

Subsidized Housing Basics, Part III: HUD Multifamily Programs



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Dear OVW Grantees and Transitional Housing Providers:

The National Housing Law Project has created this information packet to provide reference materials for advocates serving clients who are survivors of domestic violence, dating violence, sexual assault, or stalking. In March 2013, President Obama signed into law the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), which contains important new housing protections for survivors. VAWA 2013 covers a range of federally-subsidized housing programs, offering increased protections for survivors living in a majority of units in the U.S. Department of Housing and Urban Development's Multifamily programs. Advocates should familiarize themselves with the basic features of these programs to more fully assist survivors in finding and maintaining safe, decent, and affordable housing.

This information packet provides an overview of selected HUD Multifamily programs, including: Project-based Section 8, Sections 202 (housing for the elderly) and 811 (housing for persons with disabilities), Section 236 multifamily rental housing, Section 221(d)(3) Below Market Interest Rate (BMIR) housing, and HOME.

We hope that you find these materials helpful in aiding your clients. If you have any questions regarding the housing rights of domestic and sexual violence survivors, please contact:

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Overview

HUD-Subsidized and Project-Based Section 8 Programs

Key Components

- **Number of Units:**
 - HUD-Subsidized Section 236: approximately 89,000 units remaining
 - Section 221(d)(3) BMIR: approximately 28,000 units remaining
 - Project-Based Section 8 and PRAC: approx. 1million units remaining
 - Section 202 and 811: approximately 323,000 (Section 202); approximately 33,000 (Section 811)
 - HOME: approximately 360,000

- **How These Programs Work**
 - **Project-Based Section 8:**
 - Owners enter into a Housing Assistance Payment (HAP) contract with HUD. The contract requires that a housing provider provide affordable housing to low-income families for a certain period.
 - This contract provides a subsidy to cover the difference between HUD-approved rents (contract rent) and the amount the tenant is required to pay each month.
 - Tenants typically pay 30 percent of adjusted income, with adjustments determined under federal rules.
 - The subsidy is attached to a particular building. The tenant cannot move with a project-based Section 8 subsidy.
 - Tenants who pay for their own utilities receive an additional utility allowance that is credited against their tenant contribution.
 - For example, if the tenant's adjusted monthly income is \$1000, and the tenant also receives a \$50 utility allowance, her rent would be \$250 (30% of \$1000 is \$300, minus the \$50 allowance).
 - **Sections 236 and 221(d)(3) BMIR:**
 - HUD provided mortgage insurance and an interest rate subsidy to private housing providers.
 - No new units are being created under these programs, but thousands of these units still exist.
 - In exchange, the housing provider provides affordable units to low-income individuals by restricting rents and occupancy.
 - Rents are budget-based, meaning that tenants pay a rent that is based upon the operating costs of the property, unless they receive rental assistance.
 - Tenants of these properties can live in either "assisted" or "unassisted units"

- Assisted units – Tenants receive an additional subsidy, such as project-based Section 8, meaning that the rent contribution is based on income (typically 30 % of adjusted income)
 - Unassisted units – Tenants receive no additional subsidy, and pay the budget-based rent. Their rents are not based upon adjusted income.
 - **Sections 202 and 811**
 - Section 202 (Supportive Housing for the Elderly)
 - Program provides non-profits with funding to provide supportive housing for elderly, low-income persons.
 - Different types of subsidy throughout the program’s history:
 - “Old” Section 202: A direct HUD loan at below-market interest rate in exchange for HUD-regulated “budget-based” rents and occupancy restrictions. Budget-based rents are rents where the tenant’s monthly payment depends upon the operating costs of the building.
 - “New” Section 202/811 (See below): Forgivable capital advance in exchange for HUD-regulated “budget-based” rents and occupancy restrictions.
 - Section 811 (Supportive Housing for Persons with Disabilities)
 - Arose of out the original Section 202 program
 - Program provides non-profits with funding to provide supportive housing for disabled, very- and extremely-low-income persons.
 - Can include one or a combination of physical disabilities, developmental disabilities, or chronic mental illness (HUD Handbook 4350.3, ¶ 3-20 E).
 - Tenants of these properties can live in either “assisted” or “unassisted units.”
 - Assisted units – Tenants receive an additional subsidy, such as project-based Section 8, meaning that the rent contribution is based on income (typically 30 % of adjusted income)
 - Unassisted units – Tenants receive no additional subsidy, and pay the budget-based rent. Their rents are not based upon adjusted income.
 - Some Section 202/811 properties are entirely “assisted” or “unassisted”; other properties have only a portion of units receiving any sort of rental assistance, with the remaining units being unassisted.
 - Therefore, tenants at the same property could have their rents calculated in very different ways.
 - Newer Section 202/811 units exclusively receive rental assistance (similar to Project-Based Section 8), meaning that tenants typically pay 30% adjusted income, and not a budget-based rent.
 - **HOME**
 - Program that provides grants to state and local governments to construct, purchase, and/or rehabilitate affordable housing stock for low-income and very-low income persons.
 - Funding can be used as a loan or a grant, or as rental assistance, including tenant-based and project-based vouchers
 - HOME still receives new funding commitments
 - Tenant contribution varies, but usually is not based upon tenant income.
- **Ownership**

- Most of the programs have mostly private, profit-motivated ownership, with some non-profit providers
 - Section 202 and 811 properties have only non-profit owners.
- **Who is Involved?**
 - **Project-Based Section 8**
 - HUD is usual regulator as party to Housing Assistance Payments (HAP) contract, or PHA for Section 8 Mod Rehab
 - However, HUD has contracted out role of “Contract Administrator” for many properties
 - Contract Administrator may have changed in 2011 reshuffle
 - Listing of Contract Administrators available at:
 - http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/rfp/sec8rfp
 - Go to “Directory of PBCAs, Contract Administration Oversight Monitors (CAOMs) and HUD Desk Officers” link.
 - Lenders (private or HUD for HUD-held loan)
 - Private owners
 - Management (either owner or separate company)
 - **HUD-Subsidized Section 236 and 221(d)(3) BMIR**
 - HUD is usual regulator as party to Regulatory Agreement
 - Lenders (private or HUD for HUD-held loan or Section 202)
 - Private owners
 - Management (either owner or separate company)
 - For a list of contacts for the local HUD offices, visit:
 - <http://portal.hud.gov/hudportal/HUD?src=/localoffices>
 - For a list of contract administrators and responsible HUD staff, visit:
 - <http://portal.hud.gov/hudportal/documents/huddoc?id=caomlist.pdf>
- **Key Regulatory Features** (Statutes, Program Contract(s), Regs, Handbooks and Notices, Lease)
 - **Project-Based Section 8**
 - Section 8 of United States Housing Act of 1937, 42 U.S.C.A. §§ 1437f and 13661-13664
 - HAP Contract
 - HUD Regulations
 - 24 C.F.R. Parts 880 through 886
 - HUD Handbook
 - Handbook 4350.3 REV-1, CHG-3 (June 2009)
 - HUD Model Lease
 - HUD Model Lease (Handbook 4350.3, App. 4 Form HUD-90105a, Dec. 2007)
 - **HUD-Subsidized Section 236 and 221(d)(3) BMIR**
 - Section 236 of the National Housing Act, 12 U.S.C.A. §§ 1715z-1, 13661-13664
 - Section 221(d)(3) of the National Housing Act, 12 U.S.C.A. §§ 1715l(d)(3) and (d)(5), and §§ 13661-13664
 - Regulatory Agreement

- HUD Regulations
 - 24 C.F.R. Parts 221, 236 (savings clause 24 C.F.R. 200.1301 and 200.1302), 247 (evictions)
- Handbooks
 - HUD Handbook 4350.3 REV-1 (June 2003 and CHG-3, June 2009)
- HUD Model Lease
 - HUD Model Lease (Handbook 4350.3 REV-1, App. 4 (Form HUD-90105a, Dec. 2007))
- **Section 202/811**
 - Section 202 of the Housing Act of 1959 , 12 U.S.C.A. § 1701q
 - Section 811 of the National Affordable Housing Act of 1990, 42 U.S.C.A §§ 8013 and 13661-13664
 - Regulatory Agreement
 - HUD Regulations
 - 24 C.F.R. §§ 247 (evictions); and 891 (supportive housing for the elderly and persons with disabilities)
 - Handbooks
 - HUD Handbook 4350.3 REV-1 (June 2003 and CHG-3, June 2009)
 - HUD Model Lease
 - HUD Model Lease (Handbook 4350.3 REV-1, App. 4 (Form HUD-90105a, Dec. 2007))
- **HOME Program**
 - Statute
 - 42 U.S.C.A. §§ 12701-12839
 - Regulations
 - 24 C.F.R. § 92
 - HUD Final Rule, 78 Fed. Reg. 44628 (July 24, 2013), included significant amendments to HOME regulations
 - HUD Notices
 - HUD Policy Memos
 - *HOMEfires* Newsletter
 - *HOME FACTS* Newsletter
 - HOME FAQ's
 - <https://www.onecpd.info/resource/3318/home-faqs/>
 - Visit CPD webpage, <https://www.onecpd.info/home/> for more information
- **Where Federally Subsidized Housing Is Located in Your Community** (National, State, & Local info)
 - National Low Income Housing Coalition Preservation Database
 - Site: preservationdatabase.org
 - Description: NLIHC aggregates information from various federal programs, including most HUD programs like public housing, Section 8, and subsidized mortgages, as well as Rural Development and LIHTC units. Users can locate multiple forms of subsidized housing through a single search. The “Preservation Tool” provides attributes of a specific property. The site’s “Research Tool” allows Excel download of the entire database, which permits users to sort by geography or other characteristics. To access, users must complete a simple registration process.

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

Consider:

- Resources listed in the previous section
- Your client's lease
- Rent level
- Owner type (private owners, either non-profit or for-profit)
- Age of the housing
- Asking the property manager
- Asking community advocates

• **Getting Information**

- **Handbooks, Notices, and forms at HUDClips**
 - <http://www.hud.gov/offices/adm/hudclips>
- **NHLP Greenbook**
 - *HUD Housing Programs: Tenants' Rights* (4th ed. 2012)
- **HJN listserv**
 - Join at: www.nhlp.org/join
- **National Alliance of HUD Tenants (NAHT)**
 - saveourhomes.org

Major Applicant and Tenant Issues

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

• **Admissions**

- **Waiting list**
 - How compiled and maintained
 - 24 C.F.R. §880.603 (Section 8)
 - HUD Handbook 4350.3 REV-1, CHG-3, ¶¶ 4-13 to 4-25 (all HUD-subsidized and Section 8)

• **Eligibility**

- **HUD-Subsidized Section 236 and 221(d)(3) BMIR:**
 - Less than 80% Area Median Income (AMI) (Section 236)
 - 95% of AMI (Section 221(d)(3) BMIR)
- **Project-based Section 8 (24 C.F.R. §5.653):**
 - Less than 80% of AMI, 42 U.S.C. §1437f(a) and (c)(4), but HUD rules further limit admissions to applicants less than 50% of AMI, unless HUD grants an exception, HUD Handbook 4350.3 REV-1, CHG-3, Ch.3.
- **Section 202 and 811:**
 - Less than 50 % AMI

- **HOME:**
 - Varies based on how HOME funds are being used.

- **Targeting**
 - **Project-based Section 8**
 - At least 40% of units becoming available in any year must be leased to tenants with incomes below 30% of AMI, and 75% or 85% of units becoming available must be leased to tenants with incomes below 50% of AMI; “skipping” over lower-income applicants to reach higher income is prohibited, 42 U.S.C. §1437n(c); 24 C.F.R. §5.653
 - **HOME jurisdictions** (tenant-based rental assistance and rental units)
 - Requirements at 24 C.F.R. § 92.216
 - Income targeting does not apply to certain Section 202 and 811 subsidies, nor does it apply to the Section 221(d)(3) or Section 236 programs.

- **Immigration status**
 - **Project-based Section 8, Section 236**
 - Family must have one member of the household who is a citizen or has eligible immigration status under one of the categories set out in 42 U.S.C. § 1436(a).
 - If any members of the household are not citizens or lack eligible immigration status, the assistance for the family is prorated. *Id.*; 24 C.F.R. § 5.500–5.528.
 - The Section 202, Section 811, Section 221(d)(3), and HOME programs do not have these restrictions.

- **Other restrictions**
 - Newer restrictions on Section 8 eligibility of higher education students that are under 24 if unmarried non-veterans without dependent children: Pub. L. No. 109-115, § 327, 119 Stat. 2936 (2005) (codified at 42 U.S.C. § 1437f); 24 C.F.R. pt. 5, 70 Fed. Reg. 77,742 (Dec. 30, 2005) and 71 Fed. Reg. 18,146 (Apr. 10, 2006); HUD Hbk 4350.3 REV-1, CHG-3, ¶3-13.

- **Preferences**
 - Some properties have elderly preference or designated occupancy; properties can have preferences for working families (Section 8, 42 U.S.C. §1437n(c)(4); 24 C.F.R. §5.655; HUD Handbook 4350.3 REV-1, CHG-3, ¶ 4-6);
 - Properties can use PHA-established local preferences or old federal preferences; cannot have residency requirements; residency preferences must be HUD-approved, §5.655(c)(1) .
 - HOME Program
 - Rental owners can have admissions preferences or limited eligibility if permitted in written agreement with participating jurisdiction. 24 C.F.R. § 92.253.

- **Screening**
 - 24 C.F.R. Part 5 for Section 8
 - HUD Handbook 4350.3 REV-1, CHG-3, ¶¶ 4-7 & 4-8 for Sections 8, 236, 221(d)(3), 202 and 811
 - Drug/criminal activity
 - Poor tenant history
 - Poor rent paying history or bad credit
 - Lack of credit history insufficient for rejection
 - HOME Program (Rental housing assisted with HOME funds)
 - No discrimination against Section 8 Housing Choice Vouchers
 - 24 C.F.R. § 92.253(d)(4)
- **Procedural Protections**
 - **Sections 8, 236, 221(d)(3), 202 and 811**
 - Written tenant selection plan must be available
 - Owner must provide information regarding any preferences used
 - Owner must make written tenant selection plan publicly available upon request (HUD Handbook 4350.3 ¶ 4-4 F)
 - Tenant selection plan (TSP) must include (HUD Handbook 4350.3 ¶ 4-4 C):
 - Project eligibility requirements
 - Project-specific requirements (e.g., designation for elderly or disabled populations)
 - Citizenship/immigration status requirements
 - Social Security Number requirements
 - Income limits
 - Procedures involving taking applicants from the waitlist
 - Taking applications
 - Preferences
 - Income targeting (Section 8 properties)
 - Applicant screening criteria
 - Procedures for rejecting ineligible applicants
 - Occupancy standards
 - Unit transfer policies
 - Policies to comply with Section 504 of the Rehabilitation Act, the Fair Housing Act, and Title VI
 - Opening and closing the waitlist policies
 - Eligibility of students
 - VAWA protections (Section 8 properties only, per current 4350.3 Handbook)
 - Important Note: HUD's 4350.3 Handbook has not been edited to include additional programs covered by VAWA 2013. ALL programs discussed in this outline are covered by VAWA2013.

- TSPs can also include owner’s policies on other topics such as annual recertification requirements, unit inspections, security deposit requirements, etc.
 - Written rejection notice, offering 14-day response, meeting, and written decision within 5 days
 - See HUD Handbook 4350.3 REV-1, CHG-3, ¶ 4-4 (Tenant Selection Plan) and ¶ 4-9 (procedures).
 - **HOME Program**
 - Rental housing owners must give “prompt written notification” to rejected applicants including grounds of rejection. 24 C.F.R. § 92.253(d)(6).
- **Rents**
 - **Income-based rents**
 - Tenants typically pay 30 percent of “adjusted income,” but note that there are other ways tenant rent can be calculated.
 - Example: Project-based Section 8
 - **Budget-based rents**
 - Tenants pay a rent that is based upon the operating costs of the property.
 - Example: Unassisted Section 236 units (see next bullet)
 - **Assisted vs. unassisted units**
 - Assisted units – Tenants receive an additional subsidy, such as project-based Section 8, meaning that the rent contribution is based on income (typically 30 % of adjusted income)
 - Unassisted units – Tenants receive no additional subsidy, and pay the budget-based rent. Their rents are not based upon adjusted income.
 - Certain Section 236, 221(d)(3), 202, and 811 units are unassisted, and therefore pay only a budget-based rent. However, certain complexes have units that are both unassisted and assisted. See “How These Programs Work” section on page 1.
- **Recertification**
 - HUD Form 50058 (tenant certification and recertification)
 - Project-based Section 8, Sections 236, 221(d)(3), 202, and 811
 - 24 C.F.R. §5.657 & 5.659, HUD Handbook 4350.3 REV-1, Ch. 7 (recertification at least annually; interims on tenant request; tenant must report changes in family composition or increases in income of \$200 or more and if unemployed member becomes employed); note statute specifies *monthly* income, potentially useful to extent HUD’s rules use annual income and actual monthly is lower; HUD Enterprise Income Verif. (EIV) system: 24 C.F.R. §5.233, HUD Notice PIH-2010-19 (HA), extended by Notice PIH 2013-23 (Aug. 30, 2013).
- **Minimum Rent and hardship exemptions**
 - 24 C.F.R. §5.630 (Section 8)
 - HUD-set figure of \$25 monthly for Section 8

- **Utility Allowance**
 - If income-based rent, tenant can receive utility allowance for certain tenant-paid utilities, owner sets “reasonable” amount, credit against 30% of income tenant share; adjust when base rates change by >10%

- **Challenging rent level**
 - Request meeting with owner-manager; program administrator

- **Grievance Procedures**
 - Project-based Section 8, Sections 236, 221(d)(3), 202, and 811
 - Generally just informal meeting with management prior to final rejection of admission or eviction or termination notice, 24 C.F.R. Part 247 (eviction), HUD Handbook 4350.3 REV-1, CHG-3, ¶ 4-9 (admission) and Ch. 8 (terminations)

- **Evictions and Terminations**

Good cause required *anytime, including at end of lease term.*; 12 U.S.C. §1715z-1b(b); 24 C.F.R. Part 247; HUD Handbook 4350.3 REV-1, ¶¶ 8-11 to 8-16; Model Lease (HUD projects, App. 4 to Hbk).

 - Material noncompliance with lease
 - Material failure to carry out obligations under state landlord-tenant law
 - Alcohol abuse
 - Drug-related or criminal activity that threatens
 - 24 C.F.R. Subpart I, §§5.858 et seq. & Subpart A (many definitions); Model Lease ¶ 23 (drug-related has “*on or near*” premises requirement); other threatening criminal activity has nexus to property via other tenants, staff or residents in immediate area
 - “Other good cause”
 - **HOME**
 - Termination only for good cause. 24 C.F.R. § 92.253(c).
 - Includes serious and repeated lease violation, violation of federal, state, or local law, completion of tenancy period for transitional housing, failure to follow supportive services plan, other good cause
 - Fair Housing Act (reasonable accommodation) & VAWA 2013 protections apply

- **Notice**
 - Project-based Section 8, Sections 236, 221(d)(3), 202, and 811
 - Length (state law, or 30 days for non-breach “other good cause”)
 - Content (good cause and relevant facts, warnings & opportunity to cure for other good cause, right to meeting and to judicial defense), 12 U.S.C. §1715z-1b(b), 24 C.F.R. Part 247, HUD Handbook 4350.3 REV-1, ¶¶ 8-11 to 8-16,

Model Lease, state law; and service, 24 C.F.R. Part 247, HUD Handbook 4350.3, ¶ 4-22

- HOME
 - Rental owners receiving HOME funds must
 - Provide 30-days written notice detailing grounds of the termination/failure to renew. 24 C.F.R. § 92.253(c).

- **Required proof by landlord**
 - Preponderance of the evidence that the breach occurred
 - For drug-related/criminal conduct, arrest or conviction not required

- **Pre-judicial administrative review?** (10 days to request meeting with landlord), 24 C.F.R. Part 247, HUD Handbook 4350.3 REV-1, CHG-3, ¶ 8-13, & Model Lease (Project Based Section 8, Sections 202/811, and Sections 236/221(d)(3), App. 4 to Hbk, not HOME)

- **Section 8 terminations by landlord prior to any eviction**
 - Limited grounds (failure to provide required certification information could yield temporary or permanent termination of subsidy), notice and hearing protections (may not comply with due process), HUD Handbook 4350.3 REV-1, CHG-3, ¶¶ 8-5 & 8-6; Model Lease ¶ 17.

- **State law procedural protections are not pre-empted**
 - HUD Handbook 4350.3 REV-1, ¶ 8-12B

SELECT FEDERAL HOUSING PROGRAMS IN BRIEF

FEDERAL PROGRAM	Owner-Landlord	Other Regulator	Income Eligibility for Admission	Tenant Rent Contribution	Eviction Protection
Project-based Vouchers (PBV)	Private for-profit, non-profit or PHA	PHA administrator, unless PHA owned	<80% AMI; but 75% of vouchers issued annually @ <30% AMI includes PBVs	30% of Adj. Income; sometimes other rent formulas, incl. minimum rent <\$50	Good Cause generally required, unless owner removes unit from program, or tenant fails FSS or is no longer eligible
Project-based Section 8 (some or all units) (including Mod. Rehab)	Private for-profit or non-profit (rarely PHA)	HUD (except PHA for Mod Rehab) or contract administrator	generally now <50% AMI; 40% of new admissions @ <30% AMI	30% of Adj. Income for Section 8 units; sometimes other rent formulas, incl. minimum rent of \$25	Good Cause required for any termination, mid-term or end-of-term
Project-based Section 8 with HUD-subsidized or RHS mortgage	Private for-profit or non-profit (rarely PHA)	HUD or contract administrator	for Section 8 units, generally now <50% AMI; 40% of new admissions @ <30% AMI	30% of Adj. Income for Section 8 units; sometimes other rent formulas, incl. minimum rent of \$25	Good Cause required for any termination, mid-term or end-of-term
HUD-Subsidized Mortgage Only (Sections 236 or 221(d)(3)BMIR)	Private for-profit or non-profit	HUD (sometimes state agency lender)	<95% AMI for Sec. 221(d)(3) BMIR, <80% AMI for Sec. 236	usually flat "budget-based" rents regulated by HUD	Good Cause required for any termination, mid- or end-of-term
Section 202 or Section 811 with Project-based Section 8 or PAC/PRAC	Generally non-profit	HUD	now <50% AMI Elderly or People with Disabilities	30% of Adj. Income for Section 8 or PAC/PRAC units; if Section 8, sometimes other rent formulas, incl. minimum rent of \$25	Good Cause required for any termination, mid-term or end-of-term
HOME program	Private for-profit or non-profit	State or local government	Varies, depending upon use of HOME funds	varies, depending on use of HOME funds & other subsidies	Good Cause required for any termination, mid-term or end-of-term

This chart is adapted from *HUD Housing Programs: Tenants' Rights* (4th ed. 2012), published by the National Housing Law Project.