Solicitation of Feedback on Reform to the Section 202 and Section 811 Programs

The Office of Multifamily Housing Programs is currently seeking stakeholders input on a range of possible reforms being contemplated for the Section 202 and Section 811 Programs. Both programs received no funding for new construction activities in the Administration's proposed Fiscal Year 2011 budget. In part, this reflects the need to focus limited Departmental resources to support existing assets and programs. It also reflects the fact that both programs have suffered from a lack of updating over recent years. An overhaul is now contemplated to better target HUD's resources to more cost effectively meet the current housing and supportive service needs for frail, disabled, elderly low-income households. The direction of reform is still being determined; however, HUD anticipates that modifications to the programs could be legislative and/or administrative.

Attached please are sample questions for your review and comment. These questions reflect possible reform options and are provided only for the purpose of facilitating feedback. Individuals can call for comments on the Section 202 and Section 811 Programs posted on the "What's New" section of the Office of Multifamily Housing Programs website. Please note that we are seeking comments in writing prior to April 5, 2010.

If you have any questions or comments, please contact Ben Metcalf at (202) 402-6377 or **Benjamin.T.Metcalf@hud.gov**

202 & 811 Questions for Feedback and Discussion
Please Provide Written Comment to Benjamin.T.Metcalf@hud.gov by April 5, 2010

QUESTION	PRO	CON
Should HUD require that 202/811 projects leverage low income housing tax credit equity to reduce per unit capital advance amounts?	✓ Tax credit equity can reduce the capital advance required on a per unit basis thereby achieving 202/811 policy goals across a larger number of units ✓ Mixed finance structure ensures local/state government and/or lender/investor accountability and oversight	✓ Adds to overall transaction cost and timeline of project ✓ Relies on tax credit investors at a moment in time when tax credit industry is not robust ✓ Does not work well for small projects
Should HUD block grant 202/811 to States for allocation and administration of funds (similar to HOME)?	✓ States already administer tax credits programs so some duplication of due diligence and compliance could be avoided ✓ Medicaid waiver programs vary state by state so easier for states to coordinate with priorities for serving frail and disabled populations	✓ HUD would still have to provide regulatory oversight and take back administration from non-performing State HFAs ✓ Programs could be unevenly administered ✓ Small states would have overly small allocations that could pose administrative hardship
Should HUD provide 202/811 funding only to projects that are substantially ready to proceed (e.g. have local approvals, funding commitments, and underway with working drawings)?	✓ Greater likelihood of 202/811 dollars producing housing ✓ Shorter timeframes to get elderly and disabled households into homes ✓ Avoids conflicts where federal funding is awarded prior to final sign off by local zoning	✓ Sponsors will need to access local funds to initiate predevelopment work
Should HUD provide 202/811 funding only to sponsors that have a significant track record in developing similar housing?	✓ Greater likelihood of 202/811 funds producing housing ✓ Greater cost-effectiveness overall	✓ Sponsors without significant housing experience will have to find partners or bring on qualified staff. ✓ Harder for small sponsors to build capacity internally
Should HUD provide 202 funding only for projects that reserve some or all supported units for frail elderly households?	✓ Reduces costs to health care system with lower rates of institutionalization and hospitalization ✓ Through utilization of Medicare or Medicaid waiver programs (eg. PACE), fewer housing dollars needed for services costs lowering per unit operating subsidy	✓ Housing a riskier population could cause financial operating challenges ✓ Adds complexity to projects and deal structuring ✓ Assumes continued state and federal funding to Medicaid waiver programs
Should HUD reserve 811 funding for projects that integrate disabled households into larger affordable rental projects?	✓ Provides mainstreaming benefit to population being served	✓ Adds complexity to projects and deal structuring ✓ Model may not work for all disabled populations
Should HUD provide 202/811 funding through a national competition?	✓ Would allow areas of greater need to receive more funding ✓ Would allow for larger project sizes then existing allocations currently provide	✓ Distribution of funds may be geographically uneven from year to year

Section 202 Program
Feedback on HUD Questions

Prepared By:
John Hazelroth
JPH & Associates, Inc.
407-645-1129
jph@iag.net

April 2, 2010

1. **Should HUD require that 202 projects leverage low income housing tax-credit equity in order to reduce per unit capital advance amounts?**

Response: While a good concept, the blending of the two programs have proved time-consuming and problematic. Through 2006, a total of forty-six (46) projects have been funded under this program and ten (10) have gone to closing, or only one per year. Prior to an endorsement to move Section 202 funding to tax credit projects, one should understand the deficiencies and problems currently facing tax credit projects, which include; 1) Because rents at tax credit projects are often not significantly below market rate and in some instances actually over market rate, vacancy rates at tax credit projects are increasing; 2) In order for tax credit applications to be competitive, the set-aside units for low, very low, and extremely low income residents have increased, however the ability for the project to subsidize these rentals is diminished as the projects are unable to generate sufficient income; 3) Due to the weakened financial positions of tax credit projects, defaults have been increasing; 4) Because of the financing structure and absence of project-based rental subsidies, tax credit projects have difficulty in providing units to very low and extremely low income residents; 5) As the universe of potential buyers for tax credits has decreased (Fannie Mae and Freddie Mac were at one time the largest buyer), the equity generated from the sale of these credits is approximately 50 to 60 percent of what was earned just a few years ago; 6) The length of rent restrictions will vary between states and many are less than current 40-year restrictions present in the HUD 202 program; and 7) There is a good chance that as soon as the restrictions in tax credit projects expire, the projects are likely to revert to back market rate rents and create a future tenancy problem with respect to lower income seniors.

Although continued efforts should be made to integrate these two programs, a red flag should be raised to dispel the idea that this is a panacea to produce more units for the very-low and extremely low-income elderly.

2. **Should HUD block grant 202 funds to States for allocation and administration of funds (similar to HOME)?**

Response: HUD provided this option to states in the FY2009 funding cycle. To our knowledge, no states responded. We would discourage this due to the following reasons; 1) the number of projects is too small to offer enough economic incentive to commit to delegated processing; 2) There is no uniform processing currently amongst states and this will lead to an inconsistent underwriting, as well as processing time-lines; 3) Because states are not familiar with the programs, they will need time to hire/train staff and will need to evaluate this in light of potential processing revenue; 4) States have not proven to significantly reduce processing times over productive HUD Field Offices; 5) States are inherently more political and the process is more easily influenced; 6) In many states, non-profits are shut out of the tax credit program due to cost and influence and, should states control the delegated processing, this will make it more difficult for non-profits to participate; and 7) State budgets have proven to be inconsistent and susceptible to staff cuts.

3. **Should HUD provide 202 funding only to projects that are substantially ready to proceed (e.g. have local approvals, funding commitments, and underway with working drawings)?**

Response: HUD has modified its scoring system in the last several years to give higher scores to "project ready" projects. This has helped avoid projects which may encounter delays. We agree with tightening this even more, however if HUD elects to do this, it will likely mean less smaller community sponsors because these groups often do not possess the experience or resources to do the required pre-development work.

4. **Should HUD provide 202 funding only to sponsors that have a significant track record in developing similar housing?**

Response: HUD has revamped their scoring system in the last several years in which 1/3 of the score is influenced by a sponsor's experience. We support continuation of this effort, however such an effort will likely diminish the success rates of smaller community non-profits.

5. **Should HUD provide 202 funding only for projects that reserve some or all supported units for frail seniors?**

Response: In a 2006 study for HUD, which was supported by a follow-up AARP study, approximately 36 percent of all residents in HUD 202 projects are either frail or disabled. This percent is likely to rapidly increase as residents age faster and fewer new units are constructed. For this reason, we would discourage a "requirement" of this nature, but instead leave it up to the individual sponsors to serve additional frail if community supports are present so as to allow this.

6. **Should HUD provide 202 funding through a national competition?**

Response: Although this may result in individual projects having greater units, the experience/influence of local sponsors and service providers would be diminished. We believe it is best to continue state-wide distributions to take advantage of this.

Summary

While governmental programs, such as HUD's Section 202 program, should be continually evaluated and refined so as to best serve the intended elderly population and utilize taxpayer funding efficiently, suspending this program to insure this effort is misguided. The program has a proven track record of serving very poor elderly residents - a population that would have fallen through the cracks. In fact, a recent HUD analysis showed that program costs are offset by savings realized in the preventing of premature institutionalization of elderly residents. While HUD examines and refines this program, funding should continue to allow for the construction of new units. Even at the current modest level, it does provide some relief to the exponential growth in the need for elderly affordable housing.

Section 811 Program
Feedback on HUD Questions

Prepared By:
John Hazelroth
JPH & Associates, Inc.
407-645-1129
jph@iag.net

April 2, 2010

1. **Should HUD require that 811 projects leverage low income housing tax-credit equity in order to reduce per unit capital advance amounts?**

Response: While a good concept, the blending of the two programs have proved time-consuming and problematic. Through 2006, a total of forty-six (46) projects have been funded under this program and ten (10) have gone to closing, or only one per year. Prior to an endorsement to move Section 811 funding to tax credit projects, one should understand the deficiencies and problems currently facing tax credit projects, which include; 1) Because rents at tax credit projects are often not significantly below market rate and in some instances actually over market rate, vacancy rates at tax credit projects are increasing; 2) In order for tax credit applications to be competitive, the set-aside units for low, very low, and extremely low income residents have increased, however the ability for the project to subsidize these rentals is diminished as the projects are unable to generate sufficient income; 3) Due to the weakened financial positions of tax credit projects, defaults have been increasing; 4) Because of the financing structure and absence of project-based rental subsidies, tax credit projects have difficulty in providing units to very low and extremely low income residents; 5) As the universe of potential buyers for tax credits has decreased (Fannie Mae and Freddie Mac were at one time the largest buyer), the equity generated from the sale of these credits is approximately 50 to 60 percent of what was earned just a few years ago, 6) The length of rent restrictions will vary between states and many are less than current 40-year restrictions present in the HUD 811 program; 7) There is a good chance that as soon as the restrictions in tax credit projects expire, the projects are likely to revert to back market rate rents and create a future tenancy problem with respect to lower income persons who are disabled; and 8) It is likely that some selected disabled populations will not be served within an integrated tax credit model (ie. convincing private developers to set-aside 25 percent of their units for persons who are mentally ill or profoundly developmentally disabled.

Although continued efforts should be made to integrate these two programs, a red flag should be raised to dispel the idea that this is a panacea to produce more units for the very-low and extremely low-income elderly.

Projects in which Section 811 funding is supplemented with other funding are inherently more complicated, take longer to process, may not yield a truly integrated project, and may prove not to be more cost effective. In support of these assertions, it is helpful to review a recently completed project assisting the disabled utilizing a myriad of financing services. On February 24, 2005, Housing Resources Group (HRG), a not-for-profit housing developer, closed the final financing phase of Genesee Housing, a mixed-finance project in Seattle, Washington. The transaction, which is the first of its kind in the nation, brought together a host of partners and financing sources. The Genesee is a mixed-use building with fifty (50) apartments of which twenty-two (22) units are set-aside for persons with physical and developmental disabilities, including, but not limited to, people living with HIV/AIDS. The remaining twenty-eight (28) units provide affordable housing to low-income working class residents whose household incomes are at or below 50 percent of area median income. The financing of the project consisted of the following sources:

Source	Amount	
Tax Credits @ 4%	$	4,600,000
Section 811 Capital Advance	$	2,085,500
HOPWA Funding	$	600,000
Washington State Loan	$	900,000
AIDS Housing of Washington	$	290,450
Total	$	8,475,950
Total Units Produced (1)	$	50
Price Per/Unit (all units)	$	169,510
Price per/Special Need Unit	$	135,270

This intense effort, which took five years, produced units at a cost which was actually greater than if the non-profit applied for HUD Section 811 funding solely.

HUD Section 811 funding (if available) for 50 units, of a similar unit mix, would have been $5,608,470. This is over $2.8 million less than the actual project cost. Even if Section 811 amendment funds were required to construct this many units, it is unlikely that it would reach the $8.47 million total project cost.

2. **Should HUD block grant 811 funds to States for allocation and administration of funds (similar to HOME)?**

Response: HUD provided this option to states in the FY2009 funding cycle. To our knowledge, no states responded. We would discourage this due to the following reasons; 1) the number of projects is too small to offer enough economic incentive to commit to delegated processing; 2) There is no uniform processing currently amongst states and this will lead to an inconsistent underwriting, as well as processing time-lines; 3) Because states are not familiar with the programs, they will need time to hire/train staff and will need to evaluate this in light of potential processing revenue; 4) States have not proven to significantly reduce processing times over productive HUD Field Offices; 5) States are inherently more political and the process is more easily influenced; 6) In many states, non-profits are shut out of the tax credit program due to cost and influence and, should states control the delegated processing, this will make it more difficult for non-profits to participate; and 7) State budgets have proven to be inconsistent and susceptible to staff cuts.

3. **Should HUD provide 811 funding only to projects that are substantially ready to proceed (e.g. have local approvals, funding commitments, and underway with working drawings)?**

Response: HUD has modified its scoring system in the last several years to give higher scores to "project ready" projects. This has helped avoid projects which may encounter delays. We agree with tightening this even more, however if HUD elects to do this, it will likely mean less smaller community sponsors because these groups often do not possess the experience or resources to do the required pre-development work up.

4. **Should HUD provide 811 funding only to sponsors that have a significant track record in developing similar housing?**

Response: HUD has revamped their scoring system in the last several years in which 1/3 of the score is influenced by a sponsor's experience. We support continuation of this effort, however such an effort will likely diminish the success rates of smaller community non-profits.

5. **Should HUD provide funding only for projects that reserve some or all supported units for frail seniors?**

Response: Not applicable for Section 811 projects.

6. **Should HUD provide 811 funding through a national competition?**

Response: Although this may result in individual projects having greater units, the experience/influence of local sponsors and service providers would be diminished. We believe it is best to continue state-wide distributions to take advantage of this.

Summary

While governmental programs, such as HUD's Section 811 program, should be continually evaluated and refined so as to best serve the intended disabled population and utilize taxpayer funding efficiently, suspending this program to insure this effort is misguided. The program has a proven track record of serving very poor residents who are disabled - a population that would have fallen through the cracks.

It should also be noted that, although the Section 811 programs have been subject to criticism for not producing integrated housing, developments completed within the last several years refute this. The average project is now only 10 units and is typically located within residential neighborhoods. Sponsors have utilized a low density, scattered approach in the form of condos, townhouses, and duplexes which maintains the residential neighborhood and facilitates integration with these neighborhoods.