

Subsidized Housing Basics, Part III: HUD Multifamily Programs



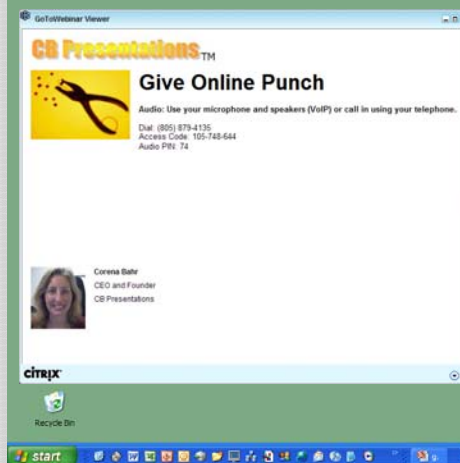
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NATIONAL HOUSING LAW PROJECT
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HOUSING JUSTICE

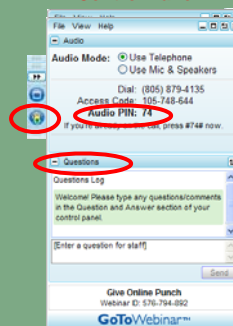
National Housing Law Project

GoToWebinar Interface

1. Viewer Window



2. Control Panel



Housekeeping

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- Materials were emailed to registrants this morning and will be emailed again after the webinar, along with evaluations.
- Materials and recording will be posted at www.nhlp.org/OVWgrantees.
- CA attorneys seeking MCLE credits will be emailed MCLE certificates after the webinar.

Today We Will Cover

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- A basic overview of the following programs:
 - Project-based Section 8 housing
 - Section 202 housing for the elderly
 - Section 811 housing for people with disabilities
 - Section 236 multifamily rental housing
 - Section 221(d)(3) Below Market Interest Rate (BMIR) housing
 - HOME
- Each program is covered by VAWA 2013 housing protections

Topics Addressed for Each Program

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- Operation of housing programs and subsidies
- Eligibility
- Rents
- Evictions
- Procedural protections
- Applicable rules
- Determining if your client lives in subsidized housing
- Locating subsidized housing

Why Does Subsidized Housing Matter?

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- **Reasons domestic and sexual violence advocates may encounter subsidized housing:**
 - Survivors' limited financial resources
 - Survivors' need to escape abusive relationships
 - ✦ Relocation to another subsidized property
 - Difficulties in navigating the admissions process
 - Negotiating with housing providers to stop evictions, subsidy terminations, or other negative actions against survivors
 - Relationship building/advocacy with housing providers

Project-Based Section 8 Program

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Project-Based Section 8 Program: Overview

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- Owners, usually private for-profit and nonprofit entities, enter into housing assistance payments (HAP) contracts with HUD.
 - ✦ **Contract administrator can be a third-party that oversees the HAP contract**
 - http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/rfp/sec8rfp (has a link to contract administrator listing)
- Tenant enters into lease with owner and pays affordable rent, typically 30% of adjusted income.
 - ✦ **Utility allowances for tenant-paid utilities**
- HUD pays the owner a rental subsidy to cover the difference between the total contract rent and the tenant's share.
- The rental subsidy is attached to a specific building, and the tenant cannot move with the subsidy.
- Two other similar programs, *project-based vouchers* & *Section 8 Mod Rehab*, have different rules

What Rules Apply to Project-Based Section 8?

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- Federal statute, HUD regulations, HUD Handbook 4350.3, HUD Notices
 - Check out www.hud.gov/hudclips.
- Owners must use HUD's model lease.
 - Form HUD-90105a, available at www.hud.gov/hudclips (Forms Library)
- Owners develop their own tenant selection plan (TSP) and house rules.
 - TSP must include certain provisions (e.g., eligibility requirements, income limits, waitlist selection procedures, etc.)
 - House rules must be reasonably related to safety of building and tenants.

Project-Based Section 8: Eligibility

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- Generally, applicants must be “very low-income,” (VLI) meaning their income cannot exceed 50% of area median income (AMI).
 - Owners must target some units to “extremely low-income” (ELI) households (30% of AMI or below).
- HUD website lists AMI and income limits for jurisdictions nationwide
 - http://www.huduser.org/portal/datasets/il/il14/index_il2014.html (FY 2014 Income Limits)

Project-Based Section 8: Admissions

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- Owner maintains the waitlist of applicants.
 - Owner is responsible for selecting tenants from waitlist.
- Owner **must** develop **tenant selection procedures**, and screen for certain criminal activity and immigration status.
- Owner may create certain admissions preferences.
- Owners **must** notify applicants of reasons for denial and offer applicants an opportunity to meet with the owner if denied.

Lily

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- Lily lives in a domestic violence shelter and recently applied for a unit in a project-based Section 8 development.
- Lily received a letter from the owner stating that her application was denied under the TSP because she has poor credit and a record of being evicted.
- How would you help Lily? What more information would you like to know?

Project-Based Section 8: Rents

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- Tenant's share of rent is typically 30% of adjusted income.
- Tenant can be required to pay a minimum rent of \$25.
- Owner recertifies tenant's income annually to ensure rent is correct. Tenant can request an interim recertification from the owner if income decreases or family size increases. Owner can require interim recertification in certain cases.

Project-Based Section 8: Evictions

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- Owner may not terminate a tenancy except for "good cause," including:
 - Material noncompliance with lease
 - Material failure to carry out obligations under state landlord-tenant law
 - Certain criminal activity
 - Alcohol abuse
 - Other good cause

Project-Based Section 8: Procedural Protections

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- Owner must give notice of the reason for the proposed denial/termination and must notify the tenant that she has an opportunity to discuss the denial/termination with the owner.
- “Other good cause” terminations require prior written notice that the conduct could result in future termination.

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Section 202

Section 811

Section 236

Section
221(d)(3)

HOME

Additional Programs

Section 202 & 811 Programs

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- **Section 202 (Supportive Housing for the Elderly)**
 - Provides nonprofits funding to provide supportive housing for very-low-income elderly persons
- **Section 811 (Supportive Housing for Persons with Disabilities)**
 - Arose out of the original Section 202 Program
 - Program provides assistance and housing associated with supportive services to disabled households with very and extremely low incomes.
 - Households can include caretakers and surviving household members.

Sections 202 & 811: What Rules Apply?

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- **Statutes**
- **Regulations**
- **HUD Model Lease**
- **HUD Handbooks**
 - HUD Handbook 4350.3
- **Tenant Selection Plans (TSPs)**
- **HUD Notices**

Pay special attention to the lease, regulations, and HUD Handbook 4350.3.

Sections 202 & 811: Eligibility and Admissions

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- **Eligibility:**
 - Section 202
 - ✖ Household has one or more individuals aged 62 or older at initial occupancy
 - ✖ Income of less than 50% AMI
 - Section 811
 - ✖ Very low and extremely low income disabled individuals or households
 - “Disability” can include one/combination of physical disability, developmental disability, or chronic mental illness
 - ✖ Income of less than 50 % AMI
- **Admissions:**
 - Owner manages waitlist and selects applicants
 - Tenant Selection Plans

Sections 202 & 811: Rents

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- **Tenant’s rent payment largely depends on type of subsidy for the unit.**
 - Some units have “budget-based” HUD-restricted rents: tenants pay for all debt service and operating costs of property without income-based rental assistance (e.g., project-based Section 8)
 - Other units have rental assistance, meaning that the tenant usually pays 30% adjusted income, and subsidy covers the rest
- **Some properties are partially assisted, with a mix**
- **Newer units are exclusively rental assistance units; however, some older Section 202 units remain under a budget-based rent structure.**
- **Rental assistance can take many forms, not limited to project-based Section 8**

Sections 202 & 811: Evictions and Protections

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- *Evictions*: Good cause required.
- *Procedural protections*: Owner must provide notice of reason for termination and opportunity to discuss with owner.

Ana

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- Ana, who lives in a Section 811 unit, has an abusive ex-boyfriend.
- Recently, the ex-boyfriend shoved Ana into a wall, causing substantial damage to the unit.
- The landlord discovered the damage, and has initiated eviction proceedings against Ana, stating that she has substantially violated the lease by damaging her apartment.
- What arguments would you consider in defending her eviction?

Section 236 & Section 221(d)(3) BMIR

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- **Section 236**
 - HUD subsidizes interest payments and restricts rents and occupancy for private rental or cooperative housing for low-income individuals.
 - ✦ Section 236 units still exist, but numbers steadily decreasing over time
 - ✦ Less than 100,000 units (2010 figures)
- **Section 221(d)(3) BMIR (Below Market Interest Rate)**
 - Program from the 1960s that provided subsidized financing to private rental housing developers
 - ✦ No new units under this program since 1968
 - ✦ However, a few thousand units continue to have active loans insured through this program, but numbers are steadily decreasing over time

Sections 236 & 221(d)(3): Rules

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- ***Applicable Rules:***
 - Statutes
 - Regulations
 - HUD Model Lease
 - HUD Handbooks
 - ✦ HUD Handbook 4350.3
 - Tenant Selection Plans (TSPs)
 - HUD Notices

Sections 236 & 221(d)(3)

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- **Eligibility:**
 - Below 80% AMI (Section 236)
 - Below 95% AMI (Section 221(d)(3) BMIR)
- **Rents:** Usually flat budget-based rents (not based on tenant's income), unless rental assistance also provided (usually project-based Section 8).
- **Evictions:** Same as Project-Based Section 8.
- **Procedural Protections:** Same as Project-Based Section 8.

HOME Program

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- **Provides grants to state and local governments to construct, purchase, and/or rehabilitate affordable housing stock for low-income and very low-income persons.**
 - HOME funds can be used to provide rental assistance, such as project-based or tenant-based vouchers.
 - New HOME funding commitments are being made.
- **Applicable Rules:** Statute, Regulations, HUD Notices, HUD Policy Memos, newsletters such as *HOMEfires*
 - <https://www.onecpd.info/home/>

HOME Program (cont.)

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- **Eligibility:** Requirements vary depending on how HOME funds are being used.
- **Rents:** Tenant contribution varies, but usually not based upon a tenant's actual income.
 - Generally, maximum rents are set at the lower of Section 8 Existing Fair Market Rent (FMR) or 30% of 65% of AMI.
- **Evictions:** Good cause required.
- **Protections:** Owner must provide 30 days' written notice specifying reasons for termination/refusal to renew lease.

Lucy

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- Lucy lives in a unit constructed under the HOME program.
- Recently, Lucy's estranged husband has been coming to her door, threatening to kill her if she doesn't reconcile with him. The husband has a history of violent and abusive behavior toward Lucy.
- Scared for her life, Lucy comes to your office and asks if there is a way for her to move to another subsidized unit. She cannot afford a market-rate apartment.
- What do you tell Lucy?

Final Considerations/Q&A

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Locating Subsidized Housing

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- Consult the National Housing Preservation Database:
 - <http://www.preservationdatabase.org/>
 - Includes
 - ✦ Project-Based Section 8; Sections 202 & 811; Section 236; Section 221(d)(3) BMIR; and HOME
 - ✦ Other housing, such as Low Income Housing Tax Credit units, Rural Development units, and public housing

Factors to Consider When Determining Your Client's Housing Program

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- **Whether:**
 - Your client rents from a private owner
 - Your client has a housing choice voucher from the PHA
 - Your client uses the HUD model lease (Form HUD-90105a)
 - The local PHA is involved
 - Your client's housing appears on the Preservation Database (previous slide)
- **Investigate these factors, and then consider asking the manager, community members, other advocates**

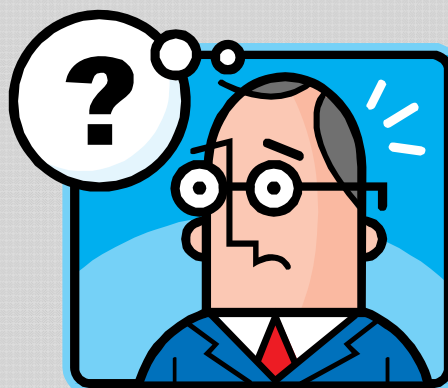
Advocacy Tips

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- **Identify Contract Administrator**
- **Work with local housing providers to implement new VAWA 2013 protections**
- **Use resources like the Housing Preservation Database to determine the type of affordable housing your client resides in or should seek**
- **Familiarize yourself with the HUD Handbook 4350.3, which covers most multifamily programs**
- **Remember: DV survivors cannot be denied admission, be evicted, or have their subsidy terminated due to circumstances arising from abuse**

Q&A Session

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Contact Information

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