TESTIMONY OF ELLEN FEINGOLD
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BOSTON, MASSACHUSETTS

before the

HOUSE COMMITTEE ON FINANCIAL SERVICES

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Thank you for inviting me to appear before you at this hearing.

I am Ellen Feingold, President of Jewish Community Housing for the Elderly in Massachusetts.

In 2001 and 2002, I was also Co-chair of the congressionally mandated "Commission on Affordable Housing and Health Facility Needs for Seniors in the 21st Century". The Commission's work set the context for this legislation.

Jewish Community Housing for the Elderly has developed and operates over 1,050 apartments for low income elderly in Boston and Newton, Massachusetts, and is currently developing another 150 units in Framingham, Massachusetts. We have also refinanced and are close to the end of renovating one of our developments, an occupied building that opened in 1973 with 256 apartments. For years, it has been our mission to make it possible for our frail low-income elderly residents to live out their lives in their JCHE homes, without having to move to a higher care facility. Towards this goal, we have been exceptionally successful with only 2- 3 percent of our residents moving to a nursing home. The average age in our buildings is over 80, residents' incomes average under $9,000 a year, and on average, they live in our buildings over eleven years.

We are very grateful to the Committee for drafting the legislation that is the subject of this hearing. It covers a range of the issues with which many of us who develop and run housing for elderly of limited means have been wrestling. It addresses squarely some of the issues that Jewish Community Housing for the Elderly has had to deal with over the last years. Again, we are really grateful. I would ask at this point that my written testimony be entered into the record.

Let me begin with an overall picture. Tom Slemmer and I are part of a broad community of organizations, many faith-based and non-sectarian, large and small, dedicated to providing decent and supportive housing to elderly people with low incomes. Our job has gotten harder and harder over the past decade to the point where we begin to feel that, while public policy and programs are intended to produce this kind of housing, in practice the obstacles placed in the way of accomplishing this at virtually every juncture tell a different story.

When JCHE started in this business, our first 202 development with 243 apartments opened in 1971 and we built it with one funding source, a 202 mortgage that paid every penny we needed to complete the building which is still 100 percent occupied.

Today, we are in the process of developing a 150-unit mixed income building with 50 Section 202 units, 40 tax credit units, and 60 market units. But that's not all—we will have a state housing finance agency mortgage, a grant from that agency's Priority Development Fund and the state's Affordable Housing Trust Fund, two other grants from another state housing agency, various grants from foundations that support "green" buildings, a sponsor contribution of the developer fee, and $5 million we've had to raise from foundations and other charitable sources to make the *pro forma* work-- nine sources, each with its own timetables, rules, guidelines, standards, etc. to say nothing of lawyers and real estate closings. This results in inconsistencies like, for example, the HUD 202 maximum unit size being smaller than the tax credit minimum unit size. In addition, construction cost inflation and legal and other fees have driven total development costs of this project up 50 percent over a little more than two years. So pipeline production delays resulting from such multiple funding actually drives up construction and development costs significantly.

The Committee asked: *Discuss examples of projects that have received both capital advance and PRAC under 202 from HUD, as well as 'gap financing'/capital funding from state or local housing agencies. What has been your experience with the respective underwriting and other administrative processes?*

With respect to new developments that involve both HUD and one or more state agencies during the development process, our experience is relatively new, but emphasizes the need for delegating the processing of such projects to state agencies that must be involved in the development process.

JCHE is currently developing a 150-unit new construction building in Framingham, MA under the Section 202 Mixed Finance Program involving both HUD and MassHousing. JCHE has been awarded FY05 Section 202 capital funding and PRAC subsidies for 50 units of elderly housing in January 2006 as part of this new affordable community. In addition to the 202 award, JCHE is now seeking a loan commitment from MassHousing for a tax exempt, private activity bond issue that would provide tax credits for the 50 units and for 40 other tax credit units that JCHE will make available to low income elderly. The remaining 60 units will be market units

making this project 60 percent low income. Based on JCHE's current program and past experience we would expect that almost all of the Section 202 units will be rented to people of extremely low incomes, less than 30 percent of the area median.

It is critical to the success of affordable low income housing production today that we minimize any coordination delays between HUD and state agencies that must be involved in such development. Building a new Section 202 unit in the Boston area now costs close to $300,000 per unit. This is not possible with Section 202 capital advance financing alone. In 2005 when JCHE was first running the cost estimates for its Section 202 application, the addition of tax credit equity under the LIHTC program made it possible to close the development cost gap which meant that at least one state agency also would be involved in the financing of this project. Today, however, these two sources of financing alone are not sufficient. Since JCHE received its FY05 award, construction costs have increased 51 percent and total development costs have increased 49 percent.

To further complicate a section 202 development, per unit allocations do not increase to compensate for pipeline delays. In FY05 the Section 202 awards per unit for high cost areas like Boston were $134,000 per unit. The HUD standard for moving a project through its pipeline to a construction closing is 18 months. The FY05 awards were announced in January 2006 meaning that now is the time that HUD anticipated these projects would reach construction. However, today each unit of Section 202 housing we are producing shows a $50,000 gap after using Section 202 and LIHTC financing combined. For JCHE's FY05 award this is now a total shortage of development financing of $2.5 million, requiring more financing from other sources and further coordination delay among institutions involved in the development process.

Therefore, moving a project through the HUD processing pipeline as fast as possible is critical to cost control for its nonprofit sponsors and developers. The fact that HUD awardees, due to processing and development complications largely beyond their control, fail to meet the anticipated 18-month development standard for 75 percent of Section 202 projects exacerbates this problem further. For example, in JCHE's case, there have been delays experienced while MassHousing staff has attempted to understand how HUD would allocate costs between units financed by HUD under the Section 202 program and units financed by a MassHousing loan under the LIHTC program. This *pro forma* analysis at HUD would normally occur after the

nonprofit developer submitted its firm commitment application, but MassHousing requires an understanding of this problem before it can commit loan proceeds to the project, as it is basic to the underwriting the agency must perform. Further, the MassHousing commitment is a pre-requisite to the submission of any firm commitment application, making this a circular, chicken-and-egg problem.

To get around this, MassHousing has made significant efforts to meet with HUD to discuss such financing matters, but the logistics of such meetings have been difficult, because the financial analysis is off-cycle for the HUD process and HUD staff priorities lie elsewhere. This is complicated still more by the fact that many questions in the Section 202 mixed finance program must be referred to HUD headquarters for resolution, since this program is relatively new and many questions arise requiring headquarters to intervene. The bottom line is that JCHE has been trying to secure a MassHousing loan commitment since May of this year, and over the past 4 months, MassHousing has been unable to obtain definitive answers to their underwriting concerns from HUD, and is in the position of proceeding to issue a loan commitment to JCHE, now scheduled for October, without adequate information affecting their underwriting criteria.

The Committee asks: *What has JCHE's experience been with reasonableness of HUD's development cost limitations in the 202 program?*

As stated above, the Section 202 awards are not sufficient alone to produce a unit of low income elderly housing. Other sources of funding such as tax credit equity are required to bring a Section 202 project to construction and this significantly complicates the development process and increases the time necessary for moving through the pipeline. In JCHE's case, its FY05 award has remained the same while costs have increased 50 percent, or to put it another way, the Section 202 capital advance amount has decreased in value by one-third in today's dollars, and JCHE is about a year away from its groundbreaking. This makes the case for delegated processing critical to the success of such development, and also raises the issue of whether there should be some discretionary ability for HUD to increase awards that will require more than 2 years of development, because of the complexities introduced by coordination with tax credit financing and other sources of funding.

If HUD can't finance fully the low income housing that is its mandate, it has to help mixed financing work! It is counterproductive, wastefully expensive, and unfair to make organizations

like JCHE, mission-driven and eager to develop more affordable housing for seniors and which invest so much of their financial and organizational capital to do so, to resolve the competition and technical disagreements among agencies in order to build this housing.

H.R. 2930 addresses many of the problems we have faced. We strongly support this bill.

Some additional important issues: First, HUD has historically taken the position that non-profits are not competent to manage their money. As the Committee well knows, the developers of 202 housing, over the years, have had the fewest problems of any government-supported housing. We believe that is because we are mission-driven organizations with Boards of Directors that are typically among the most experienced in local business, fiscally cautious, and broadly connected to the communities in which they volunteer their time. Non-profits use public money to carry out a mission of housing low income elders. For many years, we had no shareholders or investors to "take profit" out of the project—if there was ever a surplus, every penny went back into operations and resident services. Yes, some non-profit organizations were inexperienced and ran into difficulties, but their number was few, relative to housing owners on the for-profit side who have taken money out of their properties to the detriment of both buildings and residents.

HUD's effort to keep control of non-profit developers' money has reached an extreme in the last couple of years as organizations like ours attempted to refinance buildings utilizing syndication and tax credits as one component with the goal of raising money from investors beyond that required for the physical rehabilitation of the building. As HUD funds got tighter, JCHE tried to find other ways of funding what is needed, as have other nonprofits. We intended to use the money generated from the refinancing of one of our buildings not only for needed repairs and renovations but also for the benefit of our other HUD-supported buildings and residents. We planned to use surplus proceeds, first, to help fill the gaps in the funding of our newest mixed finance development to be described later; second, to redevelop a Program Center in the middle of our complex of three buildings in Boston with 900 residents; and third, to help provide the services that enable our residents to live fruitful lives with dignity to the very end.

Our HUD Regional Office was supportive but HUD headquarters resisted. At the very last minute, just before our tax credit allocation would expire causing the whole deal to unravel,

HUD headquarters agreed to sign off on the condition that the surplus funds would go into a HUD-controlled account to be used solely to fund increases in Section 8 subsidy requirements. We were even precluded from using these funds for cost overruns in the renovations and for hiring additional support staff to assist tenants in their 80s and 90s to pack their belongings, cover their furniture, and leave their apartments at 8 AM each day while construction work was in progress.

The mission for the nonprofit housing sector today is to preserve the housing it has built and expand it to meet a growing need in an increasingly complex development world. To do so, it is critical that nonprofit organizations be able to avail themselves of the same financial tools and be evaluated under the same development standards as for-profit developers of affordable housing. Facing increasingly limited financial resources nonprofit developers critically need access to the same equity capital and annual distributions on equity that for-profit developers enjoy in order to succeed.

What is the purpose of a non-profit organization going through all the complexities of organizing itself for this kind of transaction when in the end HUD requires that the private investors' money to be used to substitute for Section 8 funds? Our goal is to carry out the government's mandate to build more and better housing for the frailest and poorest elderly. For that purpose we were willing to go through the tortuous process of joint venturing with an equity partner under the IRS' LIHTC program to generate surplus proceeds—proceeds which, were we a for-profit developer, we could have walked away with, in our pocket, for whatever business or pleasure we desired. Nonprofit developers that are mission-driven and publicly regulated to restrict their "surplus" funds to their public purpose, and are committed for the long run, deserve and require the support of HUD to exercise the same financial flexibility. H.R. 2930 goes a long way to addressing this problem.

The Committee asked: *What has JCHE's experience been with HUD in the context of "mixed" refinancing, where new capital is made available to a 202 project in the context of refinancing? Please specifically address experiences with respect to HUD decisions to assume or subordinate its existing loans or subsidies.*

What has JCHE's experience been with HUD regarding the use of unexpended amounts generated by refinancing of 202 projects pursuant to Sec. 811 of AHEOA of 2000, including:

- *Use of unexpended amounts to provide for supportive services and service coordination needed by tenants as they age in place;*

- *Use of unexpended amounts to reconfigure projects to better meet the needs and preferences of potential tenants;*
- *Use of unexpended amounts for developer fees and/or equity payments to JCHE?*

JCHE has three objectives in any refinancing transaction it undertakes:

i. Perform capital improvements necessary for physical stability over the next mortgage term, including meeting present day energy conservation and accessibility standards, and repositioning the property on the market to the extent required.

ii. Stabilize the financing of support services and service coordination programs JCHE operates by maximizing the potential for an annual revenue stream and establishing reserves dedicated for such purposes whenever possible.

iii. Use of surplus equity from refinancing to assist JCHE in developing other HUD-assisted new construction projects.

Leventhal House is a 254-unit property that closed its refinancing with HUD on December 28, 2006. Although it is a Section 236 financed property, Leventhal House is owned and operated by JCHE, and has functioned as if it were a Section 202 nonprofit development. It is therefore relevant to report our experience in response to the Committee's concern for the use of unexpended refinancing proceeds.

JCHE found that HUD processing in Washington of our refinancing transaction denied us the ability to follow clear and consistent written guidelines that permit a cost efficient development process to occur. When the Leventhal House refinancing was undertaken, it took almost 2 years for the transaction to be understood by HUD and approved. All decisions were made by HUD headquarters and not by the HUD regional office where staff fully understood and appeared to support the transaction from the beginning. Inconsistencies in HUD's processing were apparent throughout the review of JCHE's plans for the property causing consultant and legal fees to increase significantly (at JCHE's expense, of course) as efforts were made to promote JCHE's interests in the everchanging refinancing context. JCHE’s plans changed a number of times in response to HUD’s changes, causing yet more expense to JCHE. HUD's final approval was slow to be issued creating a crisis atmosphere in the end-of-year attempt to close the tax exempt bond issue before it expired.

The Leventhal House refinancing was structured as a sale by JCHE to a for-profit partnership designed to utilize LIHTC equity proceeds from a limited partner. Under IRS regulations this

required a sale to the limited partnership at full market value which was appraised at $12 million. As previously described, JCHE proposed this approach in order to generate surplus proceeds, first, to supplement the financing of its HUD-assisted new construction project in Framingham, MA, the costs of which have risen by over 50 percent since JCHE purchased its site there in 2003; and second, to help stabilize the financing of its supportive services and service coordination programs for the 1,300 elderly residents in all its existing HUD-assisted properties. In structuring this transaction JCHE was careful to follow written guidance issued by HUD and its knowledge of similar projects approved by HUD for for-profit developers.

From the beginning HUD resisted JCHE's proposal solely because JCHE was a nonprofit sponsor and owner. It disregarded the ultimate purposes of the transaction and chose instead to resist the fact that significant equity proceeds would be under the control of a nonprofit entity even though JCHE accepted HUD's concern to regulate the ultimate use of these proceeds and was willing to enter into a reasonable agreement to restrict their use. JCHE submitted its preliminary application in the Fall of 2005 which was approved by the Boston Office. In the Spring of 2006, JCHE submitted its firm commitment application to HUD after securing a commitment from MassDevelopment for tax exempt bonds in support of the project.

After protracted delays in reviewing the application, it was clear that HUD was not happy with our proposal and in June 2006 it denied JCHE approval of all the key aspects of the sale/refinancing that we hope to achieve. HUD stated it would not allow a sale of the project to a limited partnership at the appraised value, only for the amount necessary to pay off the existing indebtedness because Section 8 funds were involved. In fact, the entire sale price was supported by LIHTC equity proceeds provided by JCHE's private limited partner; no Section 8 funds were involved in support of the sale price. Furthermore, HUD misunderstood in their analysis that a sale by a nonprofit to a for-profit entity must occur at full market value under the Internal Revenue Code. Failure by JCHE sell the property at full market value created private inurement issues that put JCHE at risk of losing its 501(c)(3) tax exemption. HUD also denied the importance of supporting JCHE's resident services objectives ignoring sound public policy, as well as its own written guidelines that permitted such a transaction under a memorandum issued by HUD Deputy Assistant Secretary Stillman Knight on April 25, 2005.

Subsequent efforts on JCHE's part to salvage the transaction and the MassDevelopment commitment for a $15 million tax exempt bond issue were similarly resisted. After HUD's rejection, JCHE met with the Regional Office and structured a compromise proposal with the tentative support of the field office which was of course conditional on approval from HUD headquarters. JCHE proposed to lower its requested rent levels, require the use of some of the LIHTC equity proceeds for the renovation of Leventhal House (which was to be financed by a new Section 221(d)(4) HUD-insured loan supported by the Section 8 assisted rents) and save HUD $5 million in Section 8 subsidies over what it would be required to contribute under its written refinancing guidelines if no LIHTC equity proceeds were involved – a sure win-win result, JCHE believed. JCHE only asked that HUD authorize the use of some of the sale for its HUD-assisted new construction project in Framingham and to help provide long-term financing for its supportive services programs. By the end of the summer of 2006, JCHE informally learned that this proposal had not been well received in Washington and would be denied, in spite of its financial benefits to both JCHE and HUD, and in spite of the good public policy benefits it promised to achieve. During this period, JCHE legal counsel and consultants were unable to determine any statutory, regulatory or other written guidance that would result in such a conclusion.

JCHE requested a meeting with HUD headquarters staff including those involved in the review of our proposal and our legal and financial consultants. That meeting finally took place on September 28, 2006. The outcome of this meeting was that HUD allowed a portion of JCHE's resident services objectives to be achieved—renovation and expansion of a program center in JCHE's Brighton site where Leventhal House is located—but still denied JCHE the ability to apply any sale proceeds to its Framingham project. Instead, the remaining calculated proceeds, about $2.8 million, were to be put in a HUD-restricted "Section 8 Set-Aside Account" and used to off-set future rent increases until the funds were fully exhausted. This preliminary approval was issued by HUD Central on October 31st but it failed to address several key concerns the resolution of which were essential to the closing, such as JCHE's request for distribution on its LIHTC equity that was to be contributed to the project, and the status of its 1983 flexible subsidy grant (well documented as a grant) that HUD now wanted JCHE to repay. It was not until December 12th that HUD issued its final detailed approval—only two days before the MassDevelopment Board met to vote on proceeding with the tax exempt bond issue.

In short, HUD appeared to be making up its rules and its documentation in a manner that was inconsistent with its own written guidance for such transactions. To this day, JCHE's legal counsel have not been informed of the regulatory or statutory basis for HUD's requirement to restrict the use of sale proceeds in the transaction. In our efforts to salvage the transaction and the tax-exempt bond issue prior to the end of the year, JCHE had to proceed to closing without knowing whether HUD would ultimately approve the transaction structure that would be of sufficient benefit to JCHE in achieving its objectives. No developer, nonprofit or for-profit, deserves to take the risks JCHE had to take for such a sound public purpose. In this case, it is even more difficult to understand HUD's position when JCHE structured its transaction to be similar to for-profit refinancings approved by HUD, and HUD's written guidance specifically allowed that similar nonprofit proposals were to be treated in the same manner as a for-profit transaction. At the time JCHE closed its Leventhal House sale/refinancing with HUD, this written guidance had still not been superseded.

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Use of unexpended amounts of refinancing proceeds to provide for supportive services and service coordination needs to tenants as they age in place:

JCHE spends over $1,200,000 each year, almost all from charitable donations, to provide a basic array of support services, service coordination and meaningful community activity for the residents in its 1,050 apartments located on three sites in Boston and Newton. About 10-15 percent comes from the operating budgets of the HUD-assisted entities in the form of staff salaries, materials and supplies. As JCHE's residents age in place, their support requires increasing reliance on JCHE's limited funding for services, and it is becoming increasingly difficult to maintain a consistent level of annual charitable contributions to maintain support service programs.

Thus, JCHE saw refinancing transactions as a means to stabilize its resources to operate its service programs. Given the limited means to bring support services into a low income elderly community, refinancing poses one of the only ways to counter the constant shortages of funding in this area. Nonprofit efforts to use these transactions to stabilize the funding for support services therefore ought to be applauded by HUD and we would expect that good public policy would encourage the Agency to consider ways it could mold its rules and processes to institutionalize this goal.

There are two principal means of accomplishing this objective. The first is to attempt to generate regular surplus cash annually in the form of distributions on equity to achieve some stability at the project level. The second is to utilize unexpended refinancing proceeds to establish reserves for support services programming in a manner that would "smooth out" the fluctuations in annual fundraising.

JCHE's attempts to program these two objectives, rather than being supported by HUD staff in Washington, were not taken seriously. Instead of rules being interpreted to the extent permissible within regulatory limits to insure the future viability of the communities housed in these developments, HUD staff interpreted such rules as narrowly as possible, and made it close to impossible for JCHE to benefit from the opportunities refinancing should provide to nonprofit owners in the area of resident services. Distribution on equity was denied, because of 100 percent financing secured more than 30 years ago, ignoring the fact that equity continues to accrue to private, for-profit owner, and ignoring likewise that tax credit equity could be used as the basis for such distributions.

Use of unexpended amounts of refinancing proceeds for developer fees and/or equity payments to JCHE:

Likewise, as described above, HUD largely denied the use of unexpended proceeds in the Leventhal House situation and opted instead, as a condition of granting its final approval for the refinancing, to require JCHE to establish a Section 8 set-aside fund in the amount of $2.8 million to offset future rent increases for the property. Aside from the lack of statutory and regulatory basis for such an action, the requirement amounted to a 25 percent cut that HUD took off the top of the refinancing transaction to supplement its Section 8 fund. JCHE believes HUD ought to seek this funding from Congress.

JCHE's proposed use of these unexpended refinancing proceeds, now deposited in a Section 8 set-aside account, was to enhance the financial viability of its Framingham, MA new construction project for which HUD has awarded assistance for 50 Section 202 units. As previously stated, the funds that were used to create the set-aside account are entirely derived from LIHTC equity provided by JCHE's limited partner. The fact that this puts HUD in the position of diverting LIHTC equity that is principally intended under IRS regulations to

encourage the construction of new affordable housing makes this HUD position particularly objectionable. We strongly encourage the Financial Services Committee to deny HUD the ability to restrict low income tax credit proceeds to nonprofit owners in this manner, while it allows for-profit developers to enjoy them, and make invalid and unenforceable such prior actions on HUD's part where they have been used against nonprofits utilizing both the Section 236 and Section 202 programs.

The Committee asked: *Please analyze the need for and JCHE's interest in undertaking refinancing of 202 projects funded between 1959 and 1974 and carrying 3 percent loans, including the need, if any, for provision of additional operating subsidy or rental assistance in such refinancing scenarios.*

JCHE has one Section 202 project funded in this period. Ulin House is a Section 202 development consisting of 242 apartments that was occupied in 1971. It has a 3 percent loan with a 50 year mortgage term that matures in 2021. The outstanding balance is $1.8 million and the annual debt service is $150,000 a year representing 5.5 percent of the total annual operating budget. This very low debt service limits refinancing proceeds under current HUD guidelines thus preventing any significant reinvestment in the property.

The building includes 171 very small studios (388 sq. ft.) with kitchens that were poorly designed. Replacement of the appliances and cabinetry in the current layout would be a waste of money, as they are not market competitive and difficult to rent in their current configuration. So JCHE developed a new kitchen design that would be more functional and competitive in the current market at a cost of approximately $20,000/kitchen.

Over the past ten years or so, JCHE has been renovating these kitchens under new design criteria within the limitations of the replacement reserve to accommodate them. This means we have been upgrading 10 kitchens at a time. Operating under these financial constraints, JCHE has completed six phases of renovation that include 67 studio kitchens (including 4 prototypes completed during design development) plus 6 one-bedroom conversions to fully accessible apartments.

Refinancing this development is necessary to complete the kitchen improvement program in a realistic timeframe with cost effective economies of scale, as well as completing other capital improvements important for the proper maintenance of this 36-year old building. However,

current limitations in the processing of a refinancing transaction have prevented JCHE from proceeding toward this goal. HUD has no clear guidance that permits the prepayment or subordination of the present 3 percent mortgage loan. Furthermore, Section 202 refinancing guidelines require that the debt service payments not be increased as a result of the refinancing transaction. This limitation precludes any meaningful improvement in the property, and insures steady and continuing physical decline of the 242-unit building.

There is no good policy reason why nonprofit Section 202 projects should not enjoy the same opportunities to refinance and revitalize their building systems and tenant livability as for-profit developments constructed under other assistance programs. In fact, it is essential good national policy that they do so in order to insure the preservation of this older affordable housing stock. Congress should require HUD to clarify that it supports reasonable renovation cost standards for this older elderly housing; that Section 202 owners be authorized to refinance and renovate these properties; and repeal the limitation on increases in debt service. Furthermore, HUD must allow prepayment or subordination of such new financing, particularly where HUD is involved in extending or insuring the new debt necessary to execute the renovation of the property.

A second important issue is that many non-profit organizations like JCHE that use the 202 program have also used other federal and state housing finance agency programs to develop low income elderly housing and run it as if it was 202 housing. For example, JCHE's oldest building was financed by the old 202 program and opened in 1971 with 243 units. Our next building which opened with 256 units in 1973 and is interconnected on the same site was financed under the Section 236 program. Our third building, also connected on the same site opened with 211 units in 1978, financed by the Massachusetts Housing Finance Agency. With the exception of five units among our three Boston buildings, all the other 705 units are covered by Section 8 rental subsidies. Our fourth and fifth buildings were both originally funded under the Section 202 loan program with additions constructed under the 202 capital advance program. As stated before, our current development is being funded under multiple programs. But ALL of these buildings are operated as if they were 202s with service coordinators and a broad range of supportive services available. The building described earlier, which was refinanced and renovated and then its surplus funds restricted for future Section 8 needs, is one of these buildings. It was developed under Section 236 but is 100 percent low-income and operated identically with our 202s.

So one amendment I would request of the Committee is that you make explicit in this legislation that the changes apply to all HUD-funded buildings that are operated as if they were 202s, that is, with a nonprofit sponsor that directly or indirectly maintains day-to-day management control. Another recommendation would be to authorize sufficient dollars so that Section 202 per unit costs are realistic thereby not forcing all 202 developers into more complicated forms of mixed financing.

Our program is so successful that the average tenure of residents in our buildings is over 11 years, and only 2- 3 percent must go to live in nursing homes. To do this, we believe, requires a minimum of 150 units in each development. A third recommendation would be to provide sufficient Section 202 funding so that HUD could make awards of more than 50-60 units per sponsor which would result in better service programs for residents and economies of scale for operating costs.

JCHE took the lead in 2000 to make it possible to combine funding from Section 202 and the Low Income Housing Tax Credit program. We worked with Chairman Frank, whom we proudly salute as our Congressman along with Congressman Capuano, to develop this legislation and looked forward to using it. We hope H.R. 2930 will complete the job.

The Committee asked: *How has HUD responded to JCHE's requests for PRAC increases to pay for (1) ongoing project costs such as service coordinators and supportive services, or (2) unanticipated increases in expenses such as utilities, insurance or taxes.*

(1) *PRAC increases for Service Coordinators and supportive services*. HUD's response to requests for residential service coordinators (RSCs) and supportive services assistance has usually been fair at the field office level. Recently, as oversight for JCHE's developments have been "devolved" to state agencies, this has become a more complicated process, and the risk of state agencies acting in a manner inconsistent with HUD's intent has increased. However, to date the state Contract Administrator (CA) has not acted in a manner that we would feel is significantly more restrictive than HUD with regard to support for RSCs and support services. Currently, organizations may charge up to 15 percent of the amount spent on services to the HUD budgets. We suggest changing this to up to 3 percent of the project's operating budget.

(2) *PRAC increases for utilities, insurance and taxes*. HUD has always been fair and responsive to increases in utility charges, insurance and taxes when such expenses have been appropriately documented. In recent years, however, good documentation for utility charges has been difficult, because utility companies are increasingly reluctant to provide their projections of utility rate increases prior to receiving approval from rate setting agencies, and the timing of these processes are independent and therefore not coordinated with HUD's rent increase process. This has made the task of providing HUD with credible local projections of utility expense harder, and is subjecting utility expense projections in the operating budget to increasing discussion.

It is important, however, that devolution of HUD responsibility for undertaking review and approval of budget and rent increases under the Section 202/Section 8 Program should not be at the expense of HUD's responsibility to set standards and procedures for such review and approval, and these procedures should be consistent with procedures used under the Section 202/PRAC Program.

With regard to HAP increases under Section 202/Section 8 developments, as the state government contract administrator (CA) has taken on oversight of these expenses, agency staff have opted to make their own calculations of utility expense notwithstanding their lack of experience with specific project circumstances. This has resulted in expense approvals that frequently have been too low. Since these expenses are among the largest expenses in a typical operating budget, when the CA errs on the side of being overly stringent, it can put a development in a financially difficult situation even when such expenses are only modestly higher than anticipated by industry experience. HUD should clarify that CAs must follow HUD's review procedures in this area and defer to satisfactory utility documentation provided by the owner's management agent, allowing for a reasonable allowance for the uncertainty of such projections. Since operating surpluses that may arise from overly protective projections go to fund the residual receipt account where they are available to serve as an emergency fund for future unanticipated expenses, including utility expenses, such an allowance is appropriate and necessary, given the risk to the development if these budget allowances are approved at an inappropriately low level.

This is an area where delegation of oversight to a CA needs to be accompanied by clear and detailed guidance by HUD as to how such oversight must be provided. HUD needs to be particularly vigilant, responsive to owner appeals and available for clarifying HUD procedures for budget reviews. When state agencies deviate from HUD intent and place Section 202 developments in jeopardy as they sometimes eagerly exercise pro-active efforts to insure that they will not be perceived as too loose with HUD subsidies, HUD needs to step in and clarify that budget and rent review procedures are meant to protect the financial integrity of the development operating budget, and not put the owner in a precarious financial position.

The Committee asked: *If you are testifying on behalf of a national non-profit organization, have you faced any challenges in meeting the community representation requirement of 12 USC 1701q(k)(4)?*

JCHE is not a national nonprofit organization, but we did confront a problem with the HOME program in meeting the community representation requirement. JCHE is seeking $1.5 million in HOME funds from the Mass. Department of Housing and Community Development (DHCD), one of its sources of funding for projects like the one JCHE is developing. DHCD requires a local match from the municipality where the development will occur, but the amounts available are relatively small and local competition is stiff. In addition, many municipalities have been unable to identify a CHDO that can utilize the HOME funds set aside for such organizations, and these funds often do not get awarded.

JCHE does not meet the community representation test in its new development, as it is in a new area for the organization, similar to the experience of a national organization. This is true despite its reputation for excellence, its capacity to build new affordable housing, and its experience and commitment to work with local citizen groups in the process of such development. We would suggest that the Congress and HUD consider greater flexibility in the award of CHDO funding, allowing either that local CHDOs be allowed to serve as pass-thru organizations for developers like JCHE with developer experience when the CHDOs do not have this experience and capacity, or that nonprofit developers be allowed to include substantial community representation in the process of their development, rather than confront issues such as board control, or CHDO involvement in the chain of title for a proposed site.

The Committee asked: Please o*utline any additional challenges in financing and meeting the supportive services and service coordination needs of tenants, including limits on use of project residual receipts. Please also address any relevant distinctions between direct services delivery and service coordination functions.*

To date, JCHE has experienced no significant limitations on use of project residual receipts for supportive services and service coordination. However, with regard to the operating budget, we have encountered a wide variation in responses to budget requests for limited use of operating funds for such purposes. There are no written guidelines, nor uniformity of treatment for such requests. It would therefore be very helpful if HUD were to consider reasonable standards for providing limited funding within the capacity of the operating budget and balance sheet assets for supportive services and service coordination needs of tenants recognizing that such resources will of necessity need to be supplemented with charitable contributions from foundations and private donor sources. We recommend a guideline of up to 3 percent of a project's operating budget.

The Committee asked: *Please describe JCHE's experience with the Assisted Living Conversion Program.*

JCHE has not used the Assisted Living Conversion Program, among other reasons because of its state licensure requirements. JCHE's model of a wide array of services made available to residents on an as-needed basis is more supportive of their well-being and their dignity, more economical, and not consistent with the model of a licensed facility.

Finally, the Committee asked: *What would be the impact on tenant rents and financial viability of existing 202 projects operated by JCHE that receive Section 8 assistance if Congress failed to renew such assistance?*

Rents would rise above levels affordable for low income tenants, forcing many of them out, or, in the case where deed restrictions require the project rents to remain affordable, the project would go into foreclosure. There is no adequate alternative today to the deep subsidies required for keeping rents affordable for low income families and elderly whose incomes are at or below 60 percent of median income, let alone those of extremely low income tenants with incomes below 30 percent of median income, such as most of JCHE's residents.

In conclusion, in 2001 and 2002, the Seniors Commission documented the magnitude of the problem facing the country with the extraordinary growth of the elderly, both in numbers, in

frailty, and as a proportion of the population. We identified the 202 gap in housing for seniors with the most severe housing needs—that is, severe financial problems and/or health problems and/or problems in the condition of their housing— as 6.1 million units, projected to reach over 7.5 million in 2020. While Congress has always defended the 202 program and resisted its elimination and restored many cuts, nothing comes near meeting today's needs, let alone preparing to meet the approaching tsunami of elders needing housing.

H.R. 2930 takes one strong step toward meeting the challenge, by eliminating some of the road blocks sponsors like JCHE face, and making production through the use of existing programs smoother and therefore quicker and less costly! Again, I thank you for your work on this issue and your commitment to solving it.

Thank you.

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