



January 14, 2015

Regulations Division  
Office of General Counsel  
451 7<sup>th</sup> Street SW.  
Room 10276  
Department of Housing and Urban Development  
Washington, DC 20410–0500

**RE: Supportive Housing and Services for the Elderly and Persons With Disabilities:  
Implementing Statutory Reforms.  
24 CFR Parts 891 and 892  
Docket No. FR–5576–P–01**

LeadingAge New York represents over 100 HUD subsidized senior housing communities in New York State and is the New York state affiliate of LeadingAge.

We believe that this rule is likely to have a significant impact on future subsidized senior housing development, residents who will be served in senior housing, how services are implemented, and how funding is prioritized for HUD Section 202 communities.

This proposed rule would implement amendments made by the Section 202 Supportive Housing for the Elderly Act of 2010 (Section 202 Act of 2010) and the Frank Melville Supportive Housing Investment Act of 2010 (Melville Act) to the authorizing statutes for HUD’s supportive housing for the elderly program, known as the Section 202 program, and the supportive housing for persons with disabilities program, known as the Section 811 program.

This proposed rule would establish the requirements and procedures for the use of new project rental assistance for supportive housing for persons with disabilities; the implementation of an enhanced project rental assistance contract; allowance of a set-aside for a number of units for elderly individuals with functional limitations or other category of elderly persons as defined in the notice of funding availability (NOFA); make significant changes for the prepayment of certain loans for supportive housing for the elderly; implement a new form of rental assistance called Senior Preservation Rental Assistance Contracts (SPRACs); modernize the capital advance for supportive housing for persons with disabilities; and provide grant assistance for applicants without sufficient capital to prepare a site for a funding competition.

A significant change in these regulations is the way senior housing will be financed in the future. While Section 202 PRACs provided both building capital and ongoing rental assistance these

proposed regulations envisions separate financing for building capital. Most often the financing would be through the Low Income Housing Tax Credit (LIHTC) program.

This rule also proposes to establish the regulations for the Service Coordinators in Multifamily Housing program and the Assisted Living Conversion program.

On behalf of LeadingAge New York, I am pleased to provide comments on the proposed rule for Supportive Housing and Services for the Elderly and Persons With Disabilities, Service Coordinators in Multifamily Housing program and the Assisted Living Conversion program.

LeadingAge NY's comments are submitted below in bullets addressing specific sections of the rule and are intended to augment the comments submitted by LeadingAge. Page numbers in brackets refer to the specific page in the [Vol. 79, No. 194 Federal Register notice](#).

### **Enhanced Project Rental Assistance Contract (ePRAC)**

#### **§ 891.105 Definitions.**

[Page 660615]

**Enhanced project rental assistance contract (ePRAC) means an enhanced project rental assistance contract is made available for owners of existing 202 and 811 capital advance properties. Such contract would allow for the inclusion of debt service as an eligible expense for the units covered by the contract.**

- In recent years there has been a major push to consolidate the myriad of rental assistance programs and streamline oversight. These proposed rules provide regulations for three new rental assistance programs, all of which differ from each other and from HUD's established rental assistance programs. We'd encourage HUD to consider making these programs consistent with existing programs to minimize confusion and promote consistency.
- It seems from the proposed rule that ePRACS and PRACs will be awarded for only a partial subsidy for each project. Any HUD Section 202 that does not have a full subsidy, especially when there is a set-aside preference (including functional limitations), will need to manage multiple wait lists. For instance, if a resident was admitted into a Section 202 without functional limitations as defined in the proposed ruling the resident would not necessarily be eligible for a subsidy. Yet later in their residency if they meet the functional limitations definition they would then be eligible for a subsidy. HUD should either award a full subsidy for each Section 202 project, or clarify rules for wait lists with internal and external preferences with an update to Notice H 2014-16 issued November 28, 2014.

### **(7) Allowances for services (in the Section 202 Program only)**

[Page 660615]

- LeadingAge NY fully supports the ability to provide and fund services in Section 202 properties, yet often there is not enough operational funding to sustain these programs (including a service coordinator) within a Low-Income Housing Tax Credit (LIHTC) program financing. LeadingAge NY encourages a federal-state cooperation of funding opportunities including state set-asides for nine percent tax credits for projects receiving Section 202 subsidy. In addition, other federal-state funding could be directed to a service enriched senior housing outside of the Section 202 program to provide the type services needed for seniors to age-in-place in an independent setting.

#### **§ 891.150 Operating cost standards.**

[Page 660616]

(5) Operating cost savings. **HUD may retain a percentage of the ongoing operating cost savings.** HUD will advise of the percentage of savings to be retained through notice.

- LeadingAge NY is concerned that HUD's implementation of retaining a percentage of ongoing operating cost savings could be implemented inconsistently. Previously HUD has eliminated funding for "excess income" that could have gone into capital repairs or to fund a service coordinator. LeadingAge NY recommends elimination of this clause, or specification that HUD will retain operational savings only if a property has satisfactory funding for capital repairs, services funding (if provided) and a service coordinator. HUD should clarify that the employment of a service coordinator (and their salary) is still an eligible service cost under the contract for project rental assistance and that \$15 per unit per month (or more) can be used for such purposes.

#### **§ 891.175 Technical assistance**

[Page 660616]

For purposes of the Section 202 Program and the Section 811 Program, HUD shall make available appropriate technical assistance.

(a) Assistance under this section must ensure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the programs.

(b) HUD may offer competitive grants under this section in order to bolster an applicant's capacity to engage in preliminary work required in the development of supportive housing under the Section 202 Program or the Section 811 program.

**(1) Assistance under paragraph (b) of this section is available only if:**

(i) The applicant is eligible under the NOFA for the Section 202 Program or the Section 811 Program;

**(ii) The applicant has site control; and**

**(iii) The applicant lacks access to capital to undertake initial efforts to confirm site feasibility, pursue initial site funding, and undertake the preparatory steps necessary to compete in the NOFA for the Section 202 Program or the Section 811 Program, as applicable.**

(2) Competitive grants provided under paragraph (b) of this section may be used to cover initial costs of necessary architectural and engineering work, site control, and other activities related to the development of supportive housing for the elderly and persons with disabilities.

- This section authorizes technical assistance grants to not-for-profits that are eligible to apply for Section 202 or 811 funding, have site control and lack access to capital to take the steps necessary to compete for the Section 202 or 811 NOFA. It appears the technical assistance grants would replace Demonstration Predevelopment Grants which were awarded to sponsors who received Section 202 fund reservations--much too late in the process to be truly effective. Providing 811 and 202 sponsors with the capital needed to begin packaging grant applications is critical to completing a project. Given the fact that LIHTCs are the only significant source available for affordable multifamily housing, and that these deals require a large expenditure of pre-development capital before a sponsor is competitive, we strongly suggest that HUD make the grant available in advance to those who want to compete for credits under the LIHTC program.

#### **§ 891.225 Provision of services.**

[Page 660617]

**(2) Sponsors of projects may set aside a percentage, as determined by HUD in a NOFA, of units for elderly individuals with functional limitations or other category of elderly individuals as defined in the NOFA.** Tenants of these set-aside units must be eligible for long term services and support from home and community-based service providers. Such set-aside units must abide by the requirements under § 891.410(c)(3).

(3) Any cost associated with the employment of a service coordinator shall also be an eligible cost, except if the project is receiving congregate housing services assistance under section 802 of the National Affordable Housing Act (42 U.S.C. 8011). **The HUD approved service costs will be an eligible expense to be paid from project rental assistance, not to exceed \$15 per unit per month; or such other amount as determined by HUD. The balance of service costs shall be provided from other sources, which may include copayment by the tenant receiving the service.** Such co-payment shall not be included in the Total Tenant Payment. The limit of \$15 per unit, per month, or such other amount as determined by HUD, pertains only to the cost of supportive services and not to costs associated with the employment of a service coordinator.

- There has to be careful consideration by HUD of the expectations of the housing staff, including the service coordinator, with respect to providing health care services in relation to state assisted living requirements. While this is not easily addressed in this regulatory framework, it is important that HUD understand the complex policy issue of promoting housing with services and how that corresponds to state assisted living laws. Prioritizing and targeting the frail elderly for limited housing subsidies may disadvantage states that have stricter assisted living regulations. If assisted living licensure is required for the proposed HUD Section 202 the cost of providing the mandatory services under

licensure could be cost prohibitive to the provider. While LeadingAge NY supports HUD allowing to target functional limitations as a sponsor preference we would caution against any mandated set-aside. Given the variety of state regulations across the country it is likely that there may be some states in which a project targets residents with “functional limitations” will trigger assisted living licensure. LeadingAge New York would welcome working with HUD to find ways in which state’s assisted living requirements can be considered in crafting funding opportunities and making awards for Section 202 communities.

- In the event funds can be generated beyond the debt service we would strongly support the expansion of the ePRAC to support services and the service coordination position.
- LeadingAge NY recommends that HUD clarify that Section 202 properties can include services as an eligible expenses to develop a non-medical support service package (i.e., housekeeping, transportation, meals...) and allow the property charge residents a copayment who voluntarily choose these services.

#### **§ 891.308 Cost limits.**

[Page 660617]

#### **(ii) The applicant will not receive a waiver in excess of 110 percent of the applicable HOME Investment Partnership program cost limitations.**

- Accessing HOME funding is often a critical component on completing senior housing construction. Placing an absolute cap on waivers could eliminate worthy projects in areas that experience an especially high increase in development costs. We suggest that the 110 percent cap be increased or removed. Provisions in the preamble (p. 60597, column 2) indicate that cost limits (particularly in the 811 program) may be waived to provide for special design features to meet the needs of persons with disabilities. Section 202 housing may also have specific design feature needs, HUD should expand this provision to be applicable to both 202 and 811 programs.

LeadingAge NY recommends that, if the owner is proposing to set aside units for frail seniors, there should be a formula to incorporate common areas and to waive the 110% of the applicable HOME Investment Partnership program cost limitation. This change would help to enable more “program areas” to allow frail residents to age in place, depending on funding sources that may be leveraged.

#### **§ 891.410 Determination of eligibility and selection of tenants.**

[Page 660618]

#### **(ii) Owners must lease units set aside under § 891.225(b)(2) to elderly individuals who can provide evidence of functional limitations or other category as defined in the NOFA. Evidence**

can consist of a doctor's or nurse's written evaluation or a letter from the AAA or Aging and Disability Resource Center (ADRC) or other like social service agencies. Examples of service providers include, but are not limited to, Medicaid home and community-based service providers or Programs for All-Inclusive Care for the Elderly (PACE) providers (including colocation of PACE programs on site). **Provider organizations must have the capacity to bill Medicaid or be affiliated with AAA.**

(iv) **Set aside units must be distributed throughout the project and must not be segregated to one area of a building or the project. A specified number of units, rather than specific units (e.g., units 101, 201, etc.), may be set aside for this purpose.**

- In § 891.205, the proposed rule addresses that an assessment of functional limitations must be performed by “a qualified professional and is generally documented by an individual’s service provider or health care provider.” Yet the above citation notes that evidence of a person’s functional limitation can include a letter from the Area Agency on Aging (AAA), Aging and Disability Resource Center (ADRC) or other like social service agency. LeadingAge NY suggests that since a housing subsidy could be linked to the evidence of functional limitations that there be consistency in the evaluation of the ADL / IADL assessment through a qualified health care provider. Not all AAAs or ADRCs are staffed by qualified professionals to provide an accurate assessment of ADL / IADLs. HUD should specify in this section that evidence of functional limitations should be conducted by a qualified professional.
- Where providers opt to set a preference for frail elderly, we urge HUD’s multifamily and fair housing staff to consider the legitimate reasons for “clustering” units for frail seniors who may need accessible features beyond what is required in the standard Section 202 unit. For example, frail seniors dependent on assistive devices (walkers, canes, etc.) may need closer proximity to a co-located service provider, or the ability to easily access transportation pick up points. Also, there may added architectural costs associated with safely housing a person with certain needs like apartment sprinklers for those who need assistance in transferring. We encourage HUD to remove the language “must not be segregated” and to provide the much-needed flexibility to allow residents to live safely.

## **PART 892—SERVICE COORDINATOR IN MULTIFAMILY HOUSING AND ASSISTED LIVING CONVERSION PROGRAMS**

### **Subpart B—Service Coordinator in Multifamily Housing Program**

#### **§ 892.105 Definitions.**

[Page 60627]

**Service coordinator** means a social service staff person hired, contracted, or retained by the assisted housing owner or its management company, who assists residents in identifying,

locating, and acquiring supportive services necessary for elderly persons and nonelderly persons with disabilities to live independently and age in place.

**Supportive services** mean health related services, mental health services, services for nonmedical counseling, meals, transportation, ADL services, (eating, bathing, grooming, dressing, transferring, and other such activities as HUD deems essential for maintaining independent living), housekeeping, chore assistance, safety, group and socialization activities, assistance with medications (in accordance with any applicable state laws), case management, personal emergency response, and other appropriate services that are designed to prevent hospitalization or institutionalization and permit elderly residents to age in place and live independently in a residential setting. The supportive services may be provided through any agency of the Federal, State or Local Government, or other public or private department, agency or organization.

- LeadingAge NY supports HUD’s definition of the service coordinator with their main function is to assist residents in “identifying, locating, and acquiring” support services.

#### **§ 892.235 Training.**

[Page 60629]

**Service coordinators must receive and document training, at minimum, in the following subject areas:**

- (a) The aging process;
  - (b) Elder and disability services;
  - (c) Eligibility for and procedures of Federal and applicable state entitlement programs;
  - (d) Legal liability issues relating to providing service coordination;
  - (e) Drug and alcohol use and abuse by the elderly; and
  - (f) Mental health issues.
- The above training requirement does not specify if the mandated training is initial or ongoing training for service coordinators. LeadingAge NY recommends that HUD specify initial training in the above subject areas and require ongoing training for service coordinators with a specific number of annual credit hours as an allowable program expense.
  - Service coordinator qualifications should not be so stringently dependent on applicant having a bachelors degree. A bachelor’s of social work or a master in social work degree are certainly encouraged, but may not always be readily available for hire in all areas of the country. Flexibility to determine that a combination of alternative educational levels and/or proven skills in the area are sufficient should be left up to the owner, and not require that the owner seek/obtain a formal waiver from HUD.

#### **§ 892.245 Confidentiality.**

[Page 60630]

(a) (1) A service coordinator may not disclose to any person any individually identifiable information that relates to the provision of supportive services to a resident, unless and only to the extent the resident to whom the information relates has knowingly consented. Any such consent must be in writing and be signed by the resident, and must clearly identify the parties to whom the information may be disclosed, as well as the scope and purpose of the disclosure.

(2) In the absence of an applicable consent to disclosure in accordance with this section, **service coordinators may nonetheless disclose individually identifiable information that relates to the provision of supportive services to a resident, to the extent necessary to protect the safety or security of a resident, housing project staff, or the housing project.**

- LeadingAge NY recommends that HUD expand the ability to disclose individually identifiable information to protect safety or security to include family, caregivers and home health care / personal care staff.

#### **Quality Assurance (no provisions currently included)**

Leading Age recommends that HUD should include provisions concerning quality assurance as this helps to enhance the quality of the programs and facilitate the better and more professionalized level of services provided by on-site service coordinators.

#### **Subpart C – Assisted Living Conversion Program**

[Pages 60630 & Page 60631]

§ 892.300 Purpose and applicability.

(a) Purpose. The Assisted Living Conversion program provides **grants for the conversion of elderly housing to assisted living facilities and other purposes**. Grants provided under this program must be used for the purposes described in section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2).

§ 892.305 Definitions

**Service-enriched housing means** housing that:

- (1) Makes available, through licensed or certified third party service providers, supportive services to assist the residents in carrying out activities of daily living, as defined under § 891.205;
- (2) Includes the position of a service coordinator;
- (3) Provides separate dwelling units for residents, each of which contains a full kitchen and bathroom;
- (4) Includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the housing; and
- (5) Provides residents with control over health care and supportive services decisions, including the right to accept, decline, or choose such services, and to have the choice of a provider.



- The proposed regulations related to the Assisted Living Conversion Program (ALCP) should make it clear that an unlicensed service-enriched housing project is eligible for funding. While this option is made clear in the preamble language, the regulations focus on licensed housing. The service-enriched housing option is a critical component to allow flexibility with state assisted living licensure regulations to develop a HUD senior housing with services programs for seniors to remain in independent housing. The definition of “conversions should be changed to read: “Conversion means activities in an eligible project designed to convert dwelling units into assisted living facilities or service-enriched housing.”
- In addition, the regulations should also clarify that it is the eligible service provider working in a service enriched housing model that must be able to “bill for services,” and not the housing sponsor.

## Conclusion

Thank you again for the opportunity to comment on the proposed on the proposed rules for Supportive Housing and Services for the Elderly and Persons With Disabilities, Service Coordinators in Multifamily Housing program and the Assisted Living Conversion program. If you have any questions I can be contacted at [kharris@leadingageny.org](mailto:kharris@leadingageny.org) or at 518.867.8835.

Sincerely,

A handwritten signature in black ink that reads "Ken Harris". The signature is written in a cursive, slightly stylized font.

Ken Harris  
Senior Policy Analyst