



# Section 202 and Other HUD Rental Housing Programs for Low-Income Elderly Residents

**Libby Perl**  
Specialist in Housing Policy

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## Summary

The population of persons age 65 and older in the United States is expected to grow both in numbers and as a percentage of the total population over the next 25 years, through 2030. In 2002, a bipartisan commission created by Congress issued a report, *A Quiet Crisis in America*, that detailed the need for affordable assisted housing and supportive services for elderly persons and the shortage the country will likely face as the population ages. The Department of Housing and Urban Development (HUD) operates a number of programs that provide assisted housing and supportive services for low-income elderly persons (defined by HUD as households where one or more persons are age 62 or older) to ensure that elderly residents in HUD-assisted housing can remain in their apartments as they age. This report describes those programs, along with current developments in the area of housing for elderly households.

HUD operates five programs that designate assisted housing developments for either low-income elderly residents alone, or low-income elderly residents and residents with disabilities. The primary HUD program that provides housing for low-income elderly households is the Section 202 Supportive Housing for the Elderly program. Established in 1959, it is the only HUD program that currently provides housing exclusively for elderly residents. The Section 221(d)(3) Below Market Interest Rate and Section 236 programs are mortgage subsidy programs that provide housing for all age levels, but have properties specifically dedicated to elderly households. The Public Housing and project-based Section 8 housing programs also have projects dedicated to elderly households.

In addition to providing housing, HUD operates four supportive services programs for elderly persons residing in HUD-assisted properties. The Congregate Housing program, Service Coordinator program, and Resident Opportunity and Self-Sufficiency (ROSS) Service Coordinator program each provide services such as meals and assistance with activities of daily living to help residents remain independent. The Assisted Living Conversion program gives grants to HUD-assisted developments so that they can convert units or entire buildings into assisted living facilities.

Among current issues involving HUD-assisted housing for elderly residents is housing preservation. In its report *A Quiet Crisis in America*, the Commission on Affordable Housing and Health Facility Needs for Seniors in the 21<sup>st</sup> Century noted that units of affordable housing for low-income elderly households could be converted to market-rate housing in the coming years due to mortgage maturity and prepayment. Another concern is the deterioration of existing housing developments.

In the 111<sup>th</sup> Congress, language in the FY2009 Omnibus Appropriations Act (P.L. 111-8) made changes to current law regarding the refinancing of Section 202 loans. The law was meant to make it feasible for owners of older Section 202 developments (generally those funded prior to 1974) to refinance their loans and use proceeds to improve the properties. However, the law was in effect only for the duration of FY2009, and HUD did not release guidance on how the provisions would be implemented. House- and Senate-passed versions of the FY2010 HUD funding bill (H.R. 3288) contain identical language regarding refinancing, which is also similar to provisions in the Section 202 Supportive Housing for the Elderly Act (S. 118), a bill that was introduced on January 6, 2009.

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## Introduction

In 1999, Congress created a bipartisan commission to study the housing needs of the senior population as it ages. The commission's final report, entitled *A Quiet Crisis in America*, warned of the nation's growing senior population and the lack of affordable housing and supportive services programs to meet future demand.<sup>1</sup> The percentage of individuals age 65 and older is beginning to make up a larger percentage of the total U. S. population, and is expected to continue to grow through 2030.<sup>2</sup> Between 2000 and 2030, the number of persons age 65 and older is expected to grow from 35.0 million to 71.5 million, and from 12.4% of the population to 19.6%.<sup>3</sup> In particular, the "oldest old," those individuals aged 85 and older, are becoming a larger share of the elderly population, raising concerns about the availability of supportive services in addition to affordable housing. The bipartisan housing commission estimated that the aging of the population will result in the need for an additional 730,000 units of affordable housing by 2020.<sup>4</sup>

The Department of Housing and Urban Development (HUD) operates a number of programs that provide both housing and supportive services for elderly households.<sup>5</sup> HUD defines "elderly person" as a household composed of one or more persons in which at least one person is age 62 or older at the time of initial occupancy.<sup>6</sup> Five HUD programs provide affordable rental housing that is designated for low-income elderly households. Of these five, only one, the Section 202 Supportive Housing for the Elderly program, provides housing exclusively for elderly persons. The other four programs provide housing for all age groups, but allow some properties to be devoted primarily to housing elderly residents. The Section 236 and Section 221(d)(3) programs extended subsidized loans to private developers during the 1960s and early 1970s so that they could build low-income housing, some of which included buildings dedicated to elderly residents (neither program makes new loans, although some buildings still have active mortgages). The Public Housing and project-based Section 8 programs also dedicate some buildings primarily for use by elderly households.

In addition to housing, HUD funds four supportive services programs for elderly residents in its subsidized properties. These programs are the Congregate Housing program, the Service Coordinator program, the Resident Opportunity and Self-Sufficiency (ROSS) Service Coordinator program, and the Assisted Living Conversion program. Each program works to allow elderly persons living in HUD-eligible properties to remain in their apartments through assistance and services.

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<sup>1</sup> The report by the Commission on Affordable Housing and Health Facility Needs for Seniors in the 21<sup>st</sup> Century was released to four congressional committees on June 30, 2002: the House and Senate Appropriations Committees, the House Financial Services Committee, and the Senate Banking, Housing and Urban Affairs Committee. The report is available at [http://govinfo.library.unt.edu/seniorscommission/pages/final\\_report/finalreport.pdf](http://govinfo.library.unt.edu/seniorscommission/pages/final_report/finalreport.pdf).

<sup>2</sup> Wan He, Manisha Sengupta, Victoria A. Velkoff, and Kimberly A. DeBarros, 65+ *In the United States: 2005*, U.S. Census Bureau, December 2005, <http://www.census.gov/prod/2006pubs/p23-209.pdf>.

<sup>3</sup> *Ibid.*, pp. 12-13.

<sup>4</sup> *A Quiet Crisis in America*, p. 22.

<sup>5</sup> Although other terms such as "Older Americans" may be preferred, this report uses the term "elderly" to refer to those individuals eligible for HUD-assisted housing for persons age 62 or older because it is the term used by HUD and has a meaning specific to HUD's housing programs.

<sup>6</sup> 12 U.S.C. § 1701q(k)(1).

This report provides a summary of the HUD programs that provide multi-family rental housing for low-income elderly households and their related supportive services programs. It also discusses funding and current issues in the area of assisted housing for low-income elderly persons. However, the report does not include a comprehensive look at all housing programs that serve elderly households. Major sources of assistance that are not discussed include HUD's Section 8 voucher program,<sup>7</sup> HUD's mortgage insurance and reverse mortgage programs,<sup>8</sup> and the Department of Agriculture's rural housing programs that provide assistance to elderly households.<sup>9</sup>

## HUD Housing Programs

### The Section 202 Supportive Housing for the Elderly Program

The Section 202 Supportive Housing for the Elderly program is the only HUD program that currently provides housing exclusively for elderly households, with approximately 263,000 units available for elderly households (this does not include Section 202 units for persons with disabilities).<sup>10</sup> Established as part of the Housing Act of 1959 (P.L. 86-372) and last authorized in FY2003 (P.L. 106-569), the current version of the Section 202 program makes capital grants and project rental assistance available to developers so that they can build housing that is affordable to very low-income elderly households. The program was not always structured this way, however, and it has changed several times since its inception. During the nearly 50 years that the Section 202 program has existed, the system of providing financing for developments has changed from loans to grants, the tenant population it targets has moved from moderate-income elderly households to very low-income elderly households, and the program has gone from serving only elderly households to serving elderly and disabled households, and then back to serving elderly households exclusively. The history of Section 202 is important because many projects developed in the early years of the program continue to operate under the rules in place at the time they were built.

The history of the Section 202 program can be divided into three distinct phases based primarily on changes to its financing structure and the income eligibility of tenants. From 1959 to 1974, the program provided housing units affordable to moderate-income elderly households and households with an adult member with a disability by extending low-interest construction loans to nonprofit developers. Between 1974 and 1990, the program continued to extend loans to

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<sup>7</sup> For more information on Section 8 vouchers, see CRS Report RL32284, *An Overview of the Section 8 Housing Programs*, by Maggie McCarty.

<sup>8</sup> For more information on reverse mortgages, see CRS Report RL33843, *Reverse Mortgages: Background and Issues*, by Bruce E. Foote.

<sup>9</sup> For more information on the Department of Agriculture's rural housing programs, see CRS Report RL33421, *USDA Rural Housing Programs: An Overview*, by Bruce E. Foote.

<sup>10</sup> Barbara A. Haley and Robert W. Gray, *Section 202 Supportive Housing for the Elderly: Program Status and Performance Measurement*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, June 2008, p. 22, [http://www.huduser.org/Publications/pdf/sec\\_202\\_1.pdf](http://www.huduser.org/Publications/pdf/sec_202_1.pdf) (hereinafter, *Section 202 Supportive Housing for the Elderly: Program Status and Performance Measurement*). Although the Section 202 program no longer provides housing for persons with disabilities, between 1965 and 1992, Section 202 housing was developed for both elderly and disabled households. The total number of Section 202 units available for both elderly households and households with an adult member who has a disability is around 303,000 units. *Ibid.*

developers, but added project-based Section 8 rental assistance to subsidize tenant rents so that developers could afford to rent units to low-income elderly and disabled households (those with incomes at or below 80% of area median income) or, beginning in 1981, very low-income households (those with incomes at or below 50% of area median income).<sup>11</sup> Finally, beginning in 1990, HUD replaced the Section 202 loan program with capital grants and a different form of rental assistance referred to as PRAC (project rental assistance contracts). These units are available to very low-income elderly households.

### History of the Section 202 Program: 1959 to 1974

When the Section 202 program was established in 1959, its purpose was to provide housing for moderate-income elderly tenants—those with too much income for Public Housing but insufficient income for market-rate housing.<sup>12</sup> Through the program, the government loaned funds to private nonprofit developers so that they could build housing for elderly families and individuals. Unlike most of its loan programs, HUD made the Section 202 loans directly to developers rather than insuring loans from private lenders.<sup>13</sup> The interest rates on the loans were low—approximately 3%—and had a duration of up to 50 years.<sup>14</sup> The developers, assisted by low-interest mortgage payments, could set rents in their buildings at levels that were affordable to elderly households with moderate incomes. At the time, there were no income eligibility restrictions on the properties. Between 1959 and 1968, developers constructed 45,257 Section 202 units in 335 projects, with an average of 135 units per building, most of which were efficiency apartments.<sup>15</sup>

In 1962, HUD began setting rents for Section 202 properties on a community-by-community basis. The new rents were meant to be affordable for lower-middle-income elderly households, and they varied across the country.<sup>16</sup> In 1968, HUD set income eligibility limits for all Section 202 developments at the higher of 135% of Public Housing limits or 80% of area median income.<sup>17</sup> To make units affordable for low-income elderly tenants (those with incomes at or below 80% of area median income), Congress enacted a rental subsidy program called the Rent Supplement program (described later in this report) as part of the Housing and Urban Development Act of 1965 (P.L. 89-117).<sup>18</sup> Those tenants receiving rent subsidies made up a relatively small percentage of total tenants during the early years of the Section 202 program, however.<sup>19</sup>

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<sup>11</sup> In 1981, the Housing and Community Development Amendments (P.L. 97-35) required that Section 202 units be made available primarily to very low-income households.

<sup>12</sup> U.S. Department of Housing and Urban Development, *Housing for the Elderly and Handicapped: The Experience of the Section 202 Program from 1959 to 1977*, January 1979, p. 29 (hereinafter, *Housing for the Elderly and Handicapped*).

<sup>13</sup> Barry G. Jacobs, Kenneth R. Harney, Charles L. Edson, and Bruce S. Lane, *Guide to Federal Housing Programs* (Washington, DC: Bureau of National Affairs, 1982), p. 77.

<sup>14</sup> *Housing for the Elderly and Handicapped*, p. 18.

<sup>15</sup> *Ibid.*, p. 17. See also United States Senate Special Committee on Aging, *Section 202 Housing for the Elderly: A National Survey*, committee print 98-257, 98<sup>th</sup> Cong., 2<sup>nd</sup> sess., (Washington, DC: GPO, 1984), p. 7.

<sup>16</sup> *Housing for the Elderly and Handicapped*, p. 29.

<sup>17</sup> *Ibid.*, p. 18.

<sup>18</sup> The Rent Supplement program primarily provided rent subsidies for tenants living in Section 221(d)(3) housing, but Section 202 residents were eligible as well.

<sup>19</sup> *Housing for the Elderly and Handicapped*, p. 97.

The eligible tenant population for the Section 202 program changed in 1964 when non-elderly “handicapped” individuals and families were added to the definition of “elderly families” as part of the Housing Act of 1964 (P.L. 88-560).<sup>20</sup> Yet very few tenants who were considered non-elderly handicapped participated in the Section 202 program between 1964 and 1974. Although data were not kept, HUD surveyed property owners and estimated that through 1977, less than 1% of tenants were non-elderly handicapped.<sup>21</sup>

In FY1970, the Section 202 program was not funded for the first time since its enactment. The Nixon Administration did not propose any new funds for the program and Congress did not appropriate them. The Administration’s rationale was, at least in part, that the large size of the Section 202 loans had a negative effect on the size of the federal budget.<sup>22</sup> This was due to the fact that the program showed only expenditures and not the offsets made when developers paid back the Section 202 loans.<sup>23</sup> Between 1970 and 1974, the Section 202 program did not fund any new construction projects. Instead, housing for elderly households was constructed using the Section 236 mortgage subsidy program, established as part of the Housing and Civil Rights Act of 1968 (P.L. 90-448, discussed later in this report).

Of the Section 202 properties funded prior to 1974, there are approximately 250 buildings, representing more than 35,000 units, that still have active loans.<sup>24</sup> These properties continue to accept tenants according to the rules in place at the time they were developed. Section 202 developments that applied for HUD funds prior to 1962 are not subject to income limits, while those constructed after 1962 but prior to July 1972 are subject to the income limits approved by HUD at the time.<sup>25</sup> In addition, in the years since many pre-1974 Section 202 developments were constructed, HUD has provided rental assistance for approximately 38% of the units, primarily through the Loan Management Set Aside (LMSA) program. LMSA was a special allocation of project-based Section 8 assistance contracts available for units in troubled FHA-insured properties.

### **History of the Section 202 Program: 1974 to 1990**

In 1974, the Housing and Community Development Act of 1974 (P.L. 93-383) both reactivated the Section 202 program and instituted a number of changes. The primary change was to make project-based Section 8 rental assistance available to building owners. Project-based Section 8 rental assistance is a rent subsidy that, at the time, made up the difference between 25% of tenant income and market rate rent as established by HUD (tenant payments were later raised to 30% of income), and was available only to low-income tenants. Although the law did not restrict Section 202 units only to those households that qualified for project-based Section 8 rental assistance, the availability to owners of the rental subsidy meant that more low-income tenants began to live in

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<sup>20</sup> For more information about housing for persons with disabilities, see CRS Report RL34728, *Section 811 and Other HUD Housing Programs for Persons with Disabilities*, by Libby Perl.

<sup>21</sup> *Ibid.*, p. 36.

<sup>22</sup> Senate Committee on Aging, Subcommittee on Housing for the Elderly, *Examination of Proposed Section 202 Housing Regulations*, hearing before the 94<sup>th</sup> Cong., 1<sup>st</sup> sess., June 6, 1975, p. 2.

<sup>23</sup> M. Powell Lawton, *Planning and Managing Housing for the Elderly* (New York: John Wiley & Sons, 1975), p. 38.

<sup>24</sup> CRS analysis of HUD data downloaded in September 2009.

<sup>25</sup> HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs, June 2007, chapter 3, paragraph 3-23, <http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/index.cfm> (hereinafter, “HUD Handbook 4350.3”).

Section 202 projects, a change from the program's previous tendency to serve mostly moderate-income elderly families.<sup>26</sup> Contracts for project-based Section 8 rental assistance payments between HUD and Section 202 owners were initially set for up to 20 years and were renewable.<sup>27</sup>

Loans for the construction of Section 202 housing continued to be available to developers when the program was reactivated; however, P.L. 93-383 changed the interest rate, raising it from 3% to the U.S. Treasury's cost of borrowing, while the duration of the loan term dropped from 50 years to 40 years. Another change was in the distribution of Section 202 loan funds. Prior to 1974, Section 202 developments were largely concentrated in urban areas.<sup>28</sup> However, the Housing and Community Development Act directed that 20% to 25% of funds go to nonmetropolitan areas.<sup>29</sup> By 1988, the share of Section 202 units located in cities with populations less than 10,000 rose to 11.5%, compared to 2.7% through 1974.<sup>30</sup> A final change to the Section 202 program in P.L. 93-383 was the requirement that Section 202 developments support state and local plans to provide services such as transportation, homemaker services, and counseling and referral services to elderly tenants.

In 1981, the tenant income guidelines for Section 202 units that receive project-based Section 8 rental assistance were changed as part of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35).<sup>31</sup> The law required that HUD units receiving project-based Section 8 rental assistance, including Section 202 projects, be made available primarily to very low-income households—those with incomes at or below 50% of area median income. The law specified that, of the units receiving project-based Section 8 rental assistance prior to 1981, 10% could be occupied by households with incomes between 50% and 80% of the area median income (those households considered low income), while only 5% of new units could be occupied by families earning between 50% and 80% of the area median. These percentages were later changed to 25% and 15%, respectively.<sup>32</sup>

Between 1974 and 1988, an estimated 128,636 additional units of Section 202 housing were built using construction loans and project-based Section 8 rental assistance.<sup>33</sup> The average size of developments declined from 153 units in developments built between 1959 and 1974 to 92 units in developments built between 1975 and 1984, and then to 56 units in developments built between 1985 and 1988.<sup>34</sup> Only 5.4% of the units built between 1974 and 1985 were efficiencies,

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<sup>26</sup> *Housing for the Elderly and Handicapped*, pp. 105-106.

<sup>27</sup> An exception for contracts up to 40 years was made for developments built or rehabilitated by loans from state or local agencies.

<sup>28</sup> *Housing for the Elderly and Handicapped*, p. 38.

<sup>29</sup> P.L. 93-383, section 213(d).

<sup>30</sup> House Committee on Aging, Subcommittee on Housing and Consumer Interests, *The 1988 National Survey of Section 202 Housing for the Elderly and Handicapped*, 101<sup>st</sup> Cong., 1<sup>st</sup> sess., December 1, 1989, p. 29.

<sup>31</sup> See Section 323.

<sup>32</sup> The Supplemental Appropriations Act of 1984 (P.L. 98-181) changed the requirement for units assisted prior to 1981 from 10% to 25%, and the Housing and Community Development Act of 1987 (P.L. 100-242) changed the requirement for units assisted after 1981 from 5% to 15%. See 42 U.S.C. § 1437n(c).

<sup>33</sup> Leonard F. Heumann, Karen Winter-Nelson, and James R. Anderson, *The 1999 National Survey of Section 202 Elderly Housing*, American Association of Retired Persons, January 2001, p. 9, [http://assets.aarp.org/rgcenter/il/2001\\_02\\_housing.pdf](http://assets.aarp.org/rgcenter/il/2001_02_housing.pdf) (hereinafter, *The 1999 National Survey of Section 202 Elderly Housing*).

<sup>34</sup> *The 1988 National Survey of Section 202 Housing for the Elderly and Handicapped*, p. 27.



compared to more than 60% prior to 1974; however, between 1985 and 1988 the percentage of efficiencies rose again, to 18.9%.<sup>35</sup>

### **History of the Section 202 Program: 1990 to the Present**

In 1990, the Cranston-Gonzalez National Affordable Housing Act (P.L. 101-625) again changed the financing scheme of the Section 202 program. The law replaced loans to developers with capital advances. The capital advances do not accrue interest, and developers need not pay them back as long as the properties are made available to very low-income elderly households for at least 40 years.

The change in financing was prompted by concern about the costs involved in paying back Section 202 loans. Under the Section 202 loan program, developers often used project-based Section 8 rental assistance to service their loan debt in addition to using it to supplement tenant rents—its intended purpose.<sup>36</sup> At the time P.L. 101-625 was enacted, it was estimated that approximately 75% of Section 8 project rental assistance was used by developers to service their loan debt, leaving only 25% for operating expenses and improvements.<sup>37</sup> Under the new program of capital grants, it was thought that developers would no longer need to use rental assistance to make loan payments, allowing HUD to make lower project rental assistance payments, requiring less budget authority.<sup>38</sup>

Both the method of providing project-based rental assistance and the way in which development cost limitations for Section 202 projects are determined also changed as a result of P.L. 101-625. Rental subsidies are no longer provided through the Section 8 program, meaning that rents are not based on Section 8 fair market rents (FMRs).<sup>39</sup> The new project rental assistance—referred to as PRAC—is meant to ensure that owners have the capacity to determine the needs of residents for supportive services, coordinate those services, and identify sources of funding to deliver the services.<sup>40</sup> Although the duration of the new project rental assistance contracts was initially 20 years, HUD's current practice is to extend new rental assistance contracts for three years. In addition, P.L. 101-625 provided that project development costs be calculated on the basis of factors specific to constructing Section 202 projects rather than using FMR standards, as had been the case. These new factors include the prevailing costs of construction, rehabilitation, and acquisition of property; the costs of special design features for elderly residents; and the costs of adding congregate space.<sup>41</sup> The new system is meant to ensure that all areas of the country have adequate funds to develop and maintain Section 202 housing; under the old system of FMRs,

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<sup>35</sup> Ibid.

<sup>36</sup> Senate Committee on Banking, Housing, and Urban Affairs, *The National Housing Act*, Senate report to accompany S. 566, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 101-316, June 8, 1990, p. 133.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid., p. 34.

<sup>39</sup> FMRs are generally set at the 40<sup>th</sup> percentile of rents paid in an area, although in some high-cost areas, FMRs are set at the 50<sup>th</sup> percentile.

<sup>40</sup> S.Rept. 101-316, Report of the Senate Committee on Banking, Housing, and Urban Affairs, to accompany S. 566, the National Affordable Housing Act, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., June 8, 1990, pp. 133-134. The provisions in S. 566 regarding Section 202 were adopted in P.L. 101-625. See H.Rept. 101-943.

<sup>41</sup> *Cranston-Gonzalez National Affordable Housing Act*, conference report to accompany S. 566, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 101-943, October 25, 1990, p. 484.

those areas of the country with low FMRs often could not afford to develop Section 202 projects.<sup>42</sup>

Another significant change in P.L. 101-625 was the removal of housing for persons with disabilities from the Section 202 program. Congress began to initiate the split between housing for elderly and disabled households in 1978 when the Housing and Community Development Amendments (P.L. 95-557) required that, beginning in FY1979, at least \$50 million of the amounts available for loans under the Section 202 program be devoted to housing for non-elderly “handicapped” individuals.<sup>43</sup> Later, as part of the Housing and Community Development Act of 1987 (P.L. 100-242), Congress further specified that 15% of total Section 202 funds should be devoted to housing for persons with disabilities. In P.L. 101-625, Congress directed that beginning in 1992, housing for persons with disabilities be provided through a completely separate program called the Section 811 Supportive Housing for Persons with Disabilities program.<sup>44</sup> As with the Section 202 program, developers of Section 811 housing receive capital grants and project rental assistance to construct, rehabilitate, or acquire housing for very low-income individuals with disabilities. The advent of Section 811 has not completely eliminated Section 202’s role in serving disabled households; however, Section 202 developments constructed before 1992 continue to provide housing for persons with disabilities according to the rules that existed at the time of construction.

Between 1993 and 1998, the Section 202 program created approximately 27,632 units of housing for elderly households,<sup>45</sup> and between 2000 and 2006, another 35,281 units were constructed.<sup>46</sup> In this phase of the Section 202 program, developments have become smaller, with an average of 50 units per project through 1998, and 42 units per site in those developed between 2000 and 2006.<sup>47</sup> These newer Section 202 developments have virtually no efficiency units.<sup>48</sup>

### **The Section 202 Program’s Grant Process**

HUD awards Section 202 grants to private nonprofit groups and to for-profit general partnerships where the sole general partner is a nonprofit organization. The grant process consists of two parts, one of which involves a formula and the other a competitive process. In the first step, HUD uses a need-based formula to allocate the total amount of Section 202 funds available for capital grants and project rental assistance in a fiscal year to each of the 18 HUD multifamily hubs.<sup>49</sup> Of the funds available, HUD allocates 85% to metropolitan areas and 15% to non-metropolitan areas.

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<sup>42</sup> S.Rept. 101-316, p. 134.

<sup>43</sup> Housing provided for persons with disabilities through the Section 202 program is sometimes referred to as “Section 202(h)” housing, referring to the subparagraph that was added to the Section 202 statute by P.L. 95-557.

<sup>44</sup> For more information about the Section 811 program, see CRS Report RL34728, *Section 811 and Other HUD Housing Programs for Persons with Disabilities*, by Libby Perl.

<sup>45</sup> *The 1999 National Survey of Section 202 Elderly Housing*, p. 9.

<sup>46</sup> *Section 202 Supportive Housing for the Elderly: Program Status and Performance Measurement*, p. 20.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*, p. 29.

<sup>49</sup> HUD lists the multifamily hubs in its annual Notice of Funding Availability (NOFA). They are Atlanta, GA, Baltimore, MD, Boston, MA, Buffalo, NY, Chicago, IL, Columbus, OH, Denver, CO, Detroit, MI, Fort Worth, TX, Greensboro, NC, Jacksonville, FL, Kansas City, MO, Los Angeles, CA, Minneapolis, MN, New York, NY, Philadelphia, PA, San Francisco, CA, and Northwest/Alaska. The FY2009 NOFA is available on HUD’s website, <http://www.hud.gov/offices/adm/grants/nofa09/sec202esec.pdf> (hereinafter, FY2009 Section 202 NOFA).

The formula for allocating Section 202 funds to the HUD field offices looks at “relevant characteristics of the elderly population” in each field office’s jurisdiction, including the population of elderly renters.<sup>50</sup> HUD also considers the number of one-person elderly renter households that have incomes at or below 50% of the area median income, together with one of three “housing conditions.” These three housing conditions are paying more than 30% of income toward rent, occupying a unit without a kitchen or plumbing, or occupying an overcrowded unit (defined as accommodating 1.01 or more persons per room).<sup>51</sup>

In the second step in the grant process, applicants apply directly to their field offices for the funds that have been allocated to their areas. HUD then evaluates grantee applications and uses a point system to assign up to 102 points per application.<sup>52</sup> Points are awarded in the following categories:

- up to 25 points are awarded for the applicant’s capacity to provide housing, including experience in providing housing to minorities;
- up to 13 points are awarded for the need for funding in the applicant’s target area;
- up to 45 points are awarded for the approach to providing housing, including the quality and effectiveness of the proposal, the involvement of elderly persons in designing the proposal, and the proximity and accessibility of the site to transportation and services;
- up to 5 points are awarded for the applicant’s ability to secure funding from other sources; and
- up to 12 points are awarded for development of an evaluation plan to measure performance of the project.

In FY2008, \$526 million was distributed to grant recipients in 39 states to construct or convert more than 3,700 units of housing for elderly households.<sup>53</sup>

## **Section 202 and Low-Income Housing Tax Credits**

Financing affordable housing, including housing for elderly residents, may require multiple streams of funding in order to support the design, construction, and ongoing operating costs of a project. In addition to federal funds provided through HUD programs, affordable housing developers may use mortgage revenue bonds, tax credits, and local housing trust fund resources, among other sources, to develop housing for low-income and special-needs populations. While HUD funds might once have been sufficient on their own to develop an affordable housing project, that is not always the case today. This is true for Section 202 developers, who may bring together multiple sources of funding to develop a project. One of the primary sources of funding available for developing affordable housing is the Low-Income Housing Tax Credit (LIHTC). The LIHTC was enacted as part of the Tax Reform Act of 1986 (P.L. 99-514) and provides incentives for the development of affordable rental housing through federal tax credits

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<sup>50</sup> 24 CFR § 791.402(c).

<sup>51</sup> FY2009 Section 202 NOFA, p. 6.

<sup>52</sup> *Ibid.*, p. 62. Two of the points are bonus points awarded for projects that are part of renewal communities, empowerment zones, or enterprise communities.

<sup>53</sup> The list of grantees is available at <http://www.hud.gov/utilities/intercept.cfm?content/releases/pr09-007.pdf>.

administered by the Internal Revenue Service (IRS). The IRS allocates tax credits to states based on population, and states award the credits to developers to use as a source of financing for the development of affordable rental housing.<sup>54</sup>

In 2000, in order to help Section 202 (and Section 811) developers bring together multiple financing sources, Congress enacted a law that makes the interaction of Section 202 funds and LIHTCs more feasible by changing the way in which federal funds are treated. The value of LIHTCs are determined, in part, based on the cost of developing a property—referred to as the qualified basis.<sup>55</sup> The costs of constructing, acquiring, and rehabilitating a property (among other costs<sup>56</sup>) are included in calculating the qualified basis, but the amount must then be reduced by any federal grants received by the developer, which in turn reduces the value of the tax credits. Therefore, if a nonprofit developer were to receive a Section 202 capital grant, its value would be subtracted in calculating the qualified basis, which could result in minimal LIHTCs. The Homeownership and Economic Opportunity Act (P.L. 106-569), enacted in 2000, allowed for-profit limited partnerships, where a nonprofit organization is the sole general partner, to be eligible Section 202 owners. The changed law allows a nonprofit Section 202 grantee to loan the Section 202 capital grant to the limited partnership. Under this arrangement, the Section 202 funds are no longer a “federal grant” to be subtracted in calculating the qualified basis, potentially increasing the value of LIHTCs.

The change in the law to allow for-profit limited partnerships to own Section 202 housing developments has not immediately made mixed financing arrangements common, however. The transactions are complicated and may require extensive expertise in housing finance to make them work. HUD acknowledges that “most developers seek to avoid the use of federal grant financing in most LIHTC projects.”<sup>57</sup> In addition, the treatment of Section 202 PRAC in tax credit transactions has been unclear. Although the IRS has created exceptions to the rule that federal grants do not count toward the qualified basis of a property for certain categories of rental assistance, Section 202 PRAC has not been among the exceptions. The programs that have been exempted from the requirement include project-based Section 8 rental assistance payments and public housing capital and operating funds,<sup>58</sup> the Native American Housing Block Grant Program,<sup>59</sup> Rent Supplement and Rental Assistance Payments programs,<sup>60</sup> and the Shelter Plus

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<sup>54</sup> For more information on the LIHTC, see CRS Report RS22389, *An Introduction to the Design of the Low-Income Housing Tax Credit*, by Mark P. Keightley.

<sup>55</sup> Specifically, a property’s qualified basis is determined as follows: (1) the cost of constructing, acquiring, or rehabilitating the property is calculated, (2) this amount is reduced by federal grants received by the developer, and (3) the resulting value is then multiplied by the percentage of space in the housing development that is devoted to low-income use. This percentage is the lower of either the “unit fraction”—the ratio of low-income units to all units in the building—or the “floor space fraction”—the ratio of square footage in low-income units to total square footage. 26 U.S.C. § 42(c). The qualified basis is then multiplied by the value of the tax credits—these are roughly either 9% or 4%—to determine the total annual value of the tax credits.

<sup>56</sup> In addition to the costs of materials, construction, and/or rehabilitation, among the costs included in determining qualified basis are contractor fees, developer fees, engineering fees, and the cost of drawing up architectural specifications. Among the costs that are not included are the cost of land and fees associated with long-term financing. See Joseph Guggenheim, *Tax Credits for Low Income Housing* (Glen Echo, MD: Simon Publications, 1996) p. 37.

<sup>57</sup> See HUD website, “Calculating the Qualified Basis,” <http://www.hud.gov/offices/cpd/affordablehousing/training/web/lihtc/calculating/qualifiedbasis.cfm>.

<sup>58</sup> 26 C.F.R. § 1.42-16.

<sup>59</sup> Rev. Rul. 2008-6.

<sup>60</sup> Rev. Rul. 2002-65.

Care and Single Room Occupancy programs.<sup>61</sup> Despite language in the Homeownership and Economic Opportunity Act of 2000 indicating that Congress intended Section 202 (and Section 811) assistance to be included in calculating qualified basis (rather than subtracted from it), the IRS has not issued a ruling that would be necessary to make this possible.<sup>62</sup>

Another possible limitation in developing mixed finance projects using federal grants, such as Section 202 together with the LIHTC, was removed with passage of the Housing and Economic Recovery Act of 2008 (P.L. 110-289). Under LIHTC law, developers may qualify for tax credits worth roughly 9% or 4%.<sup>63</sup> Under previous LIHTC law, the higher 9% credit was available for new construction that was *not* federally subsidized, while the 4% credit was available for either federally subsidized new construction or existing buildings. The statutory definition of “federally subsidized” included below market federal loans (the structure used by limited partnerships to loan Section 202 capital grants).<sup>64</sup> The fact that developers of federally subsidized buildings did not qualify for the higher tax credit made financing projects with the LIHTC less lucrative. Developers either had to accept the lower 4% credit or set up a system through which federal grants were loaned to the project at a market rate of interest.<sup>65</sup>

However, P.L. 110-289 removed the phrase “below market federal loans” from the definition of federal subsidy in the LIHTC statute. This makes all federally subsidized new construction placed in service after the effective date of P.L. 110-289 eligible for 9% tax credits. The 9% credits are very competitive,<sup>66</sup> however, and it may still be difficult for Section 202 developers to obtain them.

## **Section 221(d)(3) Below Market Interest Rate Program**

In 1961, Congress enacted the Section 221(d)(3) Below Market Interest Rate (BMIR) program (P.L. 87-70) to help public agencies, cooperatives, limited dividend corporations, and nonprofit sponsors create housing for low- and moderate-income families.<sup>67</sup> The BMIR program has not provided funds for new developments since 1968, but properties with active mortgages continue

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<sup>61</sup> Rev. Rul. 98-49.

<sup>62</sup> P.L. 106-569 amended the Section 202 statute to state that “[n]otwithstanding any other provision of law, assistance amounts provided under this section may be treated as amounts not derived from a Federal grant.” See Section 832. On September 17, 2003, the IRS issued a letter stating that it was reviewing the applicability of the LIHTC section of federal grants to PRAC under the Section 202 program. The letter is available at <http://www.irs.gov/pub/irs-wd/04-0061.pdf>.

<sup>63</sup> These credit rates are not set exactly at 9% and 4%—they vary depending on the current interest rate used in the Department of the Treasury credit rate formula. For more information about this issue, see CRS Report RS22917, *The Low-Income Housing Tax Credit Program: The Fixed Subsidy and Variable Rate*, by Mark P. Keightley.

<sup>64</sup> The statute also specifically exempted funds received under CDBG, HOME, and Native American Housing and Self Determination Act programs from the definition of federally subsidized, so those projects have been eligible for the 9% credit all along.

<sup>65</sup> See U.S. Department of Housing and Urban Development, “Mixed Finance Development for Supportive Housing for the Elderly or Persons with Disabilities: Final Rule,” *Federal Register*, vol. 70, no. 176, September 13, 2005, p. 54202.

<sup>66</sup> See, for example, Liz Enochs, “Affordable Housing Equity: Developers Share Tips for Converting Projects That Fail to Win 9% LIHTCs into 4% Deals,” *Affordable Housing Finance*, July 2007, <http://www.housingfinance.com/ahf/articles/2007/jul/AFFORDABLE0707.htm>.

<sup>67</sup> The Section 221(d)(3) program also contained a market interest rate component, but unlike the BMIR program, it was not designed to ensure affordability. John R. Gallagher, *Nonprofit Housing Rent Supplement Program Under Section 221(d)(3) of the National Housing Act* (Washington, DC: Urban America, Inc., 1968), p. 4.

to operate. The program, like the Section 202 program at the time it was created, was meant to serve those families with incomes too high for Public Housing, but too low for market-rate rents.<sup>68</sup> The program was, and continues to be, run by the Federal Housing Administration (FHA). Through the program, private lenders extended FHA-insured loans with interest rates of 3% and durations of up to 40 years to developers of multi-family rental housing projects of at least five units.<sup>69</sup> Lenders then sold the mortgages to the Federal National Mortgage Association (Fannie Mae).<sup>70</sup> The program continued until 1968, when the Section 236 program replaced it as a vehicle for producing multi-family housing for low-income families. Section 221(d)(3) BMIR properties are still active, providing approximately 1,154 units in projects dedicated to the elderly.<sup>71</sup> Units are open to households with incomes of up to 95% of the area median income.<sup>72</sup>

The Rent Supplement program was enacted as part of the Housing and Urban Development Act of 1965 (P.L. 89-117) to subsidize the rent payments of low-income households living in Section 221(d)(3) BMIR housing developments. FHA entered into contracts with building owners to make up the difference between 25% of tenant income (later raised to 30%) and the fair market rent as determined by HUD.<sup>73</sup> Generally, up to 20% of units in a building were eligible for Rent Supplement payments, although the Housing and Urban Development Act of 1969 (P.L. 91-152) made up to 40% of units eligible for subsidy payments if the HUD Secretary determined it was necessary.<sup>74</sup> Most, but not all, of these contracts have been converted to project-based Section 8 rental assistance.<sup>75</sup>

## **The Section 236 Program**

In 1968, Congress determined that the Section 221(d)(3) program and the Section 202 program were of limited usefulness in developing large numbers of assisted housing units. The Section 221(d)(3) program depended on Fannie Mae to purchase loans, and only limited funds were available for this purpose.<sup>76</sup> And the Section 202 program's system of direct loans had a large negative effect on the budget. As a result, the Housing and Urban Development Act of 1968 (P.L. 90-448) established the Section 236 program to provide housing for low- and moderate-income families, including facilities dedicated to elderly persons and persons with disabilities. The program was intended to replace the Section 221(d)(3) and Section 202 programs,<sup>77</sup> and for a time it did. The program produced approximately 400,000 new units in 3,601 developments by

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<sup>68</sup> Senate Committee on Banking and Currency, *Housing Act of 1961*, Senate report to accompany S. 1922, 87<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 281, May 19, 1961.

<sup>69</sup> Leonard Garland Gaston, "The 221(d)(3) Below Market Interest Rate and Rent Supplement Housing Program" (Ph.D. dissertation, Ohio State University, 1969), p. 120.

<sup>70</sup> John R. Gallagher and John J. O'Donnell, *Nonprofit Housing Under Section 221(d)(3) of the National Housing Act* (Washington, DC: Urban America, Inc., 1966), p. 20.

<sup>71</sup> U.S. Government Accountability Office, *Federal Housing Programs That Offer Assistance to the Elderly*, GAO-05-174, February 2005, p. 11, <http://www.gao.gov/new.items/d05174.pdf> (hereinafter, *Federal Housing Programs that Offer Assistance to the Elderly*).

<sup>72</sup> HUD Handbook 4350.3, chapter 3, paragraph 3-6.

<sup>73</sup> 12 U.S.C. § 1701s(d).

<sup>74</sup> 12 U.S.C. § 1701s(j)(1)(d).

<sup>75</sup> HUD FY2010 Budget Justifications, p. N-1, <http://www.hud.gov/offices/cfo/reports/2010/cjs/hsg2010.pdf>.

<sup>76</sup> House Committee on Banking and Currency, *Housing and Urban Development Act of 1968*, House report to accompany H.R. 17989, 90<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 1585, June 25, 1968.

<sup>77</sup> *Ibid.*

1976.<sup>78</sup> But after January 1973, when President Nixon imposed a moratorium on the new construction of subsidized housing, the program did not receive new funds, although it has continued to subsidize existing developments.

The Section 236 program assisted both private and nonprofit owners of rental housing projects for low-income and moderate-income households by insuring mortgages for construction or substantial rehabilitation of buildings, and by subsidizing the mortgage payments. Under the program, project owners borrowed funds from private lenders at the market interest rate, and the government then made (and continues to make) subsidy payments to the owners, called Interest Reduction Payments (IRPs), so that owners effectively pay an interest rate of only 1% on their mortgages. By paying the low 1% interest rate, owners are expected to be able to charge tenants affordable rents. Each Section 236 unit has both a basic rent and a market rent: the basic rent is the payment amount needed to operate the project at a 1% mortgage interest rate, and the market rent is the amount needed to operate the project at the actual mortgage interest rate.<sup>79</sup> Tenants pay the higher of the basic rent or 30% of their income (initially, tenants paid 25%), but rent cannot exceed the fair market rent amount.<sup>80</sup> Households with low incomes—at or below 80% of area median income—are eligible for Section 236 housing. Approximately 66,000 units, 23% of all Section 236 units, are reserved for elderly residents.<sup>81</sup>

In order to help make Section 236 housing more affordable to low-income households, some projects receive rent subsidies through a program called Rental Assistance Payments (RAP). Congress enacted the program in 1974 (P.L. 93-383) to ensure that tenants did not have to pay more than 25% of their income toward rent. Building owners were able to receive RAP for up to 20% of the units in a project (subject to increase or decrease at the discretion of the Secretary). In addition, Section 236 owners were eligible to receive Rent Supplement payments, originally developed for the Section 221(d)(3) BMIR program and made available to the Section 236 program in the Housing and Urban Development Act of 1968 (P.L. 90-448). Both RAP and Rent Supplement payments have largely been converted to project-based Section 8 rental assistance.<sup>82</sup>

## Public Housing

Public Housing is the original federally assisted housing program for low-income families, created as part of the Housing Act of 1937 (P.L. 75-412). The program provides housing for very low-income households (those with incomes at or below 50% of the area median income) and requires tenants to pay 30% of their income toward rent. Public Housing projects have long dedicated buildings to elderly tenants. The Housing Act of 1956 (P.L. 84-1020) authorized the Public Housing Administration (a predecessor to HUD) to provide units specifically for low-income elderly individuals (prior to this, HUD's definition of elderly families did not include single individuals), which increased the number of elderly households living in Public Housing.

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<sup>78</sup> General Accounting Office (now the Government Accountability Office), *Little Accomplished in Insuring that Proper Rents Are Charged Under the Section 236 Rental Assistance Housing Program*, CED-76-146, October 5, 1976, p. 2, <http://archive.gao.gov/f0402/100542.pdf>.

<sup>79</sup> 12 U.S.C. § 1715z-1(f)(1). The Section 236 market rent is different from Section 8 fair market rent.

<sup>80</sup> Charles L. Edson, "Sections 235 and 236—The First Year," *Urban Lawyer* 2, No. 14 (1970), p. 22.

<sup>81</sup> *Federal Housing Programs that Offer Assistance to the Elderly*, p. 11.

<sup>82</sup> HUD FY2009 Budget Justifications, p. K-3, <http://www.hud.gov/offices/cfo/reports/2009/cjs/hsg1.pdf>. The exceptions in the RAP program are state-aided, uninsured projects.

Congress did not intend to separate elderly residents from younger tenants.<sup>83</sup> Rather, units for elderly residents were to be integrated with those of non-elderly families. Despite this desire not to segregate elderly tenants, by 1960 the first elderly-only Public Housing development had been created.<sup>84</sup> Today, approximately 76,000 Public Housing units are designated exclusively for elderly residents.<sup>85</sup>

Beginning in 1961, persons with disabilities were included in the definition of “elderly families” for purposes of the Public Housing program. Combining elderly residents and residents with disabilities in Public Housing has been controversial. During the early years of Public Housing for elderly persons, residents with disabilities made up only a small proportion of residents. However, the number of residents with disabilities in Public Housing for the elderly began to increase in the 1980s and early 1990s for at least two reasons. First, individuals with mental illnesses were less likely to be institutionalized as a result of the availability of outpatient mental health care, and were therefore in need of affordable housing.<sup>86</sup> A second factor was passage of the 1988 Fair Housing Act Amendments (P.L. 100-430). The amendments added “handicapped” individuals to the class of individuals protected from discrimination in the provision of housing. The definition of “handicapped” included individuals with alcohol and drug addictions.<sup>87</sup> As a result of the increase of younger residents with disabilities in Public Housing, often with mental illnesses and addictions, Public Housing Authorities faced a greater number of incidents of disruptive behavior, and many elderly residents reported feeling unsafe.<sup>88</sup>

Due to the conflicts between tenants with disabilities and elderly residents, Congress in 1992 allowed Public Housing Authorities (PHAs) to designate buildings as elderly only, disabled only, or elderly and disabled only.<sup>89</sup> In 1996, The Public Housing Opportunity Extension Act of 1996 (P.L. 104-120) streamlined the process for designating buildings as elderly-only. If a PHA wants to change the composition of a building to only elderly residents, it must submit a plan to HUD to ask for approval. If the plan is approved, PHAs cannot evict non-elderly residents with disabilities, although PHAs may help residents relocate if they want to move. The law also requires that, if a PHA is unable to rent an available unit to an elderly household within 60 days, it must make the unit available to near-elderly tenants (where the head of household or spouse is age 50 or older). If the unit cannot be rented to near-elderly families, then it must be made available to all families.

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<sup>83</sup> House Committee on Banking and Currency, *Housing Act of 1956*, House report to accompany H.R. 11742, 84<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 2363, July 15, 1956.

<sup>84</sup> Frances Merchant Carp, *A Future for the Aged, Victoria Plaza and Its Residents* (Austin: University of Texas Press, 1966).

<sup>85</sup> *Federal Housing Programs That Offer Assistance to the Elderly*, p. 11.

<sup>86</sup> See General Accounting Office (now the Government Accountability Office), *Housing Persons with Mental Disabilities with the Elderly*, GAO/RCED-92-81, August 1992, pp. 10-11, <http://archive.gao.gov/d33t10/147294.pdf>.

<sup>87</sup> Congress intended the definition of handicap to be interpreted consistently with the Rehabilitation Act of 1973 (P.L. 93-112), which includes drug addiction and alcoholism as physical or mental impairments. 28 CFR § 41.31.

<sup>88</sup> *Housing Persons with Mental Disabilities with the Elderly*, p. 17. See, also, remarks of Representative Peter Blute, *Congressional Record*, daily edition, vol. 142 (February 27, 1996), p. H1274.

<sup>89</sup> The Housing and Community Development Act of 1992, P.L. 102-550. The provisions are codified at 42 U.S.C. § 1437e; the regulations are at 24 CFR §§ 945.101-945.303.



## Project-Based Section 8 Housing

Between 1974 and 1983, the Section 8 new construction and substantial rehabilitation programs made rental assistance available to developers that were creating new and rehabilitated rental housing for low-income families.<sup>90</sup> From the inception of the program, owners were able to develop properties dedicated for use by elderly households and households with an adult member who has a disability. Today, elderly residents and residents with disabilities continue to live together in project-based Section 8 housing. Although owners may give a preference to elderly families (P.L. 102-550),<sup>91</sup> unlike Public Housing, most Section 8 properties may not completely exclude residents with disabilities. The statute requires that owners continue to reserve some units for tenants with disabilities; the number is either the number of units occupied by residents with disabilities in 1992 or 10%, whichever is lower. If owners are unable to rent units to elderly families, they may give preference to near-elderly families with an adult member who has a disability. After the Section 202 program, project-based Section 8 housing provides the most housing dedicated specifically to elderly households. Of the number of units that continue to receive project-based rental assistance, approximately 200,000 are dedicated to elderly households.<sup>92</sup>

**Table I. HUD Rental Housing Programs for Low-Income Elderly Households**

Program	Income Eligibility <sup>a</sup>	Tenant Rent	Units Designated for Elderly Households Only <sup>b</sup>
<b>Section 202</b>			262,704
<i>1959 to 1962</i>	No income limits.	Set by owner based on funds required to support building operation.	
<i>1962 to 1968</i>	Income limits set on a community-by-community basis.	Set by owner.	
<i>1968 to 1974</i>	Higher of 80% of area median income or 135% of Public Housing income limits.	Set by owner.	
<i>1974 to 1981</i>	80% of area median income. <sup>c</sup>	For units with project-based Section 8 rental assistance, the greater of 30% of adjusted income or 10% of gross income.	
<i>1981 to present</i>	50% of area median income. <sup>d</sup>	The greater of 30% of adjusted income or 10% of gross income.	
<b>Section 221(d)(3) BMIR</b>	95% of area median income.	Rent is set building-by-building and approved by HUD.	1,154

<sup>90</sup> The new construction and substantial rehabilitation programs were created in P.L. 93-383 and abolished in P.L. 98-181. For more information on Section 8 housing, see CRS Report RL32284, *An Overview of the Section 8 Housing Programs*, by Maggie McCarty.

<sup>91</sup> 42 U.S.C. §§ 13611-13620.

<sup>92</sup> *Federal Housing Programs that Offer Assistance to the Elderly*, p. 11.

Program	Income Eligibility <sup>a</sup>	Tenant Rent	Units Designated for Elderly Households Only <sup>b</sup>
<b>Section 236</b>	80% of area median income.	The greater of 30% of adjusted income or “basic rent” as calculated by HUD.	65,877
<b>Public Housing</b>	80% of area median income.	The greater of 30% of adjusted income or 10% of gross income.	76,638
<b>Project-based Section 8 Rental Assistance</b>	50% of area median income. <sup>d</sup>	The greater of 30% of adjusted income or 10% of gross income.	200,455

**Source:** Prepared by CRS based on HUD Handbook 4350.3, chapter 3, paragraph 3-6, and chapter 5, paragraphs 5-25 through 5-30; *Federal Housing Programs that Offer Assistance for the Elderly*, Government Accountability Office, February 2005, p. 11; and Barbara A. Haley and Robert W. Gray, *Section 202 Supportive Housing for the Elderly: Program Status and Performance Measurement*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, June 2008, p. 38.

- a. Income limits are subject to exceptions. This table provides information on the majority of housing units for each program.
- b. The units are those in use as of 2005. The number of units does not include units for non-elderly residents with disabilities and includes only those units specifically designated for elderly residents (elderly residents may also reside in units not specifically designated for their use).
- c. Although it was not mandated that Section 202 projects serve tenants with low incomes beginning in 1974, the availability of project-based Section 8 rental assistance for low-income tenants meant that eligibility for most Section 202 units was the same as that for the Section 8 program—80% of area median income.
- d. In 1981, P.L. 97-35 required that the majority of units receiving project-based Section 8 rental assistance must be made available to very low-income households.

## Supportive Services and Assisted Living Programs

Four programs are available to provide services for elderly residents who live in HUD-subsidized buildings. The programs are the Congregate Housing program, the Service Coordinator program, the Resident Opportunity and Self Sufficiency (ROSS) Service Coordinator program, and the Assisted Living Conversion program. Three of the four programs—Congregate Housing, Service Coordinator, and Assisted Living Conversion—base their services on whether residents are considered to be either frail elderly or at-risk elderly. In the ROSS program, services are available whether residents are frail or not. Whether individuals are frail elderly or at-risk elderly depends on their ability to engage in activities of daily living (ADLs). ADLs consist of five or six categories of activities considered necessary for an individual to maintain independent functioning and their own personal care; the number of categories of activities varies slightly by program. The five common categories of activities included in all three programs are

- eating, which includes cooking and serving food;
- dressing;
- bathing, which includes getting in and out of a tub or shower;
- grooming; and

- home management, which includes housework, shopping, and laundry.<sup>93</sup>

The Congregate Housing program contains one additional ADL focused on an individual's ability to move, and includes getting in and out of chairs, walking, going outdoors, and using the toilet.

Residents who are age 62 or older and unable to perform at least three ADLs to some degree are considered frail, while those who are unable to perform one or two ADLs are considered at risk.<sup>94</sup> However, each of the three programs specifies that residents must be able to participate in ADLs at some minimal level. For example, residents must be able to feed, dress, and wash themselves; be able take care of their personal appearance; and be mobile (including use of a wheelchair). In the Congregate Housing and Assisted Living Conversion programs, residents qualify for assistance on an individual basis, while in the Service Coordinator program, entire buildings are eligible for services if a high enough percentage of residents is frail or at risk.

## **Congregate Housing**

The Congregate Housing Services program, enacted as part of the Housing and Community Development Amendments of 1978 (P.L. 95-557), was the first program to make funds available so that HUD housing facilities could provide services for elderly residents. The purpose of the program was to prevent senior residents of Section 202 and Public Housing developments from moving to nursing homes by providing meals and other supports like housekeeping, case management, personal care, and transportation. In 1990, the Cranston-Gonzalez National Affordable Housing Act (P.L. 101-625) expanded eligible developments to include those assisted under project-based Section 8 rental assistance contracts, and those assisted through the Section 221(d)(3) and Section 236 programs. Cranston-Gonzalez also specified that Congregate Housing funds could be used to renovate properties to make them accessible to elderly residents with mobility problems, and to hire service coordinators to assist residents.

Since 1995, no new Congregate Housing contracts have been awarded, but HUD continues to fund contracts that were already in existence through funds appropriated to the Service Coordinator program (described below).<sup>95</sup> Current regulations provide that HUD will pay up to 40% of Congregate Housing costs, grant recipients must pay 50% of costs, and elderly participants must make payments that total at least 10% of total program costs.<sup>96</sup> Not all project residents are eligible for Congregate Housing services. They must be frail: defined as deficient in at least three ADLs.<sup>97</sup> Eligible project residents are identified by a committee appointed by grantees and made up of three individuals, at least one of whom is a medical professional, who are competent to determine the abilities of elderly residents.<sup>98</sup>

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<sup>93</sup> For the Service Coordinator and Assisted Living Conversion programs, ADLs are listed at 24 CFR § 891.205. For the Congregate Housing program, they are listed at 24 CFR § 700.105.

<sup>94</sup> The at-risk category applies only to the Service Coordinator program.

<sup>95</sup> Although the President's budget for FY1996 did not propose funds for the Congregate Housing program, it did propose that projects similar to the Congregate Housing program would be funded through a new initiative called the Housing Certificates for Families and Individuals Performance Funds program. Congress did not appropriate funds for the program.

<sup>96</sup> 24 CFR § 700.145.

<sup>97</sup> 24 CFR § 700.135.

<sup>98</sup> HUD Handbook 4640.1: Congregate Housing Services Program Operating Procedures, November 6, 1996, chapter 2, paragraph 2-8, <http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4640.1/46401c2HSGH.pdf>.

## **Multi-Family Housing Service Coordinators**

Service coordinators in HUD developments for elderly persons and persons with disabilities work with residents to provide a wide range of services. These include the arrangement of transportation; meal services; housekeeping; medication management; visits from nurses, dentists, and massage therapists; haircuts; and social activities. Service coordinators became eligible for funding through the Section 202 program starting in 1990 (P.L. 101-625). HUD developments funded through the Section 221(d)(3) and Section 236 programs were made eligible for service coordinator funding in the Housing and Community Development Act of 1992 (P.L. 102-550).<sup>99</sup> In 2000, the law was further amended to allow service coordinators to assist those elderly residents and residents with disabilities living in the vicinity of the HUD-subsidized buildings in which the service coordinators work (P.L. 106-569).

Funding for the Service Coordinator program is awarded on a competitive basis. Owners of eligible properties may apply for funds on an annual basis through HUD's grant process.<sup>100</sup> To qualify, at least 25% of residents in a development must be considered frail elderly, at-risk elderly, or disabled non-elderly.<sup>101</sup> Applicants must also show that they have no other funds available to pay for a service coordinator. Grants are made for three years and are renewable.

## **Resident Opportunity and Self-Sufficiency (ROSS) Service Coordinators Program**

The ROSS program was established in the FY1999 HUD Appropriations Act (P.L. 105-276) to assist Public Housing residents making the transition from welfare to work, and to provide service coordinators and supportive services for elderly residents and residents with disabilities living in designated Public Housing developments.<sup>102</sup> The ROSS program for those making the transition from welfare to work was referred to as the ROSS Family Self-Sufficiency program, whereas the program for elderly residents was referred to as the ROSS Elderly/Persons with Disabilities program.<sup>103</sup> In the FY2008 grant year, HUD combined the ROSS Elderly/Persons with Disabilities program with the ROSS Family and Homeownership Program to become one grant program: ROSS Service Coordinators.<sup>104</sup>

The ROSS program is much like the Service Coordinator program. Its service coordinators may arrange for meals, transportation, housekeeping, health and nutrition programs, case management,

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<sup>99</sup> See Section 676.

<sup>100</sup> Note that Section 202 developments that receive project-based Section 8 rental assistance are not eligible for service coordinator funds. Instead, they may request an increase in their rental assistance payments to support a service coordinator.

<sup>101</sup> This requirement is present in HUD's Notice of Funding Availability for Service Coordinators. The most recent NOFA can be found on HUD's website, <http://www.hud.gov/offices/adm/grants/nofa09/scmhsec.pdf>.

<sup>102</sup> See the program's first Notice of Funding Availability, *Federal Register*, vol. 64, no. 153, August 10, 1999, p. 43543.

<sup>103</sup> Prior to the ROSS program, grants were available from HUD to Public Housing Authorities to fund service coordinators beginning in FY1994 (P.L. 103-124), and congregate housing and supportive services beginning in FY1996 (P.L. 104-134).

<sup>104</sup> See FY2008 Resident Opportunity and Self-Sufficiency Programs Webcast Presentation, May 13, 2008, <http://www.hud.gov/offices/adm/grants/nofa08/grpross.cfm>.

job training, and assistance with personal care.<sup>105</sup> ROSS funds are made available annually to PHAs, tribes, and nonprofit organizations through a competitive grant process. Awards are based on factors that include (1) the applicant's capacity and resources to implement services using a service coordinator; (2) the need for service coordinators and supportive services in the community, together with identification of service providers to meet the need; (3) the applicant's ability to leverage additional resources; and (4) the development of a system to measure the grantee's performance.<sup>106</sup> The ROSS program requires grant recipients to provide a 25% cash or in-kind match to the federal grant, and initial grants are made for three years. Beginning in FY2008, unlike previous grant years, recipient grantees may only use funds to pay for service coordinators, not for the services themselves.

## **Assisted Living Conversion**

The HUD Appropriations Act of FY2000 (P.L. 106-74) created the Assisted Living Conversion program to allow HUD-subsidized facilities for elderly residents to modify their apartments and common areas to accommodate elderly persons and persons with disabilities who need additional assistance in order to remain in their units.<sup>107</sup> HUD-funded buildings developed under the Section 202 program, Section 236 program, and Section 221(d)(3) program, or units supported by project-based Section 8 rental assistance, are eligible to apply for funds. Owners may use funds to convert some or all units in a building for use as assisted living units.

HUD's definition of an assisted living facility contains three parts: (1) the facility is licensed and regulated by the state in which it is located, (2) it provides supportive services to assist residents in carrying out activities of daily living, and (3) it has separate housing units for residents, together with common rooms.<sup>108</sup> There is no uniform state definition for what constitutes an assisted living facility, and the level of care required by state law varies.<sup>109</sup> Requirements for physical standards such as unit size and the presence of a kitchen also vary from state to state. Recipients of assisted living conversion grants must comply with state or HUD requirements regarding physical standards, whichever are more stringent. To be eligible for Assisted Living Conversion funds, HUD requires that facilities contain a central kitchen and lounge and/or recreational areas available to all residents.<sup>110</sup> HUD also requires that assisted living facilities meet certain program requirements and construction requirements. Program requirements include staff ability to respond to a crisis 24 hours a day, supervision of nutrition and medication for dependent residents, and the availability of three meals per day.<sup>111</sup> Construction requirements

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<sup>105</sup> HUD FY2009 Notice of Funding Availability for ROSS, pp. 15-20, <http://www.hud.gov/offices/adm/grants/nofa09/rosscsec.pdf>.

<sup>106</sup> *Ibid.*, pp 20-30.

<sup>107</sup> The statute governing the Assisted Living Conversion program is at 12 U.S.C. § 1701q-2.

<sup>108</sup> 12 U.S.C. §1715w(b)(6).

<sup>109</sup> For more information on state requirements, see Robert Mollica and Heather Johnson-LeMarche, *State Residential Care and Assisted-Living Policy: 2004*, Department of Health and Human Services, March 31, 2005, <http://aspe.hhs.gov/daltcp/reports/04alcom.htm>.

<sup>110</sup> See FY2009 Notice of Funding Availability for the Assisted Living Conversion Program, p. 3, <http://www.hud.gov/offices/adm/grants/nofa09/alcsec.pdf>.

<sup>111</sup> *Ibid.*, pp. 11-15.

include bathrooms that are accessible to persons with disabilities and a 24-hour emergency response system in each unit.<sup>112</sup>

Owners of eligible properties may apply for assisted living conversion funds through HUD's annual NOFA process. Grant recipients may use the funds to make units accessible by installing grab bars, widening doors, installing accessible appliances and counters, and adding emergency alert systems, among other modifications.<sup>113</sup> Grant recipients may also use funds to renovate common spaces for kitchen, dining, or recreational use, and to provide furniture, appliances, and equipment for those areas.

**Table 2. Supportive Services and Assisted Living Programs**

Programs	Developments that Qualify for Services	Eligibility
Congregate Housing	Section 202 Section 221(d)(3) Section 236 Project-based Section 8 Rental Assistance	Frail elderly and non-elderly persons with disabilities.
Service Coordinator	Section 202 Section 221(d)(3) Section 236	All residents if at least 25% of residents are frail elderly, at-risk elderly, or non-elderly persons with disabilities.
ROSS	Public Housing	All residents.
Assisted Living Conversion	Section 202 Section 221(d)(3) Section 236 Project-based Section 8 Rental Assistance	Frail elderly and non-elderly persons with disabilities.

**Source:** Prepared by CRS on the basis of 42 U.S.C. § 8011(k)(6) and (7); Notice of Funding Availability for Service Coordinators, *Federal Register*, vol. 72, no. 48, March 13, 2007, pp. 11691; P.L. 105-276; 12 U.S.C. § 1701q-2.

## Funding and Current Issues

### Funding

From FY2007 through FY2009, the Bush Administration proposed to reduce the combined funding level for the programs that provide housing and services for elderly households (primarily the Section 202 program)—by 26% in FY2007, by 22% in FY2008, and by nearly 27% in FY2009. However, in each of these fiscal years Congress did not reduce funding for the program. For FY2010, President Obama proposed to maintain the same funding level as in FY2009—\$765 million for Section 202 and related programs. See **Table 3** for Section 202 funding levels, as well as funding for supportive services programs. For more information about

<sup>112</sup> HUD Handbook 4600.1: Residential Care Facilities—Nursing Homes, Board and Care Homes, and Assisted Living Facilities, January 17, 1995, chapter 13, paragraph 13-7.

<sup>113</sup> *Ibid.*, p. 27283.

current year appropriations, see CRS Report R40727, *The Department of Housing and Urban Development: FY2010 Appropriations*, coordinated by Maggie McCarty.

**Table 3. Funding for Selected Programs, FY2001-FY2009**  
(dollars in millions)

Fiscal Year	Section 202 <sup>a</sup>	Service Coordinators	ROSS	Assisted Living Conversion
2001	677.0	49.9	— <sup>b</sup>	49.9
2002	682.6	50.0	— <sup>b</sup>	50.0
2003	678.5	49.6	9.3	24.8
2004	698.7	29.8	11.4	24.8
2005	648.3	49.6	16.3	24.8
2006	634.7	51.1	8.8	24.6
2007	638.7	51.1	16.7	24.6
2008	628.7	59.8	— <sup>d</sup>	24.8
2009	— <sup>c</sup>	90.0	— <sup>e</sup>	25.0

**Source:** Prepared by CRS on the basis of FY2000 to FY2010 HUD Budget Justifications, P.L. 111-8, and HUD Funding Notices (ROSS).

- a. Includes funds for new capital grants, new project rental assistance, and renewals of project rental assistance contracts.
- b. From FY2000 through FY2002, HUD split ROSS grants between non-elderly families and elderly residents/residents with disabilities. In FY2000 and FY2001, \$24 million was distributed; in FY2002, \$22.9 million was distributed.
- c. P.L. 111-8 did not specify an amount for Section 202 in FY2009.
- d. Beginning in FY2008, the ROSS Service Coordinator program was created to serve both non-elderly families as well as elderly residents/residents with disabilities. In FY2008, \$28 million was awarded to ROSS Service Coordinator grantees, but the amount of funds used to serve elderly residents specifically is not broken out of the total.
- e. ROSS funding for FY2009 has not yet been awarded.

## Legislation

### Refinancing Provisions in the FY2009 Omnibus Appropriations Act

The statute governing the Section 202 program allows building owners to refinance their mortgages under certain circumstances in order to take advantage of lower interest rates and to use proceeds from refinancing to improve conditions for tenants. Specifically, the law allows refinancing if an owner agrees to continue to operate the project under terms at least as advantageous to tenants as the terms of the existing loan *and* if the refinancing results in a lower interest rate and reduced debt service (i.e., reduced principal and interest payments).<sup>114</sup> However, for older Section 202 properties with interest rates as low as 3% (those funded prior to 1974), obtaining a loan with a lower interest rate and reduced debt service is not necessarily possible.

<sup>114</sup> 12 U.S.C. § 1701q note.

To make refinancing available to owners of Section 202 projects developed prior to 1974, the FY2009 Omnibus Appropriations Act (P.L. 111-8) included language that broadened the refinancing provisions of the Section 202 program.<sup>115</sup> However, the refinancing provisions did not specifically amend existing law, so they were in effect only for the duration of the fiscal year. HUD did not release guidance regarding the new provisions, so no properties were refinanced pursuant to P.L. 111-8. The House-passed and Senate-passed versions of the FY2010 HUD funding bill (H.R. 3288) contain identical language regarding refinancing that would apply in FY2010 if enacted.

Under P.L. 111-8, owners were to be able to refinance mortgages with interest rates at or below 6% in order to address a property's physical needs (and would not necessarily have been required to refinance into a loan with a lower interest rate and reduced debt service). These refinancing transactions for loans with interest rates at or below 6% would also have had several other requirements:

- the transactions would have had to meet a cost benefit analysis to be established by HUD;
- the transactions could not have resulted in increased costs for project-based Section 8 rental assistance except under certain circumstances;
- with the approval of HUD, owners could have raised tenant rents in order to meet increased debt service and operating costs if insufficient project-based Section 8 rental assistance was available to meet these costs. However, HUD's approval of increased tenant rents would have been "the basis for the owner to agree to terminate the project-based rental assistance contract," triggering tenant eligibility for enhanced Section 8 vouchers;
- when tenants who had received enhanced vouchers as a result of refinancing terminated their occupancy, those units would have become eligible for project-based Section 8 rental assistance; and
- owners would have had to enter into a use agreement to maintain affordability of units for 20 years beyond the maturity date of the original Section 202 loan.

### **The Section 202 Supportive Housing for the Elderly Act (S. 118)**

A bill that would make some changes and additions to current law governing the Section 202 program has been introduced in the 111<sup>th</sup> Congress. The Section 202 Supportive Housing for the Elderly Act of 2009 (S. 118) is similar to two bills that were introduced in the 110<sup>th</sup> Congress—H.R. 2930 (which was passed by the House) and S. 2736. The version of the bill introduced in the 111<sup>th</sup> Congress would address the financing of new Section 202 projects as well as how existing properties are refinanced. S. 118 would also change the definition of assisted living facilities in the Assisted Living Conversion program.

In the area of financing for new Section 202 developments, S. 118 would provide that, upon expiration of a contract for Section 202 rental assistance, HUD will adjust the contract to account for reasonable project costs as well as the increased costs of project reserves, service

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<sup>115</sup> See Section 234 of "General Provisions—Department of Housing and Urban Development" in Division I of the Omnibus Appropriations Act.



coordinators, and supportive services. The bill would also make a change to the definition of “private nonprofit organization.” Under current law, nonprofits must have governing boards that are responsible for operation of the Section 202 project. S. 118 would allow national nonprofit sponsors to form local advisory boards to fulfill this requirement. Another provision in S. 118 would give Section 202 project owners authority to give preference to homeless elderly applicants.

S. 118 would also address the refinancing of existing Section 202 properties. A similar proposal for refinancing Section 202 mortgages was included in the FY2009 Omnibus Appropriations Act, described in the above section, “Refinancing Provisions in the FY2009 Omnibus Appropriations Act.” The change would allow owners of older Section 202 developments (those funded prior to 1974) to refinance in order to address the property’s physical needs. The bill would also expand the ways that owners could use the proceeds from refinancing to include payment of equity and developers’ fees. Additionally, a provision in S. 118 would limit HUD’s ability to put conditions on the amount of proceeds that Section 202 owners may realize from a sale or refinancing, or the way in which owners use the proceeds. HUD would only be able to impose conditions on the amount or use of proceeds if there was an existing contract between HUD and the project owner that authorized the conditions

Another change to existing law contained in S. 118 would be a new “preservation project rental assistance” program for owners with Section 202 units that were built prior to 1974, when most units did not receive rental assistance.<sup>116</sup> The rental assistance would be available if owners chose to refinance in order to prevent displacement of tenants. This differs from provisions in the FY2009 Omnibus Appropriations Act, where tenants would have received enhanced Section 8 vouchers when owners refinanced.

S. 118 would also change the definition of “assisted living facility.” Under current law, an assisted living facility is owned by a private nonprofit corporation, is licensed by the state (or locality), makes available certain supportive services, and provides separate dwelling units for residents. The bill would change the definition so that private nonprofit organizations may meet the requirements *either* through state or local licensure *or* by providing certain supportive services to assist residents with activities of daily living. The definition would also make services available at the resident’s option.

Finally, S. 118 would create a National Senior Housing Clearinghouse within HUD to disseminate information about available rental units for elderly tenants and characteristics of those rental units. The Clearinghouse would include not only units in Section 202 facilities, but also units subsidized through the Section 8 program, the Low-Income Housing Tax Credit, the Assisted Living Conversion program, and other programs that subsidize units dedicated for use by elderly households. Information would be made available to prospective residents through a website and a toll-free number.

### **Legislation Enacted in the 110<sup>th</sup> Congress**

The Housing and Economic Recovery Act of 2008 (P.L. 110-289), which was enacted on July 30, 2008, included a provision to direct HUD to delegate to state housing finance agencies (HFAs)

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<sup>116</sup> However, some pre-1974 properties later received rental assistance through the Rent Supplement program and the Loan Management Set Aside program.

the ability to process Section 202 capital grants. Under this provision, those grantee organizations that are awarded Section 202 capital grants, and that also intend to use Low Income Housing Tax Credits to develop their properties, may have their state HFA review and process the capital grant instead of HUD. Because HFAs are the agencies that administer tax credits, delegating the processing of the Section 202 capital grant to the HFA, together with the tax credit, is thought to be more efficient. As part of the delegated processing, HFAs may recommend project rental assistance in excess of the amount awarded by HUD, though an increase is subject to HUD approval.

## **Preservation of Federally Assisted Housing**

A growing concern exists that the market will lose assisted housing units for elderly tenants because private and nonprofit owners of Section 202, 221(d)(3), and 236 developments have no obligation to continue providing subsidized housing beyond their contract terms. Therefore, owners may eventually convert these units to market-rate rental housing, jeopardizing the availability of affordable housing for their tenants. Affordable housing units may be converted under several circumstances. First, when HUD-subsidized mortgages reach maturity or when owners decide to prepay their mortgages, they may decide to convert the units to market-rate rentals. A second possibility is that owners receiving project-based Section 8 rental assistance could lose or terminate their contracts. A final concern is that owners of older buildings will not have enough funds to modernize or renovate deteriorating facilities, and units will be unavailable because they are not habitable. Congress has enacted several laws that have attempted to prevent the loss of affordable housing units due to these factors.

### **Section 202 Program**

Most owners of Section 202 properties may prepay their loans with HUD approval, however, in general, they must maintain the affordability of the units.<sup>117</sup> Congress initially addressed the prepayment of Section 202 mortgage loans in 1984 (P.L. 98-181) by allowing prepayment only if property owners continue to operate their properties on terms at least as favorable to tenants as the terms under the original loan agreement up through the original date of loan maturity. In 2000, the American Homeownership and Economic Opportunity Act (P.L. 106-569) added provisions that allow owners to refinance as part of the prepayment if the terms of the new loan result in a lower interest rate and reduced debt service payments. HUD will then make at least 50% of its savings from reduced rental assistance payments available to owners to assist tenants either through supportive services, facility improvements, or rent reductions for unassisted tenants. In the 111<sup>th</sup> Congress, legislation has been introduced that would make some changes to the way in which Section 202 loans are refinanced (see the previous section for a discussion of S. 118).

### **Section 221(d)(3) and Section 236 Programs**

Although the initial mortgage subsidy contracts between HUD and property owners in the Section 221(d)(3) and Section 236 programs had a duration of 40 years,<sup>118</sup> in order to attract developers to the program, HUD gave owners the right to prepay their mortgages (and potentially leave the

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<sup>117</sup> Some Section 202 loans made during the late 1970s and early 1980s may be prepaid without HUD approval.

<sup>118</sup> See Senate Subcommittee on Housing for the Elderly of the Special Committee on Aging, *Adequacy of Federal Response to Housing Needs of Older Americans*, hearing, 92<sup>nd</sup> Cong., 1<sup>st</sup> sess., August 2, 1971, p. 130.

program) after 20 years.<sup>119</sup> By the late 1980s, many Section 236 and 221(d)(3) project owners were in the position to prepay their mortgages and charge market rate rents, displacing the low-income tenants who lived in their developments. Recognizing that HUD could lose thousands of affordable housing units in the coming years,<sup>120</sup> Congress in 1990 enacted Title VI of the Cranston-Gonzalez National Affordable Housing Act (P.L. 101-625), the Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA). The act created incentives for building owners to continue offering affordable housing through the Section 221(d)(3) and Section 236 programs.<sup>121</sup>

LIHPRHA continued to allow owners to prepay their mortgages after 20 years, but only as long as the change did not create economic hardship for current tenants or reduce the availability of low-income housing, housing near jobs, or housing for minorities.<sup>122</sup> To convince owners to maintain affordable properties, HUD could ensure that owners receive rent subsidies sufficient to guarantee an 8% return after mortgage payments and operating expenses were paid and adequate reserves were established.

If building owners still chose to prepay their mortgages and begin charging market-rate rents, HUD protected tenants by issuing enhanced Section 8 vouchers. Enhanced vouchers require building owners in low-vacancy areas, or with elderly tenants and tenants with disabilities, to accept the vouchers, allowing tenants to remain in the building at the lower rental amount for up to three years.<sup>123</sup> The law also required owners to pay 50% of tenant moving expenses. LIHPRHA has not been funded since FY1997 (P.L. 104-204), but during the 1990s it is estimated to have preserved 110,000 units of Section 221(d)(3) and Section 236 housing.<sup>124</sup> Current law requires that owners give Section 221(d)(3) and Section 236 tenants at least 150 days' notice when they plan to prepay their mortgages.<sup>125</sup>

## **Project-Based Section 8 Rental Assistance**

A large number of assisted housing units for elderly households are supported with project-based Section 8 rental assistance contracts. When Section 8 rental assistance contracts began to expire in the 1990s, many owners began to opt out of the program. In its FY1998 HUD Appropriations Act (P.L. 105-65), Congress responded to the opt-outs by providing that contracts for rental assistance with HUD could be renewed at rental rates up to the rate prevailing in the market whenever market rate rents exceed the contract rent. (Market rent is based on either the rent levels of comparable unassisted properties in a building's area or on area fair market rent levels as determined by HUD.) This provision is sometimes called "mark up to market," and it attempts to

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<sup>119</sup> House Subcommittee on Housing and Community Development of the Committee on Banking, Finance and Urban Affairs, *Preventing the Disappearance of Low-Income Housing*, hearing, 100<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 8, 1988, p. 4. See, also, *Cranston-Gonzalez National Affordable Housing Act*, conference report to accompany S. 566, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 101-943, October 25, 1990, p. 457.

<sup>120</sup> In 1990, Congress noted that over the next 12 years, more than 360,000 units of federally assisted housing could be lost. H.Rept. 101-943, p. 457.

<sup>121</sup> The act is codified at 12 U.S.C. §§ 4101-4125.

<sup>122</sup> 12 U.S.C. § 4108.

<sup>123</sup> 12 U.S.C. § 4113.

<sup>124</sup> The National Housing Law Project, *HUD Housing Programs: Tenants' Rights* (Oakland, CA: The National Housing Law Project, 2004), 15/37.

<sup>125</sup> P.L. 105-276.

give incentives to owners to stay in the Section 8 program even if they could otherwise make more money in the private market. If owners decide to opt out of the rental assistance program, tenants may qualify for enhanced Section 8 vouchers that they may use to either remain in the building or move elsewhere.<sup>126</sup> P.L. 105-65 also created the “mark-to-market” program for cases in which Section 8 payments exceed market-rate rents. Mark-to-market allows those owners with above-market rents to renew their rental assistance contracts with HUD, although at a lower rate, while also restructuring their outstanding debt on the property. The program is designed both to ensure that HUD pays reasonable market rents for subsidized properties and to provide incentives for owners of assisted properties to renew their contracts with HUD.

## **Children Living in Housing Developments for Elderly Residents**

The most recent Census estimated that 2.4 million grandparents were raising grandchildren, and that of this number, approximately 19% of grandparents were poor.<sup>127</sup> The HUD guidelines governing the Section 202, Section 221(d)(3), Section 236, and certain project-based Section 8 assistance programs specifically prohibit the exclusion of children from these developments (“owners may not exclude otherwise eligible elderly families with children from elderly properties ...”).<sup>128</sup> Guidelines governing Public Housing developments are less specific, although the guidance states that “there is nothing in the definition of elderly family that excludes children. Many elderly families today consist of grandparents with custody of grandchildren. This is an elderly family.”<sup>129</sup>

Even if developments designed for elderly residents do allow children, however, they might not be equipped to serve families with both elderly members and young children. For example, most units in elderly housing developments are either efficiencies or have only one bedroom, and may not have the space to accommodate family members. In addition, elderly developments might lack common spaces where children might play, or the after-school programs that are often a part of HUD-subsidized complexes for families.

In order to address the growing number of grandparents raising grandchildren, Congress enacted the Living Equitably—Grandparents Aiding Children and Youth (LEGACY) Act in 2003 as part of the American Dream Downpayment Act (P.L. 108-186). The LEGACY Act provides for the funding of housing units in the Section 202 program for elderly residents raising grandchildren or other relatives age 19 or younger. Congress did not fund the LEGACY Act until FY2006, when it appropriated \$3.96 million for an Intergenerational Families Demonstration Project. On April 25, 2008, HUD released a Notice of Funding Availability (NOFA) to solicit grant applications for LEGACY Act funds.<sup>130</sup> In December 2008, HUD announced two awardees, both of which will

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<sup>126</sup> 42 U.S.C. § 1437f(t).

<sup>127</sup> Tavia Simmons and Jane Lawler Dye, *Grandparents Living with Grandchildren: 2000*, U.S. Census Bureau, October 2003, pp. 1, 9, <http://www.census.gov/prod/2003pubs/c2kbr-31.pdf>.

<sup>128</sup> HUD Handbook 4350.3, chapter 3, paragraph 3-23, <http://www.hud.gov/offices/adm/hudclips/handbooks/hsgb/4350.3/43503c3HSGH.pdf>.

<sup>129</sup> HUD Public Housing Occupancy Guidebook, June 2003, Section 2.2, p. 25, <http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebooknew.pdf>.

<sup>130</sup> See Notice of Funding Availability for FY2007 Demonstration Program for Elderly Housing for Intergenerational Families, *Federal Register*, vol. 73, no. 81, April 25, 2008, pp. 22759-22776.

receive capital grants and rental assistance: one project consisting of 10 units will be located in Chicago, while the other, consisting of nine units, will be in Smithville, TN.<sup>131</sup>

The LEGACY Act also called for HUD, together with the Census Bureau, to produce a study of the affordable housing needs of grandparents raising grandchildren. In April 2008, HUD released a *Report to Congress on Intergenerational Housing Needs and HUD Programs*.<sup>132</sup> The report describes the number, characteristics, and housing conditions of grandparent-headed households and households with other relatives raising related children. The report estimated that 265,000 grandparent-headed households and 225,000 households headed by other relatives would qualify for assistance under the LEGACY Act.<sup>133</sup>

## **Author Contact Information**

Libby Perl  
Specialist in Housing Policy  
eperl@crs.loc.gov, 7-7806

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<sup>131</sup> See HUD's funding announcement, <http://www.hud.gov/offices/hsg/mfh/eldfam/announcement.pdf>.

<sup>132</sup> The report is available at <http://www.huduser.org/Publications/pdf/intergenerational.pdf>, and the data tables are at [http://www.huduser.org/Publications/pdf/intergenerational\\_tables.pdf](http://www.huduser.org/Publications/pdf/intergenerational_tables.pdf).

<sup>133</sup> *Ibid.*, p. 6.