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

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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 coming 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 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. The Assisted Living Conversion Program makes grants to HUD-assisted developments so that they can convert units or entire buildings into assisted living facilities or service enriched housing.

Congress has not funded new units of Section 202 housing since FY2011, though funds sufficient to pay rental assistance on existing units continue to be appropriated. In budget requests, the Administration has proposed to change the way in which new units of Section 202 housing are financed. The FY2013 and FY2014 budgets proposed that rental assistance through the Section 202 program be combined with other forms of capital financing (such as Low Income Housing Tax Credits) to fund new units. The Section 811 Supportive Housing for Persons with Disabilities program has already adopted this structure.

In the FY2014 Consolidated Appropriations Act (P.L. 113-76), Congress provided that excess amounts in residual receipts accounts could, upon Section 202 contract termination, be used to fund a housing and services demonstration project to analyze effects on delay or avoidance of nursing home entry. According to congressional budget justifications, HUD set aside $20 million for this purpose and, in January 2016, announced the availability of $15 million to owners of assisted multifamily properties serving elderly residents.

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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.[1] Since the 1950s, the number of individuals age 65 and older has gradually begun to make up a larger percentage of the total U.S. population, and their numbers and share of the population are expected to continue to grow through 2050.[2] Between 2010 and 2050, the number of persons age 65 and older is expected to grow from 40 million to nearly 86 million, and from 13% of the population to 20%.[3] 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 would result in the need for an additional 730,000 units of affordable housing by 2020 on top of the estimated 1.4 million households receiving assistance in 1999.[4]

The Department of Housing and Urban Development (HUD) operates a number of programs that provide both housing and supportive services for elderly households.[5] 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.[6] Five HUD programs provide affordable rental housing with units designated specifically 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 insured 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

[1] The report by the Commission on Affordable Housing and Health Facility Needs for Seniors in the 21st 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.

[2] See CRS Report RL32701, *The Changing Demographic Profile of the United States*, by (name redacted) and (name r edacted) .

[3] Data from the 2010 Census come from Carrie A. Werner, *The Older Population: 2010*, U.S. Census Bureau, November 2011, p. 2, http://www.census.gov/prod/cen2010/briefs/c2010br-09.pdf. The 2050 projections are CRS estimates based on Census data released in December 2010. See CRS Report RL32701, *The Changing Demographic Profile of the United States*, by (name redacted) and (name redacted) .

[4] *A Quiet Crisis in America*, p. 22. The estimate of 1.4 million is from the 1999 American Housing Survey and is based on 1.2 million assisted households age 65 and older and 200,000 assisted households age 62 to 65. Ibid.

[5] Although other terms such as "Older Americans" or "Older Adults" 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.

[6] 12 U.S.C. §1701q(k)(1).

elderly persons living in HUD-eligible properties to remain in their apartments through assistance and services.

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,[7] HUD's mortgage insurance and reverse mortgage programs,[8] and the Department of Agriculture's rural housing programs that provide assistance to elderly households.

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. Nearly 350,000 Section 202 units are available primarily to elderly residents, though a portion of Section 202 units that were funded prior to FY1992 are set aside for non-elderly residents with disabilities.[9] 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 authorizes HUD to make capital grants and project rental assistance available to developers so that they can build housing that is affordable to very low-income elderly households. Congress has not funded new units of Section 202 housing since FY2011, though funds sufficient to pay rental assistance on existing units continues to be appropriated.

The Section 202 program was not always structured as capital grants and rental assistance, and it has changed several times since its inception. During the more than 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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[7] For more information on Section 8 vouchers, see CRS Report RL32284, *An Overview of the Section 8 Housing Programs: Housing Choice Vouchers and Project-Based Rental Assistance*, by (name redacted) .

[8] For more information on reverse mortgages, see CRS Report R44128, *HUD's Reverse Mortgage Insurance Program: Home Equity Conversion Mortgages*, by (name redacted)

[9] Estimates are based on CRS analysis of HUD data, specifically Section 202 Direct Loans and the Multifamily Assistance and Section 8 Contracts Database, available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfdata. CRS included properties still categorized as Section 202 in the HUD databases, including unassisted units that were financed through the Section 202 loan program prior to 1974.

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).[10] 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.

Phases of the Section 202 Program

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.[11] 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.[12] The interest rates on the loans were low—approximately 3%—and had a duration of up to 50 years.[13] 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.[14]

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.[15] 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.[16] 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).[17] Tenants receiving rent subsidies made up a relatively small percentage of total tenants during the early years of the Section 202 program, however.[18]

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[10] 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.

[11] 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*).

[12] 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.

[13] *Housing for the Elderly and Handicapped*, p. 18.

[14] 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, 98th Cong., 2nd sess., (Washington, DC: GPO, 1984), p. 7.

[15] *Housing for the Elderly and Handicapped*, p. 29.

[16] Ibid., p. 18.

[17] 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.

[18] *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).[19] 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.[20]

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.[21] 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.[22] 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 240 buildings, representing more than 33,000 units, that still have active loans.[23] 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.[24] 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 rental assistance contracts available for units in troubled multifamily projects with FHA-insured or HUD-held mortgages.

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 Section 202 projects, a change from the program's previous tendency to serve mostly moderate-

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[19] 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 (name redacted)

[20] *Housing for the Elderly and Handicapped*, p. 36.

[21] Senate Committee on Aging, Subcommittee on Housing for the Elderly, *Examination of Proposed Section 202 Housing Regulations*, hearing before the 94th Cong., 1st sess., June 6, 1975, p. 2.

[22] M. Powell Lawton, *Planning and Managing Housing for the Elderly* (New York: John Wiley & Sons, 1975), p. 38.

[23] CRS analysis of HUD's Direct Loan Database, available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/202directloan.

[24] U.S. Department of Housing and Urban Development, *HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs*, June 2009, chapter 3, paragraph 3-23, http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/index.cfm (hereinafter, *HUD Handbook 4350.3*).

income elderly families.[25] 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.[26]

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 an amount determined by the U.S. Treasury, 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.[27] However, the Housing and Community Development Act directed that 20% to 25% of funds go to nonmetropolitan areas.[28] 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.[29] 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 received project-based Section 8 rental assistance were changed as part of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35).[30] 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 (households considered low income), while only 5% of new units could be occupied by families with incomes between 50% and 80% of the area median. These percentages were later changed to 25% and 15%, respectively.[31]

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.[32] 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.[33] Only 5.4% of the units built between 1974 and 1985 were efficiencies, compared to more than 60% prior to 1974; however, between 1985 and 1988 the percentage of efficiencies rose again, to 18.9%.[34]

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[25] *Housing for the Elderly and Handicapped*, pp. 105-106.

[26] An exception for contracts up to 40 years was made for developments built or rehabilitated by loans from state or local agencies.

[27] *Housing for the Elderly and Handicapped*, p. 38.

[28] P.L. 93-383, Section 213(d).

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

[30] See Section 323.

[31] 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).

[32] 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 (hereinafter, *The 1999 National Survey of Section 202 Elderly Housing*).

[33] *The 1988 National Survey of Section 202 Housing for the Elderly and Handicapped*, p. 27.

[34] Ibid.

History of the Section 202 Program: 1990 to 2011

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 budget authority involved in extending Section 202 loans. Under the Section 202 loan program, developers often used 75% of the project-based Section 8 rental assistance they received to service their loan debt.[35] As a result, the loans essentially required budget authority both when they were initially extended, and then again when Congress appropriated Section 8 funds that were largely used to pay them back.[36] 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-based rental assistance payments, requiring less budget authority.[37]

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).[38] 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.[39] Although the duration of the new project rental assistance contracts was initially 20 years, HUD's practice came to be the extension of 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.[40] The new system was 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, areas of the country with low FMRs often could not afford to develop Section 202 projects.[41]

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

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

[36] Ibid.

[37] Ibid., p. 34.

[38] FMRs are generally set at the 40th percentile of rents paid in an area, although in some high-cost areas, FMRs are set at the 50th percentile.

[39] S.Rept. 101-316, pp. 133-134. The provisions in S. 566 regarding Section 202 were adopted in P.L. 101-625. See H.Rept. 101-943.

[40] *Cranston-Gonzalez National Affordable Housing Act*, conference report to accompany S. 566, 101st Cong., 2nd sess., H.Rept. 101-943, October 25, 1990, p. 484.

[41] S.Rept. 101-316, p. 134.

"handicapped" individuals.[42] 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.[43] 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 funded before 1992[44] continue to provide housing for persons with disabilities according to the rules that existed at the time of construction.

According to data from HUD, there are approximately 109,000 Section 202 units that were developed since enactment of the 1990 law and receiving rental assistance through PRAC.[45] In this phase of the Section 202 program, developments became smaller, with an average of 44 units per building.[46] These newer Section 202 developments have virtually no efficiency units.[47]

Section 202 Since 2011

Congress last provided funding for new Section 202 developments in the FY2010 and FY2011 appropriation acts (P.L. 111-117 and P.L. 112-10, respectively), and the FY2011 funds were minimal compared to previous appropriations (approximately $100 million, compared to more than $500 million in the immediately preceding years, for example, FY2008 through FY2010). From FY2012 to the present, Congress has not appropriated funds for new units financed through Section 202 capital grants. The President's budget has not proposed new capital grants since the FY2012 request.

The Administration and Congress seem to be moving toward a model where Section 202 would no longer be a funding source for the capital costs of developing new housing units. The Administration and HUD have proposed on several occasions that Section 202 adopt a model like one that was approved for the Section 811 Supportive Housing for Persons with Disabilities program in 2011. Through this model, developers are to fund the capital costs of new housing units with other available funds such as Low Income Housing Tax Credits and the HOME Investment Partnerships program funds. Section 202 would then provide rental assistance for units dedicated to elderly residents. It has yet to be seen if Section 202 is entering another new funding phase, but in a constrained budget environment, the availability of funding for Section 202 capital grants may be less certain.

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[42] 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.

[43] For more information about the Section 811 program, see CRS Report RL34728, *Section 811 and Other HUD Housing Programs for Persons with Disabilities*, by (name redacted)

[44] P.L. 101-625 delayed implementation of Section 811 until FY1992.

[45] CRS analysis of data from HUD's Multifamily Assistance and Section 8 Contracts Database, available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfdata.

[46] Ibid.

[47] 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. 29, http://www.huduser.org/Publications/pdf/sec_202_1.pdf.

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, private loans, and local housing trust funds, 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. Assuming appropriations for Section 202 capital grants, 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 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.[48]

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.[49] The costs of constructing, acquiring, and rehabilitating a property (among other costs)[50] 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 allowed 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 did not immediately make mixed financing arrangements common, however. The transactions are complicated and may require extensive expertise in housing finance to make them work. HUD has acknowledged that "most developers seek to avoid the use of federal grant

[48] For more information on the LIHTC, see CRS Report RS22389, *An Introduction to the Low-Income Housing Tax Credit*, by (name redacted) and (name redacted) .

[49] 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.

[50] 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.

financing in most LIHTC projects."[51] 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,[52] the Native American Housing Block Grant Program,[53] Rent Supplement and Rental Assistance Payments programs,[54] the Shelter Plus Care and Single Room Occupancy programs,[55] and the Housing Opportunities for Persons with AIDS program.[56] 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.[57]

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%.[58] 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).[59] 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.[60]

However, P.L. 110-289 removed the phrase "below market federal loans" from the definition of federal subsidy in the LIHTC statute. This allows for the eligibility of new construction developed with below-market federal loans placed in service after the effective date of P.L. 110-

[51] See HUD website, "Calculating the Qualified Basis," http://www.hud.gov/offices/cpd/affordablehousing/training/web/lihtc/calculating/qualifiedbasis.cfm.

[52] 26 C.F.R. §1.42-16.

[53] Rev. Rul. 2008-6, 2008-1 C.B. 271.

[54] Rev. Rul. 2002-65, 2002-2 C.B. 729.

[55] Rev. Rul. 98-49, 1998-2 C.B. 451.

[56] Rev. Rul. 99-39, 1999-2 C.B. 424.

[57] 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.

[58] 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 (name redacted) and (name redac ted) .

[59] 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.

[60] 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.

289. The 9% credits are very competitive, however, and it may still be difficult for Section 202 developers to obtain them.[61]

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.[62] The BMIR program has not provided funds for new developments since 1968, but properties with active mortgages continue to operate. The program, like the Section 202 program at the time it was created, was meant to serve families with incomes too high for Public Housing, but too low for market-rate rents.[63] 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.[64] Lenders then sold the mortgages to the Federal National Mortgage Association (Fannie Mae).[65] 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, but as affordability terms come to an end, there may be fewer units available. When the number of units designated for elderly residents was last assessed, in 2005, there were 1,154 units available.[66] Units are open to households with incomes of up to 95% of the area median income.[67]

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.[68] 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

[61] 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.

[62] 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.

[63] Senate Committee on Banking and Currency, *Housing Act of 1961*, Senate report to accompany S. 1922, 87th Cong., 1st sess., S.Rept. 281, May 19, 1961.

[64] 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.

[65] 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.

[66] 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*).

[67] HUD Handbook 4350.3, chapter 3, paragraph 3-6.

[68] 12 U.S.C. §1701s(d).

necessary.[69] Many of these contracts have converted to project-based Section 8 rental assistance, or have the option to convert under HUD's Rental Assistance Demonstration program.[70]

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.[71] And the Section 202 program's system of direct loans had a high cost to the federal budget.[72] 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,[73] and for a time it did. The program produced approximately 400,000 new units in 3,601 developments by 1976.[74] 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 for-profit and nonprofit owners of rental housing projects for low-income and moderate-income households by providing FHA insurance for 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.[75] 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.[76] Households with low incomes—at or below 80% of area median income—are eligible for Section 236 housing. At the last assessment, in 2005, approximately 66,000 units, 23% of all Section 236 units, were reserved for elderly residents.[77]

[69] 12 U.S.C. §1701s(j)(1)(d).

[70] U.S. Department of Housing and Urban Development, *FY2017 HUD Congressional Budget Justifications, Other Assisted Housing*, http://portal.hud.gov/hudportal/documents/huddoc?id=30-Other.Assisted.HSNG.pdf (hereinafter *FY2017 HUD Congressional Budget Justifications, Other Assisted Housing*).

[71] House Committee on Banking and Currency, *Housing and Urban Development Act of 1968*, House report to accompany H.R. 17989, 90th Cong., 2nd sess., H.Rept. 1585, June 25, 1968.

[72] *The 1988 National Survey of Section 202 Housing for the Elderly and Handicapped*, p. 14.

[73] Ibid.

[74] 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.

[75] 12 U.S.C. §1715z-1(f)(1). The Section 236 market rent is different from Section 8 fair market rent.

[76] Charles L. Edson, "Sections 235 and 236—The First Year," *Urban Lawyer* 2, No. 14 (1970), p. 22.

[77] *Federal Housing Programs that Offer Assistance to the Elderly*, p. 11.

In order to help make Section 236 housing more affordable to low-income households, some projects received 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 or have the option to convert under HUD's Rental Assistance Demonstration program.[78]

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).[79] 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. Congress did not intend to separate elderly residents from younger tenants.[80] 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.[81]

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.[82] 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.[83] As a result of the increase of younger residents with disabilities in Public Housing, often with mental

[78] *FY2017 HUD Congressional Budget Justifications, Other Assisted Housing*.

[79] For more information about Public Housing, see CRS Report R41654, *Introduction to Public Housing*, by (name r edacted) .

[80] House Committee on Banking and Currency, *Housing Act of 1956*, House report to accompany H.R. 11742, 84th Cong., 2nd sess., H.Rept. 2363, July 15, 1956.

[81] Frances Merchant Carp, *A Future for the Aged, Victoria Plaza and Its Residents* (Austin: University of Texas Press, 1966).

[82] See General Accounting 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.

[83] 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 C.F.R. §41.31.

illnesses and addictions, Public Housing Authorities faced a greater number of incidents of disruptive behavior, and some elderly residents reported feeling unsafe.[84]

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.[85] 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. HUD makes available on its website data on the number of PHAs with approved designated housing plans that set aside projects, or portions of projects, for elderly residents or developments for elderly residents and residents with disabilities together.[86]

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.[87] The rental assistance was meant to act as an incentive so that developers would build or rehabilitate affordable housing. In some cases, rental assistance was attached to units of housing that were developed using other assistance streams. For example, as mentioned earlier in this report (in the section entitled "History of the Section 202 Program: 1974 to 1990"), units of Section 202 housing developed between approximately 1974 and 1990 received Section 8 rental assistance in addition to direct loans from HUD. However, Section 8 rental assistance was also made available for units not developed through any other specific program.

From the inception of the Section 8 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),[88] 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

[84] *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.

[85] 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 C.F.R. §§945.101-945.303.

[86] See HUD's Designated Housing Status Report, http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_25867.xls.

[87] 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: Housing Choice Vouchers and Project-Based Rental Assistance*, by (name redacted) .

[88] 42 U.S.C. §§13611-13620.

elderly households. When last assessed, in 2005, there were 200,000 units of project-based Section 8 housing dedicated to elderly households.[89] Note that these represent Section 8 units that were not combined with Section 202 capital funding.

Table 1. HUD Rental Housing Programs for Low-Income Elderly Households

Program	Income Eligibility[a]	Tenant Rent
Section 202		
1959 to 1962	No income limits.	Set by owner based on funds required to support building operation.
1962 to 1968	Income limits set on a community-by-community basis.	Set by owner.
1968 to 1974	Higher of 80% of area median income or 135% of Public Housing income limits.	Set by owner.
1974 to 1981	80% of area median income.[b]	For units with project-based Section 8 rental assistance, the greater of 30% of adjusted income or 10% of gross income.
1981 to present	50% of area median income.[c]	The greater of 30% of adjusted income or 10% of gross income.
Section 221(d)(3) BMIR	95% of area median income.	Rent is set building-by-building and approved by HUD.
Section 236	80% of area median income.	The greater of 30% of adjusted income or "basic rent" as calculated by HUD.
Public Housing	80% of area median income.	The greater of 30% of adjusted income or 10% of gross income.
Project-Based Section 8 Rental Assistance	50% of area median income.[c]	The greater of 30% of adjusted income or 10% of gross income.

Source: Prepared by CRS based on HUD Handbook 4350.3, chapter 3, paragraph 3-6, and chapter 5, paragraphs 5-25 through 5-30

a. Income limits are subject to exceptions. This table provides information on the majority of housing units for each program.

b. 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.

c. 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.

[89] *Federal Housing Programs that Offer Assistance to the Elderly*, p. 11.

Supportive Services and Assisted Living Programs

Four federal 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/Service Enriched Housing Program. Three of the four programs—Congregate Housing, Service Coordinator, and Assisted Living Conversion/Service Enriched Housing—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.[90]

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.[91] 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 federal 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

[90] For the Service Coordinator and Assisted Living Conversion programs, ADLs are listed at 24 C.F.R. §891.205. The HUD Notices of Funding Availability for the Assisted Living Conversion/Service Enriched Housing Program refer to 24 C.F.R. §891.205, while the NOFA for Service Coordinators uses an identical definition to the one in 24 C.F.R. §891.205. ADLs for the Congregate Housing program are listed at 24 C.F.R. §700.105.

[91] The at-risk category applies only to the Service Coordinator program.

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).[92] 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.[93] Not all project residents are eligible for Congregate Housing services. They must be frail: defined as deficient in at least three ADLs.[94] 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.[95]

Multifamily 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). Section 202 projects funded prior to the institution of capital grants and PRAC are eligible (PRAC projects are structured so that rental assistance may be used to pay for service coordinators).[96] 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).[97] In 2000, the law was further amended to allow service coordinators to assist 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.[98] To qualify, at least 25% of residents in a development must be considered frail elderly, at-risk elderly, or disabled non-elderly.[99] 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.

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[92] 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.

[93] 24 C.F.R. §700.145.

[94] 24 C.F.R. §700.135.

[95] 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/hsgh/4640.1/46401c2HSGH.pdf.

[96] See the Section 202 statute, 12 U.S.C. §1701q(g)(3), for reference to the use of PRAC funds for service coordinators. The Service Coordinator NOFAs restrict applicants to Section 202 properties with direct loans. See, for example, U.S. Department of Housing and Urban Development, *FY2012 Notice of Funding Availability (NOFA) for Service Coordinators in Multifamily Housing*, March 2, 2012, p. 5, http://portal.hud.gov/huddoc/2012scmf-nofa.pdf.

[97] See Section 676.

[98] Note that Section 202 developments that receive PRAC 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.

[99] This requirement is present in HUD's Notice of Funding Availability for Service Coordinators. The most recent (continued...)

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.[100] 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.[101] 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.[102]

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, job training, and assistance with personal care.[103] ROSS funds are made available annually to PHAs, tribes, and nonprofit organizations through a competitive grant process. 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.

In FY2015 HUD made $34 million available for Service Coordinator contracts;[104] this includes all service coordinators, not just the Elderly/Persons with Disabilities program. When ROSS last separated funding for elderly residents and residents with disabilities, in FY2007, $16.7 million was awarded to grantees.[105]

Assisted Living Conversion and Service Enriched Housing

The HUD Appropriations Act of FY2000 (P.L. 106-74) created the Assisted Living Conversion Program (ALCP) to allow HUD-subsidized facilities for elderly residents to modify their apartments and common areas to accommodate elderly persons and persons with disabilities who

(...continued)

NOFA can be found on HUD's website, http://www.hud.gov/offices/adm/grants/nofa09/scmhsec.pdf.

[100] See the program's first Notice of Funding Availability, *Federal Register*, vol. 64, no. 153, August 10, 1999, p. 43543.

[101] 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).

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

[103] U.S. Department of Housing and Urban Development, *Notice of Funding Availability (NOFA) for HUD's Fiscal Year 2009 Resident Opportunity and Self-Sufficiency (ROSS)—Service Coordinators Program*, pp. 15-20, http://www.hud.gov/offices/adm/grants/nofa09/rossscsec.pdf.

[104] U.S. Department of Housing and Urban Development, Notice of Funding Availability (NOFA) for HUD's Fiscal Year 2015 Resident Opportunity and Self-Sufficiency (ROSS) – Service Coordinators Program, July 13, 2015, p. 7, http://portal.hud.gov/hudportal/documents/huddoc?id=2015ross-sc-nofa.pdf.

[105] U.S. Department of Housing and Urban Development, "HUD Awards $50 Million to Aid Seniors and Families Who Live in Public Housing," press release, March 4, 2008, http://archives.hud.gov/news/2008/pr08-027.cfm.

need additional assistance in order to remain in their units.[106] 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. Grants may also be used to pay for substantial capital repairs to eligible projects. Congress has not appropriated new funds for ALCP since FY2013 (see **Table 3**).

HUD's definition of an assisted living facility contains three parts: (1) the facility is licensed and regulated by the state or locality 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.[107] There is no uniform state definition for what constitutes an assisted living facility, and the level of care required by state law varies.[108] 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.[109] 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.[110] Construction requirements include bathrooms that are accessible to persons with disabilities and a 24-hour emergency response system in each unit.[111]

When funds are appropriated, owners of eligible properties may apply for ALCP 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.[112] 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.

In a bill enacted in the 111th Congress, the Section 202 Supportive Housing for the Elderly Act (P.L. 111-372), Congress made changes to the Assisted Living Conversion Program to add a new category of housing called "Service Enriched Housing" (SEH). To qualify for the original ALCP grants, housing must be licensed by the state or locality as an assisted living facility. Service Enriched Housing grants differ in that the facility itself does not have to be licensed as long as the service providers are licensed or certified. SEH must have a service coordinator on staff, and residents unable to perform at least one activity of daily living are eligible to receive services. In

[106] The statute governing the Assisted Living Conversion Program is at 12 U.S.C. §1701q-2.

[107] 12 U.S.C. §1715w(b)(6).

[108] For more information on state regulations, see Karl Polzer, *Assisted Living State Regulatory Review 2012*, National Center for Assisted Living, March 2012, http://www.ahcancal.org/ncal/resources/Documents/Final%2012%20Reg%20Review.pdf. Robert Mollica, Kristin Sims-Kastelein, and Janet O'Keeffe, *Residential Care and Assisted Living Compendium: 2007*, U.S. Department of Health and Human Services, November 30, 2007, http://aspe.hhs.gov/daltcp/reports/2007/07alcom.htm.

[109] See FY2009 Notice of Funding Availability for the Assisted Living Conversion Program, p. 3, http://www.hud.gov/offices/adm/grants/nofa09/alcpsec.pdf.

[110] Ibid., pp. 11-15.

[111] 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.

[112] Ibid., p. 27283.

addition, each unit in Service Enriched Housing is to contain its own kitchen and bath (the assisted living facility definition states that each unit *may* contain a kitchen and bath), and residents have a choice of which services they receive, as well as a choice of service provider. The SEH grants were available as part of the FY2012 and FY2013 grant competitions.[113]

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/Service Enriched Housing	Section 202 Section 221(d)(3) Section 236 Project-based Section 8 Rental Assistance	Frail elderly and non-elderly persons with disabilities (Assisted Living Conversion). Unable to perform at least one activity of daily living (Service Enriched Housing)

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, p. 11691; P.L. 105-276; 12 U.S.C. §1701q-2 and the FY2012 Notice of Funding Availability for Assisted Living Conversion Program and Service Enriched Housing.

Funding

Funding for Section 202 and related programs (principally the Service Coordinator and Assisted Living Conversion programs) was reduced by nearly 50% in FY2011 compared to the funding levels in the previous decade and has not recovered to previous levels since that time. In the years since FY2011, no funding has been appropriated for new Section 202 units, and the Assisted Living Conversion Program has not received any funding since FY2013. Instead, funding has largely been sufficient to support the renewal of Section 202 rental assistance and Service Coordinator contracts.

While both President Bush and President Obama had proposed to reduce funding for the Section 202 account on several occasions (in FY2007 through FY2009, and again in FY2011),[114] it was not until FY2011 that Congress first reduced funding for the program. In that year, it appropriated $400 million compared to the $825 million that was appropriated in FY2010 (Department of

113 U.S. Department of Housing and Urban Development, Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2012 Assisted Living Conversion Program (ALCP) For Eligible Multifamily Housing Projects, March 2, 2012, http://portal.hud.gov/huddoc/2012alcp-nofa.pdf and Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2013 Assisted Living Conversion Program (ALCP) For Eligible Multifamily Housing Projects, September 18, 2013, http://portal.hud.gov/huddoc/2013alcpnofa.pdf.

114 In FY2011, the proposed funding reduction was due to a plan for no new units of Section 202 housing to be funded in order to give HUD time to "redesign" the program. U.S. Department of Housing and Urban Development, *FY2011 Budget Summary: Investing in People and Places*, pp. 20-21, http://hud.gov/budgetsummary2011/full-budget-2011.pdf.

Defense and Full-Year Continuing Appropriations Act (P.L. 112-10)).[115] Since then, appropriations have dipped as low as $355 million, in FY2013, before rebounding to $420 million and $433 million in FY2016.

See **Table 3** for Section 202 funding levels through FY2016, as well as funding for the multifamily Service Coordinator and Assisted Living Conversion programs. For more information about the status of appropriations, see *Transportation, HUD, and Related Agencies' Appropriations, Issue Before Congress*.

[115] In addition to the $425 million reduction for Section 202 from the FY2010 level, an across-the-board rescission of 0.2% for discretionary accounts further reduced funding by another $800,000.

Table 3. Funding for Selected Programs, FY2001-FY2017

(dollars in millions)

	Total Housing for the Elderly[a]		Section 202[b]		Service Coordinators		Assisted Living Conversion	
Fiscal Year	President's Request	Appropriation	President's Request[c]	Appropriation	President's Request	Appropriation	President's Request	Appropriation
2001	779.0	777.3	629.0	677.0	50.0	49.9	100.0[d]	49.9
2002	783.3	783.3	683.5	682.6	49.9	50.0	49.9	50.0
2003	773.6	778.2	699.4	678.5	44.0[e]	49.6	30.0	24.8
2004	773.6	773.7	690.2	698.7	53.0	29.8	30.0	24.8
2005	773.3	741.0	690.2	648.3	53.0	49.6	30.0	24.8
2006	741.0	724.6	657.6	634.8	53.0	51.1	30.0	24.6
2007	545.5	734.6	459.4	638.7	59.4	51.1	24.8	24.6
2008	575.0	722.1	477.9[f]	628.7	71.0	59.8	24.8	24.8
2009	540.0	765.0[g]	433.4[h]	625.4	80.0	90.0	25.0	25.0
2010	765.0	825.0	650.0	668.1	90.0	89.1	25.0	39.6
2011	273.7	399.2[i]	181.9	306.3[j]	89.1	88.9[i]	0	0[j]
2012	757.0	374.6	646.0	282.6[k]	91.0	81.0[k]	20.0	11.0[k]
2013[l]	475.0	355.0	385.0[m]	267.8	90.0	76.8	0	10.4
2014	400.0	383.5	330.0[n]	311.5[o]	70.0	72.0	0	0
2015	440.0	420.0	370.0[p]	350.0	70.0	70.0	0	0
2016	455.0	432.7	378.0	355.7	77.0	77.0	0	0
2017	505.0	—	430.0	—	75.0	—	0	—

Source: Prepared by CRS on the basis of FY2000-FY2017 HUD Budget Justifications, the President's budget proposals for FY2001-FY2017, and the FY2016 Consolidated Appropriations Act (P.L. 114-113).

a. Total for the Housing for the Elderly Account includes funding for the Section 202, Service Coordinator, and Assisted Living Conversion programs. The components may not add to the total due to funding for the Working Capital Fund and for Planning Grants. The Planning Grants were funded from FY2003 through FY2010 and ranged from approximately $8 million to $25 million.

b. Unless otherwise noted, Section 202 includes funds for new capital grants, new project rental assistance, and renewals of project rental assistance contracts.

c. The President's budget requests do not specify a total amount for Section 202 capital grants and rental assistance. CRS arrived at the amounts proposed for Section 202 by subtracting the proposed funding for Service Coordinators, the Assisted Living Conversion Program, and the Working Capital Fund (if any) from the total proposed for the Housing for Special Populations or Housing for the Elderly Account.

d. In FY2001, the President's budget proposed two different sets of funds for assisted living for a total of $100 million. Of that amount, $50 million would have been allocated to the Assisted Living Conversion Program and $50 million would have been devoted to making 20% of units in new assisted living facilities insured under HUD's Section 232 program available for low-income individuals.

e. The President's FY2003 budget proposed to fund the Service Coordinator program at $53 million, in part through the use of recaptured funds, but would have appropriated $44 million in new funds.

f. The President's request for Section 202 in FY2008 would have included $25 million for a demonstration program to help Section 202 grantees leverage additional resources. This is included in the $477.9 million figure.

g. In addition to funds for planning grants and technical assistance, the FY2009 appropriation included funds for a delegated processing demonstration project.

h. The President's FY2009 Section 202 request included $15 million for a demonstration program to help Section 202 grantees leverage additional resources and $2 million to provide technical assistance for grant applicants. Both of these amounts are included in the $433.4 million requested for Section 202.

i. The FY2011 Department of Defense and Full-Year Continuing Appropriations Act (P.L. 112-10) included an across-the-board rescission of 0.2% for all discretionary accounts. The numbers in the table reflect the rescission as applied by HUD.

j. The year-long continuing resolution that funded most federal programs in FY2011 (P.L. 112-10) did not specify funding for the Assisted Living Conversion Program (ALCP), but the FY2010 Consolidated Appropriations Act (P.L. 111-117), upon which FY2011 was based, provided that "up to" $40 million was to be for available for ALCP grants. However, in its allocation of funds HUD did not provide any funding for the ALCP in FY2011. The funds that could have been provided for the program went to the Section 202 program.

k. In the FY2012 appropriation, Congress provided that "up to" $91 million be provided for Service Coordinators and "up to" $25 million for ALCP grants. HUD allocated $11 million for ALCP grants and $81 million for Service Coordinators, with the remaining $24 million going to the Section 202 program, bringing the total for Section 202 to $282.6 million. Of this amount, $16 million was estimated to go to new Senior Preservation Rental Assistance Contracts.

l. FY2013 funding levels were reduced by an across-the-board rescission of 0.2% and sequestration. The numbers in the table include these reductions.

m. Of the amount proposed for Section 202, $100 million would have been set aside for a rental assistance-only demonstration program.

n. Of the amount proposed for Section 202, $20 million would have been set aside for a rental assistance-only demonstration program.

o. In the FY2014 appropriations law, Congress gave HUD the authority to use residual receipts and other recaptured funds for "demonstration programs to test housing with services models for the elderly that demonstrate the potential to delay or avoid the need for nursing home care." According to FY2016 budget justifications, HUD set aside $20 million for this purpose in FY2014.

p. Of the amount proposed for Section 202, $20 million would have been set aside for a rental assistance-only demonstration program.

Initiatives and Issues

Supportive Services Demonstration for Elderly Households in HUD-Assisted Multifamily Housing

In the FY2014 appropriations law (P.L. 113-76), Congress gave HUD the authority to use excess residual receipts and other unobligated funds for "demonstration programs to test housing with services models for the elderly that demonstrate the potential to delay or avoid the need for nursing home care." In its FY2016 congressional budget justifications, HUD had set aside $20 million for this purpose.[116]

In January 2016, HUD released a Notice of Funding Availability (NOFA) for the Supportive Services Demonstration for Elderly Households in HUD-Assisted Multifamily Housing.[117] The NOFA provided that HUD would award $15 million to at least 80 multifamily housing owners, including Section 202, project-based Section 8, Section 221(d)(3), and Section 236 projects. Funds are available for grant recipients to hire full-time "enhanced" service coordinators and part-time wellness nurses. Through the grant applicant pool, HUD will select properties to be control subjects to use as comparisons in determining the effectiveness of the demonstration.

Refinancing Section 202 Loans

One of the issues faced by owners of older Section 202 developments is finding the funds to make improvements to their properties, which may be deteriorating or in need of modernization, so that they can continue to provide affordable housing. One of the ways this can be done is through refinancing. Owners pay off their old Section 202 loan and use the property's equity to make needed improvements. However, prior to 2011, owners of older Section 202 buildings had to obtain HUD approval to prepay their loans (in most cases),[118] and refinance into a loan with "a lower interest rate on the principal of the loan for the project and in reductions in debt service" (i.e., reduced principal and interest payments).[119] For owners of Section 202 properties that were financed prior to 1974, when interest rates were set at about 3%, it was difficult, if not impossible, to meet the requirement of a lower interest rate and reduced debt service. The Section 202 Supportive Housing for the Elderly Act (P.L. 111-372) changed the law to allow owners with interest rates at or below 6% to refinance as long as they use proceeds from the new loan to address the physical needs of the property (notwithstanding the reduced interest rate and lower debt service requirement). In addition, the law gave HUD the authority to subordinate existing Section 202 debt when owners obtain new financing for the project.

In the case of a refinancing, Section 202 owners must use the proceeds from the new loan either in a manner that is advantageous to the tenants or to provide affordable rental housing and social services for elderly persons living in another HUD-assisted property owned by the same entity. The law also enumerated purposes that would fulfill these requirements. Among the purposes for which owners can use refinancing proceeds under P.L. 111-372 are 15% for supportive services,

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[116] *FY2016 HUD Congressional Budget Justifications*, p. 25-9.

[117] U.S. Department of Housing and Urban Development, *Supportive Services Demonstration for Elderly Households in HUD-Assisted Multifamily Housing*, January 20, 2016, http://portal.hud.gov/hudportal/documents/huddoc?id=2015ssdemo-nofa.pdf.

[118] Some Section 202 loans made during the late 1970s and early 1980s may be prepaid without HUD approval.

[119] 12 U.S.C. §1701q, note.

or more with a waiver from HUD (prior law did not allow for HUD waiver), rehabilitation that results in a reduction in total units (e.g., converting efficiency units to one-bedroom units), and payment of developers' fees.

P.L. 111-372 also extended the term of the property's affordability when owners prepay their Section 202 loans (with or without refinancing). Congress initially allowed prepayment of Section 202 loans as long as 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 (P.L. 98-181). In 2000, the American Homeownership and Economic Opportunity Act (P.L. 106-569) added that, if there is a rental-assistance contract in place, the property owner must continue to operate under the terms required by the rental-assistance contract through loan maturity. P.L. 111-372 updated the law to provide that in order to gain HUD approval to prepay an existing Section 202 loan, an owner must agree to maintain affordability under the terms of the original loan or existing project-based rental assistance contract for 20 years *beyond* the date of the original loan's maturation.

Another change to existing law contained in P.L. 111-372 was the authorization of "Senior Preservation Rental Assistance Contracts" (SPRAC) for previously unassisted units in cases where owners prepay their Section 202 loans. In general, unassisted units are in properties that were financed prior to 1974, when most units did not receive rental assistance.[120] SPRACs are available to prevent displacement of tenants in cases where a refinancing results in increased rents. HUD released a final notice describing how SPRAC funds would be awarded on July 3, 2013.[121] The law also provided that Section 8 rental assistance is not to increase as the result of a refinancing unless it occurs pursuant to mark-up-to-market and mark-up-to-budget transactions under the Multifamily Assisted Housing Reform and Affordability Act (MAHRA).[122]

Before P.L. 111-372 was enacted, Congress had included similar refinancing provisions in the FY2009 Omnibus Appropriations Act (P.L. 111-8) and the FY2010 Consolidated Appropriations Act (P.L. 111-117).[123] However, the refinancing provisions did not specifically amend existing law, so they were in effect only for the duration of the fiscal year that the appropriations law was in effect. As in P.L. 111-372, under the appropriations laws, owners were able to refinance loans with interest rates at or below 6% in order to address a property's physical needs. However, the language in the appropriations acts contained some provisions that were not part of P.L. 111-372. For example, the transactions were to meet a cost benefit analysis established by HUD, and, instead of providing project-based rental assistance to previously-unassisted units in cases of increased rents, the appropriations laws provided for enhanced Section 8 vouchers. On May 4, 2012, HUD released a notice with policies and procedures governing all refinancings of Section 202 loans.[124]

[120] However, some pre-1974 properties later received rental assistance through the Rent Supplement program and the Loan Management Set Aside program.

[121] U.S. Department of Housing and Urban Development, *Notice of Senior Preservation Rental Assistance Contracts Award Process*, July 3, 2013, http://portal.hud.gov/hudportal/documents/huddoc?id=sprac_finalnotice.pdf.

[122] For more information about MAHRA, see CRS Report R41182, *Preservation of HUD-Assisted Housing*, by (name redacted) and (name redacted). The relevant section of the report is entitled "Section 8 Expiring Contracts, Renewals, and the Multifamily Assisted Housing Reform and Accountability Act (MAHRA)."

[123] See Section 234 of "General Provisions—Department of Housing and Urban Development" in Division I of the FY2009 Omnibus Appropriations Act and Section 229 of the FY2010 Consolidated Appropriations Act.

[124] U.S. Department of Housing and Urban Development, *Notice H.R. 8, Updated Requirements for Prepayment and Refinance of Section 202 Direct Loans*, May 4, 2012, http://portal.hud.gov/huddoc/12-08hsgn.pdf.

Preservation of Federally Assisted Housing

The housing finance and rental assistance programs discussed in this report all operate through private for-profit or nonprofit entities. In the Section 202, Section 221(d)(3), and Section 236 programs, HUD entered into agreements with private owners to maintain affordable housing for a period of years, ranging from 20 years to 50 years. Similarly, HUD has entered into rental assistance contracts with many owners to provide rental support for the units for a period of time. The affordability terms agreed to by property owners participating in these programs, sometimes referred to as "affordability restrictions," began to come to an end in the 1980s. When the restrictions on these properties end, there is a risk that they will become unaffordable to low- and moderate-income tenants, and that tenants will be displaced. Efforts to maintain the affordability of the remaining HUD-assisted properties as their affordability restrictions come to an end are often referred to as "assisted housing preservation."

Affordable housing units may be converted to market-rate housing under several circumstances. First, when HUD-subsidized mortgages or direct loans 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 third 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. The possibilities vary depending on the type of mortgage subsidy program or rental assistance contract. Below is a brief summary of how HUD assistance can come to an end. For more information about the issue of HUD-assisted housing preservation, see CRS Report R41182, *Preservation of HUD-Assisted Housing*, by (name redacted) and (name redacted)

- **Loan Maturity**—Owners of Section 202, Section 221(d)(3), and Section 236 financed properties may convert units to market-rate rents upon mortgage maturation provided there is no rental assistance contract attached to the unit. For units receiving Section 8 assistance, the assistance continues until the end of the contract (although the contract may be renewed after loan maturation), at which point tenants receive Section 8 vouchers. In the case of RAP and Rent Supplement, the rental assistance contracts generally end at loan maturity. Tenants receiving assistance under Rent Supplement do not receive Section 8 vouchers, while RAP-assisted tenants are eligible for vouchers.
- **Loan Prepayment**—Many, though not all, owners of Section 221(d)(3) and Section 236 properties can prepay their HUD-insured mortgages without HUD's permission and end affordability restrictions. However, income-eligible tenants receive Section 8 vouchers.
- **Opt Out of Rental Assistance Contracts**—When owners opt out of Section 8 contracts, assisted tenants receive Section 8 vouchers. Tenants receiving assistance under Rent Supplement do not receive Section 8 vouchers, while RAP-assisted tenants are eligible for vouchers.

Actions to Enable Preservation of Section 202 and Other Multifamily Housing Assistance

HUD Actions: Toward the end of FY2010, HUD began publishing notices that would enable Section 202 and other property owners to make improvements to their multifamily housing developments, potentially preserving affordable units that would otherwise fall into disrepair.

- One notice, published on December 20, 2010, gives HUD the discretion to subordinate Section 202 loans when owners have "immediate needs for rehabilitation, significant or emergency repairs," but are unable to go through the refinancing process to pay off the Section 202 loan.[125] Owners must be able to show that the subordination is necessary in order to preserve the project, and must enter into extended use agreements for the longer of 20 years beyond the loan's original maturity date or the date on which the subordinated loan is paid off.
- Similarly, HUD issued a notice that gives it the authority to defer the repayment of flexible subsidy debt in circumstances that would assist in preserving properties.[126] From the late 1970s to the mid-1990s, the flexible subsidy program provided loans to properties with HUD-assisted financing that were having financial difficulties (the last year in which Congress gave new obligation authority was FY1995). HUD may approve deferral of payment in cases where an owner refinances a loan but the funds are not sufficient to pay off the flexible subsidy debt. As with subordination of Section 202 loans, an owner has to show that the deferral is necessary to ensure preservation of the project and must agree to an extended use agreement for the longer of 20 years beyond the flexible subsidy loan's original maturity date or the loan's payoff date.
- Another HUD notice, issued on February 1, 2011, allows Section 202 owners, among others, to convert efficiency units to one-bedroom units, even if conversion results in fewer total units in the building.[127] Conversion may occur because efficiency units are undesirable and owners are unable to rent them, resulting in lack of income to keep properties operational. In order to be able to convert units, owners must demonstrate that the local market demand is such that conversion is necessary and that it will put the property in a better financial position.
- In a notice issued on November 10, 2011, HUD provided guidance to nonprofit owners of Section 236, Section 221(d)(3), and other properties with FHA-insured mortgages regarding their ability to realize profits from property sales.[128] Nonprofit owners will be able to realize sale proceeds if each of the following requirements are met: (1) the property is sold to another owner that will enter into a use agreement to maintain affordability for at least 20 years beyond the original mortgage maturity date under the same terms as the original mortgage, (2) if there is a Section 8 Housing Assistance Payment (HAP) contract in place, it must be renewed for at least 20 years, (3) rent increases must be implemented in conformance with guidance in the notice, (4) the purchaser must submit a capital

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[125] U.S. Department of Housing and Urban Development, *Notice 2010-26, Subordination of Section 202 Direct Loans*, December 20, 2010, http://portal.hud.gov/hudportal/documents/huddoc?id=H2010-26.pdf.

[126] U.S. Department of Housing and Urban Development, *Notice H.R. 5, Policies and Procedures for the Deferred Repayment of Operating Assistance Flexible Subsidy Loans*, February 14, 2011, http://portal.hud.gov/hudportal/documents/huddoc?id=11-05hsgn.pdf.

[127] U.S. Department of Housing and Urban Development, *Notice H.R. 3, Policies and Procedures for the Conversion of Efficiency Units to One-Bedroom Units*, February 1, 2011, http://portal.hud.gov/hudportal/documents/huddoc?id=11-03hsgn.pdf.

[128] U.S. Department of Housing and Urban Development, Notice H.R. 31, Policy for Treatment of Proceeds Resulting from the Sale of FHA-insured or Secretary-held formerly insured Multifamily Projects by Nonprofit Owners, November 10, 2011, http://portal.hud.gov/hudportal/documents/huddoc?id=11-31hsgn.pdf.

needs assessment, and significant repairs must be undertaken after the transaction closes, (5) the purchaser should have a feasible financing plan for the duration of the use agreement or HAP contract (whichever is longer), and (6) the purchaser must be experienced in the operation of affordable rental housing.

Congressional Action: The FY2012 Consolidated Appropriations Act (P.L. 112-55) established the Rental Assistance Demonstration (RAD). RAD allows existing housing subsidy programs to convert to Section 8 project-based rental assistance (PBRA) or Section 8 project-based vouchers (PBV). RAD has two components, one of which allows owners to convert Rent Supplement and the RAP contracts to PBV and PBRA assistance. HUD does not have the authority to renew Rent Supplement or RAP contracts when they expire, but has the authority to renew Section 8 contracts.

Children Living in Housing Developments for Elderly Residents

According to the 2014 American Community Survey, approximately 2.72 million grandparents lived with and were responsible for the basic needs of one or more grandchildren under the age of 18.[129] Of those families, 21% were in poverty.[130] The numbers have increased since 2000, when approximately 2.4 million grandparents were raising grandchildren, with 19% of the families poor.[131]

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 ...").[132] 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."[133]

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 sometimes 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 provided 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. In December

[129] U.S. Census Bureau, *2010-2014 American Community Survey 5-Year Estimates, Table S1002*.

[130] Ibid.

[131] 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.

[132] HUD Handbook 4350.3, chapter 3, paragraph 3-23, http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/43503c3HSGH.pdf.

[133] HUD Public Housing Occupancy Guidebook, June 2003, Section 2.2, p. 25, http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebooknew.pdf.

2008, HUD announced two awardees, both of which received capital grants and rental assistance: one project consisting of 10 units in Chicago and the other consisting of 9 units in Smithville, TN.[134]

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*.[135] 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 were considered very low income, and therefore would have been eligible for LEGACY Act-funded housing.[136]

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[134] See HUD's funding announcement, http://www.hud.gov/offices/hsg/mfh/eldfam/announcement.pdf.

[135] 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.

[136] Ibid., p. 6.