

## HUD Multifamily Programs Overview

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*The National Housing Law Project has created this outline to provide reference materials for advocates serving clients in finding and maintaining safe, decent, and affordable housing. This outline provides an overview of selected HUD Multifamily programs, including: Project-based Section 8, Sections 202 (housing for the elderly) and 811 (housing for persons with disabilities), Section 236 multifamily rental housing, Section 221(d)(3) Below Market Interest Rate (BMIR) housing, and HOME.*

### Overview of Each Program

#### ***Project-Based Section 8***

- Owners renew Housing Assistance Payment (HAP) contract with HUD that requires them to provide affordable housing to low-income families for a certain period.
  - Contracts with owners for up to 20 years.
  - Owner may seek to opt-out on expiration of the contract.
  - Funding no longer available for new contract commitments, just renewals of existing HAP contracts.
- The subsidy is attached to a particular building. The tenant cannot move with a project-based Section 8 subsidy.
- The HAP contract provides a subsidy to cover the difference between HUD-approved rents (contract rent) and the amount the tenant is required to pay (tenant contribution).
  - Tenants typically pay 30 percent of adjusted income, with adjustments determined under federal rules.
  - Tenants who pay for their own utilities receive an additional utility allowance that is credited against their tenant contribution.
- See NHLP, HUD HOUSING PROGRAMS TENANTS' RIGHTS (5th ed. 2018), § 1.4.1

#### ***Sections 202 & 811 - Supportive Housing for the Elderly & Persons with Disabilities***

- Section 202 (Supportive Housing for the Elderly)
  - Program provides non-profits with funding to provide supportive housing for elderly, low-income persons.
  - Different types of subsidy throughout the program's history:
    - "Old" Section 202: A direct HUD loan at below-market interest rate in exchange for HUD-regulated "budget-based" rents and occupancy restrictions.
      - Budget-based rents are rents where the tenant's monthly payment depends upon the operating costs of the building.
    - "New" Section 202/811: Forgivable capital advance in exchange for HUD-regulated "budget-based" rents and occupancy restrictions.
- Section 811 (Supportive Housing for Persons with Disabilities)
  - Arose of out the original Section 202 program
  - Program provides non-profits with funding to provide supportive housing for disabled, very- and extremely-low-income persons.
  - Can include one or a combination of physical disabilities, developmental disabilities, or chronic mental illness (HUD Handbook 4350.3, ¶ 3-20 E).

- Tenants of these properties can live in either “assisted” or “unassisted units.”
  - *Assisted tenants* receive an additional subsidy, such as project-based Section 8, meaning that the rent contribution is based on income (typically 30% of adjusted income)
  - *Unassisted tenants* receive no additional subsidy, and pay the budget-based rent, based on the operating costs of the property. Their rents are not based upon adjusted income.
- Some Section 202/811 properties are only partially “assisted”
  - Tenants at the same property could have their rents calculated in very different ways.
- Newer Section 202/811 units exclusively receive rental assistance (similar to Project-Based Section 8), meaning that tenants typically pay 30% adjusted income, and not a budget-based rent.
- See NHLP, HUD HOUSING PROGRAMS, § 1.3.4

### ***Section 236 and Section 221(d)(3) Below-Market-Interest-Rate programs***

- HUD provided mortgage insurance and an interest rate subsidy to private housing providers.
  - No new units are being created under these programs.
- In exchange, the housing provider provides affordable units to low-income individuals by restricting rents and occupancy.
- Rents are budget-based, meaning that tenants pay a rent based upon the operating costs of the property, unless they also receive rental assistance. This means that tenants of these properties can live in either “assisted” or “unassisted units.”
  - *Assisted tenants* receive an additional subsidy, such as project-based Section 8, meaning that the rent contribution is based on income (typically 30% of adjusted income)
  - *Unassisted tenants* receive no additional subsidy, and pay the budget-based rent, based on the operating costs of the property. Their rents are not based upon adjusted income.
- See NHLP, HUD HOUSING PROGRAMS, § 1.3.2 (Section 221(d)(3) BMIR); § 1.3.3 (Section 236)

### ***HOME Investment Partnerships Program***

- Provides grants to state and local governments to construct, purchase, and/or rehabilitate affordable housing stock for low-income and very-low income persons.
  - Funding can be used as a loan or a grant, or as rental assistance, including tenant-based and project-based vouchers.
  - HOME still receives new funding commitments, but future up in the air.
- Tenant contribution varies
  - HOME-funded units, *see* 24 C.F.R. § 92.252.
  - For HOME tenant-based rental assistance, *see* 24 C.F.R. § 92.209.
- See NHLP, HUD HOUSING PROGRAMS, § 1.7.3

### ***Who are the Parties?***

- **Ownership** in most of the programs is private, for profit corporations, with some non-profit providers
- **Project-Based Section 8**
  - HUD is usual regulator as party to Housing Assistance Payments (HAP) contract, or PHA for Section 8 Mod Rehab

- However, HUD has contracted out role of “Contract Administrator” for many properties.
    - [Contact list for local HUD offices](#)
  - Lenders (private or HUD-held loan)
  - Private owners
    - Building management (either owner or separate company)
- **Section 202 and 811**
  - HUD is regulator.
  - These properties have only non-profit owners.
- **HUD-Subsidized Section 236 and Section 221(d)(3) BMIR**
  - HUD is usual regulator as party to Regulatory Agreement.
  - Lenders (private or HUD for HUD-held loan or Section 202)
  - Private owners
    - Management (either owner or separate company)
- **HOME**
  - State housing agency

## **Key Authorities**

Key authorities to consult include statutes, program contract(s), regulations, handbooks, HUD notices, and the lease.

### ***Project-Based Section 8***

- Section 8 of United States Housing Act of 1937, 42 U.S.C.A. § 1437f
- 42 U.S.C.A. §§ 13661-13664
- Housing Assistance Payment (HAP) contract between Owner and HUD
- HUD Regulations
  - 24 C.F.R. Parts 880, 881, 883, 884, & 886; 24 C.F.R. Part 247 (evictions)
- [HUD Handbook 4350.3 REV-1, CHG-4 \(Nov. 2013\)](#)
  - *All references to HUD Handbook 4350.3 are to this version*
- [HUD Model Lease](#) (Appendices of the HUD Handbook)
- [HUD Housing Notices](#)
- [HUD Section 8 Renewal Policy Guidebook \(2017\)](#)
- Tenant selection plans and house rules

### ***Sections 202 and 811***

- Section 202 of the Housing Act of 1959, 12 U.S.C.A. § 1701q
- Section 811 of the National Affordable Housing Act of 1990, 42 U.S.C.A § 8013
- 42 U.S.C.A. §§ 13661-13664
- Regulatory Agreement
- HUD Regulations
  - 24 C.F.R. §§ 247 (evictions) and 891 (supportive housing for the elderly and persons with disabilities)
- HUD Handbook 4350.3
- HUD Model Lease
- HUD Housing Notices
- Tenant selection plans and house rules

### ***HUD-Subsidized Section 236 and Section 221(d)(3) BMIR***

- Section 236 of the National Housing Act

- 12 U.S.C.A. §§ 1715z-1
- Section 221(d)(3) of the National Housing Act
  - 12 U.S.C.A. §§ 1715l(d)(3) & (d)(5)
- 42 U.S.C.A. §§ 13661-13664
- Regulatory Agreement
- HUD Regulations
  - 24 C.F.R. Part 221 (Section 221(d)(3)); 24 C.F.R. Part 236 (Section 236)
  - 24 C.F.R. Part 247 (evictions)
- HUD Handbook 4350.3
- HUD Model Lease
- HUD Housing Notices
- Tenant selection plans and house rules

### **HOME**

- 42 U.S.C.A. §§ 12701-12839
- HUD Regulations
  - 24 C.F.R. Part 92
- [HUD Notices](#)
- HUD Policy Memos
- [HUD Exchange](#)
- *HOMEfires* Newsletter
- *HOME FACTS* Newsletter
- [HOME FAQs](#)

## **Major Applicant and Tenant Issues**

*NOTE: Cites to the HUD Handbook 4350.3 cover the Project-Based Section 8, Sections 236, 221 (d)(3) BMIR, Section 202, and Section 811 programs. The HUD Handbook does not cover the HOME Program. Issues and rules specific to the HOME Program are noted.*

### **Admissions and Tenant Selection**

#### **Income Limits**

For more information, *see* HUD Handbook 4350.3, Ch. 3, fig. 3-3.; ¶ 3-6 D

- Project-based Section 8
  - Generally, applicants must be “very low-income” (VLI), earning no more than 50% of Area Median Income (AMI).
  - Owners must target some units to “extremely low-income” (ELI) families (cannot exceed 30% of AMI, or federal poverty level).
  - Pre-1981, can include “low-income” households (80% of AMI)
- Section 202 and 811
  - Varies, *see* HUD Handbook 4350.3, Ch. 3, fig. 3-3; ¶ 3-6 D
- HUD-Subsidized Section 236 and 221(d)(3) BMIR
  - 80% of AMI (Section 236) (Low-income)
  - 95% of AMI (Section 221(d)(3) BMIR)
- HOME

- Varies based on how HOME funds are being used.
- See NHLP, HUD HOUSING PROGRAMS, § 2.2.2.2

### **Income Targeting**

- **Project-based Section 8**
  - At least 40% of units becoming available in any year must be leased to tenants with incomes below 30% of AMI (ELI families)
  - “Skipping” over lower-income applicants to reach higher income applicants is prohibited, 42 U.S.C.A. § 1437n(c)(4); 24 C.F.R. § 5.655(b)(3).
  - See NHLP, HUD HOUSING PROGRAMS § 2.4.4
  - Income targeting does not apply to certain Section 202 and 811 subsidies, nor does it apply to the Section 221(d)(3) or Section 236 programs.
- **HOME Jurisdictions** (tenant-based rental assistance and rental units)
  - Requirements at 24 C.F.R. § 92.216

### **Waiting List**

- How compiled and maintained. See NHLP, HUD HOUSING PROGRAMS, § 2.8.6
  - HUD Handbook 4350.3, ¶¶ 4-13 to 4-22 (all HUD-subsidized and Section 8)
  - Owner is responsible for selecting tenants
  - Owner must develop **tenant selection policies and procedures**, and screen for certain criminal activity and immigration status. See *generally* HUD Handbook 4350.3, Ch. 4; fig. 4-2 (written tenant selection plan); ¶ 4-4 C (required contents of tenant selection plan); ¶ 4-7 (screening).
  - Owner may create certain admissions preferences. HUD Handbook 4350.3, ¶ 4-6 (preferences).

### **Immigration and Student Status**

- **Immigration: Project-based Section 8, Section 236**
  - Family must have one member of the household who is a citizen or has eligible immigration status under one of the categories set out in 42 U.S.C. § 1436a(a).
  - If any members of the household are not citizens or lack eligible immigration status, the assistance for the family is prorated. 42 U.S.C. § 1436a(b)(2); 24 C.F.R. § 5.500–5.528.
  - See NHLP, HUD HOUSING PROGRAMS, § 2.2.4 (Citizenship and Immigration Status)
- **Students**
  - Restrictions on Section 8 eligibility of higher education students. Pub. L. No. 109-115, § 327, 119 Stat. 2936, 2466 (2005); 24 C.F.R. 5.612, 70 Fed. Reg. 77,742 (Dec. 30, 2005) and 71 Fed. Reg. 18,146 (Apr. 10, 2006); HUD Handbook 4350.3, ¶ 3-13
  - See NHLP, HUD HOUSING PROGRAMS, § 2.2.6.2

### **Preferences**

- Some properties have elderly preference or designated occupancy; properties can have preferences for working families (Section 8, 42 U.S.C. §1437n(c)(4); 24 C.F.R. § 5.655(c); HUD Handbook 4350.3, ¶ 4-6);
- Properties can use PHA-established local preferences; cannot have residency requirements; owner residency preferences must be HUD-approved, 24 C.F.R. § 5.655(c).
- HOME Program
  - Rental owners can have admissions preferences or limited eligibility if permitted in written agreement with participating jurisdiction. 24 C.F.R. § 92.253(d)(3).
- NHLP, HUD HOUSING PROGRAMS, § 2.3

## Screening

- HUD Handbook 4350.3, ¶¶ 4-7 (screening) & 4-8 (prohibited screening criteria) for Sections 8, 236, 221(d)(3), 202 and 811.
- Permitted screening criteria
  - Drug/criminal activity
    - *But see* HUD Fair Housing Guidance re: Criminal History: [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF)
    - *But see* [Guidance for Public Housing Agencies \(PHAs\) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions, H 2015-10 \(Nov. 2, 2015\)](#)
  - Rental history
  - Credit history
    - Lack of credit history insufficient for rejection
- HOME
  - No discrimination against Section 8 Housing Choice Vouchers
    - 24 C.F.R. § 92.253(d)(4)
- NHLP, HUD HOUSING PROGRAMS, § 2.5

## Tenant Selection Plans

- **Sections 8, 236, 221(d)(3), 202 and 811**
  - Owner must make written tenant selection plan publicly available upon request (HUD Handbook 4350.3 ¶ 4-4 F)
  - Tenant selection plan must include (HUD Handbook 4350.3 ¶ 4-4 C):
    - Project eligibility requirements
      - Project-specific requirements (e.g., designation for elderly or disabled populations)
      - Citizenship/immigration status requirements
      - Social Security Number requirements
    - Income limits
    - Procedures involving taking applicants from the waitlist
      - Taking applications
      - Preferences
      - Income targeting (Section 8 properties)

- Applicant screening criteria
    - Procedures for rejecting ineligible applicants
  - Occupancy standards
  - Unit transfer policies
  - Policies to comply with Section 504 of the Rehabilitation Act, the Fair Housing Act, and Title VI
  - Policies on opening and closing the waitlist
  - Eligibility of students
  - VAWA protections
- Tenant selection plans can also include owner’s policies on other topics such as annual recertification requirements, unit inspections, security deposit requirements, etc. HUD Handbook 4350.3, fig. 4-2.

### **Procedural Protections**

- **Sections 8, 236, 221(d)(3), 202 and 811**
  - Written rejection notice; 14-day timeframe to dispute rejection or to request a meeting with the owner; written decision within 5 days of meeting or owner response.
    - See HUD Handbook 4350.3, ¶ 4-9 (procedures).
    - NHLP, HUD HOUSING PROGRAMS, § 2.8.8.4
- **HOME Program**
  - Rental housing owners must give “prompt written notification” to rejected applicants including grounds of rejection. 24 C.F.R. § 92.253(d)(6).

### **Rents**

- **Income-based rents**
  - Tenants typically pay 30 percent of “adjusted income.”
    - NHLP, HUD HOUSING PROGRAMS, § 4.2.3
  - Minimum Rent and hardship exemptions
    - 24 C.F.R. § 5.630 (Section 8)
    - HUD-set minimum of \$25 monthly for project-based Section 8
- **Budget-based rents**
  - Tenants pay a rent that is based upon the operating costs of the property.
- **Assisted vs. unassisted units**
  - *Assisted units* – Tenants receive an additional subsidy, such as project-based Section 8, meaning that the rent contribution is based on income (typically 30 % of adjusted income)
  - *Unassisted units* – Tenants receive no additional subsidy, and pay the budget-based rent. Their rents are not based upon adjusted income.
  - Certain Section 236, 221(d)(3), 202, and 811 units are unassisted, and therefore pay a budget-based rent.
  - Some complexes may have units that are both unassisted and assisted.

### **Recertification**

- Generally, resident recertification at least annually, unless paying full contract/market rent for certain properties, or if household is on fixed income (see below)
  - Recertification every three years for families on fixed incomes (42 U.S.C. § 1437a(a)(1), amended by FAST Act § 78001)
    - NHLP, HUD HOUSING PROGRAMS, § 4.5 (recertification) – § 4.6 (interim recertification); HUD Form 50059 (tenant certification and recertification)
- Project-based Section 8, Sections 236, 221(d)(3), 202, and 811
  - Note: statutes revised in July 2016 by HOTMA; regulations & Handbook revisions pending
  - 24 C.F.R. §§ 5.657 & 5.659, HUD Handbook 4350.3, Ch. 7

## ***Evictions and Terminations***

### **Notice**

- Project-based Section 8, Sections 236, 221(d)(3), 202, and 811
  - Length (state law, or 30 days for “other good cause”)
    - *See also* 202/811 model lease (30 days for material noncompliance)
  - Content (reasons for termination, warnings & opportunity to cure for other good cause, right to meeting, etc.)
  - 12 U.S.C. §1715z-1b(b)(3), 24 C.F.R. Part 247, HUD Handbook 4350.3, ¶¶ 8-11 to 8-16, Model Lease, state law
  - *See* NHLP, HUD HOUSING PROGRAMS, § 11.3.3.2.2
- HOME
  - Rental owners receiving HOME funds must provide 30-days written notice detailing grounds of the termination/failure to renew. 24 C.F.R. § 92.253(c).
  - *See* NHLP, HUD HOUSING PROGRAMS, § 11.3.7.1
- State law procedural protections are not pre-empted, as owners must comply with state and local requirements when terminating tenancy.
  - HUD Handbook 4350.3, ¶ 8-12B

### **Good Cause** (*See* NHLP, HUD HOUSING PROGRAMS, § 11.2)

- Project-based Section 8, Sections 236, 221(d)(3), 202, and 811
  - Good cause required anytime, including at end of lease term
    - 12 U.S.C. §1715z-1b(b)(3); 24 C.F.R. Part 247; HUD Handbook 4350.3, ¶¶ 8-11 to 8-16; Model Lease
    - Material noncompliance with lease
    - Material failure to carry out obligations under state landlord-tenant law
    - Drug-related or criminal activity that threatens
      - 24 C.F.R. § 5.858 et seq.; Model Lease ¶ 23 (drug-related has “*on or near*” premises requirement); other threatening criminal activity has nexus to property via other tenants, staff or residents in immediate area
    - “Other good cause”
- HOME



- Termination only for good cause. 24 C.F.R. § 92.253(c)
  - Includes serious and repeated lease violation, violation of federal, state, or local law, completion of tenancy period for transitional housing, failure to follow supportive services plan, other good cause.
  - Good cause “does not include an increase in the tenant's income or refusal of the tenant to purchase the housing.”
  - *See* NHLP, HUD HOUSING PROGRAMS, § 11.2.2.6
- Fair Housing Act (reasonable accommodation) & VAWA 2013 protections Apply

## **Where Federally Subsidized Housing Is Located in Your Community**

- Preservation Database (National Low Income Housing Coalition)
  - [preservationdatabase.org](http://preservationdatabase.org)
  - Aggregates information from various federal programs, including public housing, Section 8, and subsidized mortgages, as well as Rural Development and LIHTC units.
  - Users must complete a simple registration process.
- HUD AFFH Data and Mapping Tool
  - <https://egis.hud.gov/affht/#>
  - Select portions of the AFFH Data and Mapping Tool allow users to find information about HUD multifamily properties, including location and demographic information. Note that not every jurisdiction is listed in the Tool’s menu. Portions of the Tool that may be helpful in identifying specific developments include the following:
    - Map 5, “Publicly Supported Housing”
    - Table 8, “Demographics of Publicly Supported Housing Developments, by Program Category”

## **Tips for Determining What Kind of Housing Is Involved**

Consider:

- ✓ Your client’s lease
- ✓ Rent level
- ✓ Preservation Database/AFFH Data and Mapping Tool
- ✓ Owner type (private owners, either non-profit or for-profit)
- ✓ Age of the housing
  - Consider in light of what HUD programs were then in place
- ✓ Asking the property manager and/or community advocates

## **Getting Help & Information**

- **NHLP Greenbook:**
  - HUD HOUSING PROGRAMS: TENANTS RIGHTS (5th ed. 2018)
- **Handbooks, Notices, and Forms**
  - [HUDClips](#)

- **HJN Listserv**
  - Join at: <https://www.nhlp.org/about/hjn/>
- **National Alliance of HUD Tenants (NAHT)**
  - [saveourhomes.org](http://saveourhomes.org)

## **COVID-19 Resources**

- NHLP Resources: <https://www.nhlp.org/campaign/protecting-renter-and-homeowner-rights-during-our-national-health-crisis-2/>
- HUD Resources: <https://www.hud.gov/coronavirus>

*For additional information about the HUD Multifamily programs covered in these materials, or if you have questions or comments about this outline, please contact:*