

# EXAMINATION OF PROPOSED SECTION 202 HOUSING REGULATIONS

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

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PART 1—WASHINGTON, D.C.

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JUNE 6, 1975



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

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# EXAMINATION OF PROPOSED SECTION 202 HOUSING REGULATIONS

FRIDAY, JUNE 6, 1975

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

The subcommittee convened at 10 a.m., in room 4232, Dirksen Senate Office Building, Hon. Harrison A. Williams, Jr., chairman, presiding.

Present: Senators Williams, Hartke, and Percy.

Also present: John Edie, professional staff member; John Guy Miller, minority staff director; Margaret Fayé, minority professional staff member; Kathryn Dann, assistant chief clerk; and Eugene Cummings, printing assistant.

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

Senator WILLIAMS. My Subcommittee on Housing for the Elderly returns today to a subject matter very close to its heart—the Section 202 Housing Program for the Elderly and Handicapped. From 1959 to 1969, this popular program achieved acceptance, flexibility, and results—three characteristics that are very hard to find in housing programs today.

In 1969, section 202 was phased out in favor of another program—the section 236 interest-subsidy program which has since been frozen by the infamous housing moratorium levied in January 1973. Since that date, we have had no viable program to assist nonprofit sponsors in developing housing for the elderly.

Four years ago, this subcommittee began a series of hearings entitled: “Adequacy of Federal Response to Housing Needs of Older Americans,” and our first subject of investigation was section 202.

### FEDERAL RESPONSE INADEQUATE

Today, the Federal response to the housing needs of older Americans is severely inadequate. In fact, the total response is worse than it was 4 years ago.

And this morning, we return for a look at section 202, because in spite of constant administration resistance, this program has not been forgotten by this subcommittee and by many other supporters, both in and out of Congress. We were successful last year in revitalizing the original 202 program in a manner we felt would renew its role as

the primary vehicle in providing a safe and decent living environment for many older persons.

Our hearing today really boils down to one very simple goal: Thousands of older persons in this country need better housing, and many experienced and dedicated nonprofit sponsors are anxious to provide it. But these sponsors need Federal assistance to get the building built and to subsidize the rent to help those with low incomes.

All we are trying to do is fashion a simple program to make that happen. I honestly fail to see why it should be so difficult. But, year in and year out, we have faced stubborn resistance.

In its original format, the section 202 program provided direct 3-percent Government loans to nonprofit sponsors. More than 45,000 units—or 330 projects—have been built, and there has been only one foreclosure—a success record unparalleled in the history of the Department of Housing and Urban Development.

Then, in 1969, this successful program was phased out by administration decision. One reason given for its demise was the heavy impact of a direct-loan program on the annual budget. For several years I introduced legislation to continue section 202 with no result. Finally, in the last Congress, we changed some of the features that had brought it into official disfavor and incorporated them into the 1974 Housing and Community Development Act. That bill was signed into law last August. Later in the fall, Congress passed a Supplemental Appropriations Act which approved a borrowing level for the 202 program of \$215 million for fiscal year 1975.

#### APPROVED FUNDING UNUSED

My friends, 24 days are left in fiscal year 1975, and not one penny of approved section 202 funding has left HUD, and not one elderly person is the better for our efforts.

After a long delay, HUD finally issued proposed regulations for the revised section 202 program on May 15, 1975. It is these regulations that we are here today to examine.

Some may ask why it is necessary to call such a hearing before regulations become final. The answer is very simple. The objections to these proposed regulations have been so strong that I felt it was imperative to air these differences publicly, not only for the benefit of Congress, but for the benefit of HUD.

Central to the attack on these regulations is the total absence of any assistance in providing adequate permanent financing. What is more important, there is a growing consensus that these regulations, as proposed, are unworkable and will provide no program at all for nonprofit sponsors.

Contrary to congressional intent, HUD has chosen to use section 202 funds for construction loans only. Nonprofits must come by their permanent financing on their own, and many of them tell me that obtaining permanent financing has been their No. 1 obstacle over the years, and the new regulations do nothing to overcome it.

I am sure that the issue of construction versus permanent financing will be addressed by our witnesses today, and I am sure they have many other important points as well.

What concerns me is that we finally get a housing program for the elderly that will permit the dedicated nonprofit sponsor to build and care for older Americans in his community.

I should also point out that I sent a personal invitation to the Secretary of HUD, Mrs. Carla A. Hills,\* to come to testify and hear the testimony scheduled for this morning. Regrettably, she will not be with us this morning, nor will there be a presentation from HUD.

The Secretary had earlier been invited by the Senate Banking, Housing and Urban Affairs Oversight Subcommittee to testify on June 5. A change of that date to June 12 was mutually agreed upon because of the Secretary's travel schedule and the absence from Washington this week of key officials in the Department.

I am truly sorry that the Secretary will not be with us today, but we are negotiating a mutually convenient time later this month to have her testify before us in response to what will be said today.

Finally; one word of optimism. For a long time we have not had any regulations—in fact, just no program at all. At least today we have something we can look at, if not work with. And I am hopeful that our hearing today will help turn these regulations from a long-overdue promise to a workable reality.

We are going to begin, appropriately, with the statement of John Martin, special consultant, American Association of Retired Persons/National Retired Teachers Association.

Before we begin, I would like to enter into the record at this point a copy of the proposed section 202 regulations published in the May 15, 1975, *Federal Register*.

[The material referred to follows:]

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[24 CFR Part 895]

OFFICE OF ASSISTANT SECRETARY FOR HOUSING PRODUCTION AND MORTGAGE CREDIT—  
FEDERAL HOUSING COMMISSIONER

[Docket No. R-75-332]

### CONSTRUCTION LOANS FOR HOUSING FOR THE ELDERLY AND HANDICAPPED

#### PROPOSED RULEMAKING

The Department is considering amending Title 24 by adopting a new Part 895—Construction Loans for Housing for the Elderly and Handicapped. This amendment would implement section 202 of the Housing Act of 1959, 12 U.S.C. 1701q, as amended by the Housing and Community Development Act of 1974, and would set forth the substantive provisions and procedural requirements for direct Federal construction loans to encourage development of housing and related services as defined. Only projects that receive contracts for assistance under section 8 of the U.S. Housing Act of 1937 would be eligible to participate in the section 202 program.

In general, the proposed part describes the method by which an applicant would request consideration by HUD of a construction loan for a proposed project, describes the factors upon which HUD's consideration is based, explains the steps to be taken by both HUD and the applicant as the request progresses to the point of actual lending, describes the various obligations of the principals,

\* See appendix 1, p. 43.



including HUD, both in the construction and permanent financing phases, and relates the requirements of the 202 program to those of the section 8 Housing Assistance Payments Program. (See Part 880, 40 FR 18682, April 29, 1975.)

Interested persons are invited to participate in the making of this rule by furnishing such written comments, data and suggestions as they may desire. All such materials should be filed with the Rules Docket Clerk, Office of the General Counsel, Room 10245, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410 and all comments received on or before June 16, 1975, will be considered before adoption of a final rule in this matter. Copies of all comments will be available for public inspection at the above address during regular business hours both before and after the close of the comment period.

The Department has determined that these proposed regulations will not have an environmental impact, as defined in HUD Handbook 1390.1. The finding of inapplicability may be inspected at the above address.

Accordingly, it is proposed to amend Title 24 by adding a new Part 895. Construction Loans for Housing for the Elderly and the Handicapped, to read as follows:

#### **PART 895—CONSTRUCTION LOANS FOR HOUSING FOR THE ELDERLY AND HANDICAPPED**

##### **SUBPART A—GENERAL POLICY**

- Sec.  
895.1 Purpose and policy.  
895.3 Applicability of Part 880.  
895.5 Definitions.

##### **SUBPART B—ALLOCATION OF SECTION 202 LOAN FUND RESERVATIONS**

- 895.200 Geographic distribution of section 202 Loan Fund Authority.  
895.205 Invitations for requests for section 202 fund reservations.  
895.210 Contents of requests for fund reservations.  
895.215 Approval of requests for fund reservations.  
895.220 Duration of section 202 fund reservations.

##### **SUBPART C—APPLICABLE PROCEDURES UNDER SECTION 8**

- 895.300 Additional allocation of section 8 contract authority to field offices.  
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895.310 Submission of preliminary proposals.  
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##### **SUBPART D—CONSTRUCTION FINANCING PROCEDURES**

- 895.400 Requests for construction financing.  
895.405 Approval of request for construction financing.  
895.410 Amount and terms of construction financing.  
895.415 Requirements prior to initial disbursement of construction financing loan.  
895.420 Loan disbursement procedures.  
895.425 Completion of construction, approvals by HUD and permanent financing.

**AUTHORITY:** Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

##### **SUBPART A—GENERAL POLICY**

#### **§ 895.1 Purpose and policy**

(a) *Purpose.* The purpose of the program described in this part is to provide direct Federal construction loans under Section 202 of the Housing Act of 1959, 12 U.S.C. 1701q, for housing projects to serve elderly and handicapped families and individuals. 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.

(b) *General Policy.* A construction loan made pursuant to this part shall be used only to finance construction of projects which meet the requirements of, and

which will receive the benefit of, housing assistance payments under the Section 8 program. Such loans will be made only in instances where the Applicant has obtained a commitment, satisfactory to HUD, for permanent long-term financing of the project upon completion of construction.

#### § 895.3 *Applicability of Part 880*

To determine whether a project for which construction loans are requested under this part complies with the requirements of the Section 8 Housing Assistance Payments Program—New Construction, the provisions of Part 880 of this chapter shall apply except to the extent that such provisions are inconsistent with the provisions of Subparts C and D of this part.

#### § 895.5 *Definitions*

As used in this part—

“Act” means Section 202 of the Housing Act of 1959, as amended, 12 U.S.C. 1701q.

“Applicant” means any private nonprofit corporation, on part of the net earnings of which inures to the benefit of any private shareholder, contributor or individual, which is not controlled by nor under the direction of persons or firms seeking to derive profit or gain therefrom, and which is approved by the Secretary as to administrative and financial capacity and responsibility. The purposes of the Applicant must include the promotion of the welfare of elderly or handicapped families.

“Assistant Secretary” means the Assistant Secretary for Housing Production and Mortgage Credit—Federal Housing Commissioner.

“Construction” means erection of new structures for housing and related facilities.

“Development Cost” means costs of construction of housing and related facilities, and of the land on which they are located, including necessary site improvements and such other expenses as may be determined by the Assistant Secretary to be properly attributable to the capital cost of the construction or development of the housing and related facilities.

“Elderly or Handicapped Families” means (a) families of two or more persons the head of which (or his spouse) is sixty-two years of age or over or is handicapped, or (b) a single person who is sixty-two years of age or over or who is handicapped.

“Field Office” means any HUD Area, Insuring or Regional Office which is delegated authority to process applications under the Section 8 program.

“Handicapped Person” means any person having an impairment which is expected to be of long-continued and indefinite duration, is a substantial impediment to his (or her) ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered handicapped if he (or she) has a disability attributable to mental retardation, cerebral palsy, epilepsy, or another neurological condition found by the Secretary of Health, Education, and Welfare to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, which disability originates before such individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to such individual.

“Housing and Related Facilities” means rental housing structures suitable for dwelling use by elderly or handicapped families, and includes structures suitable for use by residents of the housing structures as cafeterias or dining halls, community rooms or buildings, workshops, or infirmaries or other inpatient and outpatient health facilities, or other essential service facilities. “Lender” means a lending institution which, prior to the start of construction, has agreed to (a) purchase a Section 202 construction mortgage loan upon completion of construction, or (b) otherwise provide permanent financing for a project.

“Region” means any one of the ten HUD regions.

“Section 8 Program” means the Housing Assistance Payments Program—New Construction under Part 880 of this chapter, which implements section 8 of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974.

“Secretary” means the Secretary of Housing and Urban Development or other official expressly delegated the Secretary’s authority with respect to either the Section 202 program or the Section 8 program.

## SUBPART B—ALLOCATION OF LOAN FUND RESERVATIONS

§ 895.200 *Geographic distribution of section 202 Loan Fund Authority*

From time to time, the Assistant Secretary will allocate Section 202 loan fund authority on a geographic basis for metropolitan and nonmetropolitan areas among Regions in conformance with the requirements of Section 213(d) of the Housing Community and Community Development Act of 1974, taking into consideration in addition to the factors set forth in that section, the relative numbers of elderly families residing in each Region.

§ 895.205 *Invitations for requests for section 202 fund reservations*

(a) From time to time, as loan funds become available, the Assistant Secretary will issue an invitation for requests by Applicants to receive reservations of section 202 loan authority. Invitations for requests shall be published in the *Federal Register* and in such other publications as the Assistant Secretary considers appropriate.

(b) Invitations shall state that no single Applicant shall receive a reservation of loan funds in excess of that necessary to finance construction of more than 300 units of housing and related facilities within a single Region. The invitations also shall describe eligibility requirements for Applicants, shall state that Section 8 authority has been set aside for Applicants and shall state the contents of requests, the final date for submission of requests, and any other information, guidelines, standards or procedures applicable to participation in the Section 202 Construction Loan Program. The invitation also shall state that Section 202 loan reservations will be distributed among Applicants on the basis of information furnished by the Applicant pursuant to § 895.210 and in accordance with the criteria for selection set forth in § 895.215.

§ 895.210 *Contents of requests for fund reservations*

Each request for a Section 202 fund reservation shall include the following:

- (a) Name and address of the Applicant;
- (b) Names and addresses of all officers and directors of the Applicant;
- (c) A description of any financial default, modification of terms and conditions of financing, or legal action taken against the Applicant for any reason during the past ten years;
- (d) 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 ten 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.
- (e) 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 five years Applicant has operated, such reports to be audited by an independent public accountant, if possible;
- (f) Such other information as the Applicant may wish to include which indicates any special capability to develop and operate a housing project successfully;
- (g) Such additional information as the Assistant Secretary finds pertinent to his evaluation;
- (h) The State in which the project(s) would be located and whether the project would be located in a metropolitan or nonmetropolitan area;
- (i) The number of section 202 units to be developed, by State;
- (j) The amount of section 202 loan funds requested to be reserved.

§ 895.215 *Approval of requests for fund reservations*

(a) To be eligible for selection, a request must be received by HUD within the period specified in the invitation and must be complete and responsive to the invitation. Requests for fund reservations will be approved by the Assistant Secretary based on a ranking procedure that takes into account the information provided pursuant to § 895.210.

(b) Applicants whose Request for Fund Reservation are approved shall be issued a Notice of Section 202 Fund Reservation on a form prescribed by the Assistant Secretary which shall:

- (1) Specify the amount of the fund reservation;
  - (2) Specify the Region(s) in which the housing is to be located;
  - (3) Inform the Applicant that use of the fund reservation is conditioned on a project being approved by an appropriate Field Office for assistance under the Section 8 program;
  - (4) State that the fund reservation may be further limited by the number and types of units, the development cost for the proposed project for housing and related facilities, and by the needs and market conditions of the specific project site proposed, all as determined by the Field Office;
  - (5) Instruct the Applicant to apply to the Field Office servicing the area in which the proposed housing will be located in order to initiate steps for Section 8 housing assistance;
  - (6) State that the amount of loan funds reserved or any portion thereof unused by the Applicant may not be transferred by the Applicant;
  - (7) State that a section 202 fund reservation shall not be available for use in connection with a section 8 project which is proposed in response to an invitation pursuant to § 880.203.
- (c) Applicants whose Requests for Fund Reservations are not approved shall be so notified in writing by the Assistant Secretary.

§ 895.220 *Duration of Section 202 Fund Reservations*

The Assistant Secretary shall cancel any reservations of Section 202 loan funds for projects for which construction is not commenced within the eighteen-month period following issuance of the Notice of Section 202 Fund Reservations, unless an extension of time of not to exceed six additional months is requested of and granted by the Assistant Secretary.

SUBPART C—APPLICABLE PROCEDURES UNDER SECTION 8

§ 895.300 *Additional allocation of Section 8 contract authority to field offices*

The Assistant Secretary will allocate to Field Offices contract authority for the Section 8 Housing Assistance Payments Program for use in connection with projects to be financed under section 202. This amount of contract authority will be in addition to contract authority allocated to Field Offices pursuant to § 880.201 of this chapter.

§ 895.305 *Developer's Packet*

A Field Office, upon a request from an Applicant which has received a notice of Section 202 Fund Reservation, shall forward to such applicant a Developer's Packet (Section 202), which shall:

(a) Include a copy of the applicable regulations, Handbooks, and forms. When a Field Office determines that mobile homes are appropriate or that the developer is considering using mobile homes, the Developer's Packet shall include the appropriate HUD guidelines and shall describe any changes of the requirements and procedures under this Part 895, necessitated in the case of mobile home projects, including those relating to the site and site improvements, the type or types of units, and the procedures necessary to establish fair market rents for mobile homes.

(b) Include the following information for the geographic area in which the housing is to be built:

(1) Any special requirements for housing for the elderly and the handicapped pursuant to section 209 of the Housing and Community Development Act of 1974 (42 U.S.C. 5301) and any special requirements for the handicapped pursuant to the standards established by HUD under the Architectural Barriers Act of 1968 (82 Stat. 718).

(2) Any type of housing which HUD has determined to be unacceptable.

(3) Any special requirements or restrictions to comply with the local Housing Assistance Plan, if any, and the name, address, and title of the official of the unit of general local government to whom inquiries may be addressed concerning such Plan.

(4) The specific type(s) of utilities and method(s) of distribution (utility combination) required, and a statement that, if another combination is proposed, a comparative analysis of utility costs supporting the proposed combination must be included in the Proposal.

(5) The specific management and maintenance services required to be provided by the Applicant. Such services shall include all services typically provided in the area for the type of housing contemplated.

(6) The applicable Fair Market Rents for newly constructed rental housing.  
 (7) Initial term of the Housing Assistance Contract and number of renewal options, if any.

(c) Include statements as to :

(1) Equal opportunity requirements, which include the submission of an Affirmative Fair Housing Marketing Plan if the proposal is for five or more units; an assurance of compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000a) ; compliance with Executive Order 11063 and Title VIII of the Civil Rights Act of 1968 (18 U.S.C. 245), including regulations and guidelines pursuant thereto; and certifications required pursuant to Executive Order 11246.

(2) HUD regulations and other requirements implementing Section 3 of the Housing and Urban Development Act of 1968, requiring that, to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

(3) HUD relocation requirements.

(4) HUD requirements implementing the National Environmental Policy Act of 1969 (83 Stat. 852).

(5) Governmental requirements implementing the Clean Air Act (77 Stat. 392 as amended) and the Federal Water Pollution Control Act (66 Stat. 755 as amended).

(6) HUD requirements implementing the Flood Disaster Protection Act of 1973 (87 Stat. 975).

(7) The requirement that all laborers and mechanics employed in the development of the project shall be paid not less than the wages prevailing in the locality as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a).

(8) The prescribed HUD form showing the identity of the Applicant, the developer, the builder, the architect, and the managing agent if any; the qualifications and experience of each; and the names of officials and principal members, shareholders and investors, and other parties having substantial interest in the proposed project.

(9) The requirement that the Applicant submit evidence of capability to provide the required management and maintenance services or, if the proposal is for 15 or more units, evidence of management capability and a proposed management plan and a certification by the Applicant and the management agent, if any, in a format acceptable to HUD.

(10) The requirement that (i) if the Applicant intends to pledge, or offer as security for a permanent loan or obligation, an agreement or Contract, he is responsible for submitting to the Field Office a request for approval thereof in sufficient time before he needs the financing to permit review of the method and terms of the financing and the instrument of pledge, offer or other assignment, and (ii) if the request is made after approval of the Final Proposal, the Contract Rents may be reduced where the methods and terms of financing require. (See § 880.115 of this chapter.)

(11) Other requirements which the Field Office determines to be necessary.

(12) Where copies of HUD Minimum Property Standards and any other applicable standards, guidelines and criteria may be obtained.

(13) The number of copies of the Preliminary Proposal to be submitted to the Field Office.

(14) The fact that an Applicant may submit simultaneously with the submission of the Preliminary Proposal, or at any time thereafter, a Final Proposal and the architect's certification in accordance with § 880.211 (b) of this chapter.

(15) The fact that the Field Office may determine not to select or approve the Applicant(s) proposal(s).

#### § 895.310 *Submission of Preliminary Proposals*

At any time after receiving a Developer's Packet an Applicant may submit a Preliminary Proposal which shall include the following :

(a) Identification of the proposed site, including a map showing the location of the site and the racial composition of the neighborhood, sketch of site plan, dimensions, unusual site features, if any, and zoning.

(b) A copy of the site option agreement(s), contract(s) of sale, or other document(s) which evidence the Applicant's effective control of the site(s).

(c) A description of the proposed housing and related facilities including number and type of structures, number of stories, structural system, exterior finish, heating-air conditioning system, number of units by size (number of bedrooms), living area and composition for each size of unit and special amenities or features, if any and sketches of the buildings and unit plans.

(d) The Applicant's proposed contract rent per unit by size and types of structure.

(e) A description of the equipment to be included in the contract rent.

(f) A description of the utilities and services included in the contract rent and those utilities and services not so included. For each utility and service not included in the contract rent, an estimate of the average monthly cost to the occupants during the first year of occupancy based on unit size and types of structure.

(g) A showing that the Proposal meets any special requirements or restrictions necessary for compliance with the provisions of the Local Housing Assistance Plan, if any.

(h) A statement whether the proposed project will displace site occupants. If so, the Proposal shall state the number of families, individuals, and business concerns to be displaced, identified by race or minority group status, and differentiated between owners and lessees, shall establish that there is a feasible plan for relocation and shall indicate how any necessary relocation payments will be funded.

(i) An Equal Employment Opportunity Certification, using HUD Form 2010.

(j) A statement of (1) the identity of the Applicant, developer, builder (if known), and architect (if known); (2) the qualifications and experience of each; (3) the names of officials and principal members, shareholders and investors, and other parties having substantial interest, and (4) the previous participation of each of the foregoing individuals in HUD programs, using HUD Form 2530.

(k) If a managing agent is to be employed, his identity shall be set forth, together with other applicable information as specified in paragraph (j) of this section.

(l) A statement that the Applicant intends to finance construction of the housing project and related facilities with Section 202 loan funds.

(m) A description of the proposed method of permanent financing stating whether the Applicant intends to pledge or offer the Agreement and/or Contract as security for any loan or obligation (see § 880.115(b) of this chapter). If the Applicant proposes to utilize FHA mortgage insurance, the prescribed FHA application form should be completed and submitted with the Preliminary Proposal.

#### § 895.315 *Screening and evaluation of Preliminary Proposals*

(a) *Initial Screening.* After receipt of a Preliminary Proposal, the Field Office will screen the Proposal to determine that it is complete and responsive and eligible for further processing. If the proposal does not include identification of the proposed site, description of the proposed housing, or the proposed contract rents, it shall be rejected. If the Proposal lacks, or is deficient with respect to, any of the other required elements, the Field Office shall give the Applicant a reasonable time to remedy the deficiency.

(b) *A-95 Clearance; Notice to Unit of General Local Government.* (1) After receipt of a Proposal (or after the appropriate later date for deficient Proposals amended pursuant to paragraph (a) of this section), the Field Office will, for each complete and responsive Preliminary Proposal which is subject to clearance under OMB Circular A-95 send a copy of the proposal to the appropriate A-95 Clearinghouse for review, inviting a response within thirty days from the date of the letter transmitting the Proposal.

(2) Within ten working days after receipt of a Preliminary Proposal (or after an appropriate later date for deficient Proposals amended pursuant to paragraph (a) of this section), the Field Office shall, for purposes of compliance with section 213 of the Housing and Community Development Act of 1974 forward to the chief executive officer (or his designee in writing as indicated to the Field Office) of the unit of general local government in which the proposed housing is to be located, under cover of a letter in the appropriate prescribed form, a copy of each complete and responsive Preliminary Proposal. The cover letter will invite a response within thirty days from the date the letter and the copy of the Proposal are received.

(c) *Evaluation of Preliminary Proposals by the Field Office.* The Field Office evaluation may not be completed until the response periods referred to in paragraph (b) of this section have ended. The Preliminary Proposal will be evaluated by the Field Office on the basis of all pertinent factors including, but not limited to, rent, site, design, and previous experience of the Applicant, and also on the basis of comments, if any, received from the appropriate A-95 Clearinghouse and the unit of general local government.

(d) *Selection and Notification of Selection.* The Field Office will approve a Preliminary Proposal which, in its judgment, can be developed into a Final Proposal satisfying the requirements of the Developer's Packet.

(1) With respect to a Preliminary Proposal which has been so approved, the Field Office will notify the Applicant, on HUD Form ---- and request the Applicant to submit within a time to be specified in the notification a Final Proposal in accordance with the requirements of the provisions of § 880.209. The notification shall specify:

(i) The contract rents that will be acceptable to HUD when such rents are lower than the contract rents proposed by the Applicant, and the reason for the reduction;

(ii) The estimate of the amount of relocation payments, when applicable;

(iii) The number and types of units of housing and related facilities; and

(iv) Any other special conditions or requirements.

(2) The notification shall request that the Applicant by a specified date return a copy of the notification and indicate his acceptance thereof. If the Applicant does not accept the notification by the date specified, the Field Office may rescind the notification.

(3) If the Applicant has already submitted a Final Proposal (see § 895.305 (c) (14)), the notification will state that upon acceptance of the notification by the Applicant, the Field Office will evaluate the Final Proposal in accordance with § 880.210 of this chapter.

(f) *Notification of Nonselection.* An applicant whose Preliminary Proposal is not acceptable to the Field Office shall be notified of such determination, setting forth the reasons for such nonselection and inviting the Applicant to submit an acceptable Preliminary Proposal.

#### SUBPART D—CONSTRUCTION FINANCING PROCEDURES

##### § 895.400 *Request for construction financing*

(a) At the time of submission of a Final Proposal under the Section 8 program pursuant to § 880.209 of this chapter, an Applicant shall submit a Request for section 202 Construction Financing on forms prescribed by HUD to the Field Office serving the Area in which the project will be located.

(b) The Requests provided in paragraph (a) shall be accompanied by or include the following:

(1) The names and addresses of the officers and directors of the Applicant and such other information as shall be required on the prescribed form together with a certification by each officer or director that he or she will not receive any compensation from the Applicant for his or her services and does not have any financial interest in any contract with the Applicant or in any firm or corporation which has a contract with the Applicant.

(2) A lender's letter of intent to provide permanent financing, satisfactory to the Field Office, as set forth in § 895.415 (a).

(3) Satisfactory evidence that it has the necessary legal authority to finance, construct and maintain the project and to apply for and receive the proposed loan, that it meets any requirements of the Lender as to corporate organization and that it has authority to enter into such contract obligation and execute such security instruments as may be required by HUD and the lender.

##### § 895.405 *Approval of request for construction financing*

The HUD Field Office shall review the request for construction financing and the other submissions under § 895.400 and shall notify the Applicant of its approval or disapproval, indicating any deficiencies. The Applicant will be given a reasonable time, as determined by the Field Office, to correct any such deficiencies.

The approval shall set forth fully the terms and conditions upon which the construction loan will be disbursed.

§ 895.410 *Amount and terms of construction financing*

(a) The amount of the construction financing approved shall not exceed the lesser of:

(1) The amount of loan funds reserved pursuant to § 895.215; or

(A) For mortgages insured pursuant to Chapter II, the amount of the firm commitment to insure on completion of construction; or

(B) For mortgages not insured pursuant to Chapter II, the maximum mortgage amount that would apply under § 231.3 of Chapter II if the mortgage were insured under section 231 of the National Housing Act.

(b) The construction loan shall bear interest at a rate established by the Secretary by adding: (1) A rate determined by the Secretary of the Treasury to be the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans adjusted to the nearest one-eighth of one per centum; plus (2) an allowance to cover administrative costs and probable losses under the program which allowance has been determined by the Secretary to be 1% per annum. Loans committed to be made by the Secretary shall bear interest at the rate in effect at the time the Request for Construction Financing is approved pursuant to § 895.405. The effective rate (per cent) shall be: ----- on and after ----- prior to -----.

(c) The construction loan shall be secured by a mortgage and subject to such terms and conditions as shall be determined by the Secretary.

(1) The mortgage shall bear interest during the construction period and until sold by the Secretary to the permanent Lender at a rate determined in accordance with (b).

(2) The mortgage shall bear interest upon sale by the Secretary at a rate not to exceed:

(i) If the mortgage is to be insured by the Secretary upon sale, the maximum rate applicable to such mortgage at the time of the commitment to insure such mortgage;

(ii) If the mortgage is to be purchased by a Lender providing permanent financing without a requirement for mortgage insurance by HUD, the rate agreed to by the Applicant and the Lender, as set forth in the commitment by the Lender to the Secretary to purchase such mortgage upon completion of construction.

(d) In computing the amount of the construction loan, there may be included a fee payable by the Applicant to the Lender for the commitment fee, for the agreement to provide permanent financing, and for services during the construction period incident to the disbursement of funds by HUD; that fee shall not exceed 1½ percent of the total loan.

§ 895.415 *Requirements prior to initial disbursement of construction loan*

Prior to the initial disbursement of construction loan funds by HUD, the Applicant, in addition to any other requirements pursuant to Part 880 of this chapter shall furnish such executed documents as the Field Office may require, including but not limited to:

(a) A firm commitment, in form satisfactory to the Assistant Secretary, by a HUD-approved lender, which shall provide that, upon completion of construction the lender will purchase the mortgage loan or provide financing for the Applicant to enable the Applicant to satisfy the full indebtedness under the construction loan from HUD. Such commitment shall further provide for:

(1) A term of at least 12 months after the estimated date of project completion as determined by the Field Office;

(2) A reduction, or an increase up to 20 percent, of the amount of the loan, in the event of a reduction or increase in the amount of the construction loan by HUD.

(b) A Housing Consultant's Certificate and Contract (if consultant services have been employed by the Applicant);

(c) A Certificate of Incorporation of the Non-Profit Applicant, or consumer cooperative, as required by applicable state or local law;

(d) A Certificate of Relationships and Nonprofit Motives of the Applicant;

(e) A Mortgagor's Attorney's Opinion as to the validity and legality of the mortgagor entity, the legality of the building permit, and compliance with applicable zoning laws requirements;

(f) (1) A Regulatory Agreement for Non-Profit Section 202/Section 8 Mortgagors, on a form to be prescribed by the Assistant Secretary, by which agree-



ment HUD will regulate the mortgagor's operation of the project, or (2) an addendum to the Section 8 Housing Assistance Payments Contract, as required by the Assistant Secretary;

(g) A mortgagor's Oath, wherein the Applicant certifies that the property to be constructed will not be used for hotel or transient accommodation purposes during the term of the Section 202 Construction Financing Loan;

(h) An Agreement and Certification, to be executed by the Applicant and HUD on a form to be prescribed by HUD, wherein the Applicant: (1) agrees to certify actual costs and, as may be required by the Assistant Secretary, to have the contractor and subcontractor also submit certificates of actual cost; (2) certifies as to any financial and family relationship which exist as between such Applicant, the architect, general contractors and subcontractors;

(i) An Assurance of Compliance with HUD Regulations Under Title VI of the Civil Rights Act of 1964;

(j) A Note and Mortgage on forms approved by the Assistant Secretary for use in the jurisdiction in which the property covered by the mortgage is situated. The note and mortgage shall comply with applicable state law for such instruments, and shall set forth the terms and method of repayment, maturity date, prepayment and release provisions, late charges, and such other requirements and covenants as prescribed by the Assistant Secretary;

(k) A Title Policy from a HUD-approved title insurance company or other title evidence satisfactory to the Field Office that marketable, fee simple title is vested in the Applicant as of the date the mortgage is filed for record;

(l) A survey of the mortgaged property and final plans and specifications of the housing and related facilities to be constructed, which survey and plans and specifications shall have been prepared by registered surveyors and architects, respectively, shall be in a form satisfactory to the Field Office, and shall be accompanied by such Surveyor and Architect Certificates and Owner-Architect Agreements as the Assistant Secretary may prescribe;

(m) A Building Loan Agreement to be executed by the Applicant and HUD in a form to be prescribed by the Assistant Secretary. The Agreement shall set forth the terms and conditions under which progress payments may be advanced during construction according to a schedule of disbursements, and shall include provisions for disbursements of loan proceeds only on account of portions of construction work completed and approved by HUD and provisions for a holdback or retainage from construction requisition payments in an amount determined by the Assistant Secretary;

(n) A Construction Contract between the Applicant and General Contractor, on a form to be prescribed by the Assistant Secretary, which Contract shall be in the form of either a lump sum contract or a cost plus contract; the lump sum contract shall provide for the payment of a specified amount and the cost plus contract shall provide for the payment of the actual cost of construction not to exceed an upset price, and may provide for an additional payment to the contractor in an amount approved by the Assistant Secretary; the Construction Contract shall be supplemented by such Construction Cost or Trade Payment Breakdown and General Conditions as the Assistant Secretary may prescribe;

(o) Assurance of Completion of construction in such form as may be prescribed by the Assistant Secretary, which may include Performance and Payment Bonds from approved sureties, cash escrows or Letters of Credit with a Completion Assurance Agreement, or a controlled disbursement agreement coupled with a guaranty of performance of the construction contract. Each Performance and Payment Bond furnished under this section shall be in the amount of 50 percent of the total development cost of the housing and related facilities, and any such escrow or Letter of Credit furnished hereunder shall be in the amount of 25 percent of such cost; the terms and conditions of any of the various forms of assurance of completion shall be satisfactory to the Field Office;

(p) An escrow agreement in the amount of the cost of the off-site facilities, funded by a cash deposit or Letter of Credit to assure completion of such facilities.

(q) A Contractor's and Sub-Contractor's Certification Concerning Labor Standards and Prevailing Wage Requirements, in a form required by the Assistant Secretary, certifying that the laborers and mechanics employed in the construction of the dwellings will be paid not less than the wages prevailing in the locality in which the work is to be performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of the Request for Construction Financing. Such certificates shall also include information as to all applicable labor standards and other provisions of the regulations of the Secretary of Labor;

(r) Such other information and documents as the Assistant Secretary or Field Office may require in order to approve disbursements of construction loan proceeds to this part.

If any of the foregoing documents have been submitted to, and approved by, the Field Office in connection with an application for mortgage insurance under Chapter II, such documents need not be resubmitted in order to comply with the provisions of this part.

*§ 895.420 Loan disbursement procedures*

(a) Disbursements of construction loan proceeds shall be made by HUD to or for the account of the Applicant through an approved lender, mortgage servicer, title insurance company or other agent satisfactory to the Field Office;

*Provided, however,* That to the maximum extent practicable, the Field Office shall use the services and facilities of the private mortgage industry in servicing mortgage loans made under this part.

(b) All disbursements to the Applicant shall be made on a periodic basis in an amount not to exceed the HUD-approved cost of portions of construction work completed and in place, minus the appropriate holdback or retainage, as determined by the Field Office.

(c) Requisitions for construction loan disbursements shall be submitted by the Applicant on forms to be prescribed by the Assistant Secretary and shall be accompanied by such additional information as the Field Office may require in order to approve loan disbursements under this part, including but not limited to, evidence of compliance with the Davis-Bacon Act, Department of Labor regulations, all applicable zoning, building and other governmental requirements, and such evidence of continued clear and marketable title in the Applicant as the Assistant Secretary may prescribe.

*§ 895.425 Completion of construction, approvals by HUD and permanent financing*

(a) The requirements for completion of construction and approvals by HUD set forth in Part 880 of this Chapter shall be satisfied by the Applicant prior to submission of a final requisition for disbursement of construction loan proceeds.

(b) The Applicant shall, in connection with such final requisition, submit to the Field Office such documentation as may be prescribed by the Assistant Secretary for full and final disbursement of the loan, including any applicable holdback or retainage, and such guaranty against latent defects as the Assistant Secretary may prescribe, all of which foregoing shall be in addition to the requirements of Part 880 of this chapter. The documentation hereunder shall include such information and forms as the Assistant Secretary may require in order to approve the Applicant's and Contractor's Cost Certification and to determine the total actual development cost of the housing and related facilities.

(c) Permanent financing may commence at any time subsequent to final approval by the Field Office of the housing and related facilities and a determination by HUD of the total Development Cost of such housing and related facilities. The proceeds of the permanent loan shall be sufficient to satisfy the total outstanding construction loan indebtedness.

(d) The legal instruments by which the construction loan is sold or assigned to the permanent lender shall be satisfactory to the Field Office and shall include such provisions as the Assistant Secretary may prescribe.

DAVID M. DEWILDE,  
*Acting Assistant Secretary for Housing Production  
and Mortgage Credit, Federal Housing Commissioner.*

**STATEMENT OF JOHN B. MARTIN, SPECIAL CONSULTANT, NATIONAL RETIRED TEACHERS ASSOCIATION AND THE AMERICAN ASSOCIATION OF RETIRED PERSONS**

Mr. MARTIN. Mr. Chairman, I am John B. Martin, former U.S. Commissioner on Aging, and presently serving as legislative consultant to the American Association of Retired Persons and the National Retired Teachers Association. I am appearing this morning in a broader role than as spokesman for the NRTA-AARP.

In order to facilitate the hearing and to demonstrate the unanimity of our message, I have been asked by the organizations which have cooperated in an Ad Hoc Coalition on Elderly Housing to present our response to the proposed section 202 Housing for the Elderly and Handicapped regulations. The organizations participating in the Ad Hoc Coalition on Elderly Housing are: AFL-CIO; American Association of Homes for the Aging; American Association of Retired Persons/National Retired Teachers Association; B'nai B'rith; Cooperative Services; Lutheran Housing Coalition; National Association for Non-Profit Retirement Housing; National Caucus of Black Aged; National Council of Senior Citizens; National Council on Aging; and Senior Advocates International.

As you may know, Mr. Chairman, these organizations, with a combined membership of over 12 million older Americans, and virtually all of the nonprofit sponsors with experience in constructing housing for the elderly and handicapped, have been working together in a cooperative effort to stimulate an expanded Federal commitment to meet the pressing housing needs of older Americans.

#### PRIORITY REINSTITUTE SECTION 202

A key priority of our joint agenda has been the requirement that the Department of Housing and Urban Development reinstitute the section 202 Housing for the Elderly and Handicapped program as a primary vehicle for nonprofit sponsor participation in meeting the documented housing shortages of the elderly. Objectively looking at the section 202 program, our organizations recognize a number of elements which make it a viable, efficient, and cost-effective program.

The enactment of the Housing and Community Development Act of 1974 marked a giant step toward meeting the ad hoc coalition goal of a revitalized section 202 program. We are extremely grateful for the unqualified support of members of this subcommittee for the passage of this law. It provides for a revision of the section 202 program to overcome previous Department objections concerning program economies.

Unfortunately, the jubilation which we expressed with the passage of the act was short lived. The departmental response to the revised program has been equally as unconstructive as its previous stance toward the old section 202 program.

This brings us to the point of today's hearing. On May 15, following months of seemingly unwarranted delay, the Department issued in the *Federal Register* proposed regulations to implement the revised section 202 program.

Mr. Chairman, it is the unanimous opinion of the cooperating organizations that comprise the Ad Hoc Coalition on Elderly Housing that the proposed regulations promulgated by the Department fail to meet the statutory language of section 210 of Public Law 93-383, the Housing and Community Development Act of 1974. The promulgated regulations neither offer nonprofit sponsors an adequate opportunity to build under the designed program nor establish an administratively viable program that will provide quality housing for older Americans.

However, rather than negatively criticize the Department's proposed regulations, our associations come this morning with a positive alternative to the program design suggested by HUD.

At this point, Mr. Chairman, I ask permission to enter into the record of this hearing a set of alternative regulations which have been drafted by the ad hoc coalition and which constructively build upon the proposed regulations promulgated by the Department.

To facilitate understanding, we have used the common format of placing brackets around recommended deletions, and we have italicized all proposed additions, placed in the context of the Department draft.

## TWO FUNDAMENTAL CHANGES PROPOSED

While my associate, Mr. Richard Millman, representing the National Council of Senior Citizens within the ad hoc coalition, will speak to the technical significance of the changes which the cooperating organizations are advancing, I would point out that we advocate two fundamental changes: First, we urge that the revised section 202 program provide for direct loan, construction, and permanent mortgage financing for a term not exceeding 50 years, and second, that the administration of the combined section 202/section 8 program be performed at the regional level by a specialized staff whose sole responsibility is to work with the nonprofit sponsors in producing quality housing.

The long-term direct mortgage loan and specialized program administration at the regional office level were basic to the success of the old 202 program and are, in our judgment, also critical to nonprofit involvement in and success of the new revitalized program.

Additionally, we have proposed changes in the regulations which would insure the availability of section 8 housing assistance payments for up to 100 percent of the units constructed under the revised section 202 program, and we have emphasized the need for careful screening of the sponsor as well as the applicant to protect the program from abuse by phony nonprofit enterprises.

Before turning the microphone over to Mr. Millman for a further analysis of the regulation changes we are proposing, I would like to emphasize that the position reflected in the document which we have submitted to this subcommittee and which we will send to the Department is a product of joint authorship.

Seated behind me are a number of the ad hoc coalition participants who have worked and are continuing to work to strengthen our Federal response to the housing needs of older Americans.

Inasmuch as several of the associations which have participated in the ad hoc coalition's activities wish to underscore their viewpoints with regard to the May 15 proposed regulations, I ask permission at this point in the record that their statements be included.

In closing, Mr. Chairman, I wish to extend, on behalf of the associations cooperating in the Ad Hoc Coalition on Elderly Housing, our gratefulness to you and the members of your subcommittee for your continued interest in the housing needs of older Americans. We trust you will join with us in our efforts to influence the Department of Housing and Urban Development to implement an administratively effective and efficient direct-loan program for elderly and handicapped housing as mandated by Public Law 93-383.

Senator WILLIAMS. If there is no objection to these requests, we welcome the inclusion of them into the record.\*

\* See appendix 2, Item 1, p. 46.

Mr. MARTIN. Thank you.

Senator WILLIAMS. That is a most constructive statement. I applaud you, and I am grateful for it.

Why do we not, before we get into any particular questions, turn to Richard Millman, consultant, National Council of Senior Citizens; and also representing the Ad Hoc Coalition on Housing for the Elderly, and get his presentation fully in at this time, and then we will have our discussion.

**STATEMENT OF RICHARD M. MILLMAN, CONSULTANT, NATIONAL COUNCIL OF SENIOR CITIZENS, ALSO REPRESENTING THE AD HOC COALITION ON HOUSING FOR THE ELDERLY; ACCOMPANIED BY JAMES N. BRODER**

Mr. MILLMAN. Thank you, Mr. Chairman.

Mr. Chairman, at the outset I would like to indicate that rather than to discuss the regulations line by line, which we may wish to later if you desire, I have elected to vary my remarks slightly, primarily as a consequence of the May 30, 1975, letter from the Comptroller of the United States and Senator Kennedy, which I will discuss in my testimony, and with that initial observation, let me proceed with my testimony at this point.

Mr. Chairman and members of the subcommittee, it is a pleasure for me to have the opportunity to appear before you representing the Ad Hoc Coalition on Housing for the Elderly. I am accompanied by James N. Broder.

My concern today is housing for the elderly and, specifically, the implementation of the section 202 direct loan program.

Let me say at the outset that during the struggle over the last several years for the reinstatement of this tremendously successful program, the support of the members of this subcommittee has been un-failing and it is deeply appreciated by older Americans throughout the Nation.

**"TOTALLY INADEQUATE" BORROWING LEVEL**

There are really two points that I wish to make this morning. First is the totally inadequate level of borrowing authority that HUD has requested for the 202 program for fiscal 1976 and the transition period. I am not going to sit here and discuss with you the desperate need for thousands of units of specialized housing for the elderly because I know that you are well aware of that need. What I will discuss are some facts.

The first fact is that when Congress reinstated the 202 program in the Housing and Community Development Act of 1974, it intended that this Nation once again begin to provide decent, safe, and sanitary housing for the elderly.

In funding that program last year, the Senate Appropriations Committee stated in its report on the 1975 Supplemental Appropriations Act that:

The committee believes that the new section 202 program should be employed as the primary vehicle providing housing for the elderly, and wishes to emphasize that it not be a residual program to be used only when other programs fail.

Congress went on to appropriate \$214.5 million for the remainder of fiscal year 1975. Allowing for the inevitable startup time of a new Federal program, it is obvious that Congress did not intend that the \$214.5 million be a full year's level of funding, but merely the kickoff for the last 3 or 4 months of fiscal 1975.

The second fact that I wish to bring to your attention is that none of the \$214.5 million of borrowing authority has been spent, nor have final regulations ever been issued. HUD has effectively impounded the appropriated funds, not by overtly terminating the program, or even requesting a delay required by the Impoundment Control Act, but merely by the age-old bureaucratic method of delay.

Mr. Chairman, I am not alone in the belief that this action represents an impoundment. The Comptroller General issued an opinion dated May 30, 1975, in response to a request from Senator Kennedy, which confirms this view. I ask unanimous consent that these letters be included in the record in their entirety.\*

Senator WILLIAMS. They will be.

Mr. MILLMAN. Let me describe the scenario that his letter reveals. In February 1975, HUD requested that OMB apportion the appropriated funds as a first step toward obligating the funds. OMB refused this request because no regulations for the new program had been developed. I am sure that this refusal did not come as a great surprise to HUD.

On May 9, OMB apportioned the budget amount to HUD apparently because the proposed regulations were ready for publication. The regulations were finally published for comment on May 15 with a 30-day comment period.

#### HUD IMPOUNDS \$214.5 MILLION

HUD itself estimates that it will obligate only \$34 million during the remainder of fiscal year 1975, thus impounding \$180.5 million. I do not believe that HUD is going to have final regulations in force until mid-August, and thus it will impound the full \$214.5 million for the entire fiscal year 1975. GAO suggests a remedy for the impoundment:

The total authorization for the program, however, remains intact, and an option remaining open to the Congress is to set a new loan limitation in fiscal year 1976 at a high enough rate to absorb the 1975 program delay.

The next fact that we must deal with is the request by HUD that the \$214.5 million appropriated for fiscal 1975 be the ceiling for fiscal 1976 and the transition period.

In other words, HUD is asking that funds intended for use in 1975, and impounded, be used in 1976 and beyond. Let me translate these dollars into numbers of dwelling units that will be provided over this period of time by the funds requested by HUD.

I am assuming for these purposes that one unit can be constructed at a cost of \$20,000—a very conservative estimate. Utilizing this figure, only a little over 10,000 units will be constructed with the funds provided by this committee, if any units are constructed at all.

\*See appendix 2, item 6, p. 62.

Senator WILLIAMS. You said, "conservative," and is it realistic?

Mr. MILLMAN. I think it is not. I think it is closer to \$25,000, but I have heard the figure expressed from HUD, and I am using that figure, but even assuming—

Senator WILLIAMS. This is a regional matter, and these costs vary.

Mr. MILLMAN. Correct. It varies from region to region, and we are averaging out across the country and trying to come up with an estimate on a national basis, so if we do use the \$20,000 figure, and it is a figure with which we believe HUD will accept, then only a little over 10,000 units will be constructed with the funds provided by this committee, if any units are constructed at all. That is referring to the present level of appropriation.

The issue is clear. Did Congress mean it when it said the 202 program should be employed as the primary vehicle for providing housing for the elderly? Even at maximum authorized levels, the program will produce only approximately 50,000 units.

HUD has been trying to sweep the 202 program under the rug for many years, and has simply been unable to do so. They opposed its reactivation during the debate on the Housing and Community Development Act of 1974, have impounded the appropriated funds, and are now attempting to scuttle the program by under-appropriation.

Therefore, on behalf of the ad hoc coalition I am requesting that this committee use its best efforts to secure borrowing authority under the 202 program for fiscal 1976 at the \$800 million level authorized by the enabling statute, plus the moneys that are currently in the 202 revolving fund for a total of \$915 million.

#### WHY SHORT-TERM CONSTRUCTION ONLY?

Even if Congress sets the level of borrowing authority at the realistic level that I have requested, another problem has arisen that may render an appropriation useless, and this brings me to the second point that I wish to make today.

We all know that there is more than one way to skin a cat, and if you lose on the Hill you can always try to win in the *Federal Register*.

Mr. Chairman, the proposed regulations issued by HUD on May 15, 1975, make explicit HUD's intent to utilize the 202 funds for short-term construction loan purposes only.

Former HUD Secretary Lynn, who, one suspects, is still calling the shots at HUD, had previously announced on January 20, 1975, his intention to move ahead with the 202 program only as a construction loan program. Given a limited amount of money to spend, turning the money over every 2 years on a construction loan basis certainly would result in more units than if the loans were to be for a 50-year period, HUD argued.

However, a recent issue of *Housing Affairs Letter*, May 23, 1975, a respected and accurate observer of HUD activity, stated:

HUD won't roll over section 202 money. HUD won't commit more than \$215 million now authorized for section 202 elderly/handicapped housing construction, even if loans were repaid quickly.

Fiscal 1975 Appropriations Act, officials claim, limits total lending to \$215 million, no matter how much rollover is available. This limits program, for now, to 10,000 units—not 40,000 as reported. Repayments will be used to reduce need for more Treasury borrowing, instead, we're told.

This seems to contradict earlier arguments for making section 202 into a construction loan program only. When it did this, HUD said it would thus be able to finance more units than if it used the \$215 million for permanent loans.

Unless Congress restores authorization for using repayments, it appears the number of units will be no more under the construction loan route.

Even if this barrier is overcome, unless a mechanism for permanent financing is included, any advantage gained by the construction loan approach is lost. In this regard we believe it to be a virtual impossibility for nonprofits to obtain permanent financing in the private marketplace. Further, even if permanent financing could be obtained in connection with an FHA insured loan, the point costs in such a transaction would be prohibitive to any nonprofit.

The previously mentioned GAO opinion indicating that permanent loans are permissible under the statute although the opinion states that they are not required. I must respectfully disagree with the opinion.

Congress intended that the new 202 program reactivate the substantive nature of the old 202 program with only a change in the subsidy mechanism. There is no justification either in the new statute or in the legislative history to justify any major change.

HUD's attempt to emasculate the traditional substance of the 202 program by turning it into a mere interim loan program flies in the face of expressed congressional intent.

#### SOURCES OF CONGRESSIONAL INTENT

The legislative intent is derived from three sources: First, there is the 1959 enactment itself and the way it was administered. Thus it is easy to demonstrate the way the program has worked and this, in my view, is the best evidence of the original congressional intent.

Second, there can be no doubt that the 1974 recodification of the act was intended to continue the traditional substance of the original programs with simply a change in the subsidy mechanism. The floor debate on passage of the Steele amendment makes that clear.

Finally, there is in the Senate Appropriations Committee report on the 1975 supplemental appropriations bill the declaration that the reactivated program was to be elevated to the status of being the primary program to meet the housing needs of the Nation's elderly.

The 202 program can really be divided into three parts: First, the construction loan; second, the rent subsidies; and third, the permanent financing. HUD has proposed to provide the first two, and leaves the nonprofit on its own to find the third.

Congress, in enacting the legislation, expressly provided for all three. Regrettably, HUD has steadfastly refused to provide any mechanism for permanent financing. For the consideration of the committee, here is a memorandum of law dealing with the legislative intent in enacting the new 202/8 program.

Mr. Chairman, I would like to conclude with several comments pertaining to our own proposed regulations\* which you have before you.

First, all references to construction financing are deleted consistent with our view that this program must provide for permanent financing.

\*See appendix 2, Item 1, p. 46.



Second, all references to processing by HUD field offices has been changed to require processing by trained HUD staff at the regional level.

As to the first point, I think I have made our position clear. As to the second, our intention is to prevent 202 applications from becoming lost in the morass and incompetence often found at local HUD insuring offices.

#### SPECIALISTS ARE NEEDED

This is not an FHA insurance program and should not be treated like one. The direct loan concept requires specialists who are well trained and sensitive to the needs of the elderly and nonprofit sponsors. This small number of specialists were responsible for the success of the program in the past and are likewise vital to its future.

Mr. Chairman, let me close with a final note of thanks, and our fervent hope that these efforts will bring home to HUD the tremendous desire that our organizations have to insure that this Nation fulfill its commitment to its older citizens and provide them with the housing they so desperately need. The elderly do not have the time to wait.

Thank you.

Senator WILLIAMS. Where is that memo? I think that would be appropriate to have in our hearing record.

Mr. MILLMAN. Yes, sir, and I ask it be made a part of the record.\*

Senator PERCY. Would this be a convenient point to interrupt you?

I have expressed my regrets to the chairman, and we are in the middle of executive session with Secretary Kissinger, so I will have to get right back there. I wanted to come by, however, to express deep appreciation to you for being here. I know my office has been cooperating closely with the ad hoc coalition.

It is always a privilege to welcome my long-time friend, John Martin.

I have a few questions, Mr. Martin. The situation in Chicago is not atypical. We have on hand about 10,000 applications for elderly housing. For the most desirable housing, the wait is 6 years; for the least desirable housing, at least 60 days. This is for elderly persons, or a couple, or two or three occupants for each of these units. Did you cover in your statement the need for the construction of new housing units for the elderly, or could you tell us in a sentence or two what you conceive to be those needs?

Mr. MARTIN. I have not used a figure in my testimony, Senator, but there is no question but what 100,000 to 150,000 units could and would be effectively used immediately, and are really in demand.

The trouble that we have gotten into here is that we have been falling farther and farther behind. This delay of the moratorium, the delay in getting these regulations out, and the reluctance to use 202 and the substituted one, 236, for it means that HUD has been dragging its feet for 4 or 5 years there, and the result of that is the tremendous backlog that has built up. If we had really been operating like that, we would not have such a backlog.

Mr. PERCY. Would the 202 program, as presently constituted, be useful and meaningful in meeting the need?

\*See appendix 2, item 5, p. 60.

## PERMANENT FINANCING NEEDED

MR. MARTIN. Mr. Millman and I have testified that it will not be useful in meeting this need because there is no provision for permanent financing using the 202 funds. Unless permanent financing is available in that way, the nonprofit organizations will simply not be able to finance these projects.

That is our major complaint about what HUD has done here. They propose to apply the money to construction loans, but require us to go to the private lending market for permanent financing, and that immediately runs into additional costs which runs the rental up beyond the reach of the people we are trying to build the housing for.

Senator PERCY. Can HUD rewrite these regulations under the terms of the Housing and Community Development Act of 1974 in such a way that the 202 can be used?

Mr. MARTIN. Yes, it can, Senator, and we have submitted this morning, before you got here, a complete rewrite of the regulations which we believe HUD ought to do, and which would expedite this whole program, and which would get us moving again.

Senator PERCY. The last question relates to another concern that I have. It is a matter of distribution. In the country of the young, we always seem to provide for the needs for the young and put the older people behind.

I do not think that college enrollment has kept pace with our expectations. It seems to me that there are literally thousands of federally financed housing units and rooms on college campuses around the country left vacant and unused today simply because there are not the students.

Has any study been made to determine whether or not these units would be at all helpful or useful for the elderly? I imagine it would be difficult, with empty rooms scattered in many dormitories, but there may be on some campuses the possibility of moving all the students into some buildings that they would occupy, and thus vacate a building that could be used for the elderly. A campus atmosphere might be preferable to some of the atmospheres that we have available to us right now. Elderly people tell me after 5 or 6 at night they do not go outside their doors, and on the college campus most of them would have good police protection, accessibility to stores, and an atmosphere that they could enjoy.

Mr. MARTIN. I am sure that that can be done, and I have thought that device, that resource, ought to be used.

I am told that students are reversing their former practice, and moving back into the dormitories, and no longer want to live off campus, but I still understand that there are large dormitory facilities available, and no question but what that environment would be preferable to some of the central city environments in which housing for the elderly is being built today.

## ABANDONED HOUSING: USEFUL?

Senator PERCY. I met recently with a concerned Chicago group—concerned with elderly housing. They maintained that we had homes and buildings that were being boarded up—ones owned by FHA, but

abandoned or unoccupied now—which they felt would be good for elderly housing. And I said: “Let us not be general; but be specific, and give me an address of one of them, and we’ll start with one, and see what can be done.”

They gave me an address, and I got ahold of HUD, and they immediately investigated and determined that this building was suitable for the elderly, and it could be rehabilitated for that purpose. I hope the Chicago HUD office is now going ahead with it.

I wonder if we cannot find a campus where we would have this possibility, and see if we cannot take one situation and give it a little promotion or publicity so that other possibilities which might exist could be uncovered or stimulated.

I think rather than thinking in terms of new construction, let’s see what we can do to utilize what we have. I would be happy to cooperate in any way we can to bring about such a project. My office has been doing some study and thinking on this, and maybe they can provide coordination.

Mr. MARTIN. We will be glad to take a look at that situation through our organization and come up with some suggestions.

Senator PERCY. I appreciate it, and I apologize profusely for not being able to stay.

This is an area of such deep interest and concern to me, but we do not get Secretary Kissinger every day coming back from a visit with Middle East leaders and others.

I must go down to this session as a member of the Foreign Relations Committee and see about these matters. I would like to say that even though Senator Williams is not here—that when I first came to the Senate I began working with Senator Williams on mass transit. It was an uphill battle. It was extremely difficult to get sympathy from the executive branch of Government. But we have seen, through the years, the way it has moved, and we have seen movement by the Federal Government.

I cannot think of any of my colleagues that I have ever worked with who was a greater planner, or who moved with such vigor into an area, and who would not take no for an answer.

He was absolutely correct all the way through, and I want to pledge to him in absentia for the moment that the leadership he provides in this field will have absolute bipartisan support. The work of this subcommittee has been extremely instrumental in moving ahead and focusing attention on the housing need of the elderly.

I can assure him, that we will muster all the support he will require on the Republican side of this committee and the side of the Legislative Committee with jurisdiction. I think these hearings are extremely valuable so we can better understand what can be done through regulations that might more accurately interpret the intent of Congress in this regard.

We would like to work cooperatively with you in that regard.

#### INTEREST APPRECIATED

Mr. MILLMAN. Senator Percy, I would like to note on behalf of the coalition our appreciation for your interest as well.

I would like to recall your sponsorship of an amendment—I think it was in 1972, which passed the Senate—which would have provided

the position of an Assistant Secretary for Elderly Programs. We think that is an important goal, and I would like to note your support and concern of the elderly, as demonstrated by your appearance just earlier this week on a national town meeting. You appeared on the Committee of National Council, and we do recognize that we have bipartisan support. We are grateful for the support that you have given to this very important effort.

Senator PERCY. I thank you very much indeed.

I will say that Senator Williams—and I have been taking your name in vain while you have been gone, and taking advantage of your absence—and, Senator Williams, I feel that much of our ability to focus attention and direct our energies in this field is attributable to you. I would like to commend as well the staff of this committee and subcommittee, and also members of my own senatorial staff. Constance Beaumont, who was my original adviser for the problems of senior citizens, is here, and being at least many years away from that category, she is typical of the number of younger people who, I am pleased to note, have devoted themselves to this field. I include myself among them. I am getting closer all the time.

Thank you, Mr. Chairman.

Senator WILLIAMS. Senator Hartke, do you have an observation?

Senator HARTKE. I discovered a little procedure as chairman of the Veterans Affairs Committee that is effective in getting the bureaucracy to move.

I think it is absolutely inexcusable to have a law passed in August of 1974, and not have any proposed regulations until May; I think maybe the way to avoid this is to provide that until such time as they effectively move, the air-conditioning in HUD should be turned off.

We had a situation where the VA hospitals were supposed to be air-conditioned with funds from the Veterans' Administration, and they did not use them for that purpose. The next time it came up we put a clause into the law that in the event they did not use it in accordance with the intent of Congress, the air-conditioning would be turned off. We have not had any problems.

I think one element of the disenchantment of the American people arises because of examples like this. You have a worthwhile program which is slowly strangled to death. I would hope that someplace along the line we can get word down to HUD.

I hope there is somebody in the audience listening to this, and I am not one to hesitate to put that type incentive into the measure.

Why is it so difficult to obtain long-term financing?

Mr. MILLMAN. Sir, let me try to respond to that. I think it is simple to understand it once you grasp a couple of facts first.

#### DIFFICULTY SECURING LONG-TERM FINANCING

The nonprofit is truly a nonprofit. Nonprofits do not have strong economic viability. It has dedication, and a proven ability to perform. It is hard for someone to walk into a lending institution and say: "Here I am, but I do not have a balance sheet." That is point No. 1. There are a lot of other competing applicants for the scarce amount of money.

The second point is this: Assuming that we could get FHA-guaranteed insurance on a loan—and we recognize today that that insurance would be 8.5 percent—but to borrow money from a lender, even with that guarantee, at 8.5 percent, and with the going price of money for long term at much higher levels, we are talking realistically about a placement fee or point cost that must be paid.

The best evidence available to me is that that point cost would run 7 to 9 percent of the cost of the loan, if you recognize that we are talking about projects in the \$3 to \$5 million range—\$270,000 to \$350,000 in points. No nonprofit has that resource.

What you are forcing the nonprofit to do is to jump into the lap of the profit-motivated developer and be swallowed up.

What HUD is doing is not only frustrating everything that Congress has stood for, but it is trying to do away with what the nonprofits have stood for. Dedicated service, a proven track record, by forcing us to bring ourselves to a profit-motivated developer.

The motivations of the profit-motivated developer are not always in the best interests of the elderly. We cannot get the loans for the reasons I have stated, and the elderly are made to suffer as a consequence.

Senator HARTKE. Let me ask you, when was the last time that there was a nonprofit building constructed?

Mr. MILLMAN. 1969.

Senator HARTKE. Assuming that these regulations were adopted and assuming long-term financing would be available, what is the earliest date that the next one could be?

Mr. MILLMAN. To physically construct, 18 to 24 months, but there is an inconsistency here, sir, and you are talking about going ahead with these regulations as bad as they are. These regulations do not allow us to get permanent financing and limit it to construction financing. The point is that we cannot go ahead.

Senator HARTKE. And so, for all intents and purposes, you are at a dead end; right?

Mr. MILLMAN. Right.

#### NONPROFITS MIGHT BE "SWALLOWED UP"

Senator WILLIAMS. Wait a minute. I do agree it is not desirable at all, but you mentioned the possibility of being swallowed up, and that can happen.

Mr. MILLMAN. But that would not be the type of nonprofit housing that Senator Hartke would be referring to.

Senator WILLIAMS. Who would be the other? When you say "swallowed up," that means the developer would borrow the nonprofit name, but could not the housing ultimately be in the name and disposition of the nonprofit?

Mr. MILLMAN. Well, if one is putting out dollars, I submit they would be interested in their dollars, and want the responsibility.

Senator WILLIAMS. The control would stay with the developer, and the name would go to the nonprofit. Theoretically, the housing would be built.

Mr. MILLMAN. You are witnessing here today the national nonprofit organizations, and each of us are committed not to go along as an agent for these developers. You are looking at the kinds of nonprofits,

that maybe are less sophisticated and dedicated than we are, that might be gobbled up by the nonprofit, and that presents a worse situation for the elderly.

We are committed not to be used, and we are going to do the job properly.

Mr. MARTIN. The experience that we have had with nursing homes, the proprietary interests moving in on that situation and taking it over, is comparable to what we are concerned about here.

We do not want to have that happen. We want this housing for the elderly to be built by nonprofit organizations who are motivated to build the kind of housing, and maintain the kind of program, that the elderly really need—not just a profitmaking operation.

Senator HARTKE. I see what you are saying in regard to your participation. I am trying to get away from your subjective approach for a moment and trying to be objective about what is going on here. As it is now, it is still possible for a nonprofit organization to come in; is that right?

Mr. MILLMAN. Come in where? To HUD, sir?

Senator HARTKE. To go ahead and proceed after the regulations are adopted.

Mr. MILLMAN. Construction loans only.

Senator HARTKE. I understand that they have to make their arrangements, if they can, for long-term financing.

Mr. MILLMAN. Yes; that is right.

Senator HARTKE. And you are saying that that would be at an atrocious cost. But I am asking you if, assuming you did that, even at the beginning, and the regulations have another 30 days to run and permanent rates—you have to make the application—

#### PERIOD OF INACTION

Mr. MILLMAN. We have the appropriation expiring, and we will have it expire before the application could be passed on. That would delay it somewhat.

Senator HARTKE. Even so, you would still be down. What I am saying is that you would have no construction under any circumstances, right?

Mr. MILLMAN. Correct.

Senator HARTKE. So you have a period from 1969 to 1975 with no action in this area.

Mr. MILLMAN. Precisely.

Senator HARTKE. That is 6 years of complete—not benign, but neglect of senior citizen housing, is that right?

Mr. MILLMAN. That is how we feel.

Senator HARTKE. And you do not expect anything to happen after that, is that right?

Mr. MILLMAN. If the regulations come out the way they are proposed, that is correct.

Mr. MARTIN. Senator Hartke, one gentleman on our panel is William Hughes, who used to administer this program at HUD. I wonder if he might respond to your question.

Senator HARTKE. Fine.

Senator WILLIAMS. Come up to the table, Bill.

Thank you.

## STATEMENT OF WILLIAM D. HUGHES, AMERICAN ASSOCIATION OF HOMES FOR THE AGING

Mr. HUGHES. Well, on the matter of where we go with the regulations as they have been drafted at the present time, as you have already heard, we do not anticipate that you are going to be able to produce any projects, or that there will be any nonprofit organizations able to put applications together and get the permanent financing and construct a project any time in the foreseeable future. One thing that was not mentioned is that the old program had one important requirement which was that applicants obtain letters from lending institutions showing that those lending institutions were not willing to loan them money for the project.

In other words, at the outset you acknowledged there was no money available to the applicant in the private market. The applicant came to HUD, who made the loans available to them, but not on the basis of a credit reflected in financial statements but on the basis of the quality of the sponsoring organization. The whole idea was to make loans available to organizations that really had the experience in providing social services to the community, and who had the ability to undertake this kind of proposal and go ahead with it, whether or not they have been in housing for the elderly.

### HOUSING FOR THE ELDERLY—A NEW EXPERIENCE

And if you examine the 300 odd projects under the old 202 program, you will find that for most of them operating housing for the elderly was a new experience. However, they could hire expertise to run the project, but you cannot hire the kinds of expertise needed to create a new way of life within the project. That is the job of a good sponsor.

There is no way under the new 202 regulations to recreate that kind of a program, and as far as I can see, there is not going to be permanent financing available to the type of applicant we have had in the past. I want to again stress a point made by Mr. Millman. If we follow the old 202 program, HUD will be making loans to nonprofit corporations, and many of them will be special-purpose corporations created to do the job. There is not going to be a legal tie between the sponsor and the nonprofit organization.

The sponsor may be a church, a labor union, or some other type of organization, but they have not been required to underwrite the project. They have a moral obligation to make that project work, and we have ample evidence that they take that obligation seriously. No deficit underwriting or guarantee agreement exists between the sponsor and the nonprofit. Further, there is no permanent financing available to this nonprofit organization because no lending institution will consider lending 100 percent of the project development cost to such an enterprise as that.

I do not know whether you had any other points you wanted me to make on this or not.

Senator HARTKE. Why do they not repeal the law, and not make a charade out of this whole thing?

Mr. MILLMAN. Because the law requires the long-term lending we are being—HUD is trying the patience of the U.S. Congress.

The question is, how long can they get away with it? We have been submitting the legal briefs; Senator Kennedy has spoken on the floor and acknowledged in his statements that the law required long-term lending, and the Appropriations Act last year refers to the program being the primary vehicle of housing for the elderly. The act in 1974 merely stated it was reactivating the old 202 program that Mr. Hughes administered, and that program provided long-term funding for every single project.

It is a charade to say that we have a law that allows HUD to get away with only construction lending. That is not the law; the question is, how do you enforce the law that this body has passed and which the administration and HUD refuse to follow?

Senator HARTKE. Let me ask you a legal question, and I understand there is a staff member here who is familiar with this area, but what is the procedure which has been established, rather than the law itself? Does the law require that there be long-term financing?

Mr. MARTIN. The law does not say "long-term financing." The law says "financing." This has been the structure of the 202 program from the beginning.

Senator HARTKE. What I am asking you is that if the law needs to be changed—

#### HUD INTERPRETATION RESTRICTS FUNDS

Mr. MARTIN. We think that HUD has administratively interpreted the law to restrict the use of these funds to the interim construction loan.

Senator HARTKE. I do not think there is any question that this administration has a definite policy of being opposed to anything that is of benefit to the aged; you do not expect anything of them, and you should not be disappointed. But the fact remains that there is a different question—does the law itself require that this be the procedure established? Do you feel that it was the intent of Congress, and not spelled out in sufficient detail when you are dealing with an agency that is adamantly opposed to what you are doing?

Mr. MILLMAN. We are dealing with someone administering the law in bad faith, and now I would suggest that there are ways to correct it.

You could clearly mandate by amendment or additional enactment and, although I am not as sophisticated in the legislative process, I would suggest that presently the Appropriations Committees in the House and Senate pass on the new appropriations—the Comptroller General has ruled that the present appropriation is being impounded, and ruled further that you have to substantially increase the appropriation. When the new appropriation is made, I suggest that members of this committee should urge legislators to make sure the money is being appropriated for long-term lending under the 202 program that would be binding on HUD.

I suggest also that perhaps we do need another amendment to make it clear that when the law says "up to 50 years," that we mean 50 years, and not allow them to conduct this charade.

I think you are correct. I think we have got to deal with the fact that it is being administered in bad faith, and you have to do everything necessary to insure that what is truly intended is followed.



Mr. HUGHES. Just an observation, if I may.

The original 202 program was used for construction money, but what happened was that you entered into a loan agreement for an approved project, and then you began to disburse the loan as the disbursements were needed to build it.

The 50-year period started after the closing of the loan, but, in fact, the direct loan was used for construction purposes, but not limited—absolutely not limited. It became the permanent financing.

Senator WILLIAMS. It started as construction, and was recast permanence; is that the way it worked?

Mr. HUGHES. That is right.

Senator WILLIAMS. I think, Senator Hartke, though I believe that they are very skillfully avoiding congressional intent and probably on this point could make a legal argument to get off the hook—

#### SUGGESTION OF ILLEGAL IMPOUNDMENT

Senator HARTKE. I do not think there is any question that this Attorney General is not concerned about enforcing the law, so what difference does it make?

Senator WILLIAMS [continuing]. On the impoundment question, and the General Accounting Office's suggestion that there is an illegal impoundment. Bringing legal action is no way to run the Government, yet we have had to do it.

Out of the Labor Committee we have instituted three suits—every one successful—against the executive side of the Government.

You are going to mount what will be a very visible, and we pray, a very effective, demonstration to change this regulation. You are in that process now.

You are with the ad hoc group; am I right?

Mr. MILLMAN. Yes, sir.

Senator WILLIAMS. Are you not planning some expression of your concern?

Mr. MILLMAN. It will start effectively next Monday, and I will just indicate to you that the National Council of Senior Citizens will be holding its annual legislative convention in Washington.

On Monday afternoon, on nationwide public television and live, from 3:10 to 3:55, I am moderating a television presentation to maybe 4,000 delegates across the country.

Senator Williams will be appearing and, we are also advised, Senator Brooke, Senator Mathias, and Yvonne Burke of the House will be there. This program is dedicated to 202 and how we could get it going, and the following day we expect that our delegates will be picketing HUD. We expect as many as 5,000 present to demonstrate vividly to HUD the way we feel about it.

Senator WILLIAMS. There might have been ambiguity to my reference to you as the ad hoc group.

The National Council of Senior Citizens is the sponsor of this program, and you particularly, Mr. Millman, are part of that?

Mr. MILLMAN. Correct, because I represent the national council on housing matters.

Senator WILLIAMS. Let me ask you about the opportunity to come in directly to HUD in this period. At the end of a certain point of time, there will be permanent regulations, am I right?

Mr. MARTIN. Right.

Senator WILLIAMS. What are you going to do between now and then?

Mr. MARTIN. We are submitting the same set of revised proposed regulations to HUD which we are submitting to the committee this morning.

Senator WILLIAMS. Do you get heard over there, personally, or not?

#### NO DIRECT FINANCING

Mr. MARTIN. We had one original conference with Secretary Hills in which she clearly indicated that she was not going to go along with any direct permanent financing from this money, and that was made clear. Then we had another meeting with various people down in the lower levels of the Department with regard to the regulations, which they let us take a look at in advance.

But when we met with them, they did not want us to tell them what ought to be in. They wanted to tell us what was in them, and to wait for them to publish the regulations before we commented on them. Now that they have published them, we are going to comment on them as vigorously as we can.

Senator WILLIAMS. But in the procedures, when it is time for comment, is it written comment or informal discussion?

Mr. MARTIN. Written comment.

Senator WILLIAMS. No formal presentation?

Mr. MARTIN. No hearing.

Senator WILLIAMS. The Administrative Procedures Act just says "comments"?

Mr. MILLMAN. Correct. This is, perhaps, in the form of a question or suggestion, but there is power in the Congress to consider and suspend regulations that are not responsive to legislative intent.

I believe that has been done before, and while that may occasion certain delays, there is regulation that should be given to suspending this.

Mr. MARTIN. The problem with suspending them is the problem we had on title XX on social services. We suspended them and then we were suspended, and everything was suspended for a year or more. We do not want to have that happen. We do not want to get suspended for a year or more.

Senator WILLIAMS. When does the time run on the proposal?

Mr. MILLMAN. June 16.

Senator WILLIAMS. June 16.

Mr. HUGHES. I think it is in the interest of this group to know that the handbooks—to back up the set of regulations here—as far as we can discover, have already been drafted, so they are not anticipating any substantial change.

Mr. MILLMAN. That just shows bad faith to ask for comments, and they have their handbooks printed.

Mr. HUGHES. I do not know that they are printed, but I believe they are at least drafted.

Mr. MILLMAN. At least drafted, if not printed.

Mr. MARTIN. Do I understand that Secretary Hills is going to be before you next week sometime, and these questions could be raised at that time?

### INTENT OF CONGRESS NOT CARRIED OUT

Senator HARTKE. What we have here is the situation where they refused to carry out the intent of Congress. That is being done by any kind of subterfuge; even though it is legal, it is not morally right. I think the purpose of legislation is to provide general standards and to permit the agencies to operate within that framework. Ultimately, however, we have an administration that refuses to carry out the will of the people.

The best thing we can do is draw up the rules and spell out the language so that they either follow them or quit their jobs.

Mr. MILLMAN. We would certainly support such legislation.

Senator WILLIAMS. We will have an opportunity next week in the authorizing committee to take this up.

Mr. MARTIN. I think that is the place where many of these questions can be raised.

Senator WILLIAMS. If there is going to be a change in the law, then that is the place where it has to be done.

Senator HARTKE. But they win even if we change the law, because it takes more time, and they are going ahead sabotaging the whole program; they are forcing us to take a roundabout method.

Senator WILLIAMS. And then there is, of course, the legal route in court, and if you have an elephant hide, that does not have much effect, either.

Mr. MARTIN. Senator Hartke, maybe the answer is to take away their pencils. That may be the most expedient way.

Senator HARTKE. I do not think it is good legislative procedure. Sometimes when you are dealing with people who do not play fair, you have to figure out how to make them play fair.

Mr. MILLMAN. Sir, we have considered the possibility of litigation, but we are nonprofit. We like to think the resources will go toward "people" matters, but we have no resources.

Senator HARTKE. As I understand the program, it was pretty generally a success up to 1969. I have been in these homes myself, and I tell you that there are satisfied people, and they have a pride of the type which I have seldom seen in any one group throughout the United States.

The difficulty I have found is that every individual in the place wants to show me his own little apartment, how it's taken care of—and it is a joy—and they want to show you every detail. The point is that these are good, decent programs that retain the dignity of the individual rather than forcing them onto the welfare lists.

Mr. MILLMAN. And we think the program, if it could get going, would delay and reduce the needs for institutionalization of elderly later on, and cut down those costs. You know, sir, it is so shocking to me that the White House's own Conference on Elderly in 1971 came out in support of the need for the type of housing we are talking about, and spoke of an annual need in excess of 120 units. The White House Conference on Aging I am talking about.

Senator HARTKE. Was that enforced by the White House?

Mr. MARTIN. No; it was not, Senator.

Senator WILLIAMS. Well, that was congressional opportunity given to the White House to learn something.

Senator HARTKE. May I insert here, because I happen to be from Indiana, a letter from the Lutheran Home in Indiana, and they are making the same basic point which is being made by this group.

Senator WILLIAMS. That will be included.

[The letter referred to follows:]

THE LUTHERAN HOME OF NORTHWEST INDIANA, INC.,  
Crown, Ind., May 23, 1975.

RULES DOCKET CLERK,  
Office of the General Counsel, Department of Housing and Urban Development,  
Washington, D.C.

GENTLEMEN: The proposed regulations for section 202 (Construction Loans for the Elderly and Handicapped) would exclude new nonprofit sponsoring group participation.

Provision should be made for long-term (40/50 years) mortgage commitments; and

Provision for working capital loans which can be paid from residual receipts or incorporated into the final mortgage amount.

Sincerely yours,

FRANCIS E. ELMORE,  
Executive Director.

Senator WILLIAMS. I would like to inquire how many nonprofit sponsors are ready to apply—any ballpark figure on that—notwithstanding the fact that we have had 6 years of total discouragement. There are still numbers of qualified nonprofits now ready to go, are there not?

Mr. HUGHES. Yes; it runs into the hundreds.

Senator HARTKE. But they feed on each other. Once you see somebody who has an opportunity to participate in such a program they get over to their relatives and say: "Why can't we do something like that?" I have seen that time and time again, and especially when you get into the committees.

Mr. HUGHES. Once they get involved they get so enthusiastic; also, these projects become a catalyst within each community in bringing needed service programs to the elderly. Some projects put together in this fashion actually have an overabundance of services.

Senator WILLIAMS. One final question. I understand over at HUD they say that nonprofit sponsors have traditionally experienced a great deal of trouble obtaining construction financing. I imagine this is part 1 of their foundation that they build on—this regulation that limits it to construction; what has been the experience? Has there been this kind of great difficulty in getting construction money?

#### NO PROBLEM WITH OLD PROGRAM

Mr. MARTIN. Under the old program, as it operated, the construction money was rolled over into permanent financing, so there was no real problem. You were really using governmental funds to do this. It was a direct loan program.

Senator WILLIAMS. What was the rate on the construction loans in the period when the financing was rolled over from construction?

Mr. HUGHES. The same as the long-term, 3 percent.

Senator WILLIAMS. Subsidy for construction, as it was, and basically the same kind of loan?

Mr. HUGHES. Same money, same type of loan; they completed construction and permanently financed all 3 percent.

Senator HARTKE. And the law has not been changed—except for your provision to take it out of the unified budget, which was the original project—and it is exactly the same.

Mr. MILLMAN. Senator Hartke, when you look at the floor debate in 1974 on the House floor, stated by Congressman Steele when he sponsored the amendment to reactivate the program, he said that it would reestablish the successful 202 program and a long-term lending program—another point that we must not overlook today. They tell us we are in a recession; what about the building industry? So far the programs that HUD are offering do not work.

This program will work and will assist the building industry. It is good for everyone; the elderly, the economy—and yet, the administration seems to be unable to see far enough.

Senator WILLIAMS. What if they switched the thing around and went permanent, but not construction? Would you be able to get construction money privately?

Mr. HUGHES. From what we understand, construction money is not a problem.

If 202 was restricted to a permanent financing program, I am sure there would be no problem in getting the construction financing.

Senator WILLIAMS. We thought we arrived at that point with subsidized programs for rent. That is why we put in such a combined program of 202/8, and now we do not know. That has not been tried. The theory was sound, but they have not done anything and we have not seen it in application. It is still sound, though.

Mr. MILLMAN. We think that the legislative package is sound, and we endorse it.

Senator WILLIAMS. And you have to have that section 8 in there.

Mr. MILLMAN. And, Mr. Chairman, you may recall the section 8 and the administration's own proposals—we accepted them and we said that we would build on them.

Senator WILLIAMS. We bought their problems lock, stock, and barrel, and took care of them on the budget and on the rental subsidy. This is an administration program.

Senator HARTKE. Do not ever take them at their word. That is an admonition.

To give you another example, Mr. Tarby came in and admitted that the script money bill that President Ford sent to the Congress in February—that if they passed it, he would veto it; so what do you expect?

#### CONSTRUCTION LOAN ROLLOVER

Mr. MILLMAN. Let me tell you how that applies here. We had Mr. Mitchell, the Under Secretary, telling us the reason they went to the construction loan is that you can roll it over. Now we learn that they find out that they are not going to use it for construction money at all, and the Comptroller General of the United States, in his May 30 letter,\* confirms that the law does not permit that rollover construction lending. That is a wonderful way of trying to hide.

Senator WILLIAMS. Let us take all that we have learned here today and apply it next week when Mrs. Hills is before the oversight com-

\*See appendix 2, item 6, p. 63.

mittee, and we will take as much as we can from your wisdom and deliver it to Mrs. Hills.

Thank you very much.

Now we have statements from nonprofit sponsors. We will hear from Mr. Ronald D. Pittman, senior vice president of the Bethany Villa Housing Association, Troy, Mich., and Jno. W. Williams, executive director, Methodist Homes for the Aging, Birmingham, Ala.

**STATEMENT OF RONALD D. PITTMAN, SENIOR VICE PRESIDENT,  
BETHANY VILLA HOUSING ASSOCIATION, TROY, MICH.**

Mr. PITTMAN. Thank you, Mr. Chairman.

I am Ronald Pittman, senior vice president of Bethany Villa Housing Association, a nonprofit corporation, located in Troy, Mich., a northwest Detroit suburb.

Bethany Villa Housing has owned and very successfully operated 238 senior citizens' apartments over the past 5 years. One-half of the apartments were constructed under the 202 program, and the other half under 236. The sponsoring agency of Bethany Villa is the First Baptist Church in Troy, Mich.

Our housing corporation directors and management, in their efforts to satisfy the rapidly growing demand for well-managed, attractive housing units, have, through their sponsoring agent, the church, borrowed \$50,000 by issuing bonds to secure the downpayment on 20 additional acres for 297 additional apartments. The city rezoned the property for senior citizen housing.

**RESTRICTIVE RULES FOR FINANCING**

I have personally applied for financing through the Michigan State Housing Development Authority and have communicated several times with Governor Millikin and his top aides regarding State financing, only to be stopped by restrictive rules requiring investment in high-land-value areas.

As an example, Oakland Park Towers, located in Troy, Mich., about 1 mile from Bethany Villa, obtained State financing. MSHDA states: "The apartments must be located within a quarter-mile of a major shopping center"—such as the Sears mall—"measured from boundary line to boundary line. Walking distance from door to door is not considered."

Bethany Villa Housing does not meet this requirement. We are about 1.7 miles from a major shopping center. Our apartments are all single-story units that cover about 44 acres. So we have not received State approval for their financing.

In contrast to the State requirements, we offer: reduced land costs and reduced apartment rents; scheduled bus service to major shopping areas with door-to-door service at no surcharge to tenants, because the church sponsoring agent furnishes the buses; a 24-hour, 7-day-a-week shopping facility within one-tenth of a mile from our proposed building site; certain food items delivered to the tenant's doorstep; and expansion of a facility which HUD officials have used as a model of the most desirable characteristic of senior citizen housing in the Metropolitan Detroit area.

Now that financing of our proposed expansion through the Michigan State Housing Development Authority seems impossible, we must look to other financing vehicles.

First, let us look at the revisions proposed for the 202 law and what it will, or will not, provide for nonprofit corporation owner/operators:

First, it will provide funds for construction only, provided a mortgage commitment has been secured. If we secure a mortgage with FHA at 9 points on a project totaling \$6.5 million in construction, it means that we, as a nonprofit corporation, have to come up with equity funds totaling \$585,000 for the 9 points on the FHA financing of construction—plus closing costs, plus \$300,000 for the purchase of the 20 acres of land—or a total equity of \$885,000 to \$950,000.

Second, if we seek mortgage funds through a broker from commercial sources, we are confronted with the commercial lenders' reluctance to provide mortgage funds for a period in excess of 20 years because of the 20-year section 8 limit on rent supplement support of 30 plus 70 of the tenants; commercial lenders look upon this feature as a strong potential interruption in the mortgage payment schedule in the 21st year.

Third, a 20-year mortgage would require a higher rent schedule to assure the necessary cash flow for the earlier liquidations of the mortgage loan.

And fourth, if we secured a 20-year mortgage from private commercial sources, what are our chances of securing a section 8 contract if the proposed 202 law is the main vehicle?

#### PURCHASE OF BONDS NEEDED FOR EQUITY FUNDS

In order to shop for a loan from commercial sources, a nonprofit corporation would still not be able to secure a mortgage for 100 percent of the project investment. We would be placed in the position of asking a portion of the senior citizens on our lengthy waiting list who are financially able to each purchase a \$3,000 bond to provide the equity funds needed for a commercial mortgage.

This type of financing plan provides senior citizen housing for those who are best able to pay fair market rent, but for all practical purposes excludes the senior citizens in need of section 8 assistance.

I think we must conclude that the proposed 202 program does not meet the need of the nonprofit corporation owner/operators.

Let us explore some characteristics that could be included in the proposed 202 law which could serve both the demand for senior citizen housing for the section 8 program. It would appear that our application would receive a secondary priority if section 8 contracts are available for privately financed senior citizen housing.

If we secured a 20-year mortgage from private commercial sources, what are our chances of securing a section 8 contract, if the proposed 202 law is the main vehicle, with the Government's current desire to reduce the budget and appropriations for such housing?

(1) Provide for construction funds.

(2) Government backing or insurance for 40-year mortgages for 100 percent of the proposed investment at current market rates of interest so that the Government is not involved in a significant interest subsidy or appropriating funds for another Government mortgage bank.

(3) Reduced applications and processing time for participating developers who are proven successful owner/operators of Government financed senior citizen housing. Our last 202 application consumed about 46 weeks of processing time. Time is of the essence because of inflationary pressures on construction costs, interest expenses incurred during the processing time, and the senior citizens waiting to secure such housing.

Construction activity is at low ebb; quick action on this program would benefit a depressed area of the economy while helping our senior citizens.

Finally, let me address my closing remarks to the immediate situation at Bethany Villa; I am sure the condition exists in general throughout the United States.

Bethany Villa has a waiting list requesting 595 apartments. We have had two vacant apartments for a total loss of \$500 in 5 years—this loss occurred because of painting. We go to extremes to discourage applicants. Our present 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 was hope.

HUD's failure to respond in a timely, appropriate fashion may add more people to the local welfare rolls. Our senior citizens at Bethany Villa do not want welfare, but they may be forced to apply for assistance unless HUD responds very quickly.

#### RENT SUBSIDY NEEDED FOR PROJECTED INCREASES

I note in the June *U.S. News and World Report* that the cost of imported oil is expected to increase about \$3.5 billion per year for the next 10 years. This, of course, will increase utility and other costs.

Without a good program for senior citizen housing with rent subsidy, how will the retired person on a fixed income survive? The people we speak of are the middle-class people in their 50's and 60's.

In closing, I want to be on record as opposing the proposed 202 section 8 program. Also, I wish to express my deep concern and disappointment that the Secretary of HUD, Mrs. Carla A. Hills, or her designate, could not find the time to attend this meeting that involves a discussion that affects thousands of citizens throughout the United States. I still believe the people have a right to be heard by the appropriate involved Government officials.

Mr. Chairman, I thank you for your time. I welcome your questions.

Senator WILLIAMS. Thank you very much, Mr. Pittman. I am not clear at all, though, on your last opinion of section 8.

Now, are you just flatly opposed to this part of the law that does support low-income people in meeting a rent that will follow as the interest rates go up?

Mr. PITTMAN. The way it is written now, we do not meet the Michigan State requirements through Michigan State funding, and we could apply through section 8 for 40-year rent subsidy, but if we go through 202 or FHA, it is restricted to 20 years.

Senator WILLIAMS. It is not the principle you are opposed to, but it is the time?

Mr. PITTMAN. The time only, as it is written. We are all for the supplement.



Senator WILLIAMS. This is an excellent statement and the sort of thing that is coming from the front line, the providing of housing—but the proposals you make, if I understand them, are you suggesting a revision of law?

Mr. PITTMAN. We are suggesting, Mr. Chairman, if there is no other way but to compromise, then we would suggest for the welfare of the people of the United States—the senior citizens—that this might be a possibility, and should be considered.

Senator WILLIAMS. In other words, of your proposed changes, point 2 would go to an FHA kind of backstop for the permanent loan; is that right?

Mr. PITTMAN. Yes, that is right; or even if we went to a commercial lender, if section 8 or the Government would provide insurance backing for that loan.

Senator WILLIAMS. Now, that would be a change of law. It would go from direct loan to a government support program or backstop program for a commercial loan—and Bill Hughes is here.

Bill would that not require a change of law?

Mr. HUGHES. It would require change of law as far as I know, and I must say that I did not quite understand how he plans to make use of an insured program tied into section 8. I do not see how that solves the problem, frankly, but that is a personal observation.

Senator WILLIAMS. I will say that we are getting into basic changes of law, and you can see what we would be running the risk of—a year's delay in the law change and a year of the new regulations.

#### CHANGES WILL PROLONG DELAY

You see, this would postpone it so very long.

Mr. PITTMAN. We have had how many years of delay now?

Senator WILLIAMS. I agree. I agree. We are trying to get the law to work, and to work soon.

Mr. PITTMAN. We endorse wholeheartedly 202 as it previously was.

Senator WILLIAMS. You, me, and most of us who believe in 202, recognize the problem we have faced over the last 5 years.

Absolute resistance from the administration to 202 as it was, and they gave their reasons. We tried to adopt 202 in a fashion that would meet their objections, and now they are killing it with nonapplications, nonuse.

Mr. PITTMAN. Let me point out, if I might, that we are in a position where we have to make a move.

We have acreage that has been rezoned by the city of Troy. We have this acreage which costs us \$300,000, and we cannot afford to let it sit idle. If we have to, well, independently from other senior citizens, we will be forced to build other types of apartments on there that will not actually benefit low-income people—people on fixed incomes, the people on social security.

Senator WILLIAMS. I am sure you are not alone. People are situated similarly to you across the country, and this is the compelling observation that I would think will help us as we try to register with the Department.

You are a Baptist church-sponsored group, is that correct?

Mr. PITTMAN. Correct, and as a church, we can no longer afford to pay out this amount of money.

What they are actually saying, as we interpret the rules—that they would be telling us or our sponsoring agent to put down about \$700,000 for the privilege of taking care of senior citizens.

Senator WILLIAMS. As I understand your statement, in order to get up that kind of equity, you would have to assess your residents \$3,000 apiece.

Mr. PITTMAN. We would have to say to all new incoming residents: "You will be required to buy a \$3,000 mortgage bond, and then we raise your rent so we can turn around to pay you back for the bonds you bought." We would have no problem in doing that, but it is a sad situation.

Senator WILLIAMS. Now, your 202 that is occupied has been very successful, is that correct?

Mr. PITTMAN. Yes.

Senator WILLIAMS. When was that completed and first occupied?

Mr. PITTMAN. In 1968.

Senator WILLIAMS. And you have had only two or three individuals—you mentioned three failures.

Mr. PITTMAN. Two people left and moved to Florida, and while they were gone we suffered a loss in 5 years of \$500. We left the apartments vacant while we were redecorating it. The two apartments—that was the total loss.

#### OLD PROGRAM WAS VERY SUCCESSFUL

Senator WILLIAMS. Well, the record shows that the old 202 program was always very successful. This can be demonstrated by looking at the failure rate—out of 330-plus projects, there was only 1 failure.

Mr. PITTMAN. We have had about a zero vacancy over the last 5 years; we have somewhere between 10 to 20 people that we can line up for every apartment we presently have.

Senator WILLIAMS. Where is Troy?

Mr. PITTMAN. Northwest of Detroit about 25 miles.

Senator WILLIAMS. Thank you very much, Mr. Pittman.

We will now hear from Mr. Williams.

Mr. Williams, we welcome you from Birmingham, Ala.

#### STATEMENT OF JNO. W. WILLIAMS, EXECUTIVE DIRECTOR, METHODIST HOME FOR THE AGING, BIRMINGHAM, ALA.

Mr. WILLIAMS. Thank you, Mr. Chairman.

I have just come from our North Alabama United Methodist Conference which is still going on in Birmingham. Last week the South Alabama and West Florida Conference met. My responsibility is that of executive director of the two retirement homes in our area and the development of others.

Please understand that we work with a large segment of the population and that housing is a real need among the elderly down there. You recognize that the Methodists care. The bicentennial of the Methodist work in Alabama is long past.

The problem with the proposed regulations—24 CFR, part 895—is much deeper than can be corrected by amending the words. I cannot recognize even the memory of section 202 of the Housing Act of 1959 in these regulations.

HUD proposes to administer a program of its own making. There is no legislative authorization that I have ever heard of for the program part 895 would create. These regulations, as authorized by FHA/HUD, have revealed more than they have proposed. The Agency's real motivation shows through.

### SIMPLE PROGRAM BECOMING COMPLICATED

In 1974, Congress amended the very simple loan program so that Government borrowing could be made to supply funds. Section 8 was tied in to provide the payback cash flow. All of this was a compromise with the private mortgage industry and, at best, made a simple, frugal program very complicated. We have believed that it was not impossible though, and have anxiously awaited these proposed regulations.

Others with more technical skills will speak to specifics. Please allow me to focus upon the fact that the whole concept of sponsored housing is, once again, ignored and frustrated by these regulations.

The direct-loan program succeeded because it was administered in a manner exactly opposite to what these regulations propose. You know that the sponsoring organizations, in contrast with what these regulations call applicants, were formerly encouraged to be deeply involved in housing the local elderly.

This new proposal is written so that only the most expedient and least candid of the FHA mortgage lenders could possibly ram a project through. No worthwhile sponsoring organization, such as our conferences can, nor will, put a staff on full time, worrying and compromising the FHA people through what HUD now wants all of us to call 202. Calling a program 202 does not make it workable. It only shows that even the present administration recognizes that section 202 was the best housing program ever to come from the Congress.

Frankly, we, as the responsible representatives of truly concerned religious and charitable organizations, are not authorized to conduct the church's business in the manner outlined by these regulations.

My imagination cannot fathom the labyrinth of compromise these regulations represent, but the Alabama Conferences' Boards of Ministries have never authorized me or my board to just wheel and deal through whatever it takes to get a project under construction.

Our record of success is important and valuable to us. While we are desperate to provide the elderly with secure, sponsored housing, we are just as determined to prevent further hurt to these people and to their churches.

It does not shame me to tell you that a program must be fairly simple or we cannot participate. We are in business only because it facilitates our ministry. I fear these regulations will do what section 236 did in so many places—have borrowers "pretend" a ministry in order to have access to the Federal funds. For a little while under section 236, the real profit was in nonprofit work.

It is obvious that these regulations seek to reactivate this worst of all situations. It will again have the wrong people posing as applicants, spending too much of the taxpayers' money to produce too little and too bad housing.

Basically what I am saying is that these undecipherable regulations are unnecessary. What is proposed will hinder more housing for the elderly than it will help.

We do not need construction money—we need permanent financing. HUD offers the only thing we do not need. The real section 202 program was the opposite. Then the sponsor had to prove that he could not borrow on the private market before the Government would step in as the mortgagee of last resort.

#### “NONPROFIT SPONSORS STAY OUT”

Now HUD says they will put up the construction money only. What HUD is really saying is: “Nonprofit sponsors stay out. We deal only with mortgage brokers and promoters.”

Though I consider it futile to try to amend these regulations into a meaningful program, I will comment on some of the subsections. I do this more to show HUD’s determination to keep the promoters’ bonanza flowing than to try to make a silk purse out of a sow’s ear.

Subsection 895.1(b).—To limit the general policy of section 202 to construction financing, is absolutely a perversion of the intent of this Congress. Indeed, why should 202 be bound to section 8? Why should FHA administer section 8 funds at all?

Is it not more of the nature of a welfare payment than mortgage insurance? This unwieldy union of construction loan promotion and welfare rent payments in one agency hints of bureaucratic self-perpetuation.

Subsection 895.5.—They say “Applicant means any private nonprofit corporation \* \* \*.” You know well that not just any such corporation ought to be using Federal money.

How long will it take HUD/FHA to admit that the fly-by-night nonprofit corporations can as easily produce a believable financial statement as a corporate charter? Here was the genius of the real section 202 program. “Applicant” corporations had to have been sired by local, strong organizations of repute and longevity. No amount of cash requirement can be substituted for character in this or any other moral context.

Subsection 895.215(a).—All of this shows that FHA will deal best with their favorite brokers who make full-time careers of making arrangements with the FHA.

Subsection 895.215(b)(3).—The poor applicant is bounced between the two levels of bureaucratic morass so that neither can be blamed for having caused the hurt, frustration, and delay.

Subsection 895.215(b)(4).—If the Assistant Secretary—FHA—giveth, the field office taketh away.

Subsection 895.410(d).—This is probably unconstitutional. It is hard to believe that the Treasury funds can legally be brokered. Even if legal, this 1½ percent add-on is certainly only a donation to the broker.

Subsection 895.415.—Most of this is just impossible to accomplish.

But subsection 895.420 is the capsheaf of collusion. Section 202 funds always went directly from the Treasury Department to the borrower’s bank. There never was an “approved lender, mortgage servicer, title insurance company, or other agent \* \* \*” set up by

the Government to interrupt the funds and take a 1½ percent rakeoff. This is what exposes HUD's motivation for these absurd proposed regulations.

#### APPLICANT ENCOURAGED TO GO FOR BROKE

Most of what is proposed only shows that a genuine applicant is encouraged—even required—to go for broke with his architect, lawyer, land deal, and all, with not even a hint of firm approval. In fact, the regulations are filled with disclaimer by HUD.

So, if these regulations are allowed, the format of the worst of 236, 231, and 608 will be locked in. Those mortgage brokers who are closest to the FHA/HUD officials will get a verbal gentleman's agreement that their pet projects will be funded before the paperwork begins at all. They, alone, can risk the agony. Sincere and naive sponsor/applicants can be turned down at any time, without cause or reason, without recourse or reimbursement.

We are successfully serving several hundred old folks in Alabama. We will keep at it and do our best. But we will serve the people. If the Government makes a program available which will also serve the people directly, then we are interested.

We were very interested in section 202 of the Housing Act of 1959, even as amended in 1974. We are not interested in becoming involved with what these regulations propose.

I might add, Senator, too in one of the questions that was asked of Mr. Millman and Mr. Martin regarding construction financing, that we, too, have never had a problem.

Our first unit was built in 1961 and was a 231, because it was started in 1959, before the 202 program began. We got involved in it and we did not want to start over again. The mortgage company working with us to handle it, right in the middle, threw up their hands and quit. If it had not been for a local bank which went into get qualified to handle the loan, I do not know that we would have started it.

We took bids, and the contractor financed construction at the prime interest rate; we did not have to worry about the advance or anything else until the construction was finished, so we actually saved money because we were borrowing higher than the prime interest rate. Also, I paid the contractor the last check last month on 45 apartments that we have been building over the last few years, and the bankers loaned that money at prime interest, plus one on a 90-day open note. I borrowed what I needed, and pay off that as I can; I still owe them a couple of hundred thousand dollars. I have as long as I want to pay them off.

Senator WILLIAMS. I would say your credit rating is AAA-plus.

Mr. WILLIAMS. We have a good credit rating, no question about it, but you cannot finance low-income housing for the low-income people when you have to go out on the market and borrow money; you get additional money with the people who have the money to give you.

Senator WILLIAMS. Yours has been a complete indictment of how a simple program has been complicated into a monster.

Mr. WILLIAMS. Right.

Senator WILLIAMS. And it was a simple, direct program that met the objective, and the objective was good housing for low-income elderly people.

## PROGRAM ELIMINATED

Mr. WILLIAMS. We received the permission from both of the annual conferences in 1969, and by that time the program was cut out. We have been waiting for it to start over to build in a couple of other locations in the State. We have the demand there.

Senator WILLIAMS. You have two retirement homes?

Mr. WILLIAMS. Yes, sir.

Senator WILLIAMS. Neither came in under 202?

Mr. WILLIAMS. Neither one.

Senator WILLIAMS. Between periods?

Mr. WILLIAMS. When the other was closed down we built it with private financing, and it has been a struggle to take care of people. If the church was not subsidizing every year, I would not be able to operate.

Senator WILLIAMS. You do know about the 202 program, and you, I am sure, have friends that have come in under 202 as it was, and this has been all you needed to convince you that this is the best program; is that correct?

Mr. WILLIAMS. Since well after we built the first one, and actually I tried to change the board of trustees' thinking when we built the first unit under 231. But the fact that we had the plans approved by FHA, and everything committed, when the 202 program started, they felt if we backed off now and started over we would have a delay, and that much longer getting into it.

Senator WILLIAMS. Back there, I think they guessed wrong. That is when the whole folder of directions came about that high [indicating] and the FHA thing would be this high. This was simple, direct, understandable, and it worked.

Mr. WILLIAMS. But when you have 24 people, including ministers and lay persons, it is hard to convince all of them.

Senator WILLIAMS. You have that problem, too?

Let me say that you are our last witness this morning, Mr. Williams, and I am going out here on thin ice, because I am not sure of the meaning of what you say.

You say in your statement, and on page 3, that it is the "capsheaf of collusion." What does that mean? That is a word in your statement, and I do not know what it means, "capsheaf."

Mr. WILLIAMS. The final statement that they wanted you to pay the mortgage binders extra points to borrow the money from the Government.

Technically, the Government is not loaning you the money—the Government is loaning it, but giving it to the mortgage bank over here, and they will take a rakeoff and give you the rest.

What they have done is passed it through the mortgage banker, and the vice chairman of my board is the president of a mortgage bank, and I have told him so.

## HEARING IN NEW JERSEY

Senator WILLIAMS. I will tell you what I am going to do. I have just spoken to John Edie, who has done such a wonderful job on this—I am going to take these statements with me tomorrow to a hearing

for residential development for older people in New Jersey, and I will give them to a close friend who is a mortgage banker in New Jersey and get his evaluation. He is a mortgage banker who would not be a capsheaf for collusion, and I will tell you that.

Mr. WILLIAMS. My banker is interested in the 202 program.

Senator WILLIAMS. I am referring to Bob Larson in New Jersey. He has the same motivation.

Mr. WILLIAMS. He feels we should go the 202 route, although he is in the business to make money.

Senator WILLIAMS. We are going to complete our hearing record with letters that have poured in to us, and we are going to include them in the record.\* They come from so many States, and all parts of the country, and all directed at the impossibility of making 202 effective under the regulations proposed.

Thank you very much. I will suggest to you both that it would be appreciated by your Senators if you would write to them. I know it would be.

I am volunteering to make this observation, that if they knew about your attitude, and certainly Senator Sparkman, who has been our leader in housing through all these years, or, I should say, decades—and they would be particularly impressed with your viewpoints.

If he can be there next Thursday, I hope he will enter into the discussions with Mrs. Hills on this issue.

Thank you very much.

[Whereupon, at 12:25 p.m., the subcommittee adjourned.]

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\* See appendix 3, p. 71.

# APPENDIXES

## Appendix 1

### LETTER FROM SENATOR HARRISON A. WILLIAMS, JR., TO HON. CARLA A. HILLS, SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, DATED MAY 23, 1975; AND REPLY FROM SECRETARY HILLS

DEAR MRS. HILLS: As chairman of the Subcommittee on Housing for the Elderly of the Senate Special Committee on Aging, I would like to extend this invitation for you to testify before our subcommittee at our hearing entitled "Examination of Proposed Section 202 Housing Regulations," to be held on June 6, 1975.

Very serious objections have been presented to me concerning the regulations proposed in the *Federal Register* on May 15, 1975, for the implementation of the revised section 202 program. In addition to questions arising from the proposed regulations themselves, my subcommittee intends to explore several important issues, including the following:

1. HUD's decision to limit section 202 to construction loans and the relationship of this decision to congressional intent.

2. The inability of nonprofit sponsors to obtain the permanent financing necessary to participate in the proposed 202 program.

3. HUD's position with regard to alternative means of providing accessible permanent financing such as the utilization of the Government National Mortgage Association tandem plan.

I consider this hearing to be of the utmost importance in determining the future of housing opportunities for older Americans, and I am very hopeful that you can arrange your schedule to be with us personally. I am sympathetic with the heavy demands on your time, but I feel that the present situation calls for your close attention.

The hearing will begin at 10 a.m. in room 4232 of the Dirksen Senate Office Building. Tentative plans call for an opening statement by a spokesman for the Ad Hoc Coalition of Housing for the Elderly, followed by testimony from one or two nonprofit sponsors, and then a presentation from your Department. Following your formal statement, a less formal "roundtable" discussion of important issues will follow with participation by Senators, your Department, and a limited number of spokesmen for nonprofit sponsoring organizations.

In order to give your office as much advance notice of this hearing as possible, a member of my staff, Mr. Edie, has spoken with Mr. Sol Mosher, your Assistant Secretary for Legislative Affairs, prior to the final drafting of this letter.

Mr. Mosher, after noting complications that might make your personal appearance difficult, expressed concern about three particular procedures: (1) the appropriate timing of such a hearing about regulations when final comments are not due until June 18, 1975; (2) the protocol of not scheduling your testimony first; and (3) the inappropriateness of Departmental representatives' participating in a three-way deliberation as opposed to a two-way discussion with Senators only (the suggestion being made that departmental policy strenuously opposed such a procedure and was backed by a White House directive of some kind).

In response, may I say that I feel there is great merit in having such a hearing prior to the date set for comments on the regulations to be received. I feel such a hearing will, in fact, be of great help to HUD in calling attention to the most important issues involved, and will serve to emphasize at a crucial time congressional concern.



Scheduling two or three witnesses prior to your testimony will, again, in my opinion, be of benefit to the Department. You will be able to hear their presentation and more easily incorporate appropriate comments in your statement.

Finally, I am startled to hear of a White House directive limiting departmental participation at congressional hearings purely to a two-party process, and I would like to see a copy of any such instruction. The involvement of experienced and interested spokesmen in a constructive discussion with the subcommittee and the Department, I strongly feel, will serve well the process of communication on matters of serious concern.

However, in the interests of accommodating your schedule, we would agree to hear from you to start off the hearing so long as an appropriate representative of the Department would remain available throughout the hearing either to participate in a later discussion, or to be recalled individually to respond to specific points that have been raised.

This hearing is an earnest attempt on the part of Congress to supplement the views of others at a very important stage in the emergence of a program of direct and long-lasting benefit to older Americans, and I feel that this hearing can constructively enhance the opportunity for fashioning an effective and responsive building program to house the elderly.

Sincerely,

HARRISON A. WILLIAMS,  
*Chairman, Subcommittee on Housing for the Elderly.*

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THE SECRETARY OF HOUSING  
AND URBAN DEVELOPMENT,  
*Washington, D.C.*

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

DEAR MR. CHAIRMAN: I appreciate your invitation for me to testify before the Subcommittee on Housing for the Elderly of the Senate Special Committee on Aging in the course of your "Examination of Proposed Section 202 Housing Regulations" to be held on June 6, 1975.

As Mr. Mosher explained to Mr. Edie of your staff, I have already accepted an invitation to appear before the Oversight Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs on June 12. The committee had earlier requested my appearance on June 5, but the change to the following week was mutually agreed upon because of a number of factors including my travel schedule and the absence from Washington during the first week of June of the two Assistant Secretaries with programmatic responsibilities in the areas of concern (housing and community development) to the Oversight Subcommittee.

Those same concerns which resulted in my requesting and receiving a postponement in the hearings before the Oversight Subcommittee were the bases for Mr. Mosher's effort to seek a more appropriate date in his conversations with your staff. In addition, because of my attendance at the National Governors Conference in New Orleans on June 10, I will need to focus my attention on testimony for the oversight hearings at the very time you are currently planning on holding hearings before your subcommittee. I trust you will understand my reasons for declining the invitation to appear before your subcommittee on June 6, but I wish to assure you of our desire to comply with your request at a later date should the hearing be rescheduled or extended.

I have been advised that as of May 28 no comments on our proposed section 202 regulations have been received from members of the Ad Hoc Coalition of Housing for the Elderly, although comments have been received from other groups interested in housing for the elderly or handicapped.

I would certainly suggest that the ad hoc coalition submit comments in writing so that they may be properly considered in the rulemaking process. In the several meetings we have had with members of the coalition, we have stressed the importance of communicating their complete and candid written views to us in response to the *Federal Register* request for comments.

In regard to Mr. Mosher's comments concerning departmental representatives participating in a three-way deliberation during the course of a congressional hearing, it is understood that subcommittees of Congress have sought to use somewhat different techniques in the conduct of their hearings; and the

President has encouraged Government witnesses to cooperate. However, he has expressed to heads in the executive branch his concern about the newly developing practice on the part of certain subcommittees of Congress to request participation by an Administration representative in a panel or seminar involving also nongovernmental participants. This practice, the President believes, constitutes a substantial departure from the traditional manner in which the legislative and executive branches seek and exchange information and opinions from each other's representatives. It is a departure in which the President does not concur. However, the President sees no problem with having two or more executive branch witnesses appear at the same time, but without nongovernmental witnesses, before a congressional subcommittee if appropriate arrangements are made in advance of the hearing.

I should also point out that the President has requested that executive witnesses prior to the hearing date, or representatives on their behalf, contact the committee in reference to the format of the hearing because it is felt in this way there can be satisfactorily resolved any questions that might arise in reference to the format of the hearing.

Sincerely,

CARLA A. HILLS

## Appendix 2

# MATERIAL SUBMITTED BY MEMBERS OF THE AD HOC COALITION ON ELDERLY HOUSING\*

## ITEM 1. ALTERNATIVE REGULATIONS DRAFTED BY THE AD HOC COALITION TO THE PROPOSED SECTION 202 HOUSING REGULA- TIONS

### SUBPART A—GENERAL POLICY

#### § 895.1 *Purpose and Policy*

(a) *Purpose.*—The purpose of the program described in this part is to provide direct Federal construction [loans] and permanent mortgage loans for a term not exceeding 50 years under Section 202 of the Housing Act of 1959, 12 U.S.C. 1701q, for housing projects to serve elderly and handicapped families and individuals. 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.

(b) *General Policy.*—A [construction] loan made pursuant to this part shall [be used only to finance construction of projects which meet the requirements of, and which will receive the benefit of, housing assistance payments under the Section 8 program.] automatically receive an allocation of Section 8 funds for 100 percent of units. [Such loans will be made only in instances where the Applicant has obtained a commitment, satisfactory to HUD, for permanent long-term financing of the project upon completion of construction.]

#### § 895.3 *Applicability of Part 880*

To determine whether a project for which [construction] loans are requested under this part complies with the requirements of the Section 8 Housing Assistance Payments Program—New Construction, the provisions of Part 880 of this Chapter shall apply except to the extent that such provisions are inconsistent with the provisions of Subparts C and D of this part.

#### § 895.5 *Definitions*

As used in this part—

“Act” means Section 202 of the Housing Act of 1959, as amended, 12 U.S.C. 1701q.

“Applicant” means any private nonprofit corporation, [on] no part of the net earnings of which inures to the benefit of any private shareholder, contributor or individual, which is not controlled by nor under the direction of persons or firms seeking to derive profit or gain therefrom or a nonprofit consumer cooperative which is not controlled by nor under the direction of persons or firms seeking to derive profit or gain therefrom, and which is approved by the Secretary as to administrative and financial capacity and responsibility. The purposes of the Applicant must include the promotion of the welfare of elderly or handicapped families.

[“Assistant Secretary” means the Assistant Secretary for Housing Production and Mortgage Credit—Federal Housing Commissioner.]

“Construction” means erection of new structures for housing and related facilities.

“Development Cost” means cost of construction of housing and related facilities; and of the land on which they are located, including necessary site improvements, off-site costs necessary to supply utilities to the project, interest on mortgage loan for a period of six months following substantial completion of

\*See p. 14 for listing of members and p. 16 for statement by coalition representative.

*the project*, and such other expenses as may be determined by the Assistant Secretary to be properly attributable to the capital cost of the construction or development of the housing and related facilities.

"Elderly or Handicapped Families" means (a) families of two or more persons the head of which (or his spouse) is sixty-two years of age or over or is handicapped, or (b) a single person who is sixty-two years of age or over or who is handicapped.

"Field Office" means any HUD Area, Insuring or Regional Office which is delegated authority to process applications under the Section 8 program.

"Handicapped Person" means any person having an impairment which is expected to be of long-continued and indefinite duration, is a substantial impediment to his (or her) ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered handicapped if he (or she) has a disability attributable to mental retardation, cerebral palsy, epilepsy, or another neurological condition found by the Secretary of Health, Education, and Welfare to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, which disability originates before such individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to such individual.

"Housing and Related Facilities" means rental or consumer cooperative housing structures suitable for dwelling use by elderly or handicapped families, and includes structures suitable for use by residents of the housing structures as cafeterias or dining halls, community rooms or buildings, workshops, or infirmaries or other inpatient and outpatient health facilities, or other essential service facilities. ["Lender" means a lending institution which, prior to the start of construction, has agreed to (a) purchase a Section 202 construction mortgage loan upon completion of construction, or (b) otherwise provide permanent financing for a project.]

"Region" means any one of the ten HUD regions.

"Section 8 Program" means the Housing Assistance Payments Program—New Construction under part 880 of this Chapter, which implements Section 8 of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974.

"Secretary" means the Secretary of Housing and Urban Development or other official expressly delegated the Secretary's authority with respect to either the Section 202 program or the Section 8 program.

"Sponsor" means any non-profit organization, no part of the net earnings of which inures to the benefit of any member, founder, contributor or individual, which is not controlled by nor under the direction of persons or firms seeking to derive profit or gain therefrom, or a nonprofit consumer cooperative which is not controlled by nor under the direction of persons or firms seeking to derive profit or gain therefrom, and which is responsible for the creation, control and the continuing sponsorship and support of an "Applicant" as defined herein.

#### SUBPART B—ALLOCATION OF LOAN FUND RESERVATIONS

##### § 895.200 *Geographic Distribution of Section 202 Loan Fund Authority*

[From time to time,] the [Assistant] Secretary will allocate Section 202 loan fund authority on a geographic basis for metropolitan and non-metropolitan areas among Regions in conformance with the requirements of Section 213(d) of the Housing and Community Development Act of 1974, taking into consideration in addition to the factors set forth in that section, the relative numbers of elderly families residing in each Region.

##### § 895.205 *[Invitations] Requests for Section 202 Fund Reservations*

[(a) From time to time, [as loan funds become available], the [Assistant] Secretary will issue an invitation for requests by Applicants to receive reservations of Section 202 loan authority. Invitations for requests shall be published in the Federal Register and in such other publications as the [Assistant] Secretary considers appropriate.

[(b) Invitations shall state that no single Applicant shall receive a reservation of loan funds in excess of that necessary to finance construction of more than 300 units of housing and related facilities within a single Region. The invitations also shall describe eligibility requirements for Applicants, shall state that Section 8 authority has been set aside for Applicants and shall state the

contents of requests, the final date for submission of requests, and any other information, guidelines, standards or procedures applicable to participation in the Section 202 Construction Loan Program. The invitation also shall state that Section 202 loan reservations will be distributed among Applicants on the basis of information furnished by the Applicant pursuant to § 895.210 and in accordance with the criteria for selection set forth in § 895.215.]

*An application for a Section 202 fund reservation may be made at any time directly to the Secretary who will have staff specially trained in elderly housing to process and approve these requests.*

**§ 895.210 Contents of Requests for Fund Reservations**

[Each request for a Section 202 fund reservation shall include the following:

- [(a) Name and address of the Applicant;
- [(b) Names and addresses of all officers and directors of the Applicant;
- [(c) A description of any financial default, modification of terms and conditions of financing, or legal action taken against the Applicant for any reason during the past ten years;
- [(d) 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 ten 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.
- [(e) 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 start up 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 five years Applicant has operated, such reports to be audited by an independent public accountant, if possible;
- [(f) Such other information as the Applicant may wish to include which indicates any special capability to develop and operate a housing project successfully;
- [(g) Such additional information as the Assistant Secretary finds pertinent to his evaluation;
- [(h) The State in which the project(s) would be located and whether the project would be located in a metropolitan or non-metropolitan area;
- [(i) The number of Section 202 units to be developed by State.
- [(j) The amount of Section 202 loan funds requested to be reserved.]

*Each request for a Section 202 fund reservation shall be submitted to the Secretary and shall include the following:*

- (a) *Name and address of the Sponsor.*
- (b) *Names and addresses of all officers and directors or members of the governing body of the Sponsor.*
- (c) *Description of the nature of the Sponsor, including date of its establishment and size and scope of its membership, and other comparable information.*
- (d) *Description of relationship between Sponsor and Applicant.*
- (e) *Description of any commitment, financial or otherwise, by the Sponsor for any proposed assistance to the Applicant.*
- (f) *Name and address of the Applicant.*
- (g) *Names and addresses of all officers and directors of the Applicant.*
- (h) *Certified copy of Articles of Incorporation of the Applicant.*
- (i) *A description of any financial default, modification of terms and conditions of financing, or legal action taken against the Applicant or the Sponsor for any reason during the past 10 years.*
- (j) *Evidence of the capacity to carry through to completion and successful long term operation a project for housing and related facilities. Such evidence, where available, shall include a detailed description of all housing projects (including care facilities) owned or operated by the Applicant or under sponsorship and control of the Sponsor during the past ten 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.*

(k) Evidence of the financial stability of the Sponsor. Such evidence may include the Sponsor's balance sheet(s) and statement of income and expenses for each of the past five years.

(l) The city, metropolitan or non-metropolitan area in which the project(s) would be located.

(m) The proposed number of Section 202 units to be developed, by project.

(n) The amount of Section 202 loan funds requested to be reserved.

(o) Such other information as the Applicant may wish to include which indicates any special capability to develop and operate a housing project successfully.

#### § 895.215 Approval of Requests for Fund Reservations

(a) [To be eligible for selection, a request must be received by HUD within the period specified in the invitation and must be complete and responsive to the invitation.] Requests for fund reservations will be approved by the [Assistant] Secretary based on a ranking procedure that takes into account the information provided pursuant to Section 895.210.

(b) Applicants whose Requests for Fund Reservations are approved shall be issued a Notice of Section 202 and Section 8 Fund Reservation on a form prescribed by the Assistant Secretary which shall:

(1) Specify the amount of the fund reservation;

(2) Specify the [Region(s)] city, metropolitan or non-metropolitan area in which the housing is to be located;

[(3) Inform the Applicant that use of the fund reservation is conditioned on a project being approved by an appropriate Field Office for assistance under the Section 8 program.]

[(4)] (3) State that the fund reservation may be further limited by the number and types of units, the development cost for the proposed project for housing and related facilities, and by the needs and market conditions of the specific project site proposed, all as determined by the [Field Office] Regional Office;

[(5) Instruct the Applicant to apply to the Field Office servicing the area in which the proposed housing will be located in order to initiate steps for Section 8 housing assistance;]

[(6)] (4) State that the amount of loan funds reserved or any portion thereof unused by the Applicant may not be transferred by the Applicant;

[(7)] (5) State that a Section 202 fund reservation shall not be available for use in connection with a Section 8 project which is proposed in response to an invitation pursuant to Section 880.203.

(c) Applicants whose Requests for Fund Reservations are not approved shall be so notified in writing by the Assistant Secretary.

#### § 895.220 Duration of Section 202 Fund Reservations

The [Assistant] Secretary shall [cancel] reallocate any reservations of Section 202 loan funds/Section 8 housing assistance payments for projects for which construction is not commenced within the eighteen-month period following issuance of the Notice of Section 202/Section 8 Fund Reservations, unless an extension of time of not to exceed six additional months is requested of and granted by the [Assistant] Secretary.

#### SUBPART C—APPLICABLE PROCEDURES UNDER SECTION 8

#### § 895.300 Additional Allocation of Section 8 Contract Authority to [Field Office] Regional Office

The [Assistant] Secretary will allocate to [Field Offices] Regional Offices contract authority for the Section 8 Housing Assistance Payments Program for use in connection with projects to be financed under Section 202. This amount of contract authority will be in addition to contract authority allocated to Field Offices pursuant to Section 880.201.

#### § 895.305 Developer's Packet

A [Field Office] Regional Office, upon a request from an Applicant which has received a notice of Section 202 Fund Reservation, shall forward to such applicant a Developer's Packet. (Section 202), which shall:

(a) Include a copy of the applicable regulations, handbooks, and forms. [When a Field Office determines that mobile homes are appropriate or that the developer is considering using mobile homes, the Developer's Packet shall include the

appropriate HUD guidelines and shall describe any changes of the requirements and procedures under this Part 895, necessitated in the case of mobile home projects, including those relating to the site and site improvements, the type or types of units, and the procedures necessary to establish fair market rents for mobile homes.]

(b) Include the following information for the geographic area in which the housing is to be built:

(1) Any special requirements for housing for the elderly and the handicapped pursuant to Section 209 of the Housing and Community Development Act of 1974 (42 USC 5301) and any special requirements for the handicapped pursuant to the standards established by HUD under the Architectural Barriers Act of 1968 (82 Stat. 718).

(2) Any type of housing which HUD has determined to be unacceptable.

(3) Any special requirements or restrictions to comply with the local Housing Assistance Plan, if any, and the name, address, and title of the official of the unit of general local government to whom inquiries may be addressed concerning such Plan.

(4) The specific type(s) of utilities and method(s) of distribution (utility combination) required, and a statement that, if another combination is proposed, a comparative analysis of utility costs supporting the proposed combination must be included in the Proposal.

(5) The specific management and maintenance services required to be provided by the Applicant. Such services shall include all services typically provided in the area for the type of housing contemplated.

(6) The applicable Fair Market Rents for newly constructed rental housing.

(7) Initial term of the Housing Assistance Contract and number of renewal options, if any.

(c) Include statements as to:

(1) Equal opportunity requirements, which include the submission of an Affirmative Fair Housing Marketing Plan if the proposal is for five or more units; an assurance of compliance with Title VI of the Civil Rights Act of 1964 (42 USC 2000a); compliance with Executive Order 11063 and Title VIII of the Civil Rights Act of 1968, (18 USC 245) including regulations and guidelines pursuant thereto; and certifications required pursuant to Executive Order 11246.

(2) HUD regulations and other requirements implementing Section 3 of the Housing and Urban Development Act of 1968, requiring that, to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

(3) HUD relocation requirements.

(4) HUD requirements implementing the National Environmental Policy Act of 1969 (83 Stat. 852).

(5) Governmental requirements implementing the Clean Air Act (77 Stat. 392 as amended) and the Federal Water Pollution Control Act (86 Stat. 755 as amended).

(6) HUD requirements implementing the Flood Disaster Protection Act of 1973 (87 Stat. 975).

(7) The requirement that all laborers and mechanics employed in the development of the project shall be paid not less than the wages prevailing in the locality as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 USC 276a).

(8) The prescribed HUD form showing the identity of the Applicant, [the developer], the builder (*if known*), the architect, *the housing consultant (if any)*, and the managing agent if any; the qualifications and experience of each; and the names of officials and principal members, [shareholders and investors and other parties having substantial interest in the proposed project.]

(9) The requirement that the Applicant submit evidence of capability to provide the required management and maintenance services or, if the proposal is for 15 or more units, evidence of management capability and a proposed management plan and a certification by the Applicant and the management agent, if any, in a format acceptable to HUD.

[(10) The requirement that (A) if the Applicant intends to pledge or offer as security for a permanent loan or obligation, an agreement or Contract, he is responsible for submitting to the Field Office a request for approval thereof in

sufficient time before he needs the financing to permit review of the method and terms of the financing and the instrument of pledge, offer or other assignment, and (B) if the request is made after approval of the Final Proposal, the Contract Rents may be reduced where the methods and terms of financing require. (See Sec. 880.115 of this Chapter).]

[(11)] (10) Other requirements which the [Field Office] *Regional Office* determines to be necessary.

[(12)] (11) Where copies of HUD Minimum Property Standards and any other applicable standards, guidelines and criteria may be obtained.

[(13)] (12) The number of copies of the Preliminary Proposal to be submitted to the [Field Office] *Regional Office*.

[(14)] (13) The fact that an Applicant may submit simultaneously with the submission of the Preliminary Proposal, or at any time thereafter, a Final Proposal and the architect's certification in accordance with Sec. 880.221(b) of this Chapter.

[(15)] (14) The fact that the [Field Office] *Regional Office* may determine not to select or approve the Applicant(s) proposal(s).

#### **§ 895.310 Submission of Preliminary Proposals.**

At any time after receiving a Developer's Packet an Applicant may submit a Preliminary Proposal which shall include the following:

(a) Identification of the proposed site, including a map showing the location of the site and the racial composition of the neighborhood, sketch of site plan, dimensions, unusual site features, if any, zoning.

(b) A copy of the site option agreement(s), contract(s) of sale, or other document(s) which evidence the Applicant's effective control of the site(s).

(c) A description of the proposed housing and related facilities including number and type of structures, number of stories, structural system, exterior finish, heating-air conditioning system, number of units by size (number of bedrooms), living area and composition for each size of unit and special amenities or features, if any and sketches of the buildings and unit plans.

(d) The Applicant's proposed contract rent per unit by size and types of structure.

(e) A description of the equipment to be included in the contract rent.

(f) A description of the utilities and services included in the contract rent and those utilities and services not so included. For each utility and service not included in the contract rent, an estimate of the average monthly cost to the occupants during the first year of occupancy based on unit size and types of structure.

(g) A showing that the Proposal meets any special requirements or restrictions necessary for compliance with the provisions of the Local Housing Assistance Plan, if any.

(h) A statement whether the proposed project will displace site occupants. If so, the Proposal shall state the number of families, individuals, and business concerns to be displaced, identified by race or minority group status, and differentiated between owners and lessees, shall establish that there is a feasible plan for relocation and shall indicate how any necessary relocation payments will be funded.

(i) An Equal Employment Opportunity Certification, using HUD Form 2010.

(j) A statement of (1) the identity of the Applicant, [developer,] builder (if known), and architect (if known); (2) the qualifications and experience of each; (3) the names of officials and principal members, shareholders and investors, and other parties having substantial interest, and (4) the previous participation of each of the foregoing individuals in HUD programs, using HUD Form 2530.

(k) If a managing agent is to be employed, his identity shall be set forth, together with other applicable information as specified in paragraph (j) of this section.

(l) A statement that the Applicant intends to finance construction of the housing project and related facilities with Section 202 loan funds.

[(m)] A description of the proposed method of permanent financing stating whether the Applicant intends to pledge or offer the Agreement and/or Contract as security for any loan or obligation (see Sec. 800.115(b) of this chapter). If the Applicant proposes to utilize FHA mortgage insurance, the prescribed FHA application form should be completed and submitted with the Preliminary Proposal.]

(m) *Satisfactory evidence of the unavailability of alternative financing or terms and conditions equally as favorable as the terms and conditions available under the 202 loan program.*



§ 895.315 *Screening and Evaluation of Preliminary Proposals*

(a) *Initial Screening.* After receipt of a Preliminary Proposal, the [Field Office] *Regional Office* will screen the Proposal to determine that it is complete and responsive and eligible for further process. If the Proposal does not include identification of the proposed site, description of the proposed housing, or the proposed contract rents, it shall be rejected. If the Proposal lacks, or is deficient with respect to, any of the other required elements, the [Field Office] *Regional Office* shall give the Applicant a reasonable time to remedy the deficiency.

(b) *A-95 Clearance; Notice to Unit of General Local Government.*

(1) After receipt of a Proposal (or after the appropriate later date for deficient Proposals amended pursuant to paragraph (a) of this section), the [Field Office] *Regional Office* will, for each complete and responsive Preliminary Proposal which is subject to clearance under OMB Circular A-95 send a copy of the proposal to the appropriate A-95 Clearinghouse for review, inviting a response within thirty days from the date of the letter transmitting the Proposal.

(2) Within ten working days after receipt of a Preliminary Proposal (or after an appropriate later date for deficient Proposals amended pursuant to paragraph (a) of this section), the [Field Office] *Regional Office* shall, for purposes of compliance with Section 213 of the Housing and Community Development Act of 1974, forward to the chief executive officer (or his designee in writing as indicated to the [Field Office] *Regional Office* of the unit of general local government in which the proposed housing is to be located, under cover of a letter in the appropriate prescribed form, a copy of each complete and responsive Preliminary Proposal. The cover letter will invite a response within thirty days from the date the letter and the copy of the Proposal are received.

(c) *Evaluation of Preliminary Proposals by [Field Office] Regional Office.* The [Field Office] *Regional Office* evaluation may not be completed until the response periods referred to in paragraph (b) of this section have ended. The Preliminary Proposal will be evaluated by the [Field Office] *Regional Office* on the basis of all pertinent factors including, but not limited to, rent, site, design, and previous experience of the Applicant *and sponsor*, and also on the basis of comments, if any, received from the appropriate A-95 Clearinghouse and the unit of general local government.

(d) *Selection and Notification of Selection.* The [Field Office] *Regional Office* will approve a Preliminary Proposal which, in its judgment, can be developed into a Final Proposal satisfying the requirements of the Developer's Packet.

(1) With respect to a Preliminary Proposal which has been so approved, the [Field Office] *Regional Office* will notify the Applicant, on HUD Form \_\_\_\_\_ and request the Applicant to submit within a time to be specified in the notification a Final Proposal in accordance with the requirements of the provisions of Sec. 880.209. The notification shall specify:

(A) The contract rents that will be acceptable to HUD when such rents are lower than the contract rents proposed by the Applicant, and the reason for the reduction;

(B) The estimate of the amount of relocation payments, when applicable;

(C) The number and types of units of housing and related facilities; and

(D) Any other special conditions or requirements,

(2) The notification shall request that the Applicant by a specified date return a copy of the notification and indicate his acceptance thereof. If the Applicant does not accept the notification by the date specified, the [Field Office] *Regional Office* may rescind the notification.

(3) If the Applicant has already submitted a Final Proposal (see Sec. 395.305 (c) (14)), the notification will state that upon acceptance of the notification by the Applicant, the [Field Office] *Regional Office* will evaluate the Final Proposal in accordance with Sec. 880.210 of this Chapter.

(f) *Notification of Nonselection.*—An Applicant whose Preliminary Proposal is not acceptable to the [Field Office] *Regional Office* shall be notified of such determination, setting forth the reasons for such nonselection and inviting the Applicant to submit an acceptable Preliminary Proposal.

SUBPART D—[CONSTRUCTION] MORTGAGE LOAN FINANCING PROCEDURES

§ 895.400 *Request for [Construction] Mortgage Loan Financing*

(a) At the time of submission of a Final Proposal under the Section 8 program pursuant to Sec. 880.209 of this Chapter, an Applicant shall submit a Request for Section 202 [Construction] *Mortgage Loan Financing* on forms prescribed by HUD to the [Field Office] *Regional Office* serving the Area in which the project will be located.

(b) The Requests provided in paragraph (a) shall be accompanied by or include the following:

(1) The names and addresses of the officers and directors of the Applicant and such other information as shall be required on the prescribed form together with a certification by each officer or director that he or she will not receive any compensation from the Applicant for his or her services and does not have any financial interest in any contract with the Applicant or in any firm or corporation which has a contract with the Applicant.

[(2) A lender's letter of intent to provide permanent financing, satisfactory to the Field Office, as set forth in Section 895.415(a).]

[(3)](2) Satisfactory evidence that it has the necessary legal authority to finance, construct and maintain the project and to apply for and receive the proposed loan, [that it meets any requirements of the Lender as to corporate organizations] and that it has authority to enter into such contract obligation and execute such security instruments as may be required by HUD. [and the lender.]

**§ 895.40 Approval of Request for [Construction Financing] Mortgage Loan Financing**

The HUD [Field Office] *Regional Office* shall review the request for [construction] *mortgage loan* financing and [and other submissions under § 895.400] *Section 8 housing assistance payments* and shall notify the Applicant of its approval or disapproval, indicating any deficiencies. The Applicant will be given a reasonable time, as determined by the [Field Office] *Regional Office*, to correct any such deficiencies. The approval shall set forth fully the terms and conditions upon which the [construction] loan will be disbursed.

**§ 895.410 Amount and Terms of [Construction] Financing**

(a) The amount of the [construction] financing approved shall not exceed the lesser of:

(1) The amount of loan funds reserved pursuant to § 895.215; or *such greater amounts as may be approved by the Secretary.*

[(A) For mortgages insured pursuant to Chapter II, the amount of the firm commitment to insure on completion of construction; or

[(B) For mortgages not insured pursuant to Chapter II, the maximum mortgage amount that would apply under § 231.3 of Chapter II if the mortgage were insured under Section 231 of the National Housing Act.]

(b) The [construction] *mortgage* loan shall bear interest at a rate established by the Secretary by adding: (1) a rate determined by the Secretary of the Treasury to be the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans adjusted to the nearest one-eighth of one per centum; plus (2) an allowance to cover administrative costs and probable losses under the program which allowance has been determined by the Secretary to be 1% per annum. Loans committed to be made by the Secretary shall bear interest at the rate in effect at the time the Request for [Construction] Financing is approved pursuant to § 895.405. The effective rate (per cent) shall be: — on and after — prior to —.

(c) The [construction] *mortgage* loan shall be secured by a mortgage and subject to such terms and conditions as shall be determined by the Secretary.

[(1) The mortgage shall bear interest during the construction period and until sold by the Secretary to the permanent Lender at a rate determined in accordance with (b).

[(2) The mortgage shall bear interest upon sale by the Secretary at a rate not to exceed:

[(i) If the mortgage is to be insured by the Secretary upon sale, the maximum rate applicable to such mortgage at the time of the commitment to insure such mortgage;

[(ii) If the mortgage is to be purchased by a Lender providing permanent financing without a requirement for mortgage insurance by HUD, the rate agreed to by the commitment by the Lender to the Secretary to purchase such mortgage upon completion of construction.]

**§ 895.415 Requirements Prior to Initial Disbursements of [Construction] Mortgage Loan**

Prior to the initial disbursement of [construction] *mortgage* loan funds by HUD, the Applicant [, in addition to any other requirements pursuant to Part 880 of this Chapter,] shall furnish such executed documents as the [Field Office] *Regional Office* may require, including but not limited to:

[(a) A firm commitment, in form satisfactory to the Assistant Secretary, by a HUD-approved lender, which shall provide that, upon completion of construction the lender will purchase the mortgage loan or provide financing for the Applicant to enable the Applicant to satisfy the full indebtedness under the construction loan from HUD. Such commitment shall further provide for:

[(1) a term of at least 12 months after the estimated date of project completion as determined by the Field Office;

[(2) a reduction, or an increase up to 20 per cent, of the amount of the loan, in the event of a reduction or increase in the amount of the construction loan by HUD.]

[(b)] (a) A Housing Consultant's Certificate and Contract (if consultant services have been employed by the Applicant);

[(c)] (b) A Certificate of Incorporation of the Non-Profit Applicant, or consumer cooperative, as required by applicable state or local law;

[(d)] (c) A Certificate of Relationships and Nonprofit Motives of the Applicant; *In computing the amount of the construction loan, there may be included a fee payable by the Applicant to the Lender for the commitment fee, for the agreement to provide permanent financing, and for services during the construction period incident to the disbursement of funds by HUD; that fee shall not exceed 1½% of the total loan.*

[(e)] (d) A Mortgagor's Attorney's Opinion as to the validity and legality of the mortgagor entity, the legality of the building permit, and compliance with applicable zoning laws and requirements;

[(f)] (e) (1) A Regulatory Agreement for Non-Profit Section 202/Section 8 Mortgagors, on a form to be prescribed by the [Assistant] Secretary, by which agreement HUD will regulate the mortgagor's operation of the project, or (2) an addendum to the Section 8 Housing Assistant Payments Contract, as required by the [Assistant] Secretary;

[(g)] (f) A mortgagor's Oath, wherein the Applicant certifies that the property to be constructed will not be used for hotel or transient accommodation purposes during the term of the Section 202 [Construction] *Mortgage Financing Loan*;

[(h)] (g) An Agreement and Certification, to be executed by the Applicant and HUD on a form to be prescribed by HUD, wherein the Applicant: (1) agrees to certify actual costs and, as may be required by the [Assistant] Secretary, to have the contractor and subcontractor also submit certificates of actual costs; (2) certifies as to any financial and family relationship which exists as between such Applicant, the architect, general contractors and subcontractors;

[(i)] (h) An Assurance of Compliance with HUD Regulations under Title VI of the Civil Rights Act of 1964;

[(j)] (i) A Note and Mortgage on forms approved by the [Assistant] Secretary for use in the jurisdiction in which the property covered by the mortgage is situated. The note and mortgage shall comply with applicable state law for such instruments, and shall set forth the terms and method of repayment, maturity date, prepayment and release provisions, late charges, and such other requirements and covenants as prescribed by the [Assistant] Secretary;

[(k)] (j) A Title Policy from a HUD-approved title insurance company or other title evidence satisfactory to the [Field Office] *Regional Office* that marketable, fee simple title is vested in the Applicant as of the date the mortgage is filed for record;

[(l)] (k) A survey of the mortgaged property and final plans and specifications of the housing and related facilities to be constructed, which survey and plans and specifications shall have been prepared by registered surveyors and architects, respectively, shall be in a form satisfactory to the [Field Office] *Regional Office* and shall be accompanied by such Surveyor and Architect Certificates and Owner-Architect Agreements as the [Assistant] Secretary may prescribe;

[(m)] (l) An [Building Loan] Agreement to be executed by the Applicant and HUD in a form to be prescribed by the [Assistant] Secretary. The Agreement shall set forth the terms and conditions under which progress payments may be advanced during construction according to a schedule of disbursements, and shall include provisions for disbursement of loan proceeds only on account of portions of construction work completed and approved by HUD and provisions for a holdback or retainage from construction requisition payments in an amount determined by the [Assistant] Secretary;

[(n)] (m) A Construction Contract between the Applicant and General Contractor, on a form to be prescribed by the [Assistant] Secretary, which Contract

shall be in the form of either a lump sum contract or a cost plus contract; the lump sum contract shall provide for the payment of a specified amount and the cost plus contract shall provide for the payment of the actual cost of construction not to exceed an upset price, and may provide for an additional payment to the contractor in an amount approved by the [Assistant] Secretary; the Construction Contract shall be supplemented by such Construction Cost or Trade Payment Breakdown and General Conditions as the [Assistant] Secretary may prescribe;

[(o)] (n) Assurance of Completion of construction in such form as may be prescribed by the [Assistant] Secretary, which [may] *shall* include Performance and Payment Bonds from approved sureties, [cash escrows or Letters of Credit with a Completion Assurance Agreement, or a controlled disbursement agreement coupled with a guaranty of performance of the construction contract.] Each Performance and Payment Bond furnished under this Section shall be in the amount of [50%] 100% of the total development cost of the housing and related facilities, [and any such escrow or Letter of Credit furnished hereunder shall be in the amount of 25% of such cost;] the terms and conditions of any of the various forms of assurance of completion shall be satisfactory to the [Field Office] *Regional Office*;

[(p)] An escrow agreement in the amount of the cost of the off-site facilities, funded by a cash deposit or Letter of Credit to assure completion of such facilities.]

[(q)] (o) A Contractor's and Sub-Contractor's Certification Concerning Labor Standards and Prevailing Wage Requirements, in a form required by the [Assistant] Secretary, certifying that the laborers and mechanics employed in the construction of the dwellings will be paid not less than the wages prevailing in the locality in which the work is to be performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of the Request for Construction Financing. Such certificates shall also include information as to all applicable labor standards and other provisions of the regulations of the Secretary of Labor;

[(r)] (p) Such other information and documents as the Assistant Secretary or [Field Office] *Regional Office* may require in order to approve disbursements of construction loan proceeds pursuant to this part.

[If any of the foregoing documents have been submitted to, and approved by, the Field Office in connection with an application for mortgage insurance under Chapter II, such documents need not be resubmitted in order to comply with the provisions of this part.]

#### § 895.420 *Loan Disbursement Procedures*

(a) Disbursements of [construction] *mortgage* loan proceeds shall be made by HUD [to or for the account of the Applicant through an approved lender, mortgage servicer, title insurance company or other agent satisfactory to the Field Office;

*Provided, however,* that to the maximum extent practicable, the Field Office shall use the services and facilities of the private mortgage industry in servicing mortgage loans made under this part.]

(b) All disbursements to the Applicant shall be made on a periodic basis in an amount not to exceed the HUD-approved cost of portions of construction work completed and in place, minus the appropriate holdback or retainage, as determined by the [Field Office] *Regional Office*.

(c) Requisitions for construction loan disbursements shall be submitted by the Applicant on forms to be prescribed by the [Assistant] Secretary and shall be accompanied by such additional information as the [Field Office] *Regional Office* may require in order to approve loan disbursements under this part including but not limited to, evidence of compliance with the Davis-Bacon Act, Department of Labor regulations, all applicable zoning, building and other governmental requirements, and such evidence of continued clear and marketable title in the Applicant as the [Assistant] Secretary may prescribe.

#### § 895.425 *Completion of Construction, Approvals by HUD and [Permanent Financing] Final Disbursement of Mortgage Loan Proceeds*

(a) The requirements for completion of construction and approvals by HUD set forth in Part 880 of this Chapter shall be satisfied by the Applicant [prior to submission of a] *at the time of the* final requisition for disbursement of [construction] *mortgage* loan proceeds *exclusive of amount of mortgage loan proceeds*

*allocated to interest during development. The final requisition for disbursement of funds allocated to interest during development shall be submitted by the Applicant upon the project attaining 95% occupancy.*

(b) The Applicant shall, in connection with such final requisition, submit to the [Field Office] *Regional Office* such documentation as may be prescribed by the [Assistant] Secretary for full and final disbursement of the loan, including any applicable holdback or retainage, and such guaranty against latent defects as the [Assistant] Secretary may prescribe, all of which foregoing shall be in addition to the requirements of Part 880 of this chapter. The documentation hereunder shall include such information and forms as the [Assistant] Secretary may require in order to approve the Applicant's and Contractor's Cost Certification and to determine the total actual development cost of the housing and related facilities.

[(c) Permanent financing may commence at any time subsequent to final approval by the Field Office of the housing and related facilities and a determination by HUD of the total Development Cost of such housing and related facilities. The proceeds of the permanent loan shall be sufficient to satisfy the total outstanding construction loan indebtedness.]

[(d) The legal instruments by which the construction loan is sold or assigned to the permanent lender shall be satisfactory to the Field Office and shall include such provisions as the Assistant Secretary may prescribe.]

## ITEM 2. STATEMENT OF THE AMERICAN ASSOCIATION OF HOMES FOR THE AGING

Much has been said in recent months by officials of the Department of Health, Education, and Welfare about the need to develop more and better alternatives to institutional care for the elderly. Four blocks away, the Department of Housing and Urban Development has chosen to refuse to make available one of the potentially most useful tools for providing better alternatives: to wit, the elderly housing program mandated by Congress when it enacted section 210 of the Housing and Community Development Act of 1974.

After delaying for 9 months the publication of regulations for section 202, the Department finally released a set of proposed rules on May 15 which, in the opinion of the members of the American Association of Homes for the Aging who have a long history and experience in the development and operation of elderly housing, are unworkable and render the program virtually useless.

The two primary shortcomings of the regulations are:

- (1) they would limit the 202 program to loans for construction financing only; and
- (2) they would fragment unnecessarily the application process.

The purpose of the 202 direct loan program as envisioned by Congress is to provide favorable financing for nonprofit sponsors for elderly housing. HUD has not carried out this purpose in that it has proposed only a source of construction loans.

While the availability of construction loans may be desirable, the availability of construction financing is not the real problem and has never been a significant barrier to the development of nonprofit housing for the elderly. The significant barrier which the Congress undertook to remove by enacting the recent amendments to section 202 of the Housing Act of 1959 is the lack of long-term permanent financing for nonprofit sponsors.

Our members who are experienced in the development of elderly housing are unanimous in the opinion that long-term permanent financing is absolutely unavailable in the private market at FHA interest rates without the payment of large amounts in extra points. Nonprofit sponsors by their very nature do not have the front money with which to pay these points in order to obtain permanent financing. The unwillingness of private lending institutions to make loans at the FHA interest rate is evidenced by the fact that, under the program enacted by Congress last year to provide mortgage insurance for fire safety equipment loans to nursing homes, only one application has been received by HUD nearly a year into the program. Yet clearly this does not reflect a lack of need. With the official and public attention to fire safety deficiencies, and with nursing homes throughout the country attempting to make the necessary alterations to comply with Federal regulations, the Congress responded to a large and demon-

strable need in enacting this legislation. But there is no incentive for the private money market to respond to this need given the established interest rate of FHA loans.

Even if it could pay points or conventional interest rates, a nonprofit sponsor of elderly housing would find it virtually impossible to obtain permanent financing for a term of more than 20 years because of the dependence of the project upon section 8 housing assistance payments under which subsidies are limited to 20 years.

Thus the real barrier remains and the real problem in financing housing for the elderly is left untouched by limitations placed on the program by these regulations in what appears to be defiance of the will of Congress.

If we do not deal with the permanent financing problem, we need not worry about the second major problem with the regulations because no one will be able to reach the point where administration of the program matters. Assuming, however, that this problem could be overcome, the regulations still present formidable administrative obstacles. In fact, it would be hard to imagine how more hurdles could be erected to thwart the efforts of a nonprofit sponsor.

In order to receive approval for a 202 loan, the nonprofit sponsor must fight his way through an administrative maze. First he must obtain a fund reservation for a 202 loan from HUD's central office. Then he must obtain section 8 housing assistance payments from the HUD field office, and in doing this, he must overcome his competitive disadvantage in competing against private developers. He must then arrange for permanent financing with a commercial lender, and if he finds it necessary to get his permanent financing insured by FHA, he must process yet another application with FHA in addition to dealing with the commercial lender. At this point he must go back to the HUD field office with the entire package and negotiate the actual construction loan itself.

This complicated time consuming, and costly process culminates in the negotiation of a construction loan which would have been available to the sponsor from the lending institution which provided the permanent financing. Our members tell us that a bank willing to give permanent financing is likely to give construction financing.

We regard it as essential that the regulations be altered to allow for permanent financing through the 202 direct loan mechanism as intended by Congress. In addition, we recommend that the procedures for processing and approving applications be simplified by placing the responsibility for the entire section 202/S elderly housing program into the hands of a single organizational unit within HUD at the central office and regional levels, staffed by persons knowledgeable in elderly housing.

The distinguished chairman of the Senate Subcommittee on Housing for the Elderly, Senator Harrison Williams, and others in the Congress dedicated to promoting a better life for the elderly, waged a long battle last year, against administrative opposition, to provide a program which nonprofit community groups could use to increase the desperately needed supply of suitable housing for our older citizens. This association supported that effort, and we thought that with the passage of the Housing and Community Development Act of 1974 nonprofit sponsors would again be able to play a major role in meeting the housing needs of the elderly. But the administration's opposition has apparently persisted despite passage of the law, and our hopes have been frustrated by the Department's refusal to allow the 202 program to be used to overcome the barriers to financing which it was intended to alleviate.

We deeply appreciate the past efforts made by the Senate Special Committee on Aging and the Congress, and we urge the Subcommittee on Housing for the Elderly to continue its efforts to impress upon HUD the intent of the law.

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### ITEM 3. STATEMENT OF THE NATIONAL RETIRED TEACHERS ASSOCIATION/AMERICAN ASSOCIATION OF RETIRED PERSONS

On behalf of the American Association of Retired Persons and the National Retired Teachers Association, we would like to express our unqualified support of the position set forth this morning by spokesmen for the Ad Hoc Coalition on Elderly Housing, and we register our wholehearted support of the alternative regulations to implement the section 202 Housing for the Elderly and the Handicapped program which have been submitted by the coalition to this committee.

As founding members of the Ad Hoc Coalition on Elderly Housing, the American Association of Retired Persons and the National Retired Teachers Association view this morning's hearing as an important milestone in our cooperative struggle to secure from the Department of Housing and Urban Development a workable program tailored to meet the special housing needs of older Americans. During the past 5 years we have overcome the obstacles of impoundment, moratorium, stalemate, legislation, and appropriations. The arduous confrontations with an administration opposed to a significant role for the nonprofit corporation in the housing marketplace have only strengthened our resolve to implement a workable section 202 program.

This morning, if we can influence the Department to implement the section 202 program in the form proposed by the Ad Hoc Coalition on Elderly Housing, we are at the brink of success.

The rationale behind the proposed changes in the regulations which we are recommending is fourfold.

First, we underscore the necessity to use the section 202 program as a permanent mortgage financing mechanism as well as a construction financing program for elderly housing. The proposed regulations promulgated by the Department are deficient in this respect. Under the proposed format recommended by the Department, a complicated scenario is set forth in which the nonprofit sponsor is forced to secure permanent financing through the market mechanism prior to approval of the application for the section 202 program. We are forced to ask: Was this the intent of the Congress in enacting section 210 of the Housing and Community Development Act of 1974?

We think not. While our associations agree with the Department that a refinancing scheme is within the intent of the law and would be useful in providing an accelerated turnover of the limited authorized amounts, we would prefer that permanent financing be available through the "one-window" process by providing a Government National Mortgage Association (GNMA) par takeout at the time of application. Additionally, we would prefer a formula trigger for the GNMA par takeout set at 90 or 95 percent occupancy rather than a set 2-year limit for the construction loan. The Department claims that GNMA does not have the authority to buy the section 202 loans; our reading of the law would indicate that GNMA has the authority. We suggest that this committee may wish to explore the need for legislative clarification of the Department's authority.

The second emphasis of our program is to simplify the application process by specifying the set-aside availability of section 8 subsidies for section 202 housing. As proposed by the Department, section 202 fund reservation is predicated upon mandatory duplicative processing for section 8 housing assistance payments. While we concur that there is a definite necessity for linkage between the two programs, we see neither the need for duplicate application processes nor the need for forced reliance upon section 8 subsidies. Our recommendations would provide section 8 housing assistance payments for 100 percent of the units on a set-aside basis concurrent with the section 202 housing application process in the combined "one-window" approach to include permanent financing. Additionally, our recommendations would ensure optimum project income mix by making available the section 8 subsidies to the sponsor but not mandating complete low-income subsidized occupancy as a prior requirement for section 202 financing.

The third major change which our associations are suggesting in the promulgated regulations would be to elevate the processing of section 202 applications to the regional level with staff specially trained in understanding the housing needs of older Americans. The administrative mechanism which we are suggesting is predicated upon the performance of the earlier section 202 administration which successfully managed the program during the 1960's. There appears to be common agreement between those who administered the program and those who sponsored projects under the earlier program that a professionally skilled small staff placed at the appropriate level of the Department bureaucracy is the optimum administrative framework for successful programming.

The fourth substantive change which we are proposing in the promulgated regulations provides increased protection against program abuse by other than true nonprofit sponsors. In reading the regulations, we strongly believe that the Department has, by oversight, missed the opportunity to insure quality performance by applicants. The proposed regulations, particularly section 895.210, concentrated upon the qualifications of an applicant with no mention of the

sponsor. Inasmuch as it is commonplace for a sponsor to establish a nonprofit corporation as the applicant for purposes of housing development, the thrust of the screening process should be toward monitoring the qualifications of the sponsor.

The interest of our associations lies in the development of quality housing for older Americans. Objectively looking at the section 202 program, we recognize a number of elements which make it a viable, efficient, and cost-effective program. It is one of the few programs which has been able to overcome the ingrained bias within the Department of Housing and Urban Development against nonprofit sponsors. This success is attributed to the flexibility which is lacking in the insured mortgage programs and in the arms-length relationship which the sponsors had with the builder/developer.

Administratively, the program was staffed by knowledgeable experts who recognized the specific and special needs of older and handicapped Americans.

The section 202 program is one of a number of weapons within the HUD arsenal to be used in confronting the grave housing crisis. The preoccupation of aging organizations to encourage the utilization of the 202 program is not based on a myopic view that the program is the panacea to all problems but is rather a recognition that nonprofit associations who participated in the section 202 program were stable national organizations with a sensitivity to the special needs of older persons. Standing by itself, the revised section 202 program is a limited approach, but given the statutory language that it should be used in tandem with the section 8 program, it is a very, very important step forward. Similarly, the use of the section 8 program by itself will not stimulate the construction which optimistic spokesmen have anticipated. To allow the market mechanism to be the sole determinant of construction ability, would mean that nonprofit sponsors will not be able to compete.

#### ITEM 4. STATEMENT OF THE NATIONAL COUNCIL ON THE AGING

The National Council on the Aging (NCOA) is a private, nonprofit organization whose membership consists of individuals and organizations throughout the country who serve the Nation's older citizens. In 1975 NCOA will mark its 25th year of providing leadership in the field of aging to public and private agencies at the national, State, and local levels. We continue to be a national resource for planning, information, and service in those areas affecting the lives of the Nation's elderly population.

NCOA welcomes this opportunity to present its views on the proposed regulations issued by the Department of Housing and Urban Development to implement the section 202 housing program for the elderly—authorized by the Congress in the 1974 Housing and Community Development Act. As a member of the Ad Hoc Elderly Housing Coalition, NCOA is in basic agreement with the statements made to spokesmen for the coalition here today. Therefore, our comments will summarize briefly some of NCOA's special concerns on this matter.

To begin, it is clear that the housing conditions of older people have only grown worse since the Congress authorized this program. There is a continuing and growing need for substantial increases in the stock of safe, suitable housing for older people, and residential services which maintain independent living and prevent institutionalization. Older Americans have a special housing problem which requires a special priority.

Responding to that need, the Congress enacted the section 202 elderly housing program in the 1974 Housing and Community Development Act. That program authorizes the Department of Housing and Urban Development to make direct loans for rental housing for the elderly and handicapped. The Congress made \$215 million available for this program in fiscal year 1975. Yet the \$215 million loan authorization for this fiscal year goes unused and the President requests no additional lending authority in the 1976 budget.

Thus, NCOA was initially pleased that HUD, after months of delay, finally issued proposed regulations on May 15, 1975. However, those regulations do not provide for permanent financing and as such do not set up a workable program.

Based on considerable thought and experience with regard to an effective and productive section 202 program, NCOA would like to make the following recommendations:



1. An application for a section 202 loan should be made independent of any other program and be analyzed for its social value, economic feasibility, and significance of the sponsoring nonprofit organization.

2. It is unclear whether the regulations provide for an automatic set-aside of section 8 funds. If they do, we are pleased; if they do not, they should.

3. Long-term financing of these projects must be provided for, either by direct loans or by a GNMA takeout of the construction loan at par.

4. The maximum fair market rent for section 8 when combined with section 202 must be high enough for a very deep subsidy for the elderly. The subsidy must provide for the physical space and the social programs so essential to good housing for older people. At present, the maximum fair market rentals for new construction at today's costs, in most areas, are way below economic realities.

5. In this connection we strongly recommend that HUD request appropriations for special grants to nonprofit groups for the financing of senior center space, health service areas, meeting and craft and therapy rooms in specially-designed housing for the elderly. The construction of these common areas should be done through capital grants, rather than rental charges.

6. We strongly urge the appointment of special staff in each region, trained and concentrated on housing for the elderly, to examine and process applications for section 202 loans in accordance with the above recommendations. This special staff should be coordinated by an Assistant Secretary for Housing for the Elderly.

7. The program must emphasize new construction. Many older people live in substandard homes, but many others live in standard housing which has become too old, too difficult to maintain, too costly, and simply too inefficient when disability or life disruption occurs. These units are socially, psychologically, and physically substandard. Older persons should be able to choose to move to housing they desire with the kinds of programs and services which maintain independence even when disability occurs.

NCOA applauds the efforts of this committee and its distinguished chairman in holding this hearing. We know our comments and those of the ad hoc coalition will be given your thoughtful consideration. We look forward to your continued support in encouraging HUD to provide an effective and feasible housing program for the Nation's older citizens.

#### ITEM 5. MEMORANDUM OF LAW, TO MEMBERS OF THE AD HOC HOUSING COALITION, FROM RICHARD M. MILLMAN, DATED FEBRUARY 13, 1975

##### INTRODUCTION AND SUMMARY OF POSITION WITH REGARD TO NEW 202/8 PROGRAM

In establishing the new section 202/8 program, Congress manifested its desire to meet the housing needs of the Nation's elderly through the development of specialized housing by nonprofit sponsors, and further, that the program be the primary tool for providing elderly housing. The relevant statutory provisions and legislative history make it clear that Congress intended to establish a unified and comprehensive construction-permanent financing-rental assistance program geared to the capabilities of the nonprofit sponsor—one that would utilize the capabilities of the nonprofit sponsor to its greatest advantage in the cause of constructing and operating specialized housing for the elderly. Utilizing the direct loan provisions of the 202 program for the purpose of providing construction financing to the nonprofit sponsor, in combination with a guarantee of section 8 assistance funds and the providing of permanent financing upon the attainment of project success, is a reasonable method of supplying the necessary housing under this program, providing the program is administered in a "one window" approval process. Anything less is inconsistent with the legislative history of the Housing and Community Development Act of 1974.

##### *I. The Housing and Community Development Act of 1974 combined "202" and section 8*

The 1974 amendments to the 202 program were offered as a floor amendment to H.R. 15361 by Congressman Robert H. Steele of Connecticut. (120 Cong. Rec. H5424-29 (daily ed. June 20, 1974)). In his statement, Congressman Steele said:

"The second part of *my amendment would effectively marry* the 202 construction program with the Section 23 [now Section 8] rent subsidy program to needy elderly families by making technical changes that *guarantee the availability of these subsidies* to units of elderly housing constructed under 202." (Emphasis supplied.)

The proposal of the Congressman was eventually enacted into law. Section 8(g) of the Housing and Community Development Act of 1974 provides:

"Notwithstanding any other provision of this act, assistance payments under the section may be provided, in accordance with regulations prescribed by the Secretary, with respect to some or all of the units in any project approved pursuant to section 202 of the Housing Act of 1959."

This provision, coming as it does within the body of the enactment of the new section 8 program indicates the intent of Congress to join the section 8 and 202 programs. Additionally, an amendment to the new 202 program itself demonstrates that not only did Congress join section 8 with 202 but went further by guaranteeing that section 8 funds were to be made available for 202 housing.

A new paragraph (g) (1) of the 202 Program states:

"In determining the feasibility and marketability of a project under section 202 of the Housing Act of 1959 the Secretary *shall* consider the availability of monthly assistance payments pursuant to section 8 of the U.S. Housing Act of 1937 with respect to such a project." (Emphasis supplied.)

Least there be any doubt with respect to the congressional intent, the conference report confirms that the approval of a 202 project carries with it the guarantee of section 8 funding. That report states:

"*Assistance payments* under section 23 of the U.S. Housing Act of 1937 *would be available* for both new and existing section 202 projects and HUD *would take into account the availability of such payments* in determining the feasibility and marketability of the project." (Emphasis supplied.)

#### *II. Existing section 8 regulations do not meet the legislative requirements established for the new 202/8 program*

Regulations issued to date under the Section 8 program make no guarantee of subsidy availability for 202 type projects. Additionally, they make totally inadequate allowance for the type of related facilities required under subsection (d) (8) of the 202 program, such as "cafeterias or dining halls, community rooms or buildings, work shops or infirmaries, or new inpatient or outpatient healing facilities." Section 8 regulations presently will allow for only a 5 percent increase in rent subsidies for housing for the elderly to reflect increased costs over conventional structures without such related facilities. Credible estimates indicate that at least a 35 percent increase would be necessary to meet these costs. Thus, the current section 8 regulations do not meet the mandate of the new 202 program of the Housing and Community Development Act of 1974. Clearly, HUD is required to promulgate regulations that will guarantee the availability of section 8 subsidies for the type of 202 project which Congress contemplated. This is what Section 8(g) is all about.

#### *III. Congress intended the new 202/8 program to reactivate the substantive nature of the old 202 program with simply a change in the subsidy mechanism and further intended that it be used by nonprofits as "the primary vehicle for providing housing for the elderly"*

The old 202 program was, as anyone familiar with it can verify, a substantive program for the development of housing for the elderly.

The involvement of the nonprofit sponsor was from the inception of the project and the nonprofit was invaluable to the success of the program through the life of the loan.

There is no justification either in the new statute or in the legislative history to justify any major change in the program. Any attempt to emasculate the traditional substance of "202" by either turning it into a mere interim loan program or otherwise would fly in the face of expressed congressional intent. The legislative intent is derived from three sources.

First, there is the 1959 enactment itself and the way it was administered. In this regard, it must be remembered that from 1959 to 1969 202 was an active program responsible for providing 44,000 units of housing for the elderly. Hence, it is easy to demonstrate the way it worked and this is the best evidence of original congressional intent.

Second, there can be no doubt that the 1974 recodification of the act was intended to continue the traditional substance of the original program with simply

a change in the subsidy mechanism. As Congressman Steele, the sponsor of the amendment, stated during the floor debate:

"First, it will reestablish the successful '202' program which was initially established to provide low interest direct loans to nonprofit sponsors to build housing for the elderly. Despite the outstanding success of this program, it was phased out in 1969 because of its potential budget impact. My reenactment of '202' avoids this budget pitfall because loans will be made at the Treasury borrowing rate and, therefore, will have little budget impact. This unsubsidized revolving fund approach will provide \$1.5 billion to build an estimated 75,000 units of desperately needed housing for the elderly.

"The second part of my amendment will effectively marry the '202' construction program with the 'section 23' rent subsidy program to needy elderly families by making technical changes that guarantee the availability of these subsidies to units of elderly housing construction under '202.'" (Emphasis supplied.) 120 Cong. Rec. H5424-25 (daily ed. June 20, 1974).

Third and finally, in enacting those sections of the Housing and Community Development Act of 1974 dealing with housing for the elderly, Congress intended to go beyond reactivating the old 202 program with a new subsidy mechanism. Congress went so far as to declare that the reactivated program was to be elevated to the status of being the primary program to meet the housing needs of the Nation's elderly. This is confirmed by the Senate Appropriations Committee report on the 1975 supplemental appropriations bill which funded the act, which states:

"The committee believes that the new section 202 program should be employed as the *primary vehicle for providing housing for the elderly*, and wishes to emphasize that it not be a residual program to be used only when other programs fail." (Emphasis supplied.)

Any attempt to change the program through the adoption of administrative regulations would be prohibited by law. For, it is well settled law that an administrative officer has no power to promulgate a regulation which creates a rule out of harmony with the statute. *Miller v. United States*, 294 U.S. 435 (1935); c.f. *United States v. Antikamnia Chemical Co.*, 231 U.S. 654 (1913); *United States v. United Verde Copper Company*, 196 U.S. 207 (1904); *United States v. Jefferson County Board of Education*, 372 F.2d 836 (5th Cir. 1966); *United States v. Eddy Bros., Inc.*, 291 F.2d 529, 531 (8th Cir. 1961); *Kettell v. Johnson and Johnson*, 337 F. Supp. 892 (D.C. Ark. 1972).

#### CONCLUSION

Utilizing the 202 appropriation as a revolving construction fund is consistent with congressional intent, providing there exists a "one window" coordinated approval process to provide nonprofit sponsors construction money, subsidies, and permanent financing at the time of project success. Anything less and non-profit sponsors would not be able to avail themselves of 202, and the congressional intent to utilize 202 as "the primary vehicle for providing housing for the elderly" would be thwarted.

Whether HUD or anyone else is of the opinion that the new section 8 program or any other program should be the primary tool for meeting the housing needs of the elderly is irrelevant. The matter is no longer open to debate, as Congress has decisively spoken in favor of meeting the needs through the efforts of non-profit sponsors utilizing the reactivated 202 program with the guarantee of the new Section 8 subsidies.

RICHARD M. MILLMAN.

#### ITEM 6. LETTER FROM SENATOR EDWARD M. KENNEDY TO HON. ELMER B. STAATS, COMPTROLLER GENERAL, DATED APRIL 23, 1975; REPLY FROM HON. ELMER B. STAATS, DATED MAY 30, 1975; SUBMITTED BY RICHARD M. MILLMAN

DEAR MR. STAATS: On August 22, 1974, the Housing and Community Development Act of 1974 (P.L. 93-383) was signed into law including a revision and extension of the section 202 Housing for the Elderly and Handicapped program. The new law authorized up to \$800 million for this program.

The popularity and the success of section 202 are unequalled. Since its inception, more than 45,000 units have been built (330 projects) and there has been only

one mortgage foreclosure. Today, literally hundreds of thousands of older persons are on waiting lists to enter decent housing. Unless there are some dramatic changes in the Department very soon, most of these elderly will never benefit from any improved housing.

This situation is made even more discouraging when one realizes that there are many able, qualified, experienced, nonprofit sponsors (churches, labor unions, service organizations) who are ready to build and willing to dedicate themselves to making these projects work. In many cases, these organizations already have land and plans, but they lack Federal financial assistance.

On December 27, 1974, the supplemental appropriations bill for fiscal year 1975, H.R. 16900, was signed into law establishing an actual loan level for fiscal year 1975 of \$215 million.

No request for rescission or deferral of these funds has been made by the administration. Yet no proposals have been approved and no funds obligated. In fact, new regulations for the program have yet to be issued and applications under the old regulations, which still remain in effect, have been refused by HUD.

The effect of the delay and inaction by the Department of Housing and Urban Development has been to void the operation of the section 202 program. I believe these acts represent an illegitimate attempt to veto congressionally approved programs through the impoundment of appropriations. They clearly deny to the Nation's elderly a vitally needed housing program. Section 202 remains dormant on the statute books. I would appreciate your determining whether these actions by HUD constitute violations of the provisions of the Budget and Impoundment Control Act. If you find that violations have occurred, I would urge appropriate action to force the release of these funds.

There is a related matter affecting the section 202 program, in which HUD has indicated a desire, to limit even the future use of these moneys to "construction financing" as opposed to permanent financing of housing for the elderly. This view is contained within correspondence between the former secretary and the chairman of the Senate Housing Subcommittee. I find no provision in the 1974 law for limiting the section 202 program in this way. Permanent financing was intended, because without it, the nonprofit sponsor (for whom the program designed) cannot proceed because of the practical inability to obtain permanent financing. If the HUD concept were followed, the program would remain stillborn for all time.

I wrote to the HUD Secretary on March 26, 1975, regarding this matter. I am enclosing a copy of that letter.

I would appreciate your immediate attention to this matter. It would be tragic if the Nation's elderly were to lose an entire year's funding for a vital housing program at a time when their housing needs are particularly severe.

Sincerely,

EDWARD M. KENNEDY.

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, D.C., May 30, 1975.

B-115398

Hon. EDWARD M. KENNEDY,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR KENNEDY: Your April 23 letter requested that we determine whether the Department of Housing and Urban Development violated the Impoundment Control Act of 1974 due to delays in implementing the Housing for the Elderly or Handicapped program (section 202 housing). You also asked us to determine whether the Department was authorized to limit loans under the program to those that finance project construction.

The Housing and Urban Development Act of 1974 (P.L. 93-383) authorized \$800 million for the section 202 direct loan program. This legislation also required that the aggregate amount loaned under the section 202 program in any fiscal year not exceed a limit specified in appropriation acts. The Supplemental Appropriation Act, 1975 (P.L. 93-554) enacted December 27, 1974, sets this limitation for fiscal year 1975 at \$214.5 million. This action provided the program's budget authority as available only in fiscal year 1975. Under the provisions of the Anti-deficiency Act (31 U.S.C. 665), the budget authority was required to be apportioned by January 26, 1975.

In February HUD requested OMB to apportion all of the \$214.5 million. This request was disapproved by OMB, however, because regulations for the new section 202 housing program had not been developed. On May 9, after new regulations were developed, OMB apportioned the \$214.5 million in budget authority to HUD, which in turn will make it available for obligation on the basis of the new regulations when they are published.

The decision not to apportion and make this section 202 budget authority available until May 9 constituted an impoundment of budget authority which should have been, but which was not, reported to the Congress pursuant to the Impoundment Control Act. HUD estimates that only \$34 million of this authority can be obligated before the end of the fiscal year. The remaining \$180.5 million will remain impounded until June 30, 1975, when the authority to use it will expire since the Congress restricted the use of the budget authority to fiscal year 1975. The total authorization for the program, however, remains intact, and an option remaining open to the Congress is to set a new loan limitation in fiscal year 1976 at a high enough rate to absorb the 1975 program delay.

After budget authority has been impounded and the impoundment disapproved by the Congress, the Comptroller General is empowered to bring a civil action in the U.S. District Court for the District of Columbia to require that the budget authority be made available for obligation should the administration refuse to do so. In the present instance, however, since the budget authority is only available in fiscal year 1975, the delay in reporting the impoundment will result in the authority to use the \$180.5 million expiring before the 45-day period allowed Congress for consideration of the proposal pursuant to the Impoundment Control Act can run.

The Department's plan for implementing the new section 202 housing program contemplates, as stated in your letter, that loans will be limited primarily to those that finance project construction. FHA insured or conventional loans are to be obtained by the sponsor for his permanent financing needs. We agree that the Housing and Urban Development Act of 1974 does not specifically provide for limiting new loans to those that finance project construction. We do not believe, however, that the act prohibits this approach since the authorizing legislation provides the Secretary with considerable discretion in the area of financing loans.

Sincerely yours,

ELMER B. STAATS,  
*Comptroller General of the United States.*

**ITEM 7. LETTER FROM ABE CRAMER, CHAIRMAN, B'NAI B'RITH SENIOR CITIZENS HOUSING COMMITTEE; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JUNE 5, 1975**

DEAR SENATOR WILLIAMS: B'nai B'rith appreciates the opportunity to participate in hearings of the Subcommittee on Housing for the Elderly, scheduled for June 6, 1975, for the purpose of reviewing the proposed 202 regulations.

The position of the coalition on elderly housing of which we are very much a part will be presented by our good friend John Martin.

We do recognize and appreciate the fact that HUD has been considerate in establishing: (a) Reasonable fair market rents; (b) Higher income levels of occupants; and (c) Providing for the escalation of taxes and utilities through section 8.

However, we would stress at this point the following:

1. In order to properly implement section 202 of the National Housing Act that there be established a "one window" concept which would provide an Assistant Secretary for Housing for the elderly who would be sympathetic to the needs of the elderly that they would be able to retain their respect and dignity during the fall and winter of their lives.

2. The provision for construction financing in itself is insufficient to provide full implementation to construct housing for the elderly since the small banks are unable to provide permanent financing and after a number of inquiries we find the large banks will *not* provide permanent financing.

3. If HUD is not in a position to extend direct permanent financing, we suggest it is absolutely necessary that there be a pass through to Federal National Mortgage Association, or General Mortgage Association to provide the permanent financing.

4. It is also necessary that the permanent mortgagee does *not* require interest nor amortization until the project is 95 percent occupied.

5. That consideration for sponsorship be given preference to those who have demonstrated a track record of expertise and capability to organize, construct, and operate such projects.

By providing the implementation of housing we are sure that the recession will be eliminated and will provide an unprecedented amount of employment in this country.

We are pleased to be associated with you in this important endeavor, and we extend the thanks and deep appreciation of B'nai B'rith and those on whose behalf we labor, for your continued efforts and inspired leadership.

Respectfully submitted,

ABE CRAMER.

**ITEM. 8. LETTER AND ENCLOSURES FROM ALBERT E. ERICKSON, EXECUTIVE SECRETARY, LUTHERAN HOUSING COALITION; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JUNE 5, 1975**

DEAR SENATOR WILLIAMS: I am enclosing copies of my two most recent pieces of correspondence relative to the section 202 elderly housing program for your use in conjunction with the June 6 hearing of your subcommittee on this matter. The first concerns the regulations which were proposed by HUD for the section 202 program on May 15, and the second calls for full funding by the Congress of this program in the form that it was enacted last August. I believe that these letters express my most basic objection to the regulations proposed by HUD; namely, that in addition to going against the intention of Congress, the program would be unworkable for nonprofits because it lacks a provision for long-term mortgage financing.

The Lutheran Housing Coalition has been an active participant in the Ad Hoc Coalition for Elderly Housing and fully supports their testimony on the section 202 program before your subcommittee as well as their specific recommendations for improvements in the proposed regulations.

Once again, Senator Williams, let me commend you for your continuing leadership in this matter and for calling these hearings to bring the problems into the open.

Sincerely,

ALBERT E. ERICKSON.

[Enclosures.]

LUTHERAN HOUSING COALITION,  
Washington, D.C., May 12, 1975.

Re: Proposed Regulations for Section 202.

DAVID M. DEWILDE,  
*Acting Assistant Secretary,  
Housing Production and Mortgage Credit,  
Federal Housing Commissioner*

DEAR MR. DEWILDE: I have recently reviewed the proposed regulations for section 202 direct loan funds for housing for the elderly and handicapped. *In my judgment, the proposed regulations make the program unfeasible for use by nonprofits.* The major stumbling block is the lack of a long-term mortgage commitment. The reason that previous section 202 projects were, and are, so successful for church sponsored programs was the complete package arrangement with the HUD regional office.

In order for section 202 to once again be the useful housing program for the elderly, the following must be present:

1. *895.1 Purpose and Policy.*
  - a. To provide direct Federal construction loans and long-term (50-year) mortgage commitments.
  - b. Benefits of housing assistance payments under the section 8 program shall be included for part or all units of a section 202 project.
2. *895.210 Contents of Requests for Fund Reservations.*
  - e. For new sponsorship groups the HUD regional office shall provide working capital loans which may be repaid out of residual receipts or incorporated into the final mortgage amount. (AMPO)

Given the above ingredients, I am confident section 202 can fly again to serve the low-income elderly and handicapped.

Thank you for the opportunity to share these views.

Sincerely,

ALBERT E. ERICKSON,  
*Director.*

LUTHERAN HOUSING COALITION,  
*Washington, D.C., May 27, 1975.*

Hon. JOHN O. PASTORE,  
*Dirksen Office Building,*  
*Washington, D.C.*

DEAR SENATOR PASTORE: Nearly 8 months ago the subcommittee on HUD-Independent Agencies, of which you are a member, and the full Senate Appropriations Committee approved a borrowing level of \$315 million for the section 202 housing program for the elderly and handicapped which had been reinstated by the Housing and Community Development Act of 1974 (PL. 93-383). That figure was later reduced in conference to \$215 million. The Senate report which accompanied that supplemental appropriations bill clearly stated that "the new section 202 program should be employed as the primary vehicle for providing housing for the elderly." The intent of Congress with respect to section 202 could not have been clearer.

Nevertheless, with little more than a month left in fiscal year 1975, no applications have been approved under this program, and not one dollar of the \$215 million approved has been spent or allocated. In addition, during the past month, HUD has taken two steps which, in my opinion, will further block the usefulness of section 202 as an effective mechanism for the provision of elderly housing.

1. They have requested only \$215 million in borrowing authority for fiscal year 1976 although \$800 million was authorized by the enabling statute and \$115 million remains in the 202 revolving fund. When Congress appropriated \$215 million last year for the remainder of fiscal year 1975, it was obvious that they did not intend for that figure to represent a full year's level of funding but merely the kick-off for the last few months of fiscal year 1975. Indeed, when compared with the need for such housing, estimated at 120,000 units per year by the most recent White House Conference on Aging, the 10,000 units which might be built with \$215 million is a totally inadequate figure. I strongly recommend that the borrowing authority for the section 202 elderly housing program be substantially increased in fiscal year 1976.

2. On May 15, 1975, HUD finally issued proposed regulations for the implementation of the section 202 program. However, instead of including all three elements of the program authorized by Congress—construction loans, rent subsidies, and permanent financing—HUD proposes to provide the first two and leave the nonprofit on its own to find the third. In my opinion, it will be a virtual impossibility for nonprofits to obtain permanent financing in the private marketplace. I urge you to make clear in your appropriations for the section 202 program in fiscal year 1976 that such funds are to be used in accordance with the expressed intent of Congress; namely, for construction financing, subsidization of rents, and permanent financing.

No more impressive example of the intention of Congress to stand by its commitment to housing for the elderly could be found than a decision by your subcommittee to authorize a substantial increase in borrowing authority for the section 202 program, and to specify that these funds be used to cover the full financing needs of nonprofit sponsors.

Sincerely,

ALBERT E. ERICKSON,  
*Executive Secretary.*

**ITEM 9. LETTER AND ENCLOSURES FROM STANLEY AXLRD, PRESIDENT, NATIONAL ASSOCIATION FOR NON-PROFIT RETIREMENT HOUSING; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JUNE 3, 1975**

DEAR SENATOR WILLIAMS: The National Association for Non-Profit Retirement Housing has just concluded its national convention in New Orleans, La. At the association's business meeting on May 30, delegates representing more than 100 section 202 and section 236 for-the-elderly nonprofit projects authorized and directed me, by unanimous vote, to communicate the association's opinions,

comments, and suggestions regarding the HUD-proposed rules for administration of the reenacted 202 program as published in the May 15 issue of the *Federal Register*.

The proposed rules are unworkable and, in our judgment, clearly evidence HUD's continued resistance to congressional intent for prompt and effective implementation of the 202/8 program for elderly housing as manifested in the Housing Act of 1974 and accompanying committee reports.

HUD has unilaterally attempted to convert an experience-proven, successful, scandal-free, long-term direct mortgage loan financing program into a demonstrably unworkable construction-loan-only proposal.

The most fundamental deficiency of proposed 202 rules is the absence of permanent loan financing or provisions for obtaining permanent financing. Here's why the HUD-proposed 202 construction-only financing program is demonstrably unworkable:

Since the section 8 rental assistance funds are limited to a maximum period of 20 years, a conventional lender will not consider making a mortgage loan having a term in excess of 20 years. Allowable section 8 maximum rents cannot be achieved with 20-year permanent mortgage financing. HUD acknowledges that conventional financing "may be a problem" and suggests that most or all of the projects eligible for 202 construction financing will also need to secure 40-year FHA-insured permanent mortgage financing. Currently, mortgagees are charging up to nine "points" on FHA insured multifamily projects. Thus, a non-profit group which has successfully negotiated all the hurdles to obtain 202 construction loan financing and a 40-year FHA mortgage insurance commitment would, in today's mortgage market, have to contribute from its own resources as much as 9 percent of the total project cost in order to obtain a permanent FHA insured 40-year mortgage. On a 200-unit, \$4 million project involving nine points, a nonprofit organization would have to contribute from its own resources the sum of \$360,000. The nonprofit mortgagor would, thus, be obtaining only 91 percent financing rather than 100 percent mortgage financing. The old tandem plan whereby the Government National Mortgage Association formerly purchased subsidized FHA insured 40-year mortgages at par will not be resurrected, according to HUD spokesmen. The tandem plan, according to HUD, involved "an invisible subsidy" and, HUD says, "the administration has a negative policy toward 'invisible subsidies'".

HUD's proposed 202 rules are also unworkable in terms of staffing and procedures. Administration of the old 202 program at HUD's regional office level by a specialized staff whose sole responsibility was 202-assisted nonprofit projects for the low and low-moderate income elderly was critical to success of the program and, in our judgment, is likewise essential to workability and success of the new 202/8 program.

The proposed 202 rules are also fatally defective in many other particulars as described in NANPRH's attached comments—see letter to Rules Docket Clerk, Office of HUD General Counsel.

In a series of meetings between representatives of our association and other nonprofit groups which together constitute the Ad Hoc Coalition for Elderly Housing, HUD spokesmen have evidenced HUD's continuing negative attitude to the entire 202 concept. For example, HUD spokesmen, as rationale for their refusal to establish specialized program administration at regional office level, argue that a \$215 million per annum, 10,000-unit housing program is too small to warrant setting up special staff and procedures to administer. Then, HUD works to persuade Congress to keep program funding at a minuscule level and thereby maintain the viability of its excuse for inaction!

Unless Congress adequately funds the 202 program through a substantial increase in borrowing authority for fiscal year 1976 and mandates utilization of the program for construction and permanent financing, HUD will not respond to the manifest housing needs of those elderly Americans living on fixed lower incomes who have been most cruelly punished by inflation and whose only realistic hope is vigorous and determined congressional action on their behalf.

Ours is the only national association which consists exclusively of nonprofit section 202 and 236 for-the-elderly projects. We respectfully submit that our membership, which consists of more than 100 projects from throughout the Nation, is uniquely qualified by past and current experience to determine the workability or nonworkability of proposed rules for administration of the 202/8 program. We are unanimous in concluding that the rules as presently proposed by HUD are totally and absolutely unworkable.

Cordially,

STANLEY AXIROD.

[Enclosure.]



**NATIONAL ASSOCIATION FOR NON-PROFIT RETIREMENT HOUSING POSITION  
STATEMENT ADOPTED MAY 30, 1975**

The National Association for Non-Profit Retirement Housing meeting in national convention in New Orleans, La., on May 30, 1975, hereby adopts the following statement of positions and objectives:

(1) HUD-established income limits for section 202 and section 236 for-the-elderly projects should be increased from 135 percent to 170 percent of the income limits for initial occupancy in low-rent public housing. The 202 and 236 elderly programs were intended to serve the housing and related needs of the low-moderate income elderly. Dollar incomes, but not real incomes, of retirees for whom 202 and 236 elderly programs were designed have increased more rapidly than HUD-established dollar income limits. Likewise, escalation in operating costs in general and utility costs in particular have made it increasingly difficult for existing 202 and 236 elderly projects to effectively serve the needs of those elderly for whom the programs were designed and intended.

(2) Special operating subsidies or grants should be made to HUD-assisted housing projects for the low and low-moderate income elderly so as to ameliorate the heavy impact of rapidly escalating energy costs and, in some cases, property taxes. In the alternative, such grants or subsidies should be made to HUD-assisted 236 elderly and 221(d)(3) elderly projects and the effective rate of interest on outstanding section 202 loans be reduced to 1 percent.

(3) HUD-proposed rules for the reenacted 202 program as published in the May 15 issue of the *Federal Register* are, in our opinion, patently unworkable. To provide for nonprofit involvement and program success it is essential that the 202 rules, as finally adopted, incorporate the following two fundamental elements:

(a) The 202 program provides direct loan construction and permanent mortgage financing for a term of 50 years, and

(b) The administration of the 202/8 program be performed at regional office level by a specialized staff whose sole responsibility is 202/8-assisted nonprofit projects for the low and low-moderate income elderly.

(4) The current session of Congress should provide full and immediate funding of the reenacted 202 program by authorizing a fiscal year 1976 borrowing authority in the amount of 800 million dollars as authorized in the Housing Act of 1974.

The officers and directors of the association are authorized and instructed to take appropriate action for and on behalf of the association to seek attainment of the foregoing positions and objectives.

The individual members of the association, together with their sponsoring organizations, are urged to work individually and collectively toward attainment of the aforesaid positions and objectives.

I hereby certify that the foregoing statement of positions and objectives was adopted by unanimous vote of the National Association for Non-Profit Retirement Housing meeting in national convention in New Orleans, La., on May 30, 1975.

[SEAL]

STANLEY AXLRD.

**ITEM 10. LETTER FROM STANLEY AXLRD, PRESIDENT, NATIONAL ASSOCIATION FOR NONPROFIT RETIREMENT HOUSING; TO THE RULES DOCKET CLERK, HUD, DATED JUNE 4, 1975**

DEAR SIR: The National Association for Non-Profit Retirement Housing is an organization of section 202 and section 236 for-the-elderly non-profit projects dedicated to providing housing and related services to the well-elderly of low-moderate income. Our membership consists of well over 100 such projects located throughout the Nation.

The National Association for Non-Profit Retirement Housing meeting in national convention in New Orleans, La., May 28-30, 1975, by unanimous vote authorized and directed me, for and on behalf of the association, to submit the following comments and suggestions regarding HUD-proposed rules for administration of the reenacted 202 program. Association comments and suggestions are as follows:

The provision of long-term direct mortgage loans (providing both construction and permanent mortgage financing) and specialized program administration at HUD regional office level were basic to the success of the old 202 program

and are, in our judgment, also critical to the involvement of nonprofit organizations in and the success of the new 202/8 program for elderly housing. Therefore, we urge adoption of two fundamental elements in development of the 202 rules:

(a) That the reenacted 202 program provide for HUD direct loan mortgage financing (both construction and permanent) for a term not exceeding 50 years, and

(b) That administration of the 202/8 program be performed at HUD's regional office level by a specialized staff whose sole responsibility is 202/8-assisted nonprofit projects for the low and low-moderate income elderly.

Without inclusion of these two fundamental elements the 202/8 program will, in the opinion of our entire membership, be patently unworkable.

Other comments and suggestions:

The proposed rules make no reference to nor provide a definition of "sponsor." It is extraordinarily unlikely that a religious denomination, international labor union, fraternal organization, or other major long-established nonprofit organization will, or can, be an "applicant." Rather, the sponsoring organization will organize a single-purpose 202/8-eligible nonprofit corporation to function as owner-mortgagor. The articles of incorporation of such special-purpose applicant corporations can be expressly developed to meet HUD's 202/8 requirements as well as those of the Internal Revenue Service and appropriate State statutes. In many jurisdictions Federal 501(c)(3) "charitable" Federal tax exemption is a prerequisite to compliance with State statutes granting ad valorem tax exemption to nonprofit projects for the low-moderate income elderly. In many cases, project feasibility is dependent upon property tax exemption. The association-proposed definition of "sponsor" is as follows:

"Sponsor" means any nonprofit organization, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual, which is not controlled by nor under the direction of persons or firms seeking to derive profit or gain therefrom, and which is responsible for the creation, control, and the continuing sponsorship and support of an 'Applicant' as defined herein."

Because we feel that the proposed provisions of section 895.210 "contents of request for fund reservations" are grossly deficient in that information is requested concerning the "applicant" rather than "sponsor" and that the information requested is grossly inadequate to provide a proper means for evaluation and selection, we propose that 895.210 be deleted in its entirety and that the following be substituted in lieu thereof:

Each request for a section 202 fund reservation shall be submitted to the regional office in the region in which the housing is to be located and shall include the following:

- (a) Name and address of the sponsor.
- (b) Names and addresses of all officers and directors or members of the governing body of the sponsor.
- (c) Description of the nature of the sponsor, including date of its establishment and size and scope of its membership, and other comparable information.
- (d) Description of relationship between sponsor and applicant nonprofit corporation.
- (e) Description of any commitment, financial or otherwise, by the sponsor for any proposed assistance to the applicant nonprofit corporation.
- (f) Name and address of the applicant.
- (g) Names and addresses of all officers and directors of the applicant.
- (h) Certified copy of articles of incorporation of the applicant.
- (i) A description of any financial default, modification of terms and conditions of financing, or legal action taken against the applicant or the sponsor for any reason during the past 10 years.
- (j) 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 or under sponsorship and control of the sponsor 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.

(k) Evidence of the financial stability of the sponsor. Such evidence may include the sponsor's balance sheet(s) and statement of income and expenses for each of the past 5 years.

(l) The city, metropolitan, or nonmetropolitan area in which the project(s) would be located.

(m) The proposed number of section 202 units to be developed, by project.

(n) The amount of section 202 loan funds requested to be reserved.

(o) Such other information as the applicant may wish to include which indicates any special capability to develop and operate a housing project successfully.

Other modifications of the proposed regulations which we deem to be essential are:

(1) Inclusion of "interest during construction" for 6 months following commencement of occupancy of a project or attainment of 95 percent occupancy, whichever first occurs. This was an essential element of the old 202 program.

(2) Inclusion of "off-site costs," such as running utilities to the property boundary, as an eligible development cost. The intent is that all such necessary off-site costs should be eligible provided that the market value of the site is thereby increased in an amount approximately equal to the cost of off-site improvements. This was the approach under the old 202 program.

(3) Deletion of the words "investors," "stockholders," and "developers." Neither the sponsor nor the applicant nonprofit organizations, by definition, have investors or stockholders and the applicant is, itself, the "developer" . . . although the "builder" will, of course, be a for-profit business entity selected by the applicant-developer, either through negotiation or by competitive bid.

(4) Deletion of all forms of "assurance of completion" other than requiring a 100 percent payment and performance bond from the builder. This was a requirement of the 202 program and obviated many of the problems which have been experienced in the FHA-insured multifamily programs which typically do not require a 100 percent payment and performance bond.

(5) While we have no objection, per se, to selection/approval for requests for 202 fund reservations by the Assistant Secretary, we strongly urge that the selection/approval process include requirement for a preapplication conference between the appropriate regional office elderly housing specialist and the proposed sponsor-applicant. A written report-recommendation from the regional specialist should be utilized by the Assistant Secretary to aid his evaluation and selection of the best qualified sponsor-applicant for receipt of 202 loan reservations.

Yours very truly,

STANLEY AXLRD.

## Appendix 3

### LETTERS FROM INDIVIDUALS AND ORGANIZATIONS

#### ITEM 1. LETTER FROM W. J. BRAKE, PRESIDENT, CAPITOL GRANGE SENIOR CITIZENS HOUSING CORP.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED MAY 22, 1975

DEAR SENATOR WILLIAMS: I certainly do want to congratulate you on your determination to revitalize section 202 to provide housing for senior citizens.

Several years ago Capitol Grange decided to construct a nonprofit housing facility for senior citizens. We were concerned over the increasing costs which senior citizens had to pay, and for the greater number of them from fixed incomes.

We learned of section 202 and applied for, and were granted, a loan. This enabled us to erect a 100-apartment facility. Because this was a cooperative effort between Government and private citizens, we carried the idea much further than just providing a place to live.

We sponsored crafts, game parties, community dinners, and other activities. We purchased a 12-passenger aerobus, and run regular shopping trips. We worked to clear the underbrush from a 5-acre tract to provide a very attractive park. We picked up unsaleable sod at a sod farm and sodded hillsides and bare areas of the park. We trimmed brush, hauled and burned it. We laid a rip-rap stone wall to prevent erosion along a roadside. We ditched and laid drainage tile to drain a low area.

We provided the labor to build a garage and storehouse. We erected a stage for a theater-in-the-round, and are ready to start terracing the hillside for seating. We planted trees for landscaping. There were gifts of a shuffleboard court, lapidary equipment, woodworking tools, wheel chairs, a pool table, a fireplace, and many other gifts.

In the beginning of occupancy, we provided management and maintenance for about 3 months on a volunteer basis, until a sufficient reserve could be built up to employ a manager.

Why did we give, and will continue to give, some 3,000 man- and woman-hours a year to this project? Simply because we were partners with Government! The Government had provided construction funds—a 50-year loan at 3 percent interest—and it was up to us to make the project workable. Yes, a little more than just workable—for housing alone is not quite sufficient.

Medical science had added years to the lives of these senior citizens, and with the help of Government we could add some life to those extra years. And in reality this project cost the taxpayers of the Nation only the difference in the interest rates—the 3 percent we were charged and the 6 percent which prevailed at that time.

I sincerely believe, Senator, that our voluntary labor has a value equal to the interest lost by the Government. We have 6,250 Granges located in 40 States, many of them looking for a worthwhile, long-range, community service project.

We continually receive requests for information regarding our project, from other Granges, but only one in the State of Washington, was able to get started in time to secure a 202 loan.

As we had divided our project up into four phases, and the one described above was phase I, we turned to a financing which was available, I believe section 231-D-3 for phase II, consisting of an additional 104 apartments. With 100 percent occupancy, and a long waiting list, we determined to begin phase III, another 100 apartments. An architect has provided preliminary sketches and costs estimates on a risk basis—no loan, no pay.

Just yesterday three of us drove to Grand Rapids, the nearest FHA-HUD office, only to learn that, for practical purposes, there is no senior citizens housing program. We were told that funds had been frozen by the administration, so nothing is presently available.

While I understand that section 202 has been revised so that it is not a permanent loan, but does provide construction funds, if these were available, and a permanent home for the loan provided by Fannie Mae or Jenny Mae, it could well encourage the type of Government-citizenship partnership which I believe adds to the stability of a Nation.

So, Senator Williams, I salute you for your determination. I most sincerely hope that your colleagues on the Special Committee on Aging will give wholehearted support revitalizing section 202.

Sincerely,

W. J. BRAKE.

**ITEM 2. LETTER FROM JNO. W. WILLIAMS,\* EXECUTIVE DIRECTOR, METHODIST HOME FOR THE AGING, BIRMINGHAM, ALA.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED MAY 28, 1975**

DEAR SENATOR WILLIAMS: I have just received notice of your scheduled hearing June 6 on the recently proposed section 202 elderly housing program regulations.

The home for the aging program in Alabama and west Florida of the United Methodist Church was organized in 1957, with the first of two units opening in Birmingham, Ala., in 1961, and the second opening in Dothan, Ala., in 1968. At the 1968 sessions of our annual conferences, approval was requested to build a 202 project in Pensacola, Fla. Final approval was given at the 1969 session of the North Alabama Conference.

By the time this action was approved, a moratorium had been placed on the 202 program. Since that time our board has investigated every avenue for the construction of such housing and has found none, either government or private financing, that compares with the old 202 program.

In reading the new regulations published in the Thursday, May 15, 1975, *Federal Register*, it appears that the proposed 202 program would be a construction loan only with private financing committed before the construction begins.

We have been in operation now for over 15 years and have had no problem securing construction money at any time. Long-term financing as needed to provide adequate and reasonable housing for the elderly has been and continues to be the problem. Therefore, there is no need for this program unless it can become a total financing program over 40 to 50 years. In this way, those of us who have already established programs can expand our services to the elderly.

Very truly yours,

JNO. W. WILLIAMS.

**ITEM 3: LETTER FROM THOMAS R. MERRILL, EXECUTIVE DIRECTOR, METHODIST CONFERENCE HOME, INC., ROCKLAND, MAINE; TO SENATOR HARRISON A. WILLIAMS, JR., DATED MAY 28, 1975**

DEAR SIR: I have read the proposed rules for the revived section 202 program and am delighted that movement by HUD is apparently happening.

My chief concern is that the "construction loan only" portion of the rules seems to me to be contrary to the intent of Congress. It further seems that this provision would negate the program because nonprofit sponsors would find it extremely difficult if not impossible to secure permanent financing as would be required.

The documented success of previous 202 projects is clear. I believe that there has been only one foreclosure in this program.

It also seems to me that there is some question as to the real availability of section 8 funds for this effort. Has there been an effective "set-aside" made of these funds for 202?

The success of 202 (1959) should cause HUD to establish rules and procedures which would make application and financing as easy and uncomplicated as possible for qualified nonprofit sponsors. "One-window" application procedures and direct permanent financing arrangements would certainly help.

While we of Methodist Conference Home, Inc., are not immediately considering new construction we have been in conversation with a number of groups who are. One such group is considering the rehabilitation of a building for elderly housing. Will 202 cover this?

\*See statement, p. 37.

One further comment, Senator. The success of nonprofits in providing housing and a variety of related services for the elderly seems apparent to me and I hope to you as well. For this reason it would also seem appropriate to me that Congress pass legislation and that the administration implement the same in ways which would provide nonprofit sponsors with more adequate and simplified application and funding procedures for the wide range of services which they provide. In short a "one-widow" approach to the government for funding for such services as housing, meals, counseling, information, recreation, day care, etc., would be wise. I understand that this is beyond the scope of your current investigation but respectfully ask that you consider it for future action.

Very sincerely,

THOMAS R. MERRILL.

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**ITEM 4. LETTER FROM CHARLES K. DILGARD, ADMINISTRATOR, OTTERBEIN HOME, LEBANON, OHIO; TO SENATOR HARRISON A. WILLIAMS, JR., DATED MAY 28, 1975**

DEAR SENATOR WILLIAMS: I have received a copy of the proposed amendment to title XXIV which would implement loans under the 202 program. I refer to *Federal Register*, volume 40, No. 95, dated May 15, 1975.

I really feel the total program is almost worthless in really assisting with providing low-cost housing. No doubt there are organizations that would need a construction loan from the Federal level, but in most cases I believe the commercial loaning institution that is willing to take the long-term loan will also involve itself in the short-term construction loan. In any case, we need something that can come at a lower interest rate than 8½ percent to really be of significant help.

At Otterbein Home, we have constructed 84 housing units using private financing because the old FHA program and the old 236 programs could not be blended with a comprehensive retirement community concept. At Otterbein we need to expand housing so that we can serve lower income persons. We continue to need low interest loans similar to the original 202 program.

While I appreciate the efforts of the fine people who have worked on this program, I feel it is nearly worthless in meeting the real needs of older persons for low-cost housing.

Sincerely,

CHARLES K. DILGARD.

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**ITEM 5. LETTER FROM WALTER O. KUGLER, ADMINISTRATOR, BAYVIEW MANOR, SEATTLE, WASH.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED MAY 28, 1975**

DEAR SENATOR WILLIAMS: Recently we received a notice from our AAHA office stating that your Subcommittee on Housing for the Elderly would appreciate input on section 202 program regulations.

What I have to say could be covered in 202 regulations somewhere, but I have not run into them.

It seems to me that 202 could make it more easily possible for organizations to purchase existing commercial apartment units; or, even municipal low-income housing developments. Construction of a new building(s) in a downtown location imposes many obstacles to the developer; whereas, the purchase of an existing building would be much more easy to convert to the type of program. Older persons like to be downtown—or near it—and that is where there are many apartment buildings that could be obtained and utilized in a very positive way.

Thank you.

Yours very truly,

WALTER O. KUGLER.

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**ITEM 6. LETTER FROM HOWARD B. BRAM, EXECUTIVE DIRECTOR, MENORAH PARK JEWISH HOME FOR AGED, BEACHWOOD, OHIO; TO SENATOR HARRISON A. WILLIAMS, JR., DATED MAY 28, 1975**

DEAR SIR: The section 202 program was meant to supply much needed additional housing for the elderly under nonprofit sponsorship. I do not believe that it was the intent of Congress that the 202 financing be limited only to construc-

tion loans. The 202 program, as now appearing in the *Federal Register*, does not include provision for long-term financing. Without long-term financing included, the program has been emasculated by regulations.

The proposed 202 regulations also limit any use of funds to a tie-in with the section 8 program. There may be certain situations where this may not be possible, and again, I believe that this is not within the intent of the Congress.

Sincerely,

HOWARD B. BRAM.

**ITEM 7. LETTER AND ENCLOSURE FROM CLARK HARSHFIELD, EXECUTIVE DIRECTOR, RETIREMENT HOUSING FOUNDATION, LONG BEACH, CALIF.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED MAY 29, 1975**

DEAR SENATOR WILLIAMS: An action bulletin received today from the American Association of Homes for the Aging tells us of the hearing to be held June 6 on the recently proposed section 202 elderly housing regulations. The bulletin also invites communications for the record.

Retirement Housing Foundation is a nonprofit California corporation which has developed a whole series of HUD mortgage insured projects, a list of which is enclosed. The foundation is also managing, through its subsidiary management company, several troubled projects referred by regional and local offices here in California, and we have a very successful record in management and development of such projects.

The title 202 section of the National Housing Act of last August brought a limited ray of hope to nonprofits that they might again be able to successfully develop projects with the 202 vehicle. However, it now appears that the administration has again frustrated the whole nonprofit industry by arbitrarily limiting its application to interim financing. As an interim financing program, it is absolutely useless, redundant and ridiculous. The only reason for 202 for nonprofits is to provide a more flexible permanent financing vehicle for such facilities, hopefully at a lower rate of interest than the market provides. If those purposes cannot be achieved, then you might as well forget it because as it stands, it is totally useless.

Whoever thought up title 202 for financing is deliberately avoiding the use of it as an effective tool in the development of housing for the elderly.

Very sincerely yours,

CLARK HARSHFIELD.

[Enclosure.]

RETIREMENT HOUSING FOUNDATION DEVELOPMENTS, APRIL 1975

| Facility  | FHA project No.                         | Type of participation | Building components   |
|---|---|-----------------------|---|
| <b>A. TITLE 231 PROJECTS</b>  |   |                       |   |
| The Beatitudes 1616 West Glendale, Phoenix, Ariz. Total cost: \$10,000,000. Date: November 1966.  | 123-38017 and 123-38019.                | Cosponsor....         | 410 apartments, 160-bed convalescent unit. Includes lounges, central dining, support facilities, parking, and storage.  |
| Bixby Knolls Towers and Center Bldg., 3737-3747 Atlantic Ave., Long Beach, Calif. Total cost: \$6,500,000. Date: October 1966 and May 1971. | 122-09003. Now conventionally financed. | Owner.....            | 52 2-bedroom units; 91 1-bedroom units; 84 efficiency units; 124-bed convalescent unit. Includes main floor lounges, central dining rooms, 3,000 ft. <sup>2</sup> medical clinic, 2,000 ft. <sup>2</sup> physical therapy unit, support facilities, underground parking, and storage. |
| Casa De Modesto, 1745 Eldena Way, Modesto, Calif., Total cost: \$883,300. Date: July 1966.  | 121-38017.....                          | Cosponsor....         | 64 apartments; 20-bed convalescent unit. Includes central dining room, lounges, support facilities, parking, and storage.   |
| Mayflower Gardens, 6570 West Avenue L-12, Lancaster, Calif. Total cost: \$3,100,000. Date: May 1965.  | 122-38007.....                          | Owner.....            | 552 1-bedroom and efficiency apartments; 48-bed convalescent unit. Includes central dining, lounges, library, TV rooms, support facilities, medical clinic, dental clinic, banking facilities, parking, and storage.  |

## RETIREMENT HOUSING FOUNDATION DEVELOPMENTS, APRIL 1975—Continued

| Facility   | FHA project No.          | Type of participation | Building components  |
|--|--------------------------|-----------------------|--|
| <b>A. TITLE 231 PROJECTS</b>   |                          |                       |  |
| Pioneer House, 415 P St., Sacramento, Calif. Total cost: \$1,843,000. Date: October 1966.  | 136-38003                | Cosponsor             | 100 1-bedroom and efficiency apartments; 50-bed convalescent unit. Central dining, lounges, support facilities, and parking.         |
| Plymouth Square, 1319 North Madison Ave., Stockton, Calif. Total cost: \$1,776,000. Date: January 1970.                                      | 136-38005                | do.                   | 90 1-bedroom and efficiency apartments; 38-bed convalescent unit. Central dining, lounges, support facilities, and parking.          |
| Plymouth Tower, 3401 Lemon St., Riverside, Calif. Total cost: \$1,749,000. Date: February 1970.  | 122-38035                | do.                   | 90 1-bedroom and efficiency apartments; 38-bed convalescent unit. Includes central dining, lounges, support facilities, and parking. |
| Sun Valley Lodge, 12415 N. 103d Ave., Sun City, Ariz., Total cost: \$1,250,000. Date: July 1966.   | 123-38016                | do.                   | 87 apartments; 32-bed convalescent unit. Includes central dining, lounges, beauty salon, support facilities, and parking.            |
| Trinity House, 2701 Capitol Ave., Sacramento, Calif. Total cost: \$1,140,000. Date: November 1966.   | 136-38002                | do.                   | 60 1-bedroom and efficiency apartments; 29-bed convalescent unit. Includes central dining, lounges, support facilities, and parking. |
| <b>B. TITLE 236 PROJECTS</b>   |                          |                       |  |
| Greenfair Apartments, 701 Fairgrounds Dr., Sacramento, Calif. Total cost: \$3,785,000. Date: September 1972.                                 | 136-44902 and 136-44904. | Owner                 | 192 1-bedroom apartments. Includes lounges, library, support facilities, parking, and storage.                                       |
| Greenfair Tower II, 702 Fairgrounds Dr., Sacramento, Calif. Total cost: \$4,278,000. Date: April 1974.                                       | 136-44276                | Sponsor               | 192 1-bedroom apartments. Includes lounges, central dining, support facilities, parking, and storage.                                |
| Harbor Tower, 3d and Mesa Streets, San Pedro, Calif. Total cost: \$5,232,867. Application for conditional commitment in process.             | 122-45024                | Cosponsor             | 180 1-bedroom apartments. To include multipurpose room, TV room, lounges, library, support facilities, parking, and storage.         |
| MacArthur Park Towers, 6th and Lake Streets, Los Angeles, Calif. Total cost: \$5,839,645. Application for conditional commitment in process. | 122-45035                | Sponsor               | 183 1-bedroom apartments. To include central dining, lounges, library, TV room, support facilities, parking, and storage.            |
| Pilgrim Tower North, 560 East Villa St., Pasadena, Calif. Total cost: \$5,941,000. Date: March 1974.   | 122-44601                | do.                   | 258 1-bedroom apartments. Includes central dining, lounges, TV room, support facilities, parking, and storage.                       |
| Ralston Tower, 900 Seventeenth St., Modesto, Calif. Total cost: \$3,660,000. Date: September 1974.   | 121-44320                | Cosponsor             | 180 1-bedroom apartments. Includes central dining, lounges, TV Room, support facilities, and parking.                                |
| <b>C. CONVENTIONALLY FINANCED PROJECTS</b>   |                          |                       |  |
| Cabrillo Extended Care Hospital, 3033 Augusta St., San Luis Obispo, Calif. Total cost: \$1,201,106. Date: February 1972.                     |                          | Owner                 | 162-bed nursing home facility.   |
| United Church Care Center, 15115 South Vermont Avenue, Gardena, Calif. Total cost: \$555,000. Date: July 1971.                               |                          | do.                   | 99-bed nursing home facility.  |
| United Church Care Center, 12332 Garden Grove Blvd., Garden Grove, Calif. Total cost: \$670,000. Date: February 1972.                        |                          | do.                   | 99-bed nursing home facility.  |
| United Church Care Center, 4000 Harrison St., Riverside, Calif. Total cost: \$1,000,000. Date: April 1972.                                   |                          | do.                   | 140-bed nursing home facility.   |
| United Church Care Center, 879 Meinecke St., San Luis Obispo, Calif. Total cost: \$750,000. Date: April 1972.                                |                          | do.                   | 99-bed nursing home facility.  |
| United Church Care Center, 21414 South Vermont Ave., Torrance, Calif. Total cost: \$1,300,000. Date: December 1971.                          |                          | do.                   | 166-bed nursing home facility.   |



MANAGEMENT CONTRACTS CURRENTLY HELD BY RHF MANAGEMENT,  
INC., APRIL 1975

TITLE 202 PROJECTS

New Hope Home, 1150 New York Avenue, Long Beach, Calif. 90813, 140 residential units; FHA project No. SH-CAL-61.  
Progressive Home for the Elderly, 7011 South Figueroa Street, Los Angeles, Calif. 90044, 140 residential units; FHA project No. SH-CAL-74.

TITLE 231 PROJECTS

Bixby Knolls Towers, 3737-3747 Atlantic Avenue, Long Beach, Calif. 90807, 227 residential units, 124 convalescent beds; FHA project No. 122-09003-NP.  
Mayflower Gardens, 6570 West Avenue L-12, Lancaster, Calif. 93534, 552 residential units, 48 convalescent beds; MHA project No. 122-38007-NP.  
Pioneer House, 415 P Street, Sacramento, Calif. 95814, 100 residential units, 50 convalescent beds; FHA project No. 136-38003-NP.  
Plymouth Square, 1319 North Madison Avenue, Stockton, Calif. 95202, 90 residential units, 38 convalescent beds; FHA project No. 136-38005-NP.  
Plymouth Tower, 3401 Lemon Street, Riverside, Calif. 92501, 90 residential units, 38 convalescent beds; FHA project No. 122-38035.  
Trinity House, 2701 Capitol Avenue, Sacramento, Calif. 95816, 60 residential units, 29 convalescent beds; FHA project No. 136-38002.

TITLE 236 PROJECTS

Baptist Gardens, 10th and Pine Avenue, Long Beach, Calif. 90802, 200 residential units; FHA project No. 122-45032-NP.  
Beverly Towers, 1315 Beverly Boulevard, Montebello, Calif. 90640, 189 residential units; FHA project No. 122-44215-NP.  
Garden Grove Towers, Garden Grove, Calif., 200 residential units; FHA project No. 122-45033-NP.  
Greenfair Apartments, 701 Fairgrounds Drive, Sacramento, Calif. 95817, 192 residential units; FHA project No. 136-44902 and FHA project No. 136-44904-NP.  
Greenfair Tower II, 702 Fairgrounds Drive, Sacramento, Calif. 95817, 194 residential units; FHA project No. 136-44276-NP.  
Harbor Tower, 3d and Mesa Streets, San Pedro, Calif., 180 residential units; FHA project No. 122-45024.  
MacArthur Park Tower, 6th and Lake Streets, Los Angeles, Calif., 183 residential units; FHA project No. 122-45035.  
Pilgrim Tower North, 560 East Villa Street, Pasadena, Calif. 91101, 258 residential units; FHA project No. 122-44601.  
Plymouth West, 240 Chestnut Street, Long Beach, Calif. 90802, 196 residential units; FHA project No. 122-44812-NP.  
Ralston Tower, 900 Seventeenth Street, Modesto, Calif. 95354, 180 residential units; FHA project No. 121-44320-NP.  
Wong Center, 333 J Street, Sacramento, Calif. 95814, 187 residential units; FHA project No. 136-44019-NP.  
Wycliff Plaza, Flower Street, N. of Washington, Santa Ana, Calif., 200 residential units; FHA project No. 122-45034-NP.

CONVENTIONALLY FINANCED PROJECTS

Cabrillo Extended Care Hospital, 3033 Augusta Street, San Luis Obispo, Calif. 93401, 162-bed nursing home facility.  
United Church Care Center, 15115 South Vermont Avenue, Gardena, Calif. 90247, 99-bed nursing home facility.  
United Church Care Center, 12332 Garden Grove Boulevard, Garden Grove, Calif. 92503, 99-bed nursing home facility.  
United Church Care Center, 4000 Harrison Street, Riverside, Calif. 92503, 140-bed nursing home facility.  
United Church Care Center, 879 Meinecke Street, San Luis Obispo, Calif. 93401, 99-bed nursing home facility.  
United Church Care Center, 21414 South Vermont Avenue, Torrance, Calif. 90502, 166-bed nursing home facility.

**ITEM 8. LETTER FROM JOHN M. BRUNEER, PACIFIC SOUTHWEST SYNOD, LUTHERAN CHURCH IN AMERICA; TO THE RULES DOCKET CLERK, HUD, DATED MAY 30, 1975**

DEAR SIR: The proposed regulations for section 202 are not feasible for use by nonprofits. The major stumbling block is the lack of a long-term mortgage commitment.

In order for section 202 to be a useful housing program for the elderly and handicapped, the following provisions must be present:

(1) Subpart A, Sec. 895.1—Purpose and Policy.

(a) The purpose of the program described in this part is to provide direct Federal construction loans . . . (add) and long-term (50-year) mortgage commitments.

(b) (add) Benefits of housing assistance payments under the section 8 program SHALL be included for part or all units of a section 202 project.

(2) Subpart B, Sec. 895.210—Contents of Requests for Funds.

(e) (add) For new sponsorship groups the HUD regional office shall provide working capital loans which may be repaid out of residual receipts or incorporated into the final mortgage amount.

I hope you will see that the suggested additions are considered.

Faithfully yours,

JOHN M. BRUNEER.

**ITEM 9. LETTER FROM HOWARD F. KUDER, PRESIDENT, WITTENBERG MANOR, INC., SAN LORENZO, CALIF.; TO HON. PORTNEY STARK, U.S. HOUSE OF REPRESENTATIVES (CALIF.), DATED MAY 31, 1975**

DEAR SIR: We understand that you are on the committee of the House that handles HUD matters. The above organization is in the process of constructing a project for the elderly under section 8 of the Housing Act of 1974. The one important ingredient which is missing is that HUD will not use Section 202 funds for long-term mortgages, only for construction loans. We would like to ask that you add language to a supplement appropriation bill for section 202 requiring HUD to provide long-term mortgage mechanism for section 8 programs.

This Wittenberg Manor, Inc., is sponsored by a local church, is a non-profit corporation, and has also met State and Federal requirements as an organization.

As of now it is not possible for nonprofit sponsors to get long-term financing from conventional sources and it is economically unfeasible to pay for points for 30- to 40-year mortgages. We, therefore, urge you to see if it is not possible for HUD to furnish financing under section 202 or some other mortgage mechanism should be provided for section 8 programs.

It is our aim to provide about 100 housing units in the area generally considered as San Lorenzo, Cherryland, Ashland, and the area known as Hayward Acres. This area has a population of about 70,000 people. Cherryland has some 13 percent of the people over 65 years of age, San Lorenzo area about 6 percent over 65, Ashland area about 7 percent over 65 and Hayward Acres about 9 percent over 65. Their need for this housing is brought out by the above figures which were compiled by the Alameda County Planning Department. As required by the 1974 Housing Act, we already have hired a housing consultant, have engaged an architect, have made known our preliminary plans to the Alameda County planning staff and have bought a most desirable piece of property in Hayward Acres. This property is immediately adjacent to San Lorenzo, shopping is within two blocks, two blocks from Kennedy Park, and two blocks from a bus line. We believe we have a valid case for elderly housing in this area and will probably start with a minimum age of 55 and the above figures deal with people over 65.

In connection with the 1974 Housing Act which provides for the development plan for the area, in this case the unincorporated area of Alameda County plus the six cities of less than 50,000 population each in the county, we had the board of supervisors of Alameda County revise their plan to include our plan of 120 units.

There is a similar project known as Fargo Manor in San Leandro which was sponsored jointly by the Jewish and Presbyterian congregations in San Leandro. This development has 75 units, was filled the day it opened and has a waiting list of 300 people.

We have already received a number of inquiries, mostly from people living on social security with limited income who would like to move into this type of project.

We would like to have you use your influence to carry out the objectives of the 1974 Housing Act so that long-term financing can be used under section 202 or under some other mortgage mechanism for section 8 projects.

Yours very truly,

HOWARD F. KUDER.

**ITEM 10. LETTER FROM HOWARD F. KUDER, WITTENBERG MANOR, INC.; TO THE RULES DOCKET CLERK, HUD, DATED MAY 31, 1975**

DEAR SIR: We note with interest the regulations as set forth in the *Federal Register* on May 15 (vol. 40, No. 95) for use of section 202 funds. We do not believe those regulations are feasible for use by nonprofit corporations. The primary stumbling block of course is lack of long-term mortgage commitment. It is not possible economically nor feasible to secure long-term financing from conventional private mortgage resources, plus the fact that even if such loans were obtainable, nonprofits could not afford to pay points for the loans. Therefore it would appear that your regulations should provide for housing assistance payments for all section 8 programs.

We also would request that HUD regional offices provide capital loans which may be paid out of residual receipts or incorporated into the final mortgage amount.

Yours very truly,

HOWARD F. KUDER.

**ITEM 11. LETTER FROM DR. HARRY SUMMERS, EXECUTIVE DIRECTOR, NEW MEXICO INTERCHURCH AGENCY; MRS. BETTY WEIR, PRESIDENT, COORDINATED ACTION OF SENIOR ADULTS; AND REV. CHARLES E. FISH, PRESIDENT, BOARD OF TRUSTEES, ENCINO HOUSE, INC.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED MAY 31, 1975**

DEAR SENATOR WILLIAMS: As sponsors of Encino House Project No. 202-SH-NM-03 and the proposed Encino House East, Project No. 116-44051-NP-WAH, which was killed by the housing moratorium of January 5, 1973, we wish to state our continued interest in building additional, much-needed housing for the elderly such as the present Encino House in Albuquerque, New Mex. Encino House has been 100 percent occupied since its opening in December of 1970 and has a waiting list in excess of 350 people which constitutes a 3- to 4-year waiting list.

We have been eagerly awaiting the implementation of the new reactivated 202 program as authorized by Congress in the housing law of 1974; however, after examining the HUD proposed rules for the reenacted 202 program as published in the May 15 issue of the *Federal Register*, they are, in our opinion, patently unworkable to provide for nonprofit involvement and program success. It is essential that the 202 rules as finally adopted, incorporate the following four fundamental elements:

1. The 202 program provide direct loan construction and permanent mortgage financing for a term of 50 years.
2. The administration of the 202/8 program be performed at regional office level by specialized staff whose sole responsibility is 202/8 assisted, nonprofit projects for the low and low-moderate income elderly.
3. Benefits of housing assistance payments under the section 8 program shall be included for part or all units of a section 202 project.
4. For new sponsorship groups, the HUD regional office shall provide working capital loans which may be repaid out of residual receipts or incorporated into the final mortgage amount.

It is our conclusion that it will be impossible for nonprofit sponsors, such as ours, to become involved in the development of any new projects unless permanent financing is provided for by the Government, directly or indirectly, as under the original 202 law and that even if permanent financing would be provided for, that

without specialized administration on the regional level as provided for in the old 202/236 program to help implement the program, that it will not be successful.

The current session of Congress should provide full and immediate funding of the reenacted 202 program by authorizing a fiscal year 1976 borrowing authority in the amount of 800 million dollars as authorized by the Housing Act of 1974.

It is our opinion that unless the Congress forcibly directs the administration and the Department of HUD to implement this program in a meaningful way, that neither the administration nor the Department of HUD will ever do so.

Very truly,

DR. HARRY SUMMERS.  
MRS. BETTY WEIR.  
REV. CHARLES E. FISH.

**ITEM 12. LETTER AND ENCLOSURE FROM DR. WILLIAM L. GEE, PRESIDENT, AND MARIE-LOUISE ANSAK, EXECUTIVE DIRECTOR, ON LOK SENIOR HEALTH SERVICES, SAN FRANCISCO, CALIF.; TO WILLIAM ORIOL, STAFF DIRECTOR, SPECIAL COMMITTEE ON AGING, DATED JUNE 2, 1975**

DEAR MR. ORIOL: Enclosed is a copy of our response to the proposed rules for the section 202 program for the elderly and handicapped of the Department of Housing and Urban Development.

We are very concerned about this since it again looks as if basically no money will be available to small nonprofit organizations in low-income inner city neighborhoods to develop the much needed housing for the elderly and handicapped.

In spite of all recognitions of the needs of the elderly and voluminous testimonies in Federal committees in support of adequate housing and constructive alternatives to nursing home replacement, the administration, through these regulations, inhibits developments. It looks again as if the economically disadvantaged individuals and organizations would be severely discriminated against.

We would appreciate your consideration of this matter.

Very sincerely,

DR. WILLIAM L. GEE.  
MARIE-LOUISE ANSAK.

[Enclosure.]

ON LOK SENIOR HEALTH SERVICES,  
*San Francisco, Calif., May 29, 1975.*

RULES DOCKET CLERK.

*Office of the General Counsel, Department of Housing and Urban Development, Washington, D.C.*

Subject: Proposed rules for the Section 202 Program for Elderly and Handicapped  
(*Federal Register*, vol. 40 No. 95, May 15, 1975)

As representatives of a small organization aiming to provide services and housing for the impaired, low-income elderly of the Chinatown-North Beach District of San Francisco, we express our grave concern about and opposition to the above proposed rules. It appears that these rules might successfully prevent a sponsor in a low-income inner city area (where land values are high) to provide adequate housing.

There is no provision in the proposed rules for the use of section 202 for permanent financing. In the proposed rules, section 202 is available only as a construction loan, which imposes upon the nonprofit sponsor the necessity to arrange permanent financing elsewhere. Currently, there is no permanent financing tool.

Permanent financing has customarily been provided as a necessary ingredient for federally assisted housing. This was true in the 202 program as it was administered in an earlier era. It was true of the section 236 program, where a permanent loan at par (no discounts) was provided through the GNMA tandem plan.

Currently, a permanent loan under section 231 for an elderly/handicapped housing project would cost the sponsor about seven points.

Under these rules a small organization such as ours will find it extremely difficult to sponsor a project and in the case of this district this will further encourage commercial development at the expense of decent housing for human

beings. We find this trend deplorable, particularly in view of the growing awareness of the needs of our senior citizens.

*We urge careful reconsideration of this matter!*

DR. WILLIAM L. GEE.  
MARIE-LOUISE ANSAK.

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**ITEM 13. LETTER FROM MAURICE B. GREENBAUM, ADMINISTRATOR, YORK HOUSE NORTH/SOUTH, PHILADELPHIA, PA.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JUNE 2, 1975**

DEAR SENATOR WILLIAMS: In conjunction with the work of the Housing Subcommittee of the Senate Committee on Aging, I understand that you will be conducting hearings on June 6 regarding HUD's proposed regulations for 202 housing. As a New Jersey resident and a professional in housing for aged, I would like to offer my views regarding the regulations.

The proposed regulations provide no permanent mortgage financing and set forth an application-approval process which involves a combination of Washington and local FHA office administration that has consistently proved to be unworkable for 202's. I suggest that Congress mandate for HUD the utilization of the 202 program for construction *and* permanent financing. Without this mandate the enormous need for housing for the elderly will continue to be unmet.

Sincerely yours,

MAURICE B. GREENBAUM.

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**ITEM 14. LETTER FROM ALEXANDER COTTRELL, ADMINISTRATOR, CAMPUS TOWERS, JACKSONVILLE, FLA.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JUNE 2, 1975**

DEAR SENATOR HARRISON: The above named nonprofit corporation is very much interested in sponsoring additional housing for the elderly. We have land and are willing to use it for serving our seniors, but financing such an undertaking would make it out of the question. We feel, however, that the direct loan original 202 program such as we now have would help us. We are aware of your efforts in restoring this highly successful program, and support its restoration.

The 202/8 program recently offered simply does not give much opportunity for a nonprofit low income group corporation such as ours to render this much needed service to our many applicants.

Hopefully,

ALEXANDER COTTRELL.

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**ITEM 15. LETTER FROM SISTER MARY ANNE GUTHRIE, DIRECTOR, DIOCESE OF MEMPHIS, TENN.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JUNE 2, 1975**

DEAR SENATOR WILLIAMS: It has been brought to my attention that the committee which you chair will be considering section 202 of the housing program this week. In an effort to respond to the needs of our older Americans within our community, the Catholic Diocese of Memphis is in the process of developing a plan that will provide low-income housing for approximately 300 people.

Under this plan, 100 units have been designated for intermediary care, while the remaining units (one-bedroom apartments) will be available to those living on fixed incomes in need of adequate housing. This combination is itself unique. In addition to this, we are planning to erect the housing units as a part of a planned unit development.

The diocese, which owns 24 acres of land in midtown Memphis, presently has St. Peter's Home for Children on this property. This home serves approximately 50 emotionally-disturbed and dependent children, a nutritional rehabilitation day-care program serving 50 children who are victims of malnutrition, a day-care program serving 60 children whose parents are working, and 12 emotionally-disturbed teenage girls.

Twelve acres of this land houses a central high school. At this time, students from the high school are working with the children at the home in various ways as part of their educational curriculum. Upon completion of the home for our older Americans, this service will be extended to the residents.

The long-range planning for the use of this land is the development of a village concept. The plan is indeed exciting when we can integrate our older Americans into this dream. However, in order to accomplish this phase of the plan, the diocese is looking to the Federal Government for long-range financing under section 202 of the construction loan program.

It is our hope and prayer that your committee, in its deliberations this week, will be favorable to the long-range financing of this particular section of the bill which will allow our project, hopefully, to move more quickly to its completion. Thank you for your consideration.

Sincerely yours,

SISTER MARY ANNE GUTHRIE.

**ITEM 16. LETTER FROM WALTER WEBER, LUTHERAN SOCIAL SERVICES OF SOUTH DAKOTA; TO THE RULES DOCKET CLERK, HUD, DATED JUNE 3, 1975.**

DEAR SIR: Pertinent to proposed regulations for the use of section 202 funds for the housing of elderly and handicapped persons, I wish to encourage a corrective provision for the present lack of a long-term mortgage commitment which would make it feasible for nonprofit organizations to become involved with the program. In the interest of a more useful housing program for the elderly and handicapped, please consider the following provisions relative to the proposed regulations for the use of section 202 funds:

(1) Subpart A, Section 895.1—Purpose and Policy.

(a) The purpose of the program described in this part is to provide direct Federal construction loans . . . (add) and long-term (50-year) mortgage commitments.

(b) (add) Benefits of housing assistance payments under the section 8 program SHALL be included for part or all units of a section 202 project.

(2) Subpart B, Section 895.210—Contents of Requests for Funds.

(e) (add) For new sponsorship groups the HUD regional office shall provide working capital loans which may be repaid out of residual receipts or incorporated into the final mortgage amount.

Thank you for your consideration in this regard.

Most sincerely,

WALTER WEBER.

**ITEM 17. LETTER FROM WILLIAM R. STEINBERG, PRESIDENT, FOUR FREEDOMS, INC., MIAMI BEACH, FLA.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JUNE 3, 1975**

DEAR SENATOR WILLIAMS: Our nonprofit organization founded in 1958 by a group of international labor unions affiliated with the AFL/CIO among whom were the United Auto Workers, United Steel Workers of America, International Ladies Garment Workers Union, National Maritime Union, International Union of Electrical Workers, International Brotherhood of Operative Potters, and the American Radio Association, have during the years sponsored the construction of four elderly housing projects under section 202 of the National Housing Act.

These projects located in Detroit, Philadelphia, Seattle, and Miami Beach, totaling 1092 apartment units and related facilities, have all been operating at full capacity and all of them have waiting lists with a combined total numbering in the thousands.

Our efforts to expand our activities by the construction of additional projects were of course nullified by the unwarranted and, we believe, illegal impoundment of fund authorized by the Congress for the 202/236 programs.

The passage of the Housing and Community Development Act of 1974, together with the anti-impoundment legislation instilled in us and in all other charitable organizations who have the welfare of our senior citizens at heart, new hope that we could resume development of additional projects in line with the ever increasing need for decent housing for the elderly and the handicapped who are unable to cope financially with the inflated costs of housing offered by the private sector of our economy.

The proposed rules promulgated by the Department of Housing and Urban Development have brought to us and others the quick realization that the will

of the people and laws passed by the Congress of the United States and signed by the President (evidently with "tongue in cheek") can be negated by inaction and delay, since more than 10 months after the act's approval, its implementation as far as 202/8 is concerned, is still in the rulemaking stage and may well remain there for some time.

If as HUD maintains, its proposed rules providing for construction loans to nonprofit sponsors with a firm takeout commitment by a private institution are in accord with the intent of the Congress, then we fear that this program is doomed to certain failure providing for a combination of Washington and local FHA application approval process that has in the past consistently proved unworkable.

If on the other hand, the intent of Congress was and is to provide permanent financing for the section 202 program as seems evident by the language of the act, then this intent is being deliberately perverted, the congressional mandates to restore the successful 202 program is being resisted and emasculated.

It is quite clear that unless the Congress adequately funds the 202 program at the full \$800 million level authorized by the act and mandates utilization of the program for construction and permanent financing, HUD will not respond to the manifest housing needs of the elderly which the 1971 White House Conference on Aging put at a required annual production of at least 120,000 housing units.

It is quite evident that HUD will not request any additional funding of its own accord since the same \$215 million it has not used in fiscal 1975 will almost certainly not be used in fiscal 1976 if this amount is again authorized as HUD requests.

Believing, as all do, that your Subcommittee on Aging is firmly committed to a revitalized 202 program as is a large majority of the Congress, we respectfully request firm, incisive, and immediate action be taken toward such a result.

We are taking the liberty of sending a copy of this letter to the other members of your committee as well as the members of the Senate Committee on Appropriations.

Very sincerely yours,

WILLIAM R. STEINBERG.

**ITEM 18. LETTER FROM LAWRENCE N. STRUNK, UPLANDS RETIREMENT VILLAGE, PLEASANT HILL, TENN.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JUNE 3, 1975**

DEAR SENATOR WILLIAMS: I am writing in connection with your subcommittee on Housing for the Elderly, a part of the Senate Special Committee on Aging. I understand that you will be holding hearings on the proposed section 202 elderly housing program regulations. I want to say, first, how happy I am that the hearings are to be held.

There seems to be more delay than usual in getting the regulations to us. We are concerned about housing for the elderly. I, personally, represent a nonprofit church-related organization that is dedicated to retirement in all of its forms and all of its conditions here at the Uplands Retirement Center. We have houses individually owned where we give medical attention and maintenance care. We have apartments where persons can live at their own pace. We have efficiency apartments in a building which includes nurses on call, and we have a nursing home. All of this is in one 550 acre complex in Tennessee.

We need to have more apartments built, for it seems to us that as long as we can keep the people in their own place where they have the assurance of the freedom that keeps aging people active and yet the support structure behind them to give them the maintenance, housekeeping, and nursing care they need, this is one of the ways to keep people from entering the nursing home too soon. Our nursing home is filled, and as we build more apartments we will need to expand that facility. But it is in the total complex that we look forward to having the 202 continued as construction and financing, so that it can all be done in one package.

One of the things that concerns us greatly is the vast amount of paperwork that seems to be needed to get an ordinary program off the ground. There seems to be lacking in all of America a sense of trust. This concerns us, because certainly we have been trying our best since 1922 to give the people here in Appalachia a better way of life.

Thank you.

Sincerely,

LAWRENCE N. STRUNK.

**ITEM 19. LETTER FROM R. E. STONE, ADMINISTRATOR, CLAWSON MANOR, CLAWSON, MICH.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JUNE 4, 1975**

DEAR SENATOR WILLIAMS: The task of providing nonprofit housing for the senior citizens of our country is, I am sure, as important to you as it is to us who are charged with the administration of present programs. Presently, I am the administrator of a 202 facility that has been successful from the day it opened. I am completely sold on the 202 program as it existed 1959-69. We presently have 264 apartments and a waiting list of nearly 200 who cannot be served for from 1 to 4 years. This is the situation that exists in our area, metropolitan Detroit, in all comparable facilities. It is my earnest hope that you and your committee will see fit to recommend that the 202 elderly housing program be funded at the full \$800 million for 1976 as authorized by the Housing Act of 1974. This would provide roughly 4 projects per State which would be woefully short of the total needed to house older persons in an acceptable way on their very limited incomes. We have many who have to get along on incomes of \$2,000 and \$3,000 per year and pay elevated medical and hospitalization insurance expenses at the same time.

Upon examination of HUD's regulations for the reenacted 202 program, it appears that some insurmountable obstacles have been included that will make impossible the task of development of any facilities of a nonprofit nature. Without construction and permanent financing provisions, there is no source of funding available for such ventures. Replies to my inquiries have been negative. Unless Congress can be persuaded to mandate HUD's actions in implementing a reinstated 202 program that will be feasible to nonprofit sponsors, the housing crisis for the elderly of our people will likely become increasingly more acute. I urge you and your committee to lend your support to a reinstated 202 program with viable options for the nonprofit sponsors instead of the impossible ones proposed by HUD.

Sincerely,

R. E. STONE.

**ITEM 20. LETTER FROM LARRY E. FAULHABER, LAKEWOOD SENIOR CITIZENS, INC.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JUNE 4, 1975**

DEAR SENATOR WILLIAMS: This Nation's senior citizens have devoted their lives to making this country what it is today. Their productivity and dedication have made it possible for you and I to enjoy the standard of living we have today. Their reward has been declining purchasing power for their retirement incomes and inadequate housing.

You can help. The 202 elderly housing program which produced tens of thousands of low-cost housing units during the 60's has been restored. This program assisted Lakewood senior citizens to build 320 apartments for the elderly during that time. The Westerly, as it is known, has been 100 percent occupied ever since and our waiting list numbers nearly 1,000. This same story is repeated over and over in all areas of the country.

Even though the program has been restored, HUD has not allocated funds for the program. On May 15, HUD published proposed 202 rules which are unworkable for nonprofit organizations which are the backbone of the senior housing industry.

In order to work, the program must have:

1. Immediate and adequate funding by HUD,
2. Provisions for construction and permanent financing,
3. Reasonable income limits, and
4. Specialized administration.

Please give this program your immediate attention. The beneficiaries, our senior citizens, and the many nonprofit sponsors such as Jaycees, church groups, community organizations, teachers' groups, and unions will enthusiastically support your efforts.

Sincerely,

LARRY E. FAULHABER.



**ITEM 21. LETTER FROM LUTHER FULMER, JR., DIRECTOR, THE MARTIN LUTHER FOUNDATION, INC., WILMINGTON, DEL.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JUNE 6, 1975**

DEAR SENATOR WILLIAMS: This is in reference to the hearings which you are conducting on Friday on the 202/8 elderly housing program. In a conversation with John Edie yesterday of the Senate Committee on Aging, he suggested that I write to you in lieu of testimony before your committee.

We are presently operating a 202 \$4.5 million project in Wilmington, Del. of 12 stories and 236 apartment units. Luther Towers is a success story attested to by studies done by the University of Delaware on elderly housing, studies done by the Division of Housing of the State of Delaware, and also by Delaware State College, Department of Sociology and Urban Affairs. It is the only 202 in the State of Delaware and its waiting list of 335 paid applicants further illustrates its success and demand for more of the same.

The Towers is owned by a nonprofit corporation of the Lutheran Churches in Delaware and has a full-time staff of six persons whose salary is augmented in the amount of \$33,000 a year by these churches. In addition, there are 120 volunteers called Luther Tower aides who serve the needs of the residents in varying capacities. We believe that the 202 as passed by the Senior Citizens Housing Act of 1959 is one of the best programs created by the Federal Government to fill the needs of housing of our aging.

Because of the need evidenced by our waiting list and the eminent passage of the Housing Act of 1974, we borrowed \$210,000 from the Delaware State Division of Housing in September 1974, to purchase a piece of property within a block of our present structure. This loan runs for 18 months, interest free, after which we must begin paying 3 percent interest. This commitment was made by our board in the firm belief that the 202 that passed Congress attached to section 8 would be of the same quality and same structure as the one under which we have built Luther Towers. As you are well aware, in fact this is not the case.

It is estimated by engineers on our board of directors that to duplicate our present building which cost \$4.5 million on our new site would cost approximately \$7 million. Under the present program, we understand that we could only obtain construction financing under the present 202/8 after which we would have to obtain our own permanent financing. Working with figures supplied by a local bank, on this basis we would have to charge \$325/month average for our apartments that present rent for \$132/month average. The annual income of our waiting list is \$4,013. At the lowest possible rate of 7½ percent for 20 years, the project becomes totally unworkable and unrealistic for providing housing for low-moderate income. When these questions are posed to HUD officials their answer is in the rent subsidy portion of the legislation. This raises serious unanswered questions. What will be the asset limitations in order to receive rent subsidy? If a specific amount of rent subsidy funds are designated for a particular area, will there be sufficient funds to cover the project? What will be the definition of what is included in income in order to receive subsidy?

Our congressional delegation are all personally familiar with the Towers and its program and are very supportive of our receiving additional funding in order to provide more housing of the same caliber and at similar rents, and have so indicated this by letter to HUD.

At a meeting last week in New Orleans of the National Association of Non-Profit Retirement Homes, it was the consensus of those present that the present 202/8 is unworkable. Therefore, I strongly urge you and your committee to use your influence in helping to restore the 202 with permanent financing and separate administration. It has been obvious since the passage of the bill in 1974 that HUD is not anxious to make the 202 section of the bill workable. Therefore, we depend on the Congress to make it clear to HUD that the highly successful 202 of the past be reinstated as promptly as possible.

If there is any further information that I can contribute toward the support of a successful 202 program, please call upon me.

Sincerely,

LUTHER FULMER, JR.

**ITEM 22. LETTER FROM ROBERT E. JOHNSON, CONSULTANT, HOUSING AND HUMAN SETTLEMENTS, UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES, NEW YORK, N.Y.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JUNE 20, 1975**

DEAR SENATOR WILLIAMS: The United Presbyterian Church in the United States of America is disturbed that HUD does not intend to use the 202 program for permanent financing.

It is our understanding that you and your committee intended that the 202 program should include permanent financing.

We therefore urge you and your committee to insist that HUD comply with the congressional intent of the bill.

Again may we express our appreciation for your continuing interest in housing for the elderly, especially the poor and moderate income.

Sincerely,

ROBERT E. JOHNSON.

**ITEM 23. LETTER FROM ROBERT E. JOHNSON, CHAIRPERSON, INTER-RELIGIOUS COALITION FOR HOUSING, NEW YORK, N.Y.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JUNE 20, 1975**

DEAR SENATOR WILLIAMS: The Interreligious Coalition for Housing is disturbed that HUD does not intend to use the 202 program for permanent financing.

It is our understanding that you and your committee intended that the 202 program should include permanent financing.

We therefore urge you and your committee to insist that HUD comply with the congressional intent of the bill.

Again may we express our appreciation for your continuing interest in housing for the elderly, especially the poor and moderate income.

Sincerely,

ROBERT E. JOHNSON.

**ITEM 24. LETTER FROM G. NOAH NEWMARK, SECRETARY OF INTER-FAITH HOUSING, AMERICAN JEWISH COMMITTEE, LOS ANGELES, CALIF.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JUNE 23, 1975**

DEAR SENATOR WILLIAMS: I am writing on behalf of Interfaith Housing Corporation of Southern California, a nonprofit corporation formed by the faith community, to advocate and develop the housing so critically needed by our low and moderate income citizens.

We find—as apparently a number of members of Congress have as well—that the administration's position, as enunciated by Secretary Hills, on section 202, is contrary to what we understood to be the intent of Congress. By refusing to use this program for permanent, long-term financing, HUD will severely limit the possibilities for meeting this country's critical housing needs. Likewise, it will effectively undermine the legitimate and necessary role which nonprofit sponsors can play in this area.

We urge that through your subcommittee on elderly housing, in its questioning of Mrs. Hills, you strongly advance the original intention of the Congress.

Thank you for your consideration.

Sincerely,

G. NOAH NEWMARK.

**ITEM 25. LETTER FROM LEE WHEELOCK, PRESIDENT, QUAKER HOMES, COLUMBUS, OHIO; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JUNE 24, 1975**

DEAR SENATOR WILLIAMS: I am writing to you with regard to the actions of the Senate Subcommittee on Elderly Housing and HUD's section 202 proposed program. I represent a nonprofit group which was formed to develop an elderly housing facility in Columbus.

We are having difficulty proving financial feasibility, and I am told our problem is not unique. It exists with all groups such as ours that have similar goals.

The news of the Housing Act of 1974 was encouraging and gave us renewed hope of being able to develop housing under a combination of sections 202 and 8. However, much time has passed since the act was approved and even the intent of Congress has been negated relative to the implementation of section 202.

Precisely, we do not need construction loans under section 202. We need mortgage loans. Also we need significant allocations of section 8 units.

Will your subcommittee consider the enactment of meaningful legislation that will provide for subsidized mortgages and/or rents on a significant scale for elderly housing and nursing homes? I am sure the Nation will benefit.

Sincerely yours,

LEE WHEELOCK.

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**ITEM 26. MAILGRAM FROM LUTHERAN SOCIAL SERVICES OF TENNESSEE, INC.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JUNE 24, 1975**

We are nonprofit sponsors of two projects: Luther Towers, which started as project 202, and Ascension Towers, a project 236. We believe elderly need many more units this type as our waiting list is long. Present proposed section 202 is an affront to those of us dedicated to human needs. It does little more than pay lip service and without a permanent financing provision the section 202 as written leaves us helpless. Strongly urge that the administration restore all provisions originally intended by Congress.

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**ITEM 27. TELEGRAM FROM C. ALLEN MORROW AND REV. JOSEPH TAYLOR, HOUSING COMMITTEE LEADERS, CHICAGO, ILL.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JUNE 25, 1975**

On behalf of the over 55,000 members of the Chicago Metropolitan Area Senior Citizens Senate, we would like to be on record in support of section 202 and section 8 of the Housing and Community Development Act of 1974 to provide much needed housing assistance for the elderly.

We urge immediate revisions be completed so that the section 202 program can become a reality. When regulations are approved, every senior citizens organization should be given factual information on participation by not-for-profit corporations.

Due to the fact that we received notice of the hearing only yesterday, it is impossible to send a delegate to participate on Thursday, June 26, hearing. Additional specific questions will be forwarded to the committee by Senator Charles Percy who will address them on our behalf.

Respectfully yours,

C. ALLEN MORROW.  
REV. JOSEPH TAYLOR.

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**ITEM 28. LETTER FROM EPHRAIM F. GOLDSTEIN, EXECUTIVE VICE PRESIDENT, FEDERATION HOUSING, INC., PHILADELPHIA, PA.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JULY 8, 1975**

DEAR SENATOR WILLIAMS: Your recent survey of housing need for older adults points out the inescapable fact that the present economy is playing havoc with our senior citizens. This nonprofit corporation, established specifically to develop housing for older adults, has a waiting list of over 5,000 applicants, many of whose housing needs become more pressing daily because of their inability to cope with the rising costs of living and the periodic rent increases in the marketplace. The demand for subsidized housing for our older citizens is exemplified by the volume of requests that I receive weekly from Senator Scott, Senator Schweiker, Congressman Eilberg, and your other colleagues in Washington, as well as those in State and local government, responding to the urgent pleas from their constituents for assistance in their securing housing within our apartment complex.

I commend you and your effort to restore a more adequate housing program for this age group and implore you to strive with your colleagues to obtain the essential appropriations for the old 202 program that proved so successful.

As a nonprofit sponsor living daily with the frustrations of inadequate, unsuitable, and too costly housing for older adults, we must have the tools; the subsidized housing program to restore security, dignity, and decent living conditions in the lives of our older citizens.

Sincerely yours,

EPHRAIM F. GOLDSTEIN.

**ITEM 29. LETTER FROM WILLIAM J. DALY, PRESIDENT, SHELTER FOR THE ELDERLY, INC., DOWNERS GROVE, ILL.; TO SENATOR HARRISON A. WILLIAMS, JR., DATED JULY 18, 1975**

DEAR SENATOR WILLIAMS: As president of a local, community-based volunteer organization working for the construction and operation of moderate cost rental housing for the elderly of DuPage County, I am writing to you to express my dismay and confusion concerning the proposed administrative regulations recently published (May 15, 1975) in the *Federal Register* for the implementation of the 202 housing program within the framework of the Housing and Community Development Act of 1974.

A little background information is in order. First fact—the only operative housing program now available to communities is the HCD Act of 1974, whereby the Federal Government is shifting its emphasis and involvement from ownership and administration of housing projects to penetration of the housing market by potential buyers/renters through economic support. Second fact—a study of the record indicates that of all the federally sponsored housing programs, the old 202 housing program which provided mortgage moneys rather than the current proposed idea of providing short-term construction loans, proved to be the most successful way in which to allow limited income people to penetrate the (rental) housing market, particularly the senior citizen. Third and last fact—rent supplement, like the medicare and medicaid health programs, will result in the highest cost possible being incurred by both the Federal agency and the renter as it encourages (within very loose limits) maximum rental charges to be rendered as up to 75 percent of this charge will be guaranteed.

I might sum up my observations by saying the following:

(A) The intent of the old 202 housing program was to incur the lowest possible cost to the builder/sponsor of the project and thus pass this saving on to the renter—this is not possible under proposed administrative regulations which make the economic support available only as construction moneys and not as mortgage moneys.

(B) As William B. Prendergast, Jr., Senior Assistant for Legislative Affairs, noted in his letter of July 1, 1975, to Representative Erlenborn, who has expressed an interest in this matter, the new 202 housing program will allow more moneys to be recycled, but it will *not bring down* the cost of construction or total cost of the project significantly for the developer and thus the renter, as its cost impact on the total project is negligible.

(C) I was under the impression that Congress added the reactivation of the old 202 housing program within the HCD Act of 1974 due to the merits of the program, and not so that it could be changed by administrative regulations.

I want to express my concerns about the potential mis-impact of the proposed administrative regulations (see *Federal Register*, vol. 40, No. 95, May 15, 1975, pp. 21040-21045) at this time so that some corrective action could possibly be initiated before the "concrete" is poured. I know that I have probably stated my case poorly, but please appreciate that as a (volunteer) potential applicant and/or participant in the HCD Act of 1974, I am easily confused and frustrated.

I would appreciate your comments and views concerning this matter. Please feel free to contact me on this.

Thank you for your interest in this matter.

Sincerely,

WILLIAM J. DALY.