aahsa™
creating the future of aging services

Statement of Ms. Michelle Norris
Senior Vice President of National Church Residences

Testifying on behalf of
The American Association of Homes and Services for the Aging

Subcommittee on Housing and Community Opportunity
"H.R. 4868, Housing Preservation and Tenant Protection Act of 2010"

Introduction

Good morning Chairwoman Waters, Ranking Member Capito and members of the Subcommittee. My name is Michelle Norris and I am pleased to be here to today, representing the American Association of Homes and Services for the Aging. 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. More than a third of our membership is housing members which is the fastest growing segment of our membership; and most of them are assisted housing providers. AAHSA's commitment is to create the future of aging services through quality people can trust.

I am also the Senior Vice-President for Development and Acquisitions of National Church Residences (NCR) where I have worked for 16 years. National Church Residences, a Columbus, Ohio-based non-profit organization, was founded in 1961 and is one of the largest developers of affordable senior housing in the United States. NCR is also a founding member of Stewards of Affordable Housing for the Future (SAHF), an organization comprised of nine national non profit housing providers, seven of which are members of AAHSA as well, dedicated to the preservation of existing affordable housing communities. I am also the immediate past president of NAHMA.

NCR owns and/or manages over 20,000 affordable senior and family housing units in 300 properties in 27 states and Puerto Rico. Our portfolio is diverse in the financing programs we use and the populations we serve, including supportive housing for the homeless, assisted living communities, and five health care facilities in Ohio. NCR continues to be an active developer doing both new construction and preservation of affordable housing. NCR's portfolio of Section 202s include many located in districts represented by the members of this subcommittee and the original cosponsors of H.R. 4868. Finally, NCR is headquartered in Ms. Kilroy's district in Columbus, Ohio.

On behalf of AAHSA, NCR, my staff and the residents and families we serve, I would like to thank you for holding a hearing on this important issue. I especially would like to thank Chairman Frank and the original co sponsors for introducing this legislation and for including the provisions of the Section 202 Supportive Housing for the Elderly reform legislation in Title VII of this bill. This legislation is sorely needed if affordable senior housing is to survive into the future. Though I am aware that some of our industry colleagues have concerns about several sections in the bill, I will respectfully defer to them to address these concerns in detail.

Overview of Elderly Housing Crisis

Our nation's affordable housing crisis is particularly acute among the elderly living on low or moderate incomes. In 2006, 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. AAHSA believes that there are six major contributing factors to the elderly-housing crisis:

- the unnecessary loss of federally subsidized housing units,
- the extremely limited number of new affordable housing units built,
- an elderly population boom,
- a national policy that has favored vouchers instead of production as the solution to the affordable housing crisis,
- escalating operating costs, and
- a lack of predictability for social services funding.

Despite the estimates of the Congressionally mandated *Commission on Affordable Housing and Health Facility Needs for Seniors in the 21st Century* that we will need an additional 730,000 units of assisted housing in 2020, the Section 202 program has been flat funded, for most of the last eight years, building fewer and fewer units each year. In fact in the year 2008, the 202 grants awarded will produce only 3500 units for the entire country, an average of 70 units per state. This year the Administration's budget proposal recommends zero funding for new capital advances although we are hopeful that the Congress will reject that proposal.

Compounding the problem of a limited number of new units produced is the loss of existing senior housing units that are being converted to market rate, or demolished to free the property for

aahsa™
creating the future of aging services

other uses. We are absolutely losing ground. That is why H.R. 4868 is so important. For AAHSA members and for the NCR leadership team, HR4868 presents real opportunities for aging in place and making senior affordable housing the platform for the delivery of supportive services. Not only are there provisions in this bill which will make it easier and more efficient to refinance and preserve Section 202 properties, but there are provisions that will address the next preservation crisis of maturing mortgages and will apply the new authorities for the 202 refinancings to other affordable housing properties.

As you requested, I will focus my testimony mostly on the issues of how HR 4868 will address the challenges of preservation, refinancing and recapitalizing the older assisted housing stock and prevent the displacement of assisted housing residents with special emphasis on supportive housing for the elderly and housing and supportive services so critical to aging in place.

Title VII of HR 4868 includes in its entirety the Section 202 reform legislation. (Its counterpart in the Senate is S. 118.) This legislation 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 the cost of new construction and it helps retain the best HUD properties in prime locations with access to transportation and services. We are encouraged that the current Administration is focused and committed to a national policy of preservation. Secretary Donovan stated at a June hearing on preservation before this Committee that "HUD needs to be a leader and a partner in preserving critical housing resources. Too often it seems that HUD policies and practices get in the way of preservation efforts instead of supporting them. That is going to change." HR 4868 will equip HUD with many new tools and clear authority to preserve affordable senior housing.

It is a fact that many elderly housing facilities have "aged" and need modernization and/or retrofitting in order to accommodate supportive services to aging residents, update the aging building systems, increase environmentally friendly features and address handicap accessibility. These projects could be preserved for an additional 30 years with the infusion of private dollars far less than the cost of new construction. In addition, if these facilities are allowed to disappear, 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 $100,000 per unit, yet NCR's preservation projects only need $45,000 per unit in renovation. When we acquire a property and rehab that property, instead of allowing an owner to "opt out", the total preservation cost can be approximately $70,000 compared to $100,000 per unit for new construction.

Attracting the private capital necessary to do such extensive work is often blocked or unnecessarily complicated due to the current 202 refinancing policies. Unfortunately, over the last 5-10 years, there have been many situations where the preservation of properties was made difficult or impossible by HUD's out-of-date and contradictory regulations, processing delays and absence of clear policy at both the local offices and at headquarters. This legislation along with the new leadership we have seen at HUD to ease this confusion and lack of direction.

The provisions in Title VII are essential to the successful preservation of existing housing. To many, these changes appear very detailed and technical. Yet I can assure you that each of these can be critical to the success (or failure) of real preservation efforts. The changes will go a long way towards navigating the various legal and regulatory requirements involved in today's preservation transactions. Although many of the provisions simply require HUD to do what it already has the discretion to do, this legislation would ensure HUD will be increasingly proactive about such efforts. Though the current HUD administration is increasingly focused on the value of preservation, this legislative authority guarantees that the policies will survive any change in administrations. Indeed, this bill will definitely equip and encourage HUD to take the active leadership that it must take in order to preserve the nation's irreplaceable senior housing stock. Please allow me to use the rest of this testimony to highlight some of the very specific improvements that are created by HR 4868 in preserving the 202 stock and other senior housing, protecting seniors from displacement, and in promoting aging in place strategies.

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 selling not-for-profit any equity, which they planned to use to further their mission. I can personally confirm that NCR has had very similar experiences in other areas of the country. Though there may need to be appropriate limitations on the amount of equity permitted and on how that equity may be expended, without the ability to pay some equity, these owners can simply wait out the terms of their mortgages and these properties may not be preserved. I am aware of many situations where paying a seller any price above the existing debt may make the preservation less feasible, but where the payment of some equity is feasible, it should be permitted. HR 4868 addresses the issue of appropriate equity payments. We understand that HUD is already working on a policy that will address this issue; however it is important to include legislative authority so that future administrations cannot renege on the policy.

The Senior Preservation Rental Contract

Another complication in the efforts to preserve communities is unique to the oldest cohort of Section 202 properties. These projects, built between 1969 and 1974 are often the most 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, who are paying rent amounts that often are far below market, will face rent increases that they cannot afford after any refinancing and rehabilitation. There often is no rental assistance available to ease the burden and prevent displacement. Preservation entities are faced with a decision to either evict those least able to pay or to not do the necessary rehabilitation to the property. Neither of these options is an acceptable answer for our nation!

The creation of a senior preservation rental contract would permit owners to actively preserve properties while protecting the homes of existing and future low-income seniors. To give you an idea of the magnitude of this exposure, there were 292 properties built during this period comprising 45,000 to 50,000 units. While some have full or partial Section 8 or Rent Supplement Assistance, most do not. Section 725 of HR 4868 would establish a new project based rental assistance contract for unassisted residents upon refinancing. I would respectfully request that this provision be made retroactive to address the very few projects from this generation of 202s that have been refinanced to date. The impact of not having rental assistance is devastating as is described in one of our Ohio case studies, Kirby Manor, attached to this testimony.

We are delighted that this legislation extends in section 104 this new project based assistance to other affordable housing properties that have been partially subsidized or where there are preservation transactions where heretofore only enhanced vouchers would have been available. Where seniors reside this is particularly important so that affordable housing units are preserved for the long term rather than simply protecting current tenants from displacement if there are enhanced vouchers available.

Use of Excess Proceeds

HR 4868 also addresses the issue of the use of excess proceeds in a 202 preservation transaction. . As an example, NCR had 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 each project's reserves for replacement, which were already fully funded. This essentially locked the funds into each individual project instead of allowing the funds to be distributed (within HUD approved parameters) "as needed" across a portfolio of affordable projects. Others 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. HR 4868 will correct HUD's policy.

The use of excess proceeds is the authority in the bill which will have the most direct impact on the ability of senior housing providers to preserve housing for seniors so that they can age in place. The excess proceeds can be used to provide amenities, design features and enhancements in both seniors' apartments and in the community space that otherwise might not be funded. The excess proceeds can also be used to establish escrows and funds that will provide seed capital to establish service programs or provide subsidies to seniors purchasing services such as meals, housekeeping, or chore services from third party providers.

We are delighted that in the clarification of prepayments under Section 250 of the National Housing Act, the authority which permits the prepayment of mortgages for non profit owners, the definition of the use of proceeds of the refinancing includes "affordable housing and related social services under a plan approved by the Secretary." Such authority will enable providers to facilitate aging in place and to invest in new affordable housing for seniors.

Waiver of Flexible Subsidy Loan Repayment

In April, 2006, NCR acquired a property in Asheville, NC in order to preserve the property as affordable. The property had an existing flexible subsidy loan, which could not be paid off as part of the refinancing and financial restructuring. NCR requested consideration that would allow the loan to be assumed into the new ownership. It took HUD almost eight months to inform us that they would only allow 75% of "flex sub" loan to be assumed and required 25% of the loan to be paid off. NCR applied for, and was awarded, state HOME funds – which was then used to pay off the required amount of the flexible subsidy loan. Essentially, NCR used local HOME funds to pay down the flex sub loan in lieu of using the HOME funds to do more rehab. There are countless other examples of HUD's refusal to permit forgiveness of flexible subsidy loans that make preservation deals unworkable. Section 725 of HR 4868 will correct this HUD policy that inhibits preservation.

We also are pleased that the authority to waive or assign flexible subsidy loans has been extended to other assisted housing preservation transactions at Section 110 of HR 4868.

Other Preservation Provisions

There are also a number of other provisions not directly related to Section 202 refinancings on which I would like to comment:

- Sec. 101. We have a number of members with rent supplement and RAP contracts that are close to expiration and who did not convert in the 80s; so this new opportunity is welcome.
- Sec. 102. The maturation of mortgages particularly in the Section 202 program is the next preservation crisis; so we are pleased that Section 102 offers grants and loans for purchase or rehabilitation of properties whose use restrictions will terminate within a 10 year period. It is a proactive way to encourage the preservation of these properties that may not need substantial rehabilitation or whose owners do not want to refinance the property. By 2013 at least 40 Section 202s will have mortgages that will mature, most without rental assistance. The number of similar properties will accelerate after 2013. This provision

will provide incentives for preservation rather than encouragement to convert to market rate properties once the mortgages mature.

- Sec 106. We welcome the preservation exchange program. For organizations like NCR whose primary business is preservation of affordable housing, this is an exciting opportunity.
- Sec.107. Like many of our industry colleagues, we are concerned about the Federal Right of First Refusal. Although the provision is intended to be a further tool for preservation and regardless of the buyer, the seller will receive fair market value or the original buyer's offer will be matched, we believe that the complicated process and the time frames in any sale may actually undermine the sale and in the long run preservation.
- Sec. 111. The use of residual receipts in preservation transactions is another important source of funding; so we welcome the clarity this section provides. We understand that HUD is considering new guidance with respect to residual receipts, but the statutory clarity ensures that future administrations will provide the same policy.
- Sec. 204 Like other sections this section that addresses the use of after rehabilitation rents puts into the law policies that HUD already has implemented; however, it is important to legislate this policy so that there will be no confusion under future administrations.

Assisted Living Conversion Program

HR 4868 also addresses the Assisted Living Conversion Program in Subtitle C of Title VII; it's a different type of preservation that will ensure that seniors have the health and other supportive services they need to age in place. Affordable assisted living is an option almost completely unavailable for low and very low-income seniors. Assisted living costs range from $1,742 to

$5,197 per month in the United States with the average assisted living resident paying $2,968 per month.[1] To meet the needs of the very low income frail elderly, the Section 202 program includes an Assisted Living Conversion Program (ALCP) to fund the rehabilitation of existing properties to serve frail seniors that need assisted living services. NCR has been awarded three ALCP grants in Ohio over the last couple of years. In 2009, we officially re-opened our first community using this grant. This was also the first affordable assisted living community in the ENTIRE state of Ohio. We are honored to have brought the top leadership of HUD Ohio and the top leadership of the Ohio Dept of Aging together for the first time. We are dedicated to implementing each of the projects; however, we also know from hands-on experience that these are more complicated and expensive than necessary. Once again, this legislation encourages modifications that will allow more efficient use of these funds in order to encourage more creative solutions that deliver results!

As an example, although HUD does not provide funding for direct services or licensure, by law the current ALCP program is only open to those buildings able to become **licensed** under their state's assisted living statute. This requirement can be extremely expensive to comply with and has left the program underutilized. It almost guarantees that the only states where ALCP grants will work are those with Medicaid waiver programs. In addition, it locks all the residents into services that are required as part of the assisted living license. To encourage less costly and more "flexible housing plus services" models, Sec. 731 amends the definition of eligible assisted living under the Assisted Living Conversion Program. The amended definition will permit non licensed

1 MetLife, "Market Survey of Assisted Living Costs 2005"

properties as eligible grantees that provide supportive services of the resident's choice either directly or through a licensed or certified third party. I believe that this legislation will increase the availability of assisted living-like services to very low-income elderly so that they can age in place with dignity; and that HR 4868 will allow more facilities to convert to a model that allows higher level of care with higher resident satisfaction at lower cost to the government.

New Development

Subtitle A of Title VII also addresses reforms to the capital advance program which are particularly relevant not to preservation, but to the Administration's budget proposal for the 202 program. The Administration has stated that the capital advance program needs to be more efficient and targeted to justify new capital advance funding. Although many of the Administration's reform proposals can be accomplished administratively, if there are statutory reforms that are identified as necessary to reform the program, this legislation could provide a vehicle. So I would like to highlight two reforms in particular.

Service Coordination

In addition to providing sufficient PRAC to cover service coordination, HR 4868 will establish non monetary incentives for employing a service coordinator. The 202 program is called the "Supportive Housing Program for the Elderly", but the selection criteria have never included the extent to which the applicant ensures that there will be a service coordinator for the property. Section 712 ~~of~~ will add service coordination as a selection criterion. NCR believes each property should have a service coordinator so that the seniors can learn about and link to community based supportive services which will assist seniors to remain independent for as long as possible and to age in place.

Non Metro Allocation.

Currently, under the Section 202 program, 15% of the 202 funds are set aside for non metropolitan allocations by statute. HUD currently provides each field office with a minimum of five units in non-metropolitan areas. Increasingly fewer units are available to each office due to flat program funding in addition to escalating construction costs. Non-metropolitan allocations often go unused due to insufficient funding to build in rural areas, lack of developer interest in building such small developments, lack of demand in the locality, or difficulty in economically providing services. In Section 717, the legislation provides that the non metro allocation should be a national or regional competition.

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 HR 4868. AAHSA members and my colleagues at NCR 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 thrilled that Congress believes that these topics warrant a national policy discussion. 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 advance HR 4868 in order to increase the further the efficiency and effectiveness of the preservation of Section 202 properties and to help the residents that the program serves today and those it will serve in the future age in place.

For your consideration, I have attached two case studies which serve as the poster children for Title VII of this legislation. I am pleased to report that many of the problems from these case studies are addressed in HR 4868. In addition, I am including a listing of all the preservation projects that NCR has completed or is in the process of completing since 2002.

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 as a mission-oriented purchaser, NCR did not want to 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 provided approximately $8,400,000 in equity. In addition, Kirby received 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 first mortgage was a HUD 221(d)(4) insured loan of $4.467 million at 6.5% interest. Because enhanced vouchers were 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 communities. 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 S. 118 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.

A Preservation Case Study: Viewpoint Apartments, Sandusky, OH

Viewpoint Apartments is another early generation Section 202 property in Sandusky, Ohio , that NCR tackled. It had been developed and owned by the Kiwanis. The property had a number of efficiencies that were no longer marketable and thus experiencing 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 initially determined that rather than allow the reconfiguration they'd disallow the change under a strict "one for one" replacement policy in spite of the proven limited demand for efficiencies in the Ohio market. HUD also denied our request to subordinate the existing 202 loan or to allow the assumption of the old loan into the new financing structure. The good news is that after months of painful HUD processing, NCR was able to eventually close on the refinancing and provide a $7,000,000 update and facility transformation to this valuable Sandusky community. However, NCR truly believes that it should not be this hard and that HUD should serve as a proactive partner trying to do whatever it takes to preserve these precious community assets. These are extraordinarily complex transactions, but we're hopeful that with this legislation and the leadership at HUD, the next ones will not be as difficult.

aahsa™
creating the future of aging services

National Church Residences

Preservation

Preservation Efforts Since 2002

Total Number of Units: 3205

State	Name	City	Number of Units
AZ	Memorial Towers	Phoenix	153
GA	Baptist Tower	Atlanta	300
GA	Lakewood Christian Manor	Atlanta	250
GA	Trinity Tower	Atlanta	240
MI	Madison Tower	Detroit	170
MI	Romulus Tower	Detroit	126
MI	Solberg Tower	Detroit	170
MI	Wayne Tower	Detroit	154
MN	Prairie View	Long Prairie	47
MO	Roosevelt Apartments	St. Louis	154
NC	Battery Park Apartments	Asheville	122
NC	Clinton Crossing	Clinton	32
NC	Cotton Street Commons	Monroe	72
NC	Gregg Court Apartments	Rocky Mt	72
NC	Midland Commons	Charlotte	60
NC	Vanderbilt Apartments	Asheville	123
NJ	Alexian Manor	Elizabeth	75
OH	Bristol Court	Waverly	82
OH	Harborview Apartments	Sandusky	100
OH	Kirby Manor	Cleveland	147
OH	Viewpoint Apartments	Sandusky	117
WI	Lakeside Villas I	Milwaukee	151
WI	Lakeside Villas II	Milwaukee	206
WI	Maplewood Commons	Fond du Lac	82

NCR Portfolio Preservation

Total Number of Units: 1231

State	Name	City	Number of Units
CA	Cypress Sunrise	Los Angeles	75
CA	Clara Park	Los Angeles	50
CA	Summerfield Plaza	Sacramento	40
CA	Wysong Plaza	Los Angeles	95

aahsa
creating the future of aging services

FL	Fair Havens Village	Sebring	80
FL	Franklin House	Eustis	46
FL	Grove City Manor	Grove City	101
FL	Palm Springs Villa	Hialeah	53
FL	PSI Mandarin Center	Jacksonville	80
IN	Rosewood Terrace	Richmond	57
MD	New Towne Village	Leonardtown	36
OH	Trinity Manor	Middletown	90
OH	Meadowview Apartments	Mt. Sterling	40
PA	Neshannock Woods	New Castle	81
PR	Santiago Fajardo	Fajardo	60
PR	Villa Esperanza	Carolina	100
PR	Villa Providencia	Guaynabo	75
WI	Courtyard at Willow Woods	Tomah	72

Future Preservation

Total Number of Units: 341

State	Name	City	Number of Units
MI	Clark East	Detroit	200
MI	Madison Manor	Detroit	81
MO	Friendship Manor	Blue Springs	60

Total Number of Preservation Units: 4777