

AUTHORITIES

PREPAYMENT AND REFINANCING OF SECTION 202 LOANS FOR SUPPORTIVE HOUSING FOR ELDERLY PERSONS

Specific authority for the prepayment and refinancing of the old “SH” 202 projects is from the Omnibus Appropriations Act for the fiscal year ending September 30, 2009. Section 234 of that act is excerpted below.

SEC. 234. PREPAYMENT AND REFINANCING.

(a) APPROVAL OF PREPAYMENT OF DEBT. – Upon request of the project sponsor of a project assisted with a loan under section 202 of the Housing Act of 1959 (as in effect before the enactment of the Cranston-Gonzalez National Affordable Housing Act), for which the Secretary’s consent to prepayment is required, the Secretary shall approve the prepayment of any indebtedness to the Secretary relating to any remaining principal and interest under the loan as part of a prepayment plan under which –

(1) the project sponsor agrees to operate the project until the maturity date of the original loan under terms at least as advantageous to existing and future tenants as the terms required by the original loan agreement or any project-based rental assistance payments contract under section 8 of the United States Housing Act of 1937 (or any other project-based rental housing assistance programs of the Department of Housing and Urban Development, including the rent supplement program under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s)) or any successor project-based rental assistance program, except as provided by subsection (a)(2)(B); and

(2) the prepayment may involve refinancing of the loan if such refinancing results –

(A) in a lower interest rate on the principal of the loan for the project and in reductions in debt service related to such loan; or

(B) in the case of a project that is assisted with a loan under such section 202 carrying an interest rate of 6 percent or lower, a transaction under which

(i) the project owner shall address the physical needs of the project;

(ii) the prepayment plan for the transaction, including the refinancing, shall meet a cost benefit analysis, as established by the Secretary, that the benefit of the transaction outweighs the cost of the transaction including any increases in rent charged to unassisted tenants;

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(iii) the overall cost for providing rental assistance under section 8 for the project (if any) is not increased, except, upon approval by the Secretary to –

(I) mark-up-to-market contracts pursuant to section 524(a)(3) of the Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f note), as such section is carried out by the Secretary for properties owned by nonprofit organizations; or

(II) mark-up-to-budget contracts pursuant to section 524(a)(4) of the Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f note), as such section is carried out by the Secretary for properties owned by eligible owners (as such term is defined in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k));

(iv) the project owner may charge tenants rent sufficient to meet debt service payments and operating cost requirements, as approved by the Secretary, if project-based rental assistance is not available or is insufficient for the debt service and operating cost of the project after refinancing. Such approval by the Secretary –

(I) shall be the basis for the owner to agree to terminate the project-based rental assistance contract that is insufficient for the debt service and operating cost of the project after refinancing; and

(II) shall be an eligibility event for the project for purposes of section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t));

(v) units to be occupied by tenants assisted under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)) shall, upon termination of the occupancy of such tenants, become eligible for project-based assistance under section 8(o)(13) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(13)) without regard to the percentage limitations provided in such section; and

(vi) there shall be a use agreement of 20 years from the date of the maturity date of the original 202 loan for all units, including units to be occupied by tenants assisted under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)).

THERE IS NO (b)

Authority for the prepayment and refinancing of other section 202 projects is from from the American Homeownership and Economic Opportunity Act of 2000 [Public Law 106-569; 114 Stat. 3019; 12 U.S.C.1701z note]. Sections that act are excerpted below.

TITLE VIII--HOUSING FOR ELDERLY AND DISABLED FAMILIES

SEC. 801. SHORT TITLE. This title may be cited as the `Affordable Housing for Seniors and Families Act`.

SEC. 802. REGULATIONS.

The Secretary of Housing and Urban Development (referred to in this title as the `Secretary`) shall issue any regulations to carry out this title and the amendments made by this title that the Secretary determines may or will affect tenants of federally assisted housing only after notice and opportunity for public comment in accordance with the procedure under section 553 of title 5, United States Code, applicable to substantive rules (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). Notice of such proposed rulemaking shall be provided by publication in the Federal Register. In issuing such regulations, the Secretary shall take such actions as may be necessary to ensure that such tenants are notified of, and provided an opportunity to participate in, the rulemaking, as required by such section 553.

SEC. 803. EFFECTIVE DATE.

(a) IN GENERAL- The provisions of this title and the amendments made by this title are effective as of the date of the enactment of this Act, unless such provisions or amendments specifically provide for effectiveness or applicability upon another date certain.

(b) EFFECT OF REGULATORY AUTHORITY- Any authority in this title or the amendments made by this title to issue regulations, and any specific requirement to issue regulations by a date certain, may not be construed to affect the effectiveness or applicability of the provisions of this title or the amendments made by this title under such provisions and amendments and subsection (a) of this section. Subtitle A-- Refinancing for Section 202 Supportive Housing for the Elderly

SEC. 811. PREPAYMENT AND REFINANCING.

(a) APPROVAL OF PREPAYMENT OF DEBT- Upon request of the project sponsor of a project assisted with a loan under section 202 of the Housing Act of 1959 (as in effect before the enactment of the Cranston-Gonzalez National Affordable Housing Act), the Secretary shall approve the prepayment of any indebtedness to the Secretary relating to

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any remaining principal and interest under the loan as part of a prepayment plan under which--

(1) the project sponsor agrees to operate the project until the maturity date of the original loan under terms at least as advantageous to existing and future tenants as the terms required by the original loan agreement or any rental assistance payments contract under section 8 of the United States Housing Act of 1937 (or any other rental housing assistance programs of the Department of Housing and Urban Development, including the rent supplement program under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s)) relating to the project; and

(2) the prepayment may involve refinancing of the loan if such refinancing results in a lower interest rate on the principal of the loan for the project and in reductions in debt service related to such loan.

(b) SOURCES OF REFINANCING- In the case of prepayment under this section involving refinancing, the project sponsor may refinance the project through any third party source, including financing by State and local housing finance agencies, use of tax-exempt bonds, multi-family mortgage insurance under the National Housing Act, reinsurance, or other credit enhancements, including risk sharing as provided under section 542 of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note). For purposes of underwriting a loan insured under the National Housing Act, the Secretary may assume that any section 8 rental assistance contract relating to a project will be renewed for the term of such loan.

(c) USE OF UNEXPENDED AMOUNTS- Upon execution of the refinancing for a project pursuant to this section, the Secretary shall make available at least 50 percent of the annual savings resulting from reduced section 8 or other rental housing assistance contracts in a manner that is advantageous to the tenants, including—

- (1) not more than 15 percent of the cost of increasing the availability or provision of supportive services, which may include the financing of service coordinators and congregate services;*
- (2) rehabilitation, modernization, or retrofitting of structures, common areas, or individual dwelling units;*
- (3) construction of an addition or other facility in the project, including assisted living facilities (or, upon the approval of the Secretary, facilities located in the community where the project sponsor refinances a project under this section, or pools shared resources from more than one such project); or*
- (4) rent reduction of unassisted tenants residing in the project according to a pro rata allocation of shared savings resulting from the refinancing.*

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(d) USE OF CERTAIN PROJECT FUNDS- The Secretary shall allow a project sponsor that is prepaying and refinancing a project under this section—

- (1) to use any residual receipts held for that project in excess of \$500 per individual dwelling unit for not more than 15 percent of the cost of activities designed to increase the availability or provision of supportive services; and*
- (2) to use any reserves for replacement in excess of \$1,000 per individual dwelling unit for activities described in paragraphs (2) and (3) of subsection (c).*

(e) BUDGET ACT COMPLIANCE- This section shall be effective only to extent or in such amounts that are provided in advance in appropriation Acts.

THE REGULATIONS

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Prepayment privileges: 891.530

(a) The prepayment (whether in whole or in part) or the assignment or transfer of physical and financial assets of any Section 202 project is prohibited, unless the Secretary gives prior written approval.

(b) The Secretary may not grant approval unless he or she has determined that the prepayment or transfer of the loan is part of a transaction that will ensure the continued operation of the project, until the original maturity date of the loan, in a manner that will provide rental housing for the elderly and handicapped on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 loan agreement and any other loan agreements entered into under other provisions of law.

DEFINITIONS

From section 202(k)(3) and (k)(4) of the Housing Act of 1959 as amended by section 831 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q)

(k) Definitions...

- (3) The term "owner" means a private nonprofit organization that receives assistance under this section to develop and operate supportive housing for the elderly.

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- (4) The term “private nonprofit organization” means any incorporated private institution or foundation –
- (A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;
 - (B) which has a governing board
 - (i) the membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located, and
 - (ii) which is responsible for the operation of the housing assisted under this section; and
 - (C) which is approved by the Secretary as to financial responsibility. Such term includes a for-profit limited partnership the sole general partner of which is an organization meeting the requirements under subparagraphs (A), (B), and (C), or a corporation wholly owned and controlled by an organization meeting the requirements under subparagraphs (A), (B), and (C).