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Testimony of
Thomas W. Slemmer, Board Chair-Elect
The American Association of Homes and Services for the Aging

Housing Financial Services Committee
Subcommittee on Housing and Community Development
Hearing on H.R. 2930: The Supportive Housing for the Elderly Reform Act

Introduction

Good morning Chairwoman Waters, Ranking Member Biggert, members of the Committee. My name is Tom Slemmer and I am please to be here to today, representing the American Association of Homes and Services for the Aging. I have the honor of serving as the AAHSA Board Chair Elect. 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.

I am also the President and CEO of National Church Residences (NCR). National Church Residences, a Columbus-based non-profit organization, was founded in 1961 and is one of the largest developers of affordable senior housing in the United States. We own and/or manage nearly 250 affordable senior and family housing communities in 27 states and Puerto Rico, including five health care facilities in Ohio. NCR currently has 25 additional properties in development throughout the country. In 2003 NCR joined with several other affordable housing providers, many of which are AAHSA members, to create Stewards of Affordable Housing for the Future (SAHF), an organization dedicated to the preservation of existing affordable housing communities.

On behalf of AAHSA, NCR, my staff and the residents and families we serve, I would like to thank the Chairwoman, Ranking Member and the subcommittee for holding a hearing on this important issue. I would also like to thank Congressman Mahoney for introducing H.R. 2930. This legislation is sorely needed if affordable senior housing is to survive into the future.

Overview of Elderly Housing Crisis

It should come as no surprise that there is an affordable housing crisis in our country. This problem is particularly acute among the elderly living on low or moderate incomes. Last year AARP released an update of its Section 202 study and found that, on average, there were ten seniors waiting for each Section 202 unit that became available. Generally stated, the major contributing factors to the elderly-housing crisis are the unnecessary loss of federally subsidized housing units, the lack of significant affordable housing production of new units, an elderly population boom, a national policy that favors vouchers instead of production as the solution the affordable housing crisis, escalating rental costs and a lack of predictability for social services funding.

Despite estimates that we will need an additional 730,000 units of assisted housing in 2020 the Section 202 program has been level funded, building fewer and fewer units each year. For the past two years AAHSA has urged Congress to provide enough funding for the Section 202 program to develop at least 10,000 units. In the FY07 NOFA , HUD funded just over 3,600 new units. According to the Joint Center on Housing we have lost two units of affordable housing for each one that we've build. These units are being converted to market rate, or demolished to free the property for other uses. We are losing ground. It is both irresponsible and unforgivable, if we do not take the necessary steps on a national policy level to remedy this problem.

H.R. 2930 provides an opportunity for you, and for providers, to develop financially sound developments and preserve existing properties that the federal government has spent billions of dollars constructing over a 40 year period. It is unlikely that we will address the affordable housing crisis through significant funding increases given the severe constraints that the federal government is under. What we can do is to address the opportunities and obligations that we see before us and increase the efficiency of the current program, with a commitment to preserving existing housing stock.

New Development

The Section 202 program is the most successful elderly housing production programs in the country. I once testified that the Section 202 program was a prefect example of an affordable program because it set up a one-stop shop and did not require outside funding sources. I am here to make it clear that this is no longer the case. Gap financing from multiple sources is necessary for almost every Section 202 project built today. State and local requirements, the increased cost of material and labor, and the complexities of the deals have made the development and preservation of each project a feat of Herculean proportions. That is why the provisions in H.R. 2930 are so important.

Delegated Processing

In addition to understanding the current complexities of financing affordable housing projects, state agencies are in a better position to process new Section 202 deals that will leverage state and local funding for larger projects. The added benefit is one of perspective. The Section 202 program originally was designed to fully fund a project and as such the sole power lies within HUD to approve every aspect of a program. We need a paradigm shift – one that will recognize that today the Section 202 funds are just one of many programs involved in the development of a new project. In more and more deals the Section 202 funding is fully matched or exceeded by other sources. Ideally those agencies that currently administer the federal HOME or CDBG funds or the state tax credit allocating agency will take on the task of processing the Section 202 grants within a specified time frame. I know that many have already expressed interest.

Mixed Financing with LIHTC

The competitive Low Income Housing Tax Credit (LIHTC) program employs rigid time frames makes it difficult to use with the Section 202 program. The unpredictable HUD processing time and constant waiver requests that must be vetted at head quarters make the combination of mixed financing deals almost impossible. Unfortunately the tax credit program represents the most likely source of funding to meet the large gaps in the Section 202 deals and it is to our benefit to make this work. These projects are complicated with obsolete HUD regulatory burdens that increase development timeframes, put the tax credit awards at risk and raise operating costs. In addition, these mixed finance projects require a level of sophistication that few sponsors feel capable of tackling. Delegated processing to state agencies will help mixed financing more predictable and easier to use. State agencies are already doing the multiple source, layered financing deals. HUD staff has been candid in the fact that they do not currently posses the expertise and do not have the funding for education to get the current HUD staff "up to speed" on the tax credit program.

Development Cost Limits

The 2005 HUD report on construction costs indices for Section 202 and 811 housing included an overall finding that the factors and approach that HUD uses for establishing development cost limits "do not accurately reflect current actual development costs" for the surveyed projects or for the typical private funded construction. HUD itself had commissioned the report because they suspected the inadequacy, and unreasonableness, of their cost limits. In the case of NCR, I can tell you that the current development cost limits just do not work and are essentially irrelevant. Our development team seeks and is granted waivers of the limits in every case. The report findings also noted that the existing costs limits force developers to seek additional funding, which "significantly lengthened the total development timeframes." Some of the most important provisions of H.R. 2930 address this problem.

Adequate PRAC Allocations

Initial PRAC allocations for new development are chronically under funded, leaving developers to limit the scope of the project's services or staffing. Because the new Section 202 PRAC properties are not eligible for the rent increases in the first year, the operating deficit can be devastating to the properties. HUD recently announced that they would permit PRAC increases for projects before projects opens. This has helped alleviate the operational funding problems in many new projects, but not all.

Proper Use of Owner Deposits

Under the current Section 202 statute the owner deposit for new projects is supposed to be held for operating short falls during the first three years. HUD has implemented an unwritten policy to require non-profit owners to use this deposit to cover the development short falls caused by the under funded capital advance. Organizations such as NCR rely on the return of some or all of those deposits to meet other housing mission needs, including overhead for staff and preliminary work to develop new projects and increase our supportive services component in existing properties. H.R 2930 tackles this problem head on in Section 104.

Flexibility to Work with Local Boards

Many of you may be familiar with Plymouth Congregational Church here in Washington, DC. This is an active, vibrant church at North Capitol and Riggs Road in Northeast. Retirement Housing Foundation (RHF), a national non-profit based in California, worked closely with Reverend Hagler and his congregation to get this project built. I urge you to visit this property and talk to those involved about the importance of partnership and the role of development experts to help a community realize its dream of taking on a new mission to serve low-income seniors live in safe, decent housing with dignity. Because of the need for active community partnerships such as this to support the property and residents, AAHSA members are committed to continuing the involvement of local boards, on an advisory or governing level. H.R. 2930 allows a degree of flexibility for larger organizations that have difficulty maintaining active board participation in some areas.

Local board members tend to be very active at the beginning of a project and often include many of the individuals and local politicians that were instrumental in getting a project approved. The simple fact is that over time it is difficult to maintain an active local board involved in the major decisions. Many national non-profits in AAHSA's membership have to retain a high degree of control over the board to make certain that they meet consistent with the terms laid out in the by-laws and execute the necessary business of the property. This is not to say that we no longer want to work with local communities – this is vital to our success and an integral part of our mission.

Preservation

Title II of H.R. 2930 will further the preservation of senior housing, one of the most important federal housing policies Congress can endorse and facilitate. Preservation of existing housing can be done at a fraction of costs of new construction and it helps retain the best HUD properties in prime locations with access to transportation and services. As I mentioned the tragedy is that due to HUD's lack of focus and commitment to a national policy of preservation, we are losing affordable units faster than we are building them. Indeed, rather than encouraging preservation, HUD often has thwarted it. Many elderly housing facilities have "aged" and need modernization and/or retrofitting and refinancing in order to accommodate supportive services to aging residents, assure quality of life, and accessibility. These projects could be preserved for an additional 30 years with the infusion of dollars far less than the cost of new construction. Furthermore, it is unlikely that many communities will support large scale affordable housing of the size that currently exists in the Section 202 portfolio. We estimate that new construction costs in our 202 portfolio are approximately $70,000 per unit, yet NCR's preservation projects only need $20,000-$30,000 per unit in renovation. If you consider acquisition and preservation of a property that a non-profit purchased from an owner "opting out" of the program the total preservation cost can be approximately $70,000 compared to $100,000 per unit for new construction.

While there is little movement to tackle the preservation issue at the federal level, I cannot stress enough how essential the localities have been in helping organizations, such as NCR, preserve senior housing. I have attached two summaries that highlight the importance of the preservation and the real human costs that seniors pay when if we cannot find some way to save these communities. These are far more complex than the new development deals due, not just to the need for multiple funding sources, but the complete restructuring of the existing funding and final financing package.

The provisions in Title II of H.R. 2930 are essential to a successful federal preservation of existing housing. The changes are detailed and highlight the difficulty involved in navigating the various legal and regulatory requirements involved in the multiple programs involved in a given project. However, many of the provisions simply require HUD to do what it already has the discretion to do. Before I give you some real world examples of projects where these changes would have made a difference, I want to stress the importance of identifying a point person, or ombudsman, within HUD to tackle the complicated preservation deals that come into are being done across the country.

In a pending case, a group of non-profits is working to bring adequate resources together to purchase a failing development, but HUD is insisting on modernization resources the task force does not have. HUD also refuses to provide any of its own resources or agreeing to hold the foreclosure in abeyance. Without HUD's assistance a for-profit entity will step in and purchase the property. We also do not believe that Congress would want to see these properties sold at below their assessed values.

Use of Unexpended Amounts to Provide Equity

Christian Church Homes of Northern California, another AAHSA member, has attempted to purchase troubled 202 and 236 properties from other not-for-profit, single asset owners that were no longer interested in pursuing affordable housing. HUD denied their requests to purchase the properties at a price above the outstanding indebtedness, thus denying the not-for-profit their equity, which they planned to use to further their mission. As a result of HUD's refusal to treat not-for-profit buyers and sellers as they would have for-profits, the owners decided to simply wait out the term of their mortgages. These properties may not be preserved as affordable housing when the current owners are no longer subject to HUD approval for sale.

Unfortunately, I have many examples of situations where the preservation of properties was made difficult to impossible by HUD's contradictory regulations, processing backlog and absence of clear policy to both the local and headquarter offices to aid developers and funding entities working to save at-risk projects.

The Senior Preservation Rental Contract

The older Section 202 properties are not eligible for enhanced vouchers, placing those properties and residents the most at risk for problems. These projects, built between 1969 and 1974 are in need of substantial rehabilitation in order to be preserved for another 30 – 40 years. Unfortunately any attempt to refinance these projects and do the necessary work means that the existing residents, which are paying rent amounts that have been suppressed by the provider to serve a low-income population, will face rent increases that they cannot afford. Since they are not eligible for enhanced vouchers they would face eviction. AAHSA members are not willing to compromise their mission and struggle to preserve these communities with few options to maintain the property for long term affordability. The creation of a senior preservation rental contract would permit owners to actively preserve properties to serve existing and future seniors. Without a program to provide rental assistance for these properties, these Section 202s become more likely to leave the affordable housing portfolio as they reach the end of their mortgage term. There were

292 properties build during this period comprising 45,000 to 50,000 units. While some have Section 8 or Rent Supplement Assistance, most do not.

A Preservation Case Study: Kirby Manor in Cleveland, Ohio

Kirby Manor, is a pre-1974 Section 202 development with no rental subsidy. None of the existing seniors were eligible for enhanced vouchers. The rehab needs were substantial, but the residents could not afford to pay for the increased rent that additional debt would trigger. None could bear the burden of higher rents, none wanted to move and the new owner would not displace the residents. NCR's experience with the preservation of this project is illustrative of the typical issues that developers experience. Our goal at Kirby Manor was to preserve the property and keep residents in place. Our plan was to refinance the project using tax credits, reconfigure the existing efficiencies, converting them into one bedroom units and to construct additional units. Most of the 202 units were efficiencies of 287 square feet, a portion were studios of 345 square feet and the remaining were small one-bedrooms of 439 square feet. The project as it stood was unattractive and unmarketable as compared with the West Cleveland neighborhood where new, subsidized, more desirable housing had been built for a younger population. Although the sponsor and owner of the project had maintained the project in excellent condition, all of the building's original plumbing, mechanical and HVAC systems were nearing the end of their life expectancy. Only a significant recapitalization would provide sufficient resources to preserve the property.

NCR submitted a waiver request to HUD to request the subordination of the existing Section 202 loan and received an allocation of 9% tax credits which would raise approximately $8,400,000 in equity; a commitment of $1,000,000 in HOME funds from the City of Cleveland; and, a commitment of $450,000 from the Ohio Housing Finance Agency as subordinated debt. The new financing was a 221(d)(4) insured loan of $4.467 million at 6.5% interest for the rehabilitation and new construction. Because enhanced vouchers are not available to these residents, NCR funded a $1,000,000 reserve from the equity generated in the refinancing to cover the increased rents for seniors as long as they remained. Once those residents pass away or leave there will be no deeply targeted subsidy to allow us to house the lowest income seniors. The rents will revert to tax credit levels and the poor seniors in that community will end up on a waiting list for Section 202/8 or Section 202 PRAC community. If there were a senior preservation rental assistance program, NCR would be able to house other low-income seniors in those units.

The project redesign included the reduction of the number of units from 202 to 147 units and the conversion of units from efficiencies and one-bedroom units into renovated and newly constructed one- and two-bedroom units. After countless hours of negotiations, legal opinions and waivers, this project was completed. If the statutory changes included in H.R. 2930 were enacted, then projects like Kirby Manor could be accomplished comparatively quickly and with little aggravation. Kirby Manor would be the norm instead of one in a hundred, and preservation of the Section 202 would be enhanced to prevent the loss of affordable housing just as the senior population is exploding.

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A Preservation Case Study: Kiwanis Village, Findlay, OH

Kiwanis Village is a Section 202 property in Findlay, Ohio. NCR worked on the preservation of this community that had been developed and owned by the Kiwanis under the original Section 202 program. The property had a number of efficiencies that were no longer marketable and a high vacancy rate. The project was only 50% subsidized and the rest of the units were unsubsidized and ineligible for enhanced vouchers. NCR applied for permission to reconfigure the existing units, changing them into one bedrooms and requested HUD's permission to subordinate the original 202 loan. HUD determined that rather than allow the reconfiguration they'd disallow the change under a "one for one" replacement policy and would not permit us to subordinate the existing loan. HUD also refused to allow the subordination of the existing loan Section 202 loan. Because the refinancing involved tax credits, they also refused to allow the Section 202 loan to be assumed by the new partnership.

This property is the perfect example of how desperately developers need the provisions included in H.R. 2930. Allowing the subordination of the Section 202 loan and the reconfiguration of existing units are critical to the success of a preservation deal. This also illustrates how important it is to have a preservation point person at HUD headquarters to evaluate each preservation deal on its own and the unique issues involved in a particular deal. These are extraordinarily complex transactions. While it may be easier for HUD staff to let the owners "opt-out" or foreclose on problem properties, is inconsistent with the goal of preservation. Furthermore it is not helping our affordable housing or the residents who are ultimately displaced. There are countless examples of how the federal government is not maximizing the existing housing resources available to

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properties and non-profit developers. Often these incidences occur where the communities can least afford to lose housing and housing funding.

Excess Use of Proceeds

NCR has three Section 202 properties in California which we refinanced and rehabilitated. We'd requested permission to use the $2 million in excess proceeds to create a housing trust fund for new development. HUD denied this request and required NCR to put the funds into the project reserves to replacement, which were already fully funded. It is a waste to put this into a project that really does not need it and not into another one that does. Other witnesses can give more graphic examples of the flawed HUD policy that requires the passage of legislation to permit not-for-profit sponsors to use excess proceeds to further their housing and supportive services mission. There are countless other examples of HUD's refusal to permit forgiveness of flexible subsidy loans that make preservation deals unworkable. H.R. 2930 will correct HUD's policy which inhibits preservation.

Waiver of Flexible Subsidy Loan Repayment

NCR acquired a property in Asheville, NC in order to preserve the property as affordable. The property had a flexible subsidy loan, which could not be sustained under the refinancing and financial restructuring. It was not being repaid at the time of the acquisition. It took HUD almost 8 months to inform us that they would only allow 75% of "flex sub" loan to be assumed and they required 25% of the loan to be paid off. NCR applied for, and was awarded, state HOME funds – which we then used to pay off the flexible subsidy loan to make the deal work. That is money that would otherwise have been spent on project rehab and services or that could have gone to develop a new project.

Conclusion

The need for affordable, supportive, senior housing development and preservation is undeniable and urgent. I am grateful to have an opportunity to appear before the subcommittee in support of H.R. 2930. I, my staff and colleagues have been actively involved in these issues throughout the country and have testified before this and other committees on the very problems that I discussed today. We are excited that Congress believes that these topics warrant a national policy discussion, but unfortunately solutions are not readily available in most cases. Today you will have a chance to take a positive step in the furtherance of a goal and mission that we all support. I urge you to support H.R. 2930, the increased efficiency of the Section 202 program and the residents that the program serves today and will serve in the future.