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**Overview**

**HUD-Subsidized Programs**

### **Key Components**

- **Number of Units:**
  - HUD-Subsidized Section 236 and 221(d)(3) BMIR: approx. 250,000 units remaining
  - HUD Section 202 for the elderly: approx. 400,000 units remaining
  
- **How Program Works: Subsidy Mechanism**
  - In general, there are rules pertaining to provisions for the development of affordable housing, such as mortgage insurance or a grant and in addition to rental assistance
  - HUD-Subsidized Section 236 and 221(d)(3) BMIR: HUD mortgage insurance and interest rate subsidy in exchange for HUD-regulated “budget-based” rents and occupancy restrictions; may be combined with Project-Based Section 8 or other deep subsidy, such as Rent Supplement (Rent Supp) and for Section 236, Rental Assistance Program (RAP)
  - Old Section 202: direct HUD loan at below-market interest rate in exchange for HUD regulated “budget-based” rents and occupancy restrictions; new Section 202 (elderly)/811 (people with disabilities): forgivable capital advance in exchange for HUD-regulated “budget-based” rents and occupancy restrictions
  - Project-Based Section 8: rental assistance contract providing subsidy to cover the difference between HUD-approved rents and tenant contribution (See the Project-Based Section 8 Overview); new Section 202/811 uses project rental assistance contract (“PRAC”), which covers only operating expenses since capital advance requires no debt service
  
- **Ownership:** Mostly private, profit-motivated or limited-dividend; some nonprofits; Sections 202 and 811 nonprofit only (but if LIHTC is used, the owner is a for profit often with a non-profit general partner, see LIHTC Overview)
  
- **Use Restrictions**
  - HUD-Subsidized Section 236 and 221(d)(3) BMIR: Regulatory Agreement accompanying mortgage, which generally cannot be prepaid without HUD approval for at least 20 years, sometimes for full 40-year mortgage term (if original nonprofit owner or Rent Supp); any required HUD approval governed by Section 250 (12 USC §1715z-15)
  - Project-Based Section 8: for term of rental assistance contract, generally initially 20 years; upon expiration, generally one-year renewals unless longer term imposed by specific renewal option chosen by owner
  
- **Who’s Involved?**
  - HUD-Subsidized Section 236 and 221(d)(3) BMIR: HUD is usual regulator as party to Regulatory Agreement; lender (private or HUD for HUD-held loan or Section 202/811); private owner; management either owner or separate company

- Project-Based Section 8: HUD is usual regulator as party to Section 8 Housing Assistance Payments (HAP) contract or PHA for Section 8 Mod Rehab, but HUD has contracted out role of “Contract Administrator” for many properties; lender (private or HUD for HUD-held loan); private owner; management either owner or separate company
- **Key Regulatory Features** (Program Contract(s), Regs, Handbooks and Notices, Lease)
  - HUD-Subsidized Section 236 and 221(d)(3) BMIR: Regulatory Agreement; 24 CFR Parts 221, 236 (savings clause 24 CFR 200.1301 and 200.1302), 247 (evictions); HUD Handbook 4350.3 REV-1 CHG-3 (June 2009); HUD Model Lease (Hbk 4350.3 REV-1, App. 4 (Form HUD-90105a, Dec. 2007))
  - Project-Based Section 8: HAP Contract; 24 CFR Parts 880 through 886; HUD Handbook 4350.3 REV-1, CHG-3 (June 2009); HUD Model Lease (Hbk 4350.3, App. 4 Form HUD-90105a, Dec. 2007)
  - Section 202 and 811: Regulatory Agreement or its equivalent, 24 CFR Parts 891, 247 (evictions); HUD Handbook 4350.3 REV-1 CHG-3 (June 2009); HUD Model Lease (Hbk, 4530.3, App. 4 forms 90105-c (Sec. 202 PRAC) and 90105-d (Sec. 811 PRAC), Dec. 2007)) and HUD Handbook, 4571.2 (Sec. 811)
  - Section 236 RAP and Rent Supplement are also covered by HUD Handbook 4350.3
- **Finding Out Where this Housing Is Located in Your Community (national, state, local info); Knowing Its Characteristics (occupancy and bedroom sizes)**
  - Find HUD Project-Based Section 8 in your State, City or County at National Housing Trust’s web site (Excel or PDF): [http://www.nhtinc.org/housing\\_data.php](http://www.nhtinc.org/housing_data.php)
  - HUD-Subsidized Mortgage Properties: lists often available from local HUD office; see also HUD data for all insured mortgages (only in MS Access, sort by program and then location) at: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/comp/rpts/mfh/mf\\_f47](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/comp/rpts/mfh/mf_f47)
  - Project-Based Section 8 and Section 202 Direct Loans: HUD data at: < [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/mfdata](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfdata)>, **only by** downloading the entire database, click on “Multifamily Assistance and Section 8 Contracts Database,” or “Section 202 Direct Loans” sortable any way you want with MS Access
  - Information regarding Section 8 developments by state, city, county or zip code is also available at <http://www.hud.gov/apps/section8/index.cfm>
  - Information regarding Section 202, 236 and 221(d)(3) properties is also available at [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_13024.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_13024.pdf) (MFH for Elderly and Disabled, 6-25-10) because elderly and disabled are eligible for family housing, the list includes housing that is also available to families and not restricted to elderly or disabled.
- **Tips for Determining What Kind of Housing Is Involved:** Lease; Rent Level; Owner type (PHA involved?); Age of Housing; Ask Manager
- **Getting Information:** Statutes, Regs, Handbooks, Notices, and other resources:
  - HUD-Subsidized Section 236 and 221(d)(3) BMIR: Sections 236 and 221(d)(3) and (d)(5) of the National Housing Act, 12 U.S.C. § 1715z-1 and §§ 1715l(d)(3) and (d)(5); regulations and Handbooks *supra*; Handbooks, Notices, and forms at <<http://www.hud.gov/offices/adm/hudclips>>; NHLP, *HUD Housing Programs: Tenants’ Rights* (4<sup>th</sup> ed. 2012)
  - Project-Based Section 8: 42 U.S.C. §1437f; regulations and Handbooks *supra*; Handbooks, Notices, and forms at < <http://www.hud.gov/offices/adm/hudclips>>; NHLP, *HUD Housing Programs: Tenants’ Rights* (4th ed. 2012)
  - Sections 202 and 811: 12 U.S.C. §§ 1701q and 8013 and regulations and Handbooks, *supra*.
  - For HUD-subsidized and Project-Based Section 8 programs, peers support on legal issues available from HJN multifamily list-serve (join at <<http://www.nhlp.org/join>>), or on organizing issues from National Alliance of HUD Tenants (NAHT) network (info a <[www.saveourhomes.org](http://www.saveourhomes.org)>, or contact <[naht@saveourhomes.org](mailto:naht@saveourhomes.org)>, or phone (617) 267-9564.
- **Related Subprograms or Set-Asides for Special Uses**

- HUD-Subsidized Section 236 and 221(d)(3) BMIR: can be used with Section 8 or other forms of rental assistance; some properties designated for elderly-only occupancy
- Project-Based Section 8: many financing programs supporting the Section 8 rental assistance, each with separate regulations from 24 C.F.R. Parts 880 through 886; some properties designated for elderly-only occupancy

## Major Applicant and Tenant Issues

### ● 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: income: less than 80% AMI (Section 236); 95% of AMI (Section 221(d)(3) BMIR)
  - Project-based Section 8 (24 C.F.R. §5.653):
    - See Project-Based Section 8 Overview.
- **Preferences:** some properties have elderly preference or designated occupancy; preferences OK for a preference 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); can use PHA-established local preferences or old federal preferences; can't have residency preferences.
- **Screening:** 24 C.F.R. Part 5 for Section 8; HUD Handbook 4350.3 REV-1, CHG-3, ¶¶ 4-7 & 4-8 for all HUD-subs projects.
  - Criminal activity
  - Poor tenant history
  - Poor rent paying history or bad credit
- **Nondiscrimination against voucher holders:** for most of the programs, discrimination against voucher holders not permitted. 12 U.S.C. §1715z-1b(b), *compare* 24 CFR 245.205.
- **Procedural Protections:** written tenant selection plan must be available; info re preferences; written rejection notice, offering 14-day response, meeting, and written decision within 5 days, HUD Handbook 4350.3 REV-1, CHG-3, ¶ 4-4 (plan) and ¶ 4-9 (procedures).

### ● Rents

#### ● Income-based rents?

- HUD-Subsidized Section 236 and 221(d)(3) BMIR: minimum flat rents (e.g., “basic rent”) based on project’s budget for most tenants (if no Section 8); 30% of adj. income if higher (Section 236, up to ceiling Section 236 “market” rent (no interest subsidy)).
- Project-based Section 8: 30% of adjusted income for rent
- PAC and PRAC: 30% of adjusted income for rent
- HUD Form 50058 (tenant certification and recertification)

#### ● Annual Income and Exclusions (for those paying income-based rents), 24 C.F.R.

§5.609 (HUD projects)

- No Earned Income Disregard
- Foster care
- Lump sums
- One-time additions

#### ● Adjusted Income after Deductions, 24 C.F.R. §5.611 (HUD projects)

- Typical Deductions: \$480 per dependent; \$400 for elderly or disabled family; minors’ earned income; unreimbursed medical expenses for elderly or disabled family; unreimbursed attendant care or apparatus expenses to enable disabled family member to be employed; child care expenses necessary for employment or education; 1990 deductions for child or spousal support (42 U.S.C. §1437a(a)(5)(A)) never backed by appropriations
- 10% of gross monthly income (rarely applies, unless extremely low income or huge deductions)

- **Recertification:** Project-based Section 8: 24 C.F.R. §5.657 & 5.659, HUD Handbook 4350.3 REV-1, Ch. 7 (recertification at least annually; interims on tenant request); note statute specifies *monthly* income, potentially useful to extent HUD’s rules use annual income and actual monthly is lower
  - **Minimum Rent and hardship exemptions,** 24 C.F.R. §5.630: HUD-set figure of \$25 monthly for Section 8 only. Minimum rent does not apply to other programs, such as Sec. 202 PRAC, Sec. 811 PRAC, RAP, Rent Supplement, Section 236 or Section 221(d)(3) programs.
  - **Utility Allowance:** (if income-based rent) for certain tenant-paid utilities, owner sets “reasonable” amount, credit against 30% of income tenant share; adjust when base rates change by >10%
  - **Other Rents** (mostly explained *supra*); if not Section 236 tenant paying Basic Rent, tenant pays 30% of income up to rent ceiling (Section 236 “market” rent or Section 8 contract rent)
  - **Ability to challenge rent level** (For those units with budget rents, request meeting with owner-manager; program administrator)
- **Grievance Procedures:** 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). For Sec. 202 and 811, there may be fewer opportunities to meet.
- **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)
      - Basics: case law re material violation and specific facts, HUD HOUSING PROGRAMS: TENANTS’ RIGHTS, Ch. 11 (4<sup>th</sup> ed. 2011); *caveat*: more recent regulations may affect precedential value of older cases; also use HJN List-Serve for peer advice on novel situations
      - 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
    - **Notice:** 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 (HUD projects).
    - **Required proof by landlord** (preponderance of evidence that breach occurred; for drug and criminal, 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 (HUD projects, App. 4 to Hbk); 10 days to request a meeting not included in form lease for Sec. 202/811, but tenant may request a meeting to contest rent calculation Model Lease Sec. 202/811 PRAC..
    - **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. Lease does not provide for subsidy termination in Sec. 202/811 PRAC units. HUD Handbook 4350.3, App. 4 Model Leases.
    - **State law procedural protections not pre-empted:** HUD Handbook 4350.3 REV-1, ¶ 8-12B.