

# CRS Report for Congress

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

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

## Summary

The population of persons age 65 and older in the United States is expected to grow both in numbers and as a percentage of the total population over the next 25 years, through 2030. In 2002, a bipartisan commission created by Congress issued a report, *A Quiet Crisis in America*, which 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 households (defined by HUD as one or more persons at least one of whom is age 62 or older) to ensure that elderly residents in HUD-assisted housing can stay 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 program. Established in 1959, it is the only HUD program that provides housing exclusively for the elderly. 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 Section 8 project-based housing programs also have projects dedicated to elderly households.

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

Among current issues involving HUD-assisted housing for elderly residents is housing preservation. In its report *A Quiet Crisis in America*, the bipartisan Commission on Affordable Housing and Health Facility Needs for Seniors in the 21<sup>st</sup> Century noted that units of affordable housing for low-income elderly households could be lost in the coming years due to mortgage maturity and prepayment. Another concern is the deterioration of existing housing developments. Two similar bills, both entitled the Section 202 Supportive Housing for the Elderly Act (H.R. 2930 and S. 2736), would, among other things, amend current law to increase the opportunities for building owners to refinance properties and use proceeds to improve the facilities. Both bills would also create a new project rental assistance program for units in certain Section 202 developments and would revise the definition of assisted living facility. H.R. 2930 was approved by the House on December 5, 2007.

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

## Introduction

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

The Department of Housing and Urban Development (HUD) operates a number of programs that provide both housing and supportive services for elderly households. HUD defines elderly households as those in which one or more persons are 62 years of age or older.<sup>5</sup> Five HUD programs provide affordable rental housing for low-income elderly households. Of these five, only one, the Section 202 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 provided subsidized loans in the 1960s and early 1970s so that

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

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

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

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

<sup>5</sup> 12 U.S.C. §1701q(k)(1).

developers 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 for use primarily 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) program for elderly persons and persons with disabilities, and the Assisted Living Conversion program. Each program works to allow elderly persons living in HUD eligible properties to remain in their apartments through assistance and services.

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. The report does not include a comprehensive look at all housing programs that serve elderly households, however. Major sources of assistance that are not discussed include HUD's Section 8 voucher program,<sup>6</sup> HUD's mortgage insurance and reverse mortgage programs,<sup>7</sup> and the Department of Agriculture's rural housing programs that provide assistance to elderly households.<sup>8</sup>

## HUD Housing Programs

### The Section 202 Housing for the Elderly Program

The Section 202 housing for the elderly program is the only HUD program that provides housing exclusively for elderly households. With more than 268,000 units available for elderly households, it provides more than the other HUD rental housing programs that designate housing for elderly residents.<sup>9</sup> Established as part of the Housing Act of 1959 (P.L. 86-372) and last authorized in FY2003 (P.L. 106-569), the current version of the Section 202 program makes capital grants and project rental assistance available to developers so that they can build housing that is affordable to

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<sup>6</sup> For more information on Section 8 vouchers, see CRS Report RL32284, *An Overview of the Section 8 Program*, by Maggie McCarty.

<sup>7</sup> For more information on reverse mortgages, see CRS Report RL33843, *Reverse Mortgages: Background and Issues*, by Bruce E. Foote.

<sup>8</sup> For more information on the Department of Agriculture's rural housing programs, see CRS Report RL33421, *USDA Rural Housing Programs: An Overview*, by Bruce E. Foote.

<sup>9</sup> Government Accountability Office, *Federal Housing Programs that Offer Assistance for the Elderly*, GAO-05-174, February 2005, p. 11, available at [<http://www.gao.gov/new.items/d05174.pdf>]. Although the Section 202 program no longer provides housing for persons with disabilities, between 1965 and 1992, Section 202 housing was developed for both elderly and disabled households. The total number of Section 202 units available for both elderly and disabled households is 320,000.

very low-income elderly households. The program was not always structured this way, however, and has changed several times since its inception. During the 47 years that the Section 202 program has existed, the system of providing financing for developments has changed from loans to grants, the tenant population targeted 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 and disabled families by extending low-interest construction loans to nonprofit developers. Between 1974 and 1990, the program continued to extend loans to developers, but added Section 8 project-based rental assistance to subsidize tenant rents so that developers could afford to rent units to low-income elderly and disabled households. Finally, beginning in 1990, HUD replaced the Section 202 loan program with capital grants and a different form of rental assistance so that developers could make housing affordable to *very* low-income elderly households.<sup>10</sup>

**History of the Section 202 Program: 1959 to 1974.** When the Section 202 program was established in 1959, its purpose was to provide housing for moderate-income elderly tenants — those with too much income for public housing, but insufficient income for market-rate housing.<sup>11</sup> The program lent funds to private nonprofit developers so that they could build housing for elderly families and individuals. Unlike most of its loan programs, HUD made the Section 202 loans directly to developers rather than insuring loans from private lenders.<sup>12</sup> The interest rates on the loans were low — approximately 3% — and had a duration of up to 50 years.<sup>13</sup> The developers, assisted by low-interest mortgage payments, could then afford to set rents in their buildings at levels that were affordable to elderly households with moderate incomes. At the time, there were no income eligibility restrictions on the properties. Between 1959 and 1968, developers constructed 45,257 Section 202 units in 335 projects, with an average of 135 units per building, most of which were efficiency apartments.<sup>14</sup>

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<sup>10</sup> Low-income households earn 80% or less of the area median income, while *very* low-income households earn 50% or less of the area median income.

<sup>11</sup> U.S. Department of Housing and Urban Development, *Housing for the Elderly and Handicapped: The Experience of the Section 202 Program from 1959 to 1977*, January 1979, p. 29 [hereinafter *Housing for the Elderly and Handicapped*].

<sup>12</sup> Barry G. Jacobs, Kenneth R. Harney, Charles L. Edson, and Bruce S. Lane, *Guide to Federal Housing Programs* (Washington, DC: Bureau of National Affairs, 1982), p. 77.

<sup>13</sup> *Housing for the Elderly and Handicapped*, p. 18.

<sup>14</sup> *Ibid.*, p. 17. See also United States Senate Special Committee on Aging, *Section 202* (continued...)

In 1962, HUD began setting rents for Section 202 properties on a community-by-community basis. The new rents were meant to be affordable for lower-middle income elderly households, and they varied across the country.<sup>15</sup> In 1968, HUD set income eligibility limits for all Section 202 developments at the higher of 135% of public housing limits or 80% of area median income.<sup>16</sup> To make units affordable for low-income elderly tenants (those earning 80% or less of the area median income), Congress enacted a rental subsidy program called the Rent Supplement program (described later in this report) as part of the Housing and Urban Development Act of 1965 (P.L. 89-117).<sup>17</sup> Those tenants receiving rent subsidies made up a relatively small percentage of total tenants during the early years of the Section 202 program, however.<sup>18</sup>

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). 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 estimates that through 1977, less than 1% of tenants were non-elderly handicapped.<sup>19</sup>

In FY1970, the Section 202 program was not funded for the first time since its enactment. The Nixon Administration did not propose any new funds for the program and Congress did not appropriate them. The Administration’s rationale was, at least in part, that the large size of the Section 202 loans had a negative effect on the size of the federal budget.<sup>20</sup> This was due to the fact that the program showed only expenditures and not the offsets made when developers paid back the Section 202 loans.<sup>21</sup> Between 1970 and 1974, the Section 202 program did not fund any new construction projects. Housing for elderly households was instead 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).

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<sup>14</sup> (...continued)

*Housing for the Elderly: A National Survey*, committee print 98-257, 98<sup>th</sup> Cong., 2<sup>nd</sup> sess., (Washington: GPO, 1984), p. 7.

<sup>15</sup> *Housing for the Elderly and Handicapped*, p. 29.

<sup>16</sup> *Ibid.*, p. 18.

<sup>17</sup> The Rent Supplement program primarily provided rent subsidies for tenants living in Section 221(d)(3) housing, but Section 202 residents were eligible as well.

<sup>18</sup> *Housing for the Elderly and Handicapped*, p. 97.

<sup>19</sup> *Ibid.*, p. 36.

<sup>20</sup> Senate Committee on Aging, Subcommittee on Housing for the Elderly, *Examination of Proposed Section 202 Housing Regulations*, hearing before the 94<sup>th</sup> Cong., 1<sup>st</sup> sess., June 6, 1975, p. 2.

<sup>21</sup> M. Powell Lawton, *Planning and Managing Housing for the Elderly* (New York: John Wiley & Sons, 1975), p. 38.

Of the Section 202 properties funded prior to 1974, there are approximately 267 buildings, representing more than 36,000 units, that still have active loans.<sup>22</sup> These properties continue to accept tenants according to the rules in place at the time they were developed. Section 202 developments that applied for HUD funds prior to 1962 are not subject to income limits, while those constructed after 1962 but prior to July 1972 are subject to the income limits approved by HUD at the time.<sup>23</sup> In addition, since the creation of many pre-1974 Section 202 developments, 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 Section 8 project-based assistance contracts available for units in troubled FHA-insured properties.

**History of the Section 202 Program: 1974 to 1990.** In 1974, the Housing and Community Development Act of 1974 (P.L. 93-383) reactivated the Section 202 program and also made a number of changes to the program. The primary change was to make Section 8 project-based rental assistance available to building owners. Section 8 project-based 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 Section 8 project-based 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-income elderly families.<sup>24</sup> Contracts for Section 8 project-based rental assistance payments between HUD and Section 202 owners were initially set at up to 20 years and were renewable.<sup>25</sup>

Loans for the construction of Section 202 housing continued to be available to developers when the program was reactivated; however, P.L. 93-383 changed the interest rate, raising it from 3% to the U.S. Treasury's cost of borrowing, while the duration of the loan term dropped from 50 years to 40 years. Another change was in the distribution of Section 202 loan funds. Prior to 1974, Section 202 developments were largely concentrated in urban areas.<sup>26</sup> However, the Housing and Community Development Act directed that 20% to 25% of funds go to nonmetropolitan areas.<sup>27</sup> By 1988, the share of Section 202 units located in cities with populations less than

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<sup>22</sup> CRS analysis of HUD data.

<sup>23</sup> HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs, June 2007, chapter 3, paragraph 3-23 [hereinafter "HUD Handbook 4350.3"]. The 2004 version is available at [<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503c3HSGH.pdf>].

<sup>24</sup> *Housing for the Elderly and Handicapped*, pp. 105-106.

<sup>25</sup> An exception for contracts up to 40 years was made for developments built or rehabilitated by loans from state or local agencies.

<sup>26</sup> *Housing for the Elderly and Handicapped*, p. 38.

<sup>27</sup> P.L. 93-383, section 213(d).

10,000 rose to 11.5%, compared to 2.7% through 1974.<sup>28</sup> A final change to the Section 202 program in P.L. 93-383 was the requirement that Section 202 developments support state and local plans to provide services like transportation, homemaker services, and counseling and referral services to elderly tenants.

In 1981, the tenant income guidelines for Section 202 units that receive Section 8 project-based rental assistance were changed as part of the Housing and Community Development Amendments of 1981 (P.L. 97-35). The law required that HUD units receiving Section 8 project-based rental assistance, including Section 202 projects, be made available primarily to very low-income households, those earning 50% or less of the area median income. The law specified that, of the units receiving Section 8 project-based rental assistance prior to 1981, 10% could be occupied by households with incomes between 50% and 80% of the area median income (those households considered low income), while only 5% of new units could be occupied by families earning between 50% and 80% of the area median.<sup>29</sup>

Between 1974 and 1988, an estimated 128,636 additional units of Section 202 housing were built using construction loans and Section 8 project-based rental assistance.<sup>30</sup> The average size of developments declined from 153 units in developments built between 1959 and 1974, to 92 units in developments built between 1975 and 1984, to 56 units in developments built between 1985 and 1988.<sup>31</sup> 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%.<sup>32</sup>

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

The change in financing was prompted by concern about the costs involved in paying back Section 202 loans. Under the Section 202 loan program, developers often used Section 8 project-based rental assistance to service their loan debt in

<sup>28</sup> House Committee on Aging, Subcommittee on Housing and Consumer Interests, *The 1988 National Survey of Section 202 Housing for the Elderly and Handicapped*, 101<sup>st</sup> Cong., 1<sup>st</sup> sess., December 1, 1989, p. 29.

<sup>29</sup> The percentages have since been changed to 25% and 15%, respectively. 42 U.S.C. §1437n(c).

<sup>30</sup> Leonard F. Heumann, Karen Winter-Nelson, and James R. Anderson, *The 1999 National Survey of Section 202 Elderly Housing*, American Association of Retired Persons, January 2001, p. 9, available at [[http://assets.aarp.org/rgcenter/il/2001\\_02\\_housing.pdf](http://assets.aarp.org/rgcenter/il/2001_02_housing.pdf)].

<sup>31</sup> *The 1988 National Survey of Section 202 Housing for the Elderly and Handicapped*, p. 27.

<sup>32</sup> *Ibid.*

addition to using it to supplement tenant rents — its intended purpose.<sup>33</sup> At the time P.L. 101-625 was enacted, it was estimated that approximately 75% of Section 8 project rental assistance was used by developers to service their loan debt, leaving only 25% for rent subsidies and improvements.<sup>34</sup> Under the new program of capital grants, developers no longer need to use Section 8 assistance to make loan payments, allowing HUD to make lower project rental assistance payments, requiring less budget authority.<sup>35</sup>

The method of providing project-based rental assistance also changed as a result of P.L. 101-625. Rental subsidies are no longer provided through the Section 8 program, meaning that rents are not based on Section 8 fair market rents (FMRs).<sup>36</sup> The new project rental assistance is calculated using factors specific to constructing Section 202 projects. These factors include the prevailing costs of construction, rehabilitation, and acquisition of property, the costs of special design features for elderly residents, and the costs of adding congregate space.<sup>37</sup> The new system is meant to ensure that all areas of the country have adequate funds to develop and maintain Section 202 housing; under the old system of FMRs, those areas of the country with low FMRs often could not afford to develop Section 202 projects.<sup>38</sup> Although the duration of the new project rental assistance contracts was initially 20 years, HUD's current practice is to extend new rental assistance contracts for three years.

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 the Housing and Community Development Act of 1987 (P.L. 100-242), specifying that 15% of total 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 Housing for Persons with Disabilities program. 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; Section 202 developments constructed before 1992 continue to provide housing for persons with disabilities according to the rules that existed at the time of construction.

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<sup>33</sup> Senate Committee on Banking, Housing, and Urban Affairs, *The National Housing Act*, Senate report to accompany S. 566, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 101-316, June 8, 1990, p. 133.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*, p. 34.

<sup>36</sup> FMRs are generally set at the 40<sup>th</sup> percentile of rents paid in an area, although in some high-cost areas, FMRs are set at the 50<sup>th</sup> percentile.

<sup>37</sup> *Cranston-Gonzalez National Affordable Housing Act*, conference report to accompany S. 566, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 101-943, October 25, 1990, p. 484.

<sup>38</sup> S.Rept. 101-316, p. 134.

Between 1993 and 1998, the Section 202 program created approximately 27,632 units of housing for elderly households.<sup>39</sup> HUD estimates that funds appropriated in the years FY1999 through FY2006 were sufficient to support an additional 47,000 units.<sup>40</sup> In this phase of the Section 202 program, developments have become smaller, with an average of 50 units per project, and have virtually no efficiency units.<sup>41</sup> The developments also serve a slightly older population. In 1983, the average age was 72, and in 1999 it was 75. The oldest buildings house the oldest residents. In Section 202 developments built between 1959 and 1974, 58.6% of residents are age 76 or older, while in developments built between 1993 and 1998, 35.6% of residents are age 76 or older.<sup>42</sup>

The most recent change to the Section 202 program was made in 2000 as part of the American Homeownership and Economic Opportunity Act (P.L. 106-569). The law made for-profit limited partnerships eligible to own Section 202 properties as long as the sole general partner is a private nonprofit organization.<sup>43</sup> The change is meant to make developers better able to take advantage of private financing options and federal housing tax credits.<sup>44</sup>

**The Section 202 Program's Grant Process.** HUD awards Section 202 grants to private nonprofit groups and for-profit general partnerships. The grant process consists of two parts, one of which involves a formula and the other a competitive process. In the first step, HUD uses a need-based formula to allocate the total amount of Section 202 funds available for capital grants and project rental assistance in a fiscal year to each of the 18 HUD field offices. Of the funds available, HUD allocates 85% to metropolitan areas and 15% to non-metropolitan areas.<sup>45</sup>

The formula for allocating Section 202 funds to the HUD field offices looks at “relevant characteristics of the elderly population” in each field office’s jurisdiction, including the population of elderly renters.<sup>46</sup> HUD also considers the number of one-person elderly renter households that have incomes at or below 50% of the area median income, together with one of three “housing conditions.” These three housing conditions are: paying more than 30% of income toward rent, occupying a

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<sup>39</sup> *The 1999 National Survey of Section 202 Elderly Housing*, p. 9.

<sup>40</sup> HUD Budget Justifications for FY2001 through FY2008.

<sup>41</sup> *The 1999 National Survey of Section 202 Elderly Housing*, p. 10.

<sup>42</sup> *Ibid.*, p. 18-19.

<sup>43</sup> The provision is codified at 12 U.S.C. §1701q(k)(4).

<sup>44</sup> See 24 CFR §891.800.

<sup>45</sup> For the most recent guidelines on the Section 202 grant distribution process, see HUD’s Notice of Funding Availability, *Federal Register*, vol. 72, no. 48, March 13, 2007, pp. 11697-11717 (hereinafter “FY2007 NOFA”).

<sup>46</sup> 24 CFR § 791.402(c).

unit without a kitchen or plumbing, or occupying an overcrowded unit (defined as accommodating 1.01 or more persons per room).<sup>47</sup>

In the second step in the grant process, applicants apply directly to their field offices for the funds that have been allocated to their areas. HUD then evaluates grantee applications and uses a point system to assign up to 102 points per application.<sup>48</sup> Points are awarded in the following categories:

- Up to 23 points are awarded for the applicant's capacity to provide housing, including experience in providing housing to minorities;
- Up to 13 points are awarded for the need for funding in the applicant's target area;
- Up to 47 points are awarded for the approach to providing housing, including the quality and effectiveness of the proposal, the involvement of elderly persons in designing the proposal, and the proximity and accessibility of the site to transportation and services;
- Up to 5 points are awarded for the applicant's ability to secure funding from other sources; and
- Up to 12 points are awarded for development of an evaluation plan to measure performance of the project.

In FY2007, \$519 million was distributed to grant recipients in 38 states to construct or convert nearly 3,900 units of housing for elderly households.<sup>49</sup>

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

In 1961, Congress enacted the Section 221(d)(3) Below Market Interest Rate (BMIR) program (P.L. 87-70) to help public agencies, cooperatives, limited dividend corporations, and nonprofit sponsors create housing for low- and moderate-income families.<sup>50</sup> 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 those families with incomes too high for public housing, but too low for market-rate rents.<sup>51</sup> The program was, and continues to be, run by the Federal Housing Administration (FHA). Through the program, private lenders extended FHA-insured loans with interest rates of 3% and durations of up to 40 years to developers of multi-family rental housing

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<sup>47</sup> FY2007 NOFA, p. 11699.

<sup>48</sup> *Ibid.*, p. 11712. Two of the points are bonus points awarded for projects that are part of renewal communities, empowerment zones, or enterprise communities.

<sup>49</sup> The list of grantees is available at [<http://www.hud.gov/news/releases/pr07-157.pdf>].

<sup>50</sup> The Section 221(d)(3) program also contained a market interest rate component, but unlike the BMIR program, it was not designed to ensure affordability. John R. Gallagher, *Nonprofit Housing Rent Supplement Program Under Section 221(d)(3) of the National Housing Act* (Washington, DC: Urban America, Inc., 1968), p. 4.

<sup>51</sup> Senate Committee on Banking and Currency, *Housing Act of 1961*, Senate report to accompany S. 1922, 87<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 281, May 19, 1961.

projects of at least five units.<sup>52</sup> Lenders then sold the mortgages to the Federal National Mortgage Association (Fannie Mae).<sup>53</sup> The program continued until 1968, when the Section 236 program replaced it as a vehicle for producing multi-family housing for low-income families. Section 221(d)(3) BMIR properties are still active, providing 1,154 units in projects dedicated to the elderly.<sup>54</sup> Units are open to households with incomes of up to 95% of the area median income.<sup>55</sup>

The Rent Supplement program was enacted as part of the Housing and Urban Development Act of 1965 (P.L. 89-117) to subsidize the rent payments of low-income households living in Section 221(d)(3) BMIR housing developments. FHA entered into contracts with building owners to make up the difference between 25% of tenant income (later raised to 30%) and the fair market rent as determined by HUD.<sup>56</sup> Generally, up to 20% of units in a building were eligible for Rent Supplement payments, although the Housing and Urban Development Act of 1969 (P.L. 91-152) made up to 40% of units eligible for subsidy payments if the HUD Secretary determined it was necessary.<sup>57</sup> Most but not all of these contracts have been converted to Section 8 project-based rental assistance.<sup>58</sup>

## The Section 236 Program

In 1968, Congress determined that the Section 221(d)(3) program and the Section 202 program were of limited usefulness in developing large numbers of assisted housing units. The Section 221(d)(3) program depended on Fannie Mae to purchase loans, and only limited funds were available for this purpose.<sup>59</sup> And the Section 202 program's system of direct loans had a large negative effect on the budget. As a result, the Housing and Urban Development Act of 1968 (P.L. 90-448) established the Section 236 program to provide housing for low- and moderate-income families, including facilities dedicated to elderly persons and persons with disabilities. The program was intended to replace the Section 221(d)(3) and Section 202 programs,<sup>60</sup> and for a time it did. The program produced approximately 400,000

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<sup>52</sup> Leonard Garland Gaston, "The 221(d)(3) Below Market Interest Rate and Rent Supplement Housing Program" (Ph.D. dissertation, Ohio State University, 1969), p. 120.

<sup>53</sup> John R. Gallagher and John J. O'Donnell, *Nonprofit Housing Under Section 221(d)(3) of the National Housing Act* (Washington, DC: Urban America, Inc., 1966), p. 20.

<sup>54</sup> *Federal Housing Programs that Offer Assistance to the Elderly*, p. 11.

<sup>55</sup> HUD Handbook 4350.3, chapter 3, paragraph 3-6.

<sup>56</sup> 12 U.S.C. §1701s(d).

<sup>57</sup> 12 U.S.C. §1701s(j)(1)(d).

<sup>58</sup> HUD FY2008 Budget Justifications, p. J-1, available at [<http://www.hud.gov/offices/cfo/reports/2008/cjs/part2/hsg/rentsupplement.pdf>].

<sup>59</sup> House Committee on Banking and Currency, *Housing and Urban Development Act of 1968*, House report to accompany H.R. 17989, 90<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 1585, June 25, 1968.

<sup>60</sup> *Ibid.*

new units in 3,601 developments by 1976.<sup>61</sup> But after January 1973, when President Nixon imposed a moratorium on the new construction of subsidized housing, the program did not receive new funds, although it has continued to subsidize existing developments.

The Section 236 program assists both private and nonprofit owners of rental housing projects for low-income and moderate-income households by insuring mortgages for construction or substantial rehabilitation of buildings, and by subsidizing the mortgage payments. Under the program, project owners borrowed funds from private lenders at the market interest rate, and the government then made (and continues to make) subsidy payments to the owners, called Interest Reduction Payments (IRPs), so that owners effectively pay an interest rate of only 1% on their mortgages. By paying the low 1% interest rate, owners are expected to be able to charge tenants affordable rents. Each Section 236 unit has both a basic rent and a market rent: the basic rent is the payment amount needed to operate the project at a 1% mortgage interest rate, and the market rent is the amount needed to operate the project at the actual mortgage interest rate.<sup>62</sup> Tenants pay the higher of the basic rent or 30% of their income (initially, tenants paid 25%), but rent cannot exceed the fair market rent amount.<sup>63</sup> Households with low incomes — below 80% of area median income — are eligible for Section 236 housing. Approximately 66,000 units, 23% of all Section 236 units, are reserved for elderly residents.<sup>64</sup>

In order to help make Section 236 housing more affordable to low-income households, some projects receive rent subsidies through a program called Rental Assistance Payments (RAP). Congress enacted the program in 1974 (P.L. 93-383) to ensure that tenants need not 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 Section 8 project-based rental assistance.<sup>65</sup>

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<sup>61</sup> General Accounting Office (now the Government Accountability Office), *Little Accomplished in Insuring that Proper Rents Are Charged Under the Section 236 Rental Assistance Housing Program*, CED-76-146, October 5, 1976, p. 2, available at [<http://archive.gao.gov/f0402/100542.pdf>].

<sup>62</sup> 12 U.S.C. §1715z-1(f)(1). The Section 236 market rent is different from Section 8 fair market rent.

<sup>63</sup> Charles L. Edson, “Sections 235 and 236 — The First Year,” *Urban Lawyer* 2, No. 14 (1970), p. 22.

<sup>64</sup> *Federal Housing Programs that Offer Assistance to the Elderly*, p. 11.

<sup>65</sup> HUD FY2008 Budget Justifications, p. K-1, available at [<http://www.hud.gov/offices/cfo/reports/2008/cjs/part2/hsg/rentassistance.pdf>]. The exceptions in the RAP program are state-aided, uninsured projects.

## Public Housing

Public housing is the original federally assisted housing program for low-income families, created as part of the Housing Act of 1937 (P.L. 75-412). The program provides housing for very low-income households (earning 50% or less 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.<sup>66</sup> Rather, units for elderly residents were to be integrated with those of non-elderly families. Despite this desire not to segregate elderly tenants, by 1960 the first public elderly-only housing development had been created.<sup>67</sup> Today, more than 76,000 public housing units are designated exclusively for elderly residents.<sup>68</sup>

Beginning in 1961, disabled individuals were included in the definition of “elderly families” for purposes of the public housing program. Combining elderly and disabled residents in public housing has been controversial. During the early years of public housing for elderly persons, disabled residents 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 two reasons. First, individuals with mental illnesses were less likely to be institutionalized as a result of the availability of outpatient mental health care, and were therefore in need of affordable housing.<sup>69</sup> A second factor was passage of the 1988 Fair Housing Act Amendments (P.L. 100-430). The amendments added “handicapped” individuals to the class of individuals protected from discrimination in the provision of housing. The definition of “handicapped” included individuals with alcohol and drug addictions.<sup>70</sup> As a result of the increase of younger, disabled residents in public housing, often with mental illnesses and addictions, public housing authorities faced a greater number of incidents of disruptive behavior, and many elderly residents reported feeling unsafe.<sup>71</sup>

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<sup>66</sup> House Committee on Banking and Currency, *Housing Act of 1956*, House report to accompany H.R. 11742, 84<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 2363, July 15, 1956.

<sup>67</sup> Frances Merchant Carp, *A Future for the Aged, Victoria Plaza and Its Residents* (Austin: University of Texas Press, 1966).

<sup>68</sup> *Federal Housing Programs that Offer Assistance to the Elderly*, p. 11.

<sup>69</sup> See General Accounting Office (now the Government Accountability Office), *Housing Persons with Mental Disabilities with the Elderly*, GAO/RCED-92-81, August 1992, pp. 10-11, available at [<http://archive.gao.gov/d33t10/147294.pdf>].

<sup>70</sup> Congress intended the definition of handicap to be interpreted consistently with the Rehabilitation Act of 1973 (P.L. 93-112), which includes drug addiction and alcoholism as physical or mental impairments. 28 CFR §41.31.

<sup>71</sup> *Housing Persons with Mental Disabilities with the Elderly*, p. 17. See, also, remarks of Representative Peter Blute, *Congressional Record*, daily edition, vol. 142 (February 27, (continued...))

Due to the conflicts between disabled and elderly residents, in 1992 Congress allowed public housing authorities (PHAs) to designate buildings as elderly only, disabled only, or elderly and disabled only.<sup>72</sup> In 1996, The Public Housing Opportunity Extension Act of 1996 (P.L. 104-120) streamlined the process for designating buildings as elderly-only. If a PHA wants to change the composition of a building to only elderly residents, it must submit a plan to HUD to ask for approval. If the plan is approved, PHAs cannot evict non-elderly disabled residents, 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.

## Section 8 Project-Based Housing

Between 1974 and 1983, the Section 8 new construction and substantial rehabilitation programs made rental assistance available to developers that were creating new and rehabilitated rental housing for low-income families.<sup>73</sup> From the inception of the program, owners were able to develop properties dedicated for use by elderly and disabled families. Today, elderly and disabled households continue to live together in Section 8 project-based housing. Although owners may give a preference to elderly families (P.L. 102-550),<sup>74</sup> unlike public housing, most Section 8 properties may not completely exclude residents with disabilities. The statute requires that owners continue to reserve some units for disabled households; the number is either the number of units occupied by disabled families in 1992 or 10%, whichever is lower. If owners are unable to rent units to elderly families, they may give preference to near-elderly disabled families. After the Section 202 program, Section 8 project-based housing provides the most housing dedicated specifically to elderly households. Of the number of units that continue to receive project-based rental assistance, approximately 200,000 are dedicated to elderly households.<sup>75</sup>

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<sup>71</sup> (...continued)  
1996), p. H1274.

<sup>72</sup> The Housing and Community Development Act of 1992, P.L. 102-550. The provisions are codified at 42 U.S.C. §1437e; the regulations are at 24 CFR §945.101-945.303.

<sup>73</sup> The new construction and substantial rehabilitation programs were created in P.L. 93-383 and abolished in P.L. 98-181. For more information on Section 8 housing, see CRS Report RL32284, *An Overview of the Section 8 Program*, by Maggie McCarty.

<sup>74</sup> 42 U.S.C. §§13611-13620.

<sup>75</sup> *Federal Housing Programs that Offer Assistance to the Elderly*, p. 11.

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

Program	Income Eligibility <sup>a</sup>	Tenant Rent	Units for Elderly Households Only <sup>b</sup>
<b>Section 202</b>			268,251
<i>1959 to 1962</i>	No income limits.	Set by owner based on funds required to support building operation.	
<i>1962 to 1968</i>	Income limits set on a community-by-community basis.	Set by owner.	
<i>1968 to 1974</i>	Higher of 80% of area median income or 135% of public housing income limits.	Set by owner.	
<i>1974 to 1981</i>	80% of area median income. <sup>c</sup>	For units with Section 8 project-based rental assistance, the greater of 30% of adjusted income or 10% of gross income.	
<i>1981 to present</i>	50% of area median income. <sup>d</sup>	The greater of 30% of adjusted income or 10% of gross income.	
<b>Section 221(d)(3) BMIR</b>	95% of area median income.	Rent is set building-by-building and approved by HUD.	1,154
<b>Section 236</b>	80% of area median income.	The greater of 30% of adjusted income or “basic rent” as calculated by HUD.	65,877
<b>Public Housing</b>	80% of area median income.	The greater of 30% of adjusted income or 10% of gross income.	76,638
<b>Section 8 Project-Based Rental Assistance</b>	50% of area median income. <sup>d</sup>	The greater of 30% of adjusted income or 10% of gross income.	200,455

**Source:** Prepared by CRS based on HUD Handbook 4350.3, chapter 3, paragraph 3-6 and chapter 5, paragraphs 5-25 through 5-30. *Federal Housing Programs that Offer Assistance for the Elderly*, Government Accountability Office, February 2005, p. 11.

- Income limits are subject to exceptions. This table provides information on the majority of housing units for each program.
- The units are those currently in use. The number of units does not include units for non-elderly residents with disabilities.
- Although it was not mandated that Section 202 projects serve tenants with low incomes beginning in 1974, the availability of Section 8 project-based 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.
- In 1981, P.L. 97-35 required that the majority of units receiving Section 8 project-based rental assistance must be made available to very low-income households.

## Supportive Services and Assisted Living Programs

Four programs are available to provide services for elderly residents who live in HUD-subsidized buildings. The programs are the Congregate Housing program, the Service Coordinator program, the Resident Opportunity and Self Sufficiency (ROSS) program, and the Assisted Living Conversion program. Three of the four programs — Congregate Housing, Service Coordinator, and Assisted Living Conversion — base their services on whether residents are considered to be either frail elderly or at-risk elderly. Whether individuals are frail elderly or at-risk elderly depends on their ability to engage in activities of daily living (ADLs). ADLs consist of five or six categories of activities considered necessary for an individual to maintain independent functioning and their own personal care; the number of categories of activities varies slightly by program. The five common categories of activities included in all three programs are

- eating, which includes cooking and serving food;
- dressing;
- bathing, which includes getting in and out of a tub or shower;
- grooming; and
- home management, which includes housework, shopping, and laundry.<sup>76</sup>

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

Residents who are age 62 or older and unable to perform at least three ADLs to some degree are considered frail, while those who are unable to perform one or two ADLs are considered at risk.<sup>77</sup> Note, however, that 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, take care of their personal appearance, and must 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. In the ROSS program, services are available whether residents are frail or not.

### Congregate Housing

The Congregate Housing Services program, enacted as part of the Housing and Community Development Amendments of 1978 (P.L. 95-557), was the first program to make funds available so that HUD housing facilities could provide services for

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<sup>76</sup> For the Service Coordinator and Assisted Living Conversion programs, ADLs are listed at 24 CFR §891.205. For the Congregate Housing program, they are listed at 24 CFR 700.105.

<sup>77</sup> The at-risk category applies only to the Service Coordinator program.

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 Section 8 project-based rental assistance contracts, and those assisted through the Section 221(d)(3) and Section 236 programs. Cranston-Gonzalez also specified that Congregate Housing funds could be used to renovate properties to make them accessible to elderly residents with mobility problems, and to hire service coordinators to assist residents.

Since 1995, no new Congregate Housing contracts have been awarded, but HUD continues to fund contracts that were already in existence through funds appropriated to the Service Coordinator program (described below).<sup>78</sup> To receive Congregate Housing funds, nonprofit owners and public housing authorities applied to HUD for funds. Current regulations provide that HUD will pay up to 40% of Congregate Housing costs, grant recipients must pay 50% of costs, and elderly participants must make payments that total at least 10% of total program costs.<sup>79</sup> Not all project residents are eligible for Congregate Housing services. They must be frail, defined as deficient in at least three ADLs.<sup>80</sup> Eligible project residents are identified by a committee appointed by grantees and made up of three individuals, at least one of whom is a medical professional, who are competent to determine the abilities of elderly residents.<sup>81</sup>

## Multi-Family Housing Service Coordinators

Service coordinators in HUD developments for elderly persons and persons with disabilities work with residents to provide a wide range of services. These include the arrangement of transportation, meal services, housekeeping, medication management, visits from nurses, dentists, and massage therapists, haircuts, and social activities. Service coordinators became eligible for funding through the Section 202 program starting in 1990 (P.L. 101-625). HUD developments funded through the Section 221(d)(3) and Section 236 programs were made eligible for service coordinator funding in the Housing and Community Development Act of 1992 (P.L. 102-550).<sup>82</sup> In 2000, the law was further amended to allow service coordinators to

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<sup>78</sup> Although the President's budget for FY1996 did not propose funds for the Congregate Housing program, it did propose that projects similar to the Congregate Housing program would be funded through a new initiative called the Housing Certificates for Families and Individuals Performance Funds program. Congress did not appropriate funds for the program.

<sup>79</sup> 24 CFR §700.145.

<sup>80</sup> 24 CFR §700.135.

<sup>81</sup> HUD Handbook 4640.1: Congregate Housing Services Program Operating Procedures, November 6, 1996, chapter 2, paragraph 2-8, available at [<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4640.1/46401c2HSGH.pdf>].

<sup>82</sup> See Section 676.

assist those elderly and disabled residents 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 Service Coordinator funds on an annual basis through HUD's grant process.<sup>83</sup> To qualify, at least 25% of residents in a development must be considered frail elderly, at-risk elderly, or disabled non-elderly.<sup>84</sup> Applicants must also show that they have no other funds available to pay for a service coordinator. Grants are made for three years, and are renewable.

## **Resident Opportunity and Self-Sufficiency (ROSS) Elderly/Persons with Disabilities 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 (now called project coordinators) and supportive services for elderly and disabled public housing residents living in developments designated for the elderly and disabled.<sup>85</sup> Prior to the ROSS program, grants were available from HUD to public housing authorities (PHAs) to fund service coordinators beginning in FY1994 (P.L. 103-124), and congregate housing and supportive services beginning in FY1996 (P.L. 104-134). The ROSS program is much like the Service Coordinator program. Its project coordinators may arrange for meals, transportation, housekeeping, health and nutrition programs, case management, job training, and assistance with personal care.<sup>86</sup>

ROSS funds are made available annually to PHAs, tribes, and nonprofit organizations through a competitive grant process. Awards are based on the applicant's capacity to implement services using a project coordinator, the need for project coordinators and supportive services, the quality and cost-effectiveness of the proposal, the applicant's ability to leverage additional resources, and the development of a program evaluation system.<sup>87</sup> The ROSS program requires grant recipients to provide a 25% cash or in-kind match to the federal grant, and initial grants are made for three years.

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<sup>83</sup> Note that Section 202 developments that receive Section 8 project rental assistance are not eligible for service coordinator funds. Instead they may request an increase in their rental assistance payments to support a service coordinator.

<sup>84</sup> This requirement is present in HUD's Notice of Funding Availability for Service Coordinators. The most recent NOFA can be found in the *Federal Register*, vol. 72, no. 48, March 13, 2007, p. 11691.

<sup>85</sup> See the program's first Notice of Funding Availability, *Federal Register*, vol. 64, no. 153, August 10, 1999, p. 43543.

<sup>86</sup> HUD FY2007 Notice of Funding Availability for ROSS, *Federal Register*, vol. 72, no. 48, March 13, 2007, p. 11614.

<sup>87</sup> *Ibid.*, pp. 11618-11623.

## Assisted Living Conversion

The HUD Appropriations Act of FY2000 (P.L. 106-74) created the Assisted Living Conversion program to allow HUD-subsidized facilities for elderly residents to modify their apartments and common areas to accommodate elderly persons and persons with disabilities who need additional assistance in order to remain in their units.<sup>88</sup> HUD-funded buildings developed under the Section 202 program, Section 236 program, and Section 221(d)(3) program, or buildings developed with Section 8 project-based assistance, are eligible to apply for funds. Owners may use funds to convert some or all units in a building for use as assisted living units.

HUD's definition of an assisted living facility contains three parts: (1) the facility is licensed and regulated by the state in which it is located, (2) it provides supportive services to assist residents in carrying out ADLs, and (3) it has separate housing units for residents, together with common rooms.<sup>89</sup> There is no uniform state definition for what constitutes assisted living, and the level of care required by state law varies.<sup>90</sup> Requirements for physical standards such as unit size and the presence of a kitchen also vary from state to state. Recipients of assisted living conversion grants must comply with state or HUD requirements regarding physical standards, whichever are more stringent.

To be eligible for Assisted Living Conversion funds, HUD requires that facilities contain a central kitchen and lounge and/or recreational areas available to all residents.<sup>91</sup> HUD also requires that assisted living facilities meet certain program requirements and construction requirements. Program requirements include staff availability 24 hours a day, supervision of nutrition and medication for dependent residents, and the availability of three meals per day.<sup>92</sup> Residents may live in separate units or suites of units, not to exceed four people per suite. The residential units need not contain a kitchen, but must have bathroom facilities shared by not more than four residents. Construction requirements include bathrooms that are accessible to persons with disabilities and a 24-hour emergency response system in each unit.<sup>93</sup>

Owners of eligible properties may apply for assisted living conversion funds through HUD's annual NOFA process.<sup>94</sup> Grant recipients may use the funds to make

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<sup>88</sup> The statute governing the Assisted Living Conversion program is at 12 U.S.C. §1701q-2.

<sup>89</sup> 12 U.S.C. §1715w(b)(6).

<sup>90</sup> For more information on state requirements see Robert Mollica and Heather Johnson-LeMarche, *State Residential Care and Assisted-Living Policy: 2004*, Department of Health and Human Services, March 31, 2005, available at [<http://aspe.hhs.gov/daltcp/reports/04alcom.htm>].

<sup>91</sup> HUD Handbook 4600.1: Residential Care Facilities — Nursing Homes, Board and Care Homes and Assisted Living Facilities, January 17, 1995, chapter 13, paragraph 13-2.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*, chapter 13, paragraph 13-7.

<sup>94</sup> The most recent Notice of Funding Availability for Assisted Living Conversion is (continued...)

units accessible by installing grab bars, widening doors, installing accessible appliances and counters, and adding emergency alert systems, among other modifications.<sup>95</sup> Grant recipients may also use funds to renovate common spaces for kitchen, dining, or recreational use, and to provide furniture, appliances, and equipment for those areas.

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

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

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

## Funding and Current Issues

### Funding

In both FY2007 and FY2008, the President's budget proposed to reduce total funding for housing programs for elderly households (primarily the Section 202 program) — in FY2007 by 26% and in FY2008 by 22%. However, Congress has chosen not to cut funds for the program, and funding for Section 202 has remained stable in recent years. For Section 202 funding levels, as well as funding for supportive services programs, see **Table 3**. For more information about current year appropriations, see CRS Report RL34022, *The Department of Housing and Urban Development: FY2008 Appropriations*, by Maggie McCarty, et al.

<sup>94</sup> (...continued)  
available at *Federal Register*, vol. 72, no. 48, March 13, 2007, pp. 11676-11688.

<sup>95</sup> *Ibid.*, p. 11678.

**Table 3. Funding for Selected Programs,  
FY2001-FY2008**

(dollars in millions)

Fiscal Year	Section 202 <sup>a</sup>	Service Coordinators	ROSS	Assisted Living Conversion
2001	677.0	49.9	— <sup>b</sup>	49.9
2002	682.6	50.0	— <sup>b</sup>	50.0
2003	678.5	49.6	9.3	24.8
2004	698.7	29.8	11.4	24.8
2005	648.3	49.6	16.3	24.8
2006	634.7	51.1	8.8	24.6
2007	660.5 <sup>c</sup>	51.1	16.7	24.6
2008	— <sup>d</sup>	60.0	— <sup>e</sup>	24.8

**Source:** Prepared by CRS on the basis of FY2000 to FY2009 HUD Budget Justifications, P.L. 110-5, P.L. 110-161, and HUD Funding Notices (ROSS).

- a. Includes funds for new capital grants, new project rental assistance, and renewals of project rental assistance contracts.
- b. From FY2000 through FY2002, HUD split ROSS grants between non-elderly families and elderly and disabled residents. In FY2000 and FY2001, \$24 million was distributed; in FY2002, \$22.9 million was distributed.
- c. Estimate from FY2008 HUD Budget Justifications; the amount was not specified in the FY2007 appropriations bill, P.L. 110-5.
- d. P.L. 110-161 does not specify an amount for Section 202 in FY2008.
- e. ROSS funding for FY2008 has not yet been awarded.

## Legislation

**The Section 202 Supportive Housing for the Elderly Act (H.R. 2930 and S. 2736).** Two similar bills in the 110<sup>th</sup> Congress, both entitled the Section 202 Supportive Housing for the Elderly Act (H.R. 2930 and S. 2736), would make some changes and additions to current law regarding the financing of new Section 202 construction projects as well as how existing properties are refinanced. Both bills would also change the definition of assisted living facilities in the Assisted Living Conversion program. The House approved its version of the bill, H.R. 2930, on December 5, 2007; S. 2736 was introduced on March 7, 2008.

In the area of financing for new Section 202 developments, H.R. 2930 and S. 2736 would direct HUD to delegate to state housing finance agencies (HFAs) the ability to process capital grants. Both bills would also provide that, upon expiration of a contract for Section 202 rental assistance, HUD shall adjust the contract to account for reasonable project costs as well as the increased costs of project reserves, service coordinators, and supportive services. The bills would also make a change to the definition of “private nonprofit organization.” Under current law, nonprofits must have governing boards that are responsible for operation of the Section 202 project. H.R. 2930 and S. 2736 would allow national nonprofit sponsors to form local advisory boards to fulfill this requirement. Another provision in both H.R.

2930 and S. 2736 would give Section 202 project owners authority to give a preference to homeless elderly applicants.

Various provisions in H.R. 2930 and S. 2736 would address refinancing of existing Section 202 properties. Currently, Section 202 owners may refinance their properties if they agree to operate the project under terms at least as advantageous to tenants as the terms of the existing loan *and* if the refinancing results in a lower interest rate and reduced debt service. Under H.R. 2930 and S. 2736, the new loan would not be required to have a lower interest rate as long as the project owner would use the new funding to address the project's physical needs. S. 2736 would further require owners who refinance to continue to maintain affordability for twenty years beyond the term of the existing loan and would allow a refinancing that results in increased debt service costs to occur only when the interest rate on the original mortgage was at or below 6%.

Another change to existing law contained in both bills would be a new "preservation project rental assistance" program for owners with Section 202 units that were built prior to 1974, when most units did not receive rental assistance.<sup>96</sup> The bills would also expand the ways that owners could use the proceeds from refinancing to include payment of equity and developers' fees. Additionally, a provision in both bills would limit HUD's ability to put conditions on the amount of proceeds that Section 202 owners may realize from a sale or refinancing, or the way in which owners use the proceeds. HUD would only be able to impose conditions on the amount or use of proceeds if there were an existing contract between HUD and the project owner that authorized the conditions. And whereas S. 2736 would create a mortgage sale demonstration project in which Section 202 loans would be sold to state HFAs, H.R. 2930 would require HUD to conduct a study of the potential costs and benefits of such a demonstration project.

Both H.R. 2930 and S. 2736 would change the definition of "assisted living facility." Under current law, an assisted living facility is owned by a private nonprofit corporation, is licensed by the state (or locality), makes available certain supportive services, and provides separate dwelling units for residents. The two bills would each change the definition so that private nonprofit organizations may meet the requirements *either* through state or local licensure *or* by providing certain supportive services to assist residents with activities of daily living.

Finally, S. 2736 would create a National Senior Housing Clearinghouse within HUD to disseminate information about available rental units for elderly tenants and characteristics of those rental units. The Clearinghouse would include not only units in Section 202 facilities, but also units subsidized through the Section 8 program, the Low Income Housing Tax Credit program, the Assisted Living Conversion program, and other programs that subsidize units dedicated for use by elderly households. Information would be made available to prospective residents through a website and a toll-free number.

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<sup>96</sup> However, some pre-1974 properties later received rental assistance through the Rent Supplement program and the Loan Management Set Aside program.

## Preservation of Federally Assisted Housing

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

**Section 202 Program.** Most owners of Section 202 properties may prepay their loans with HUD approval, however, in general, they must maintain the affordability of the units.<sup>97</sup> Congress initially addressed the prepayment of Section 202 mortgage loans in 1984 (P.L. 98-181) by allowing prepayment only if property owners continue to operate their properties on terms at least as favorable to tenants as the terms under the original loan agreement up through the original date of loan maturity. In 2000, the American Homeownership and Economic Opportunity Act (P.L. 106-569) added provisions that allow owners to refinance as part of the prepayment if the terms of the new loan result in a lower interest rate and reduced debt service payments. HUD will then make at least 50% of its savings from reduced rental assistance payments available to owners to assist tenants either through supportive services, facility improvements, or rent reductions for unassisted tenants. In the 110<sup>th</sup> Congress, legislation has been introduced that would make some changes to the way in which Section 202 loans are refinanced (see the previous section for a discussion of H.R. 2930).

**Section 221(d)(3) and Section 236 Programs.** Although the initial mortgage subsidy contracts between HUD and property owners in the Section 221(d)(3) and Section 236 programs had a duration of 40 years,<sup>98</sup> in order to attract developers to the program, HUD gave owners the right to prepay their mortgages (and potentially leave the program) after 20 years.<sup>99</sup> By the late 1980s, many Section

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<sup>97</sup> Some Section 202 loans made during the late 1970s and early 1980s may be prepaid without HUD approval.

<sup>98</sup> See Senate Subcommittee on Housing for the Elderly of the Special Committee on Aging, *Adequacy of Federal Response to Housing Needs of Older Americans*, hearing, 92<sup>nd</sup> Cong., 1<sup>st</sup> sess., August 2, 1971, p. 130.

<sup>99</sup> House Subcommittee on Housing and Community Development of the Committee on Banking, Finance and Urban Affairs, *Preventing the Disappearance of Low-Income Housing*, hearing, 100<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 8, 1988, p. 4. See, also, *Cranston-Gonzalez National Affordable Housing Act*, conference report to accompany S. 566, 101<sup>st</sup> Cong., 2<sup>nd</sup>

236 and 221(d)(3) project owners were in the position to prepay their mortgages and charge market rate rents, displacing the low-income tenants who lived in their developments. Recognizing that HUD could lose thousands of affordable housing units in the coming years,<sup>100</sup> in 1990 Congress enacted Title VI of the Cranston-Gonzalez National Affordable Housing Act (P.L. 101-625), the Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA). The act created incentives for building owners to continue offering affordable housing through the Section 221(d)(3) and Section 236 programs.<sup>101</sup>

LIHPRHA continued to allow owners to prepay their mortgages after 20 years, but only as long as the change did not create economic hardship for current tenants or reduce the availability of low-income housing, housing near jobs, or housing for minorities.<sup>102</sup> To convince owners to maintain affordable properties, HUD could ensure that owners receive rent subsidies sufficient to guarantee an 8% return after mortgage payments and operating expenses were paid and adequate reserves were established.

If building owners still chose to prepay their mortgages and begin charging market-rate rents, HUD protected tenants by issuing enhanced Section 8 vouchers. Enhanced vouchers require building owners in low vacancy areas, or with elderly tenants and tenants with disabilities, to accept the vouchers, allowing tenants to remain in the building at the lower rental amount for up to three years.<sup>103</sup> The law also required owners to pay 50% of tenant moving expenses. LIHPRHA has not been funded since FY1997 (P.L. 104-204), but during the 1990s it is estimated to have preserved 110,000 units of Section 221(d)(3) and Section 236 housing.<sup>104</sup> Current law requires that owners give Section 221(d)(3) and Section 236 tenants at least 150 days' notice when they plan to prepay their mortgages.<sup>105</sup>

**Section 8 Project-Based Rental Assistance.** A large number of assisted housing units for elderly households are supported with Section 8 project-based rental assistance contracts. When Section 8 rental assistance contracts began to expire in the 1990s, many owners began to opt out of the program. In its FY1998 HUD Appropriations Act (P.L. 105-65), Congress responded to the opt-outs by providing that contracts for rental assistance with HUD could be renewed at rental rates up to the rate prevailing in the market whenever market rate rents exceed the contract rent. (Market rent is based on either the rent levels of comparable unassisted

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<sup>99</sup> (...continued)

sess., H.Rept. 101-943, October 25, 1990, p. 457.

<sup>100</sup> In 1990, Congress noted that over the next 12 years, more than 360,000 units of federally assisted housing could be lost. H.Rept. 101-943, p. 457.

<sup>101</sup> The act is codified at 12 U.S.C. §§4101-4125.

<sup>102</sup> 12 U.S.C. §4108.

<sup>103</sup> 12 U.S.C. §4113.

<sup>104</sup> The National Housing Law Project, *HUD Housing Programs: Tenants' Rights* (Oakland, CA: The National Housing Law Project, 2004), 15/37.

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

properties in a building's area or on area fair market rent levels as determined by HUD.) This provision is sometimes called "mark up to market," and it attempts to give incentives to owners to stay in the Section 8 program even if they could otherwise make more money in the private market. If owners decide to opt out of the rental assistance program, tenants may qualify for enhanced Section 8 vouchers that they may use to either remain in the building or move elsewhere.<sup>106</sup> P.L. 105-65 also created the "mark-to-market" program for cases in which Section 8 payments exceed market-rate rents. Mark-to-Market allows those owners with above-market rents to renew their rental assistance contracts with HUD, although at a lower rate, while also restructuring their outstanding debt on the property. The program is designed both to ensure that HUD pays reasonable market rents for subsidized properties and to provide incentives for owners of assisted properties to renew their contracts with HUD.

## Children Living in Housing Developments for Elderly Residents

The most recent Census estimated that 2.4 million grandparents were raising grandchildren, and that of this number, approximately 19% of grandparents were poor.<sup>107</sup> The HUD guidelines governing the Section 202, Section 221(d)(3), Section 236, and certain Section 8 project-based assistance programs specifically prohibit the exclusion of children from these developments ("owners may not exclude otherwise eligible elderly families with children from elderly properties ...").<sup>108</sup> Guidelines governing Public Housing developments are less specific, although the guidance states that "there is nothing in the definition of elderly family that excludes children. Many elderly families today consist of grandparents with custody of grandchildren. This is an elderly family."<sup>109</sup>

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

In order to address the growing number of grandparents raising grandchildren, Congress enacted the Living Equitably — Grandparents Aiding Children and Youth (LEGACY) Act in 2003 as part of the American Dream Downpayment Act (P.L.

<sup>106</sup> 42 U.S.C. §1437f(t).

<sup>107</sup> Tavia Simmons and Jane Lawler Dye, *Grandparents Living with Grandchildren: 2000*, U.S. Census Bureau, October 2003, pp. 1, 9, available at [<http://www.census.gov/prod/2003pubs/c2kbr-31.pdf>].

<sup>108</sup> HUD Handbook 4350.3, chapter 3, paragraph 3-23, available at [<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503c3HSGH.pdf>].

<sup>109</sup> HUD Public Housing Occupancy Guidebook, June 2003, Section 2.2, p. 25., available at [<http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebooknew.pdf>].

108-186). The LEGACY Act provides for the funding of housing units in the Section 202 program for elderly persons raising grandchildren or other relatives age 19 or younger. It also requires education programs for HUD personnel to prevent discrimination against elderly households with children, and calls for HUD to produce a study of the affordable housing needs of grandparents raising grandchildren. Congress did not fund the LEGACY Act until FY2006, when it appropriated \$3.96 million for an Intergenerational Families Demonstration Project. HUD has not yet released the Notice of Funding Availability for LEGACY Act grants.