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LAW ALERT

SECTION 202 REFORM BILL SIGNED INTO LAW

With surprisingly little controversy, Congress passed legislation to reform the Section 202 and 811 supportive housing programs for very low income elderly and disabled persons. President Obama signed the bill into law last week.

The bill, titled the Section 202 Supportive Housing for the Elderly Act of 2010 and designated S. 118, makes a number of separate changes to the existing Section 202 program. Collectively, the revisions make it easier for nonprofit owners of such housing to refinance the projects and obtain new financing, rehabilitate the housing stock and extend the affordability of the projects an additional 20 years.

Among the new changes:

- The existing Section 202 loan may be subordinated to a new loan or assumed, rather than paid off, in connection with the refinancing transaction.
- For projects without Section 8 contracts, HUD is authorized to provide 20-year senior preservation rental assistance contracts to prevent displacement of elderly tenants.
- Flexible subsidy loans need not be paid off at the time of refinancing.
- Refinancing proceeds may be used to rehabilitate a project to improve its long-term viability or to reduce the number of units in a project by reconfiguring units that are functionally obsolete, unmarketable, or not economically viable.
- Refinancing proceeds can also be used to pay a developer fee to sponsors. In tax credit projects, the amount of the developer fee is capped by the amount permitted by the state allocating agency; in other projects, it is limited to 15% of the acceptable development cost.

The legislation also made changes to the new construction Section 202 and 811 programs. In mixed finance transactions, a limited liability company will now be permitted to serve as the general partner of the ownership entity, provided it is owned or controlled by a nonprofit corporation with 501(c)(3) tax-exempt status.

Another significant change included in the bill is to extend the reach of the grant program which currently allows conversion of elderly housing to assisted living facilities. The new bill also allows conversion of elderly housing to "service-enriched housing", with licensed or certified third party providers offering supportive services to project residents, centralized by a service coordinator, the cost of which may be funded as an operating expense of the project.

For more information, please contact Robert Mills, M David Kroot, or any Goldfarb & Lipman attorney at 510-836-6336.

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