House Financial Services Housing and Community Opportunity Subcommittee
Hearing on "The Impacts of Late Housing Assistance Payments on Tenants and Owners in the Project Based Assistance Program"
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My name is Larry Minnix and I am the President and CEO of the American Association of Homes and Services for the Aging. I would like to thank you for the opportunity to be here today and share the stories of our members regarding this important problem. I have been in aging services field for over 35 years and was the CEO of Wesley Woods Center of Emory University. Wesley Wood is a comprehensive aging services organization, with acute, outpatient, outreach, HUD housing, and nursing home care. I began there as an administrative intern and spent 28 years committed to the mission of serving seniors. I am speaking to you today as the leader of an association of providers, and also as someone that has walked in the shoes of these administrators. We are looking to you for leadership.

The members of the American Association of Homes and Services for the Aging (www.aahsa.org) serve as many as two million people every day through mission-driven, not-for-profit organizations dedicated to providing the services people need, when they need them, in the place they call home. Our 5,700 members offer the continuum of aging services: adult day services, home health, community services, senior housing, assisted living residences, continuing care retirement communities, and nursing homes. AAHSA's commitment is to create the future of aging services through quality people can trust.

The majority of AAHSA members own and operate affordable senior housing communities, funded under the HUD Section 202 and 236 programs. Because many of our members are dedicated to serving the lowest income seniors they rely heavily on project based rental subsidies to operate safe, decent, supportive housing for their residents. Depite HUD's express commitment and contractual obligation to provide housing assistsance payments in a timely manner, they have fallen far short of the mark. I cannot stress enough that this is a national problem for providers. We have heard from members in Illinois, Texas, Ohio, Georgia, California, Florida, Michigan, Oklahoma, Missouri, Connecticut and several other states. This trend, if it is allowed to continue, will endanger the future of affordable, senior housing throughout this country.

Background

Although the recent funding gaps have been broad and exceptional in scope, late payments from HUD are not a new problem. A 2005 Government Accountability Office (GAO) study[1] requested by this committee found that payment gaps in rental obligations have occurred sporadically on a national level since the onset of expiring long-term Section 8 contracts. According to the report, the primary factors affecting the timeliness of HUD's housing assistance payments were delays in the contract renewals, absence of procedures for funding and monitoring contract balances and inaccurate or incomplete submissions of monthly vouchers by project owners. The report also cites as major causes for repeated delays the bureaucratic contract renewal process, HUD's

[1] GAO Report "*Project-Based Rental Assistance: HUD Should Streamline Its Processes to Ensure Timely Housing Assistance Payments*" (November 2005)

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underestimation of its funding needs and a failure to allocate additional funds when contract balances decline faster than anticipated.

Since Congress mandated that contract renewals be implemented “subject to annual appropriations” under Multifamily Assisted Housing Reform and Affordablility Act of 1997 (MAHRA), and new rental subsidy vouchering system and payment review processes were put into effect, an increasing number of AAHSA members have detailed lengthy delays. According to the GAO report, between fiscal years 1995 and 2004, and with an average of 26,000 contracts paid per month, only three-fourths of the monthly housing assistance payments were made by the due date. Of the remaining contracts, 8 percent were delayed by 2 to 4 weeks, 6 percent - more than 18,000 per year - were 4 to 8 weeks late and another 10,000 payments per year were 8 or more weeks late. One issue that GAO did not address, were the significant problems experienced by providers of extended delays, although it did acknowledge growing problems with PRAC payments.

AAHSA’s Understanding of the Reasons for the Late HAP Payments

HUD has insisted that the primary reasons for the ongoing funding problems are the legal requirements laid out in the Anti-Deficiency Act and the shortage of funds for new contracts. According to HUD, there has been a departmental “legal opinion” based on the federal Anti-Deficiency Act that prohibits them from providing contract renewals to providers unless they have a full year’s worth of funding available for a particular property. It should be noted that this does not appear to be a formal, written legal opinion from departmental attorneys. What that

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means, of course, is that unless HUD requests sufficient funding to renew all the contracts, contracts renewed in the last quarter and perhaps the third quarter can not be renewed for a full 12 months.

HUD has repeatedly requested too little funding for the project based Section 8 account to meet the existing need. HUD has borrowed from long-term contracts within its project based Section 8 portfolio – those that received full funding initially – to meet their current funding obligations for contract renewals. While they can be admired for their creativity, the simple fact that they have taken such steps suggests that the amount of funding requested and the amount appropriated by the Congress are drastically below the actual program needs. According to experts in the field, HUD will need more than $2 billion dollars to fully fund their FY08 obligations and repay the contracts that they have "borrowed" from.

HUD has also indicated that they have been given such small increments from OMB in each periodic apportionment that they cannot meet all outstanding needs and their 12 months allocation requirements for contracts expiring in any given period. Addressing contract shortfalls or renewals has become increasingly problematic over the last half of the FY07 fiscal year. Basic payments have been delayed even if the contracts have been renewed with 12 months of funding. Furthermore, HUD's subsidy renewal, allocation and payment processes remain highly dependent on a number of manual steps which must be accomplished in sequence. So, once funding is "released" at HUD headquarters, it can still take 2 to 3 weeks for funds to reach individual project accounts.

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AAHSA members have generally reported the same funding problems, particularly for those contracts expiring in the 4th quarter of the federal fiscal year or the 1st quarter of the coming fiscal year. AAHSA has repeatedly met with HUD to discuss these problems and we acknowledge the efforts taken by certain HUD officials trying to improve the data collection and funding policies or helping assign emergency funds to untold numbers of members facing a true crisis as their reserves were depleted. However, a long-term fix has never been fully identified or implemented. Whether HUD itself truly knows how much it should have on hand for each apportionment period or not is questionable and the House Appropriations Committee expressed sincere doubts in the FY08 report.

> *The Committee is deeply concerned about HUD's inability to calculate the actual funding needs of this program. Based on recent calculations on expiring contracts and the true annual voucher cost, the Department has put the Committee in the difficult position of correcting an undefined, seemingly unlimited shortfall. The Department is either unable or unwilling to report its recaptures in this account and seems to have lost track of its contracts. As this program is based on legal contracts, it seems reasonable that HUD should be able to calculate the true need of this program. The Committee understands that the Department has engaged a contractor to assess the needs of this program and anticipates getting accurate information from this report. The Department is instructed to provide the results of that report to the Committee and to discuss the results within one week of the issuance of the report." The Committee also directed HUD to submit supporting documentation for the FY09 project–based Section 8 budget request. The required documentation is a project–by–project analysis, verifying funding for renewals and amendments.*

Impact of Funding Delays and Short Funding on AAHSA Members

The non-payment of contract funding has a disastrous impact on providers, residents and communities. AAHSA members are not-for-profit organizations, typically faith-based, with limited resources. Often times whatever capital reserves are available are spent-down to cover the missing payments, mortgages are delinquent, planned maintenance or property rehabilitation is delayed resulting in increased costs over time, staff may be laid off, and/or utility payments are held off until the last possible moment. I would like to cite a range of examples of the experiences that AAHSA members have had over the last five months.

> ***Bethany Center Senior Housing, Inc.,*** is stand alone property based in the Mission District of San Francisco, California. This past summer the property's administrator, who has been with the property for almost 20 years went two months without a payment from HUD. The community was forced to use his reserves to pay the property's bills, including the mortgage. Ultimately the property had to face the possibility of losing staff because they no longer had the funds to meet their payroll obligations. In addition the funding crisis hit in the middle of an asbestos abatement project at the site. The administrator was no longer able to continue paying the contractor and the contractor stopped work. He further noted that their vendors, from security companies to pest control, cannot afford to do work for free. Bethany Center was at risk of losing the people that they did business with to "higher priced" vendors who inevitably cost more.

> ***National Church Residences***, is a national housing provider with over 200 senior properties, including two in Charleston, West Virginia and several in Southern California. In July 2007, NCR reported to us that they had 64 properties that had not received $2.5 million in housing assistance payments. By August 1, they were missing $3.5 million in

HAP contract funding. NCR is a leading sponsor of Section 202 properties. The organization has been instrumental in working on the most financially and legally complex deals to preserve existing affordable senior properties from California to New Jersey. If organizations like NCR cannot rely on HUD to meet their obligations on existing property subsidy contracts they will not have the time, expertise and resources to dedicate towards new developments or affordable housing preservation.

King's Daughters and Sons Housing, Inc. in Norwalk, CT is sponsored by an organization that has been active in the commuity for more than 100 years. The property has experienced repeated delays during its lifetime due to process problems with contract renewal delays. In the past, the property has had to borrow money to meet it operational needs, but according to their Execitive Director the situation has never been as bad as it is today. Like 59 other properties in Connecticut, King's Daughters and Sons, did not receive its July and August 2007 payments on time. Their experience is indicative of what small local organizations face when HUD does not meet its obligations. Two of the property's staff members went without paychecks, invoices were not paid and the medical insurance was cancelled. The Board, made up of local community leaders, has spent significant amount of time trying to deal with funding issues rather than focusing on the mission of the organization. Local HUD staff has been extremely responsive and helpful where they are able, but the fact is that if HUD headquarters does not provide the contract funds there is very little that they can do to help the provider meet their operational expenses.

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AAHSA does not have a count of exactly how many of its members have “short funded” contracts, but we do know that every renewal since August has received contract language that provides incremental or “short funding”. Our primary concern, given the desperate needs of our members was that they understood that in order to receive any funding at all, they had to sign whatever HUD sent them. In short, with regards to the funding and the abbreviated contracts, HUD has housing providers over a barrel.

One thing that has become clear to us is that HUD’s solution to “short funding” contracts is exacerbating the chronic underfunding that properties have experienced over the last several years. King’s Daughters and Sons Senior Housing, in Connecticut, has received notification from HUD that they will receive a “short funded” contract to provide five months worth of funding. Unfortunately, the level of funding that HUD estimated they needed does not take into consideration the operating cost adjustment factor (OCAF) that was requested to meet the increased operational expenses. Their funding will not meet the actual expenses for the full five months. We have heard similar stories from other providers that have received notification letters on “short-funded” contracts.

HUD’s “short funding” of projects will have growing effect on the physical properties due to deferred capital improvements, and even reoutine maintenance. Given the recent funding crisis, providers are hesitant to enter into long term projects and repairs that they may not have the funding to pay for in the near future. HUD insists that sponsors provide safe, decent sanitary housing, but their short sighted “solution” to their contractual obligations makes it more difficult for providers to live up to those expectations. Senior housing properties typically have exceptional REAC scores on the physical conditions of the properties, scores that are in jeopardy.

This move to “short-fund” contracts also wreaks havoc on preservation deals that are underway or may be considered in the future. One AAHSA member, who is refinancing an older project with low-income hosuing tax credits has reported that investors are becoming leery of the certainty of HUD funding in the long term. This sentiment will only grow as HUD is unable to take the steps necessary to provide long term commitments to the properties. The LIHTC program is an essential source of capital for new developments, as well as preservation. Without the confidence of those investors the goal of serving the lowest income seniors will not be possible.

The Future Viability of the Affordable Senior Housing Portfolio

The failure of HUD to provide for timely and adequate payments on their contractual obligations to thousands of affordable senior housing providers will have a predictable impact on the future of these valuable programs. Just because AAHSA members are faith and community based organizations, they are not novices when it comes to running a business. Their commitment to serving the least among us certainly will not change, but they will have to face the fact that they cannot successfully and responsibly continue to operate communities where the residents, the staff and the soundness of the property depend on an agency that has turned out to be as unreliable as HUD.

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Some providers will remain involved in the Section 8 program, but many will recognize the inefficiency and futility of trying to meet their mission without adequate, predictable funding. Some are considering serving more moderate-income residents instead of the very-low-income or creating their own funding streams or endowments even if it would mean serving fewer people. Some, who are particulary appalled with HUD's performance, have discussed redefining their mission to get out of affordable housing all together. For providers with maturing mortgages, such a step is not inconceivable.

I want to add that this problem of late payments is not limited to Section 8 payments. Section 202 PRAC projects, built since 1990, experience delays in payments as well. AAHSA knows that the funding is in the Section 202 account, so it is unclear why providers are not being paid. Fewer units may ultimately be built because HUD has underestimated the amount of funding required for PRAC renewals and each year must set aside additional dollars to renew contracts, but the funding is available. AAHSA is afraid that PRAC renewals will become the Section 8 renewal crisis of the future.

How HUD Can Resolve the Current Funding Situation

While the current crisis may have been staved off at this point, this "short funding" of existing contracts will result in annual shortages like the type we saw this past summer, next summer and every summer going forward. The current method of "short funding" contracts is unsustainable in the future. It is AAHSA's understanding that the reason that HUD turned to short term renewals is because they have exhausted available sources of funding – including borrowing from long-

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term contracts that were fully funded at the beginning. All of this funding will eventually come due and HUD, like someone that has lived off of credit cards for decades will have to the face the fact that they have nowhere else to “borrow” from to meet their obligations.

The Administration must recognize the importance of affordable senior housing in the nation’s continuum of care and HUD must face their contractual obligations to providers. The Department must address its antiquated method of tracking contracts, expenses and projected funding needs. HUD must also educate and inform its field offices so that they can better address provider concerns. HUD should develop a communication system that will allow them to alert providers when payments are delayed and when they can expect to receive funding. This small change will allow providers to plan operations accordingly and give them the peace of mind. Most importantly, we urge HUD to reveal the extent of the underfunding of the project based Section 8 contracts, to provide accurate estimates of the real funding need for the portfolio and submit a formal supplemental funding request to Congress, as well as a realistic budget request for FY09.

In addition to the changes that I believe HUD must make, Congress will have to do the hardest part. On behalf of AAHSA, our member communities and the residents they serve, I call on Congress to provide the necessary funding to allow these properties to remain affordable, safe and secure homes. Federal support for these projects will ensure that dedicated, professional housing providers remain committed to their communities for well into the future. The lives involved cannot survive the patchwork approach to problem solving that this country will face if HUD and Congress continue to address these issues on a temporary, emergency basis and if HUD continues to “manage” its way out of its funding shortfall. As well the Section 8 program has been the piggy bank for too long in rescissions demanded from HUD and the piggy bank is dry. It’s time for Congress to reject such budget gimmicks and provide sufficient funding for affordable housing.

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