

Klein Hornig LLP
COUNSELORS AT LAW

**Introductory Training on HUD Multifamily
Programs for Elderly Persons and Disabled Persons
(Section 202 and 811 Programs)**



Ben Funk and Mo Smith
Klein Hornig LLP

BOSTON • WASHINGTON • www.kleinhornig.com



Training Overview



Today's Goals


- Understanding the basic history and structure of the 202 and 811 programs
- Understanding basic elements of project operations (management and finances)
- Introduction to preservation and redevelopment options
- Developing an analytical framework to assess 202/811 projects

2

BOSTON • WASHINGTON • www.kleinhornig.com




Training Overview




Introduction

- What are the 202 and 811 programs?
- Why are we talking about them?
- Why are we talking about the history of the programs?

BOSTON • WASHINGTON • www.kleinhornig.com 


3


Section 202 - History



Overview


- 1959 - Created pursuant to the Housing Act of 1959 to facilitate production of housing for the elderly by nonprofit/tax-exempt owners
- 1964 - Non-elderly “handicapped” added to 202 program
- Three flavors of the program:
 - 1959 to 1974
 - 1974 to 1990
 - 1990 to Present



BOSTON • WASHINGTON • www.kleinhornig.com 

4


Section 202 - History



Section 202 (1959 to 1974)


- Direct mortgage loans from HUD to project owners at low interest rate (~3%) with loan terms of up to 50 years
- Nonprofit/tax-exempt ownership

BOSTON • WASHINGTON • www.kleinhornig.com



5


Section 202 - History



Section 202 (1959 to 1974) – cont'd


- Housing for “moderate-income” elderly with budget-based rents
- Rental subsidy may require targeting lower-income families (e.g., Rent Supp)

BOSTON • WASHINGTON • www.kleinhornig.com



6


Section 202 - History



Section 202 (1974 to 1990)


- 1974 - HAP contracts introduced with shift from moderate income to low income tenants (80% of AMI)
- 1981 - HAP contracts introduced shift from low income to very low income (50% of AMI)
- 1989-1990 - Project Assistance Contract to projects with disabled persons

BOSTON • WASHINGTON • www.kleinhornig.com



7


Section 202 - History



Section 202 (1974 to 1990) – cont'd


- Direct loan interest rate increased; term reduced to up to 40 years
- NOTE: Some loan prepayments do not require HUD approval (late 70's to early 80's)

BOSTON • WASHINGTON • www.kleinhornig.com




8

Section 202 - History




Section 202 (1990 – Present)

- The Cranston-Gonzalez National Affordable Housing Act of 1990 changed program structure to (i) interest-free capital advances, and (ii) Project Rental Assistance Contract (PRAC)
- Bifurcated the assistance for the disabled through enactment of the 811 program

BOSTON • WASHINGTON • www.kleinhornig.com 

9


Section 202 - History



Section 202 (1990 – Present) – cont'd


Capital Advances

- Nonprofit/tax-exempt ownership
- 2000 – added authority for for-profit ownership by limited partnership through “mixed finance” development (required nonprofit/tax-exempt GP)
- Interest free grant with no repayment if use restricted for at least 40 years

BOSTON • WASHINGTON • www.kleinhornig.com 

10


Section 202 - History




Section 202 (1990 – Present) – cont'd

Project Rental Assistance Contracts

- Falling initial terms with 1-year renewals
- Income limit at 50% of AMI and tenant pays 30% of AGI
- Rent subsidy amount is budget-based operating costs

11
BOSTON • WASHINGTON • www.kleinhornig.com



Section 202 - Summary



Key Characteristics and Takeaways

Pre-1990 Projects

- Available to elderly (62+ years) and persons with disabilities
- Varying income and rent restrictions
- Nonprofit/tax-exempt ownership only
- Direct loans
- May or may not have rent subsidy
- May or may not require HUD approval for pre-payment; Authority for recapitalization and redevelopment options

12
BOSTON • WASHINGTON • www.kleinhornig.com


Section 202 - Summary

Key Characteristics and Takeaways

Post-1990 Projects

- Available to elderly (62+ years)
- Income limit at or below 50% of AMI; tenant pays 30% of AGI
- Nonprofit/tax-exempt ownership (LP exception)
- Capital advance
- PRAC
- Limited recapitalization and redevelopment options



13

BOSTON • WASHINGTON • www.kleinhornig.com

Section 811 - History

- 1964 – The 202 Program scope expanded to serve “non-elderly handicapped” persons. Predecessor of the 811 Program.
- 1990 - Cranston-Gonzalez Act National Affordable Housing Act of 1990
- 1999 – US Supreme Court rules in Olmstead v. L.C.
- 2011 - Frank Melville Supportive Housing Investment Act of 2010



14

BOSTON • WASHINGTON • www.kleinhornig.com

Section 811 - History



- Characteristics under Cranston-Gonzalez Act National Affordable Housing Act of 1990
 - Capital Advance; no repayment if maintain restriction to very low-income persons with disabilities for 40 years
 - PRAC; HUD approves annual operating budget and rents
 - Small projects targeted toward certain categories of disability
 - Must provide supportive services (case management; counseling; housekeeping assistance)
 - Nonprofit ownership; no distributions to owner
 - Replacement Reserve used only with HUD approval

15

BOSTON • WASHINGTON • www.kleinhornig.com

Section 811 - History



- Characteristics under Frank Melville Supportive Housing Investment Act of 2010
 - Goal: to house persons with disabilities in the most integrated setting appropriate to the needs of the individual; only this approach has been funded
 - Mechanics: Project Rental Assistance (PRA) granted by HUD to State; State pays to Owner through Rental Assistance Contract (RAC)
 - Condition: Owner executes Use Agreement with minimum term of 30 years; conveys only with State approval

16

BOSTON • WASHINGTON • www.kleinhornig.com

Section 811 - History




- Characteristics under Frank Melville Supportive Housing Investment Act of 2010 (cont'd)
 - Who is served?
 - “Eligible Applicant”
 - Where are they served?
 - “Eligible Multifamily Property”
 - How are they served?
 - Receive housing and supportive services (voluntary) in a community-based setting
 - Who serves them?
 - Owner (nonprofit, public, or private entity)
 - Service providers including via Medicaid, as designated by InterAgency Partnership Agreement

17

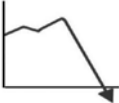
BOSTON • WASHINGTON • www.kleinhornig.com



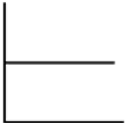
Section 202/811 - Funding




- 202 Capital Advance NOFA




- PRAC Budget Line Item



19


BOSTON • WASHINGTON • www.kleinhornig.com 

Section 202/811 - Funding



- 811 PRA under Melville Act
 - HUD NOFAs
 - 2012 PRA Demo NOFA
 - 2013/2014 PRA NOFA – awards announced in March 2015
 - Maryland DHCD Section 811 PRA Program
 - DC permanent supportive housing

20

BOSTON • WASHINGTON • www.kleinhornig.com 

202/811 Programs – Future Funding

President Donald J. Trump Proposed Budget

- No Capital Advance funding
- Reduced PRAC funding; proposed 9.6% cut in 2018
- No increase in Section 8 funding
- 811 PRAC, PAC, and new PRA: no new funds in 2017; proposed 19% cut in 2018



22

BOSTON • WASHINGTON • www.kleinhornig.com



Section 202/811 - Project Operations



- **Management Operations**
 - Management Agent certification
 - Screen applicants; manage waitlists
 - Income annually recertified
 - Lease form prescribed by HUD; amendments and addenda must be approved
 - Fair Housing and Civil Rights requirements (AFHMP, Reasonable Accommodations, etc.)
 - Budget submission and approval

24

BOSTON • WASHINGTON • www.kleinhornig.com



Section 202/811 - Project Operations



- Management Operations (cont'd)
 - Plan and prepare for inspections, including:
 - Management and Occupancy Review
 - REAC Inspection
 - FHEO Compliance review

25

BOSTON • WASHINGTON • www.kleinhornig.com

Section 202/811 - Project Operations



- How do you know what to do?
 - Regulations: 24 CFR 891
 - Key documents:
 - Note, Deed of Trust, Building Loan Agreement
 - Regulatory Agreement, Use Agreement
 - Original Rent Subsidy Contract; current renewal contracts

26

BOSTON • WASHINGTON • www.kleinhornig.com

Section 202/811 - Project Operations



27

- How do you know what to do? (cont'd)
 - HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs
 - Civil Rights and Nondiscrimination Requirements
 - Eligibility for Assistance and Occupancy
 - Waiting List and Tenant Selection
 - Determining Income and Calculating Rent
 - Lease Requirements and Leasing Activities
 - Recertification, Unit Transfers, and Gross Rent Changes
 - Termination
 - Enterprise Income Verification

BOSTON • WASHINGTON • www.kleinhornig.com

Section 202/811 - Project Operations



28

- How do you know what to do? (cont'd)
 - HUD Handbook 4350.1: Multifamily Asset Management and Project Servicing
 - Reserve for Replacement
 - Management Review
 - Rent Increases
 - Civil Rights Enforcement
 - Work-outs
 - Change in Ownership
 - Partial Release of Security
 - HUD Handbook 4381.5: Management Agent Handbook

BOSTON • WASHINGTON • www.kleinhornig.com

Section 202/811 - Project Operations

Financial Overview

- Sources of Income
 - Tenant-paid rents
 - PRAC/HAP/Other Rent Subsidy
 - Misc. (cell tower, laundry)
- Operating Expenses
 - Debt Service (Pre-1990 Direct Loan)
 - Replacement Reserve
 - Property Management
 - Supportive Services/Service Coordinator
- Use of residual receipts for project expenses only with HUD approval
- No distributions permitted to project owners



29

BOSTON • WASHINGTON • www.kleinhornig.com

Preservation/Redevelopment


- 202 Prepayment – why do it?
- HAP Renewals – various options; Preservation Exhibit
- If sold, Section 202 nonprofit owner (seller) may retain the proceeds of the sale.
- Waivers?



30

BOSTON • WASHINGTON • www.kleinhornig.com

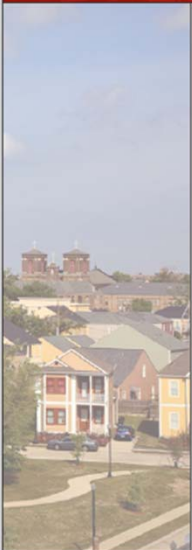
202 Prepayment




- Application for HUD approval:
 - Guidance for HUD approval is consolidated in Notice H 2013-17, May 30, 2013
 - Coordinate Prepayment approval with FHA financing application, if using FHA-insured loan

31 BOSTON • WASHINGTON • www.kleinhornig.com 

202 Prepayment



- Some features:
 - HUD consent to prepay required
 - Reduction in debt service may be required
 - Developer fee may be permitted
 - Use of “proceeds” in the refinancing may be permitted to be used in other HUD projects
 - In some cases reserve for replacement funds may be used to fund third-party reports for 202 refinances.
 - Tenant Protection Vouchers may be available for unassisted elderly residents
 - Tenant notices of Prepayment application are required

32 BOSTON • WASHINGTON • www.kleinhornig.com 

Section 202/811 - Analysis

Step 1: Locate your Documents

- Direct Loans
 - Note, Deed of Trust, Building Loan Agreement
 - Regulatory Agreement, Use Agreement
 - Original Rent Subsidy Contract
 - REAC and MOR
 - Audited Financials
- Capital Advance
 - Note, Deed of Trust
 - PRAC
 - Capital Advance Agreement
 - REAC and MOR
 - Audited Financials



33

BOSTON • WASHINGTON • www.kleinhornig.com

Section 202/811 - Analysis

Step 2: What Am I Looking For?


- Own and Operate (202 & 811)
 - Debt service requirements
 - Use restrictions (income and rent)
 - HUD budget
 - Use of reserves and residual receipts
 - Project condition
- Redevelopment (Pre-1990 202 Projects)
 - Prepayment approval
 - Use restrictions
 - Transfer of rental assistance
 - Use of reserves and residual receipts
 - Project condition



34




BOSTON • WASHINGTON • www.kleinhornig.com

Section 202/811 - Analysis



Step 3: Contact Ben and Mo


“The 202/811 Dynamic Duo”


Ben Funk
1325 G Street NW, Suite 770
Washington, DC 20005
202.495.7209
bfunk@kleinhornig.com

Mo Smith
1325 G Street NW, Suite 770
Washington, DC 20005
202.495.4092
msmith@kleinhornig.com

35

BOSTON • WASHINGTON • www.kleinhornig.com 


Resources



Additional Information – 202 Program

- 24 CFR 891
- Housing Notice 2013-17, issued May 30, 2013
- June 26, 2013 Memorandum from M. VanKirk and T. Toon: “Guidance on Housing Notice 2013-17, Updated Requirements for Prepayment and Refinance of Section 202 Direct Loans”
- HUD Handbook 4350.3 (Multifamily Occupancy)
- HUD Handbook 4350.1 (Multifamily Asset Management and Project Servicing)
- HUD Handbook 4350.1 (Management Agent)
- HUD Handbook 4571.1 (202 Direct Loan Program)
- HUD Handbook 4571.3 (202 Supportive Housing for the Elderly)
- HUD 202 Portal:
https://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/grants/section202ptl

36

BOSTON • WASHINGTON • www.kleinhornig.com 

Resources

Additional Information – 811 Program

- 24 CFR 891
- HUD Handbook 4571.2 (Section 811 Supportive Housing for Persons with Disabilities)
- HUD 811 Portal: https://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/grants/section811ptl
- HUD Exchange, Section 811 PRA Program: <https://www.hudexchange.info/programs/811-pra/>
- TAC Resource Center on Supportive Housing: <http://811resourcecenter.tacinc.org/housing-developers>
- Maryland DHCD Section 811 PRA Program: <http://dhcd.maryland.gov/HousingDevelopment/Pages/section811/Section811.aspx>
- DC DHCD 2017 Spring RFP: <https://octo.quickbase.com/db/bjc34b76f?a=showpage&pageid=55>
- DC Department of Mental Health Supportive Housing Strategic Plan 2012-2017: <https://dbh.dc.gov/sites/default/files/dc/sites/dmh/publication/attachments/webpage.%202012-2017%20Supportive%20Housing%20Strategic%20Plan.pdf>

National Low Income Housing Coalition Tools and Reports

- Housing Preservation Database: <http://nlihc.org/library/preservation>
- State & City Funded Rental Housing Programs: <http://nlihc.org/rental-programs>
- Out of Reach (report): <http://nlihc.org/oor#about> (addresses housing affordability, generally)



37

BOSTON • WASHINGTON • www.kleinhornig.com