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Section 811 and Other HUD Housing Programs for Persons with Disabilities

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Summary

The ability of persons with disabilities to live independently in affordable, accessible housing became a prominent issue starting in 1999 as the result of a Supreme Court decision, *Olmstead v. L.C.* The court held that institutionalization of persons with mental disabilities in lieu of community-based care may constitute discrimination. Shortly after the *Olmstead* decision, on February 1, 2001, President George W. Bush announced the New Freedom Initiative, an effort through multiple federal agencies to ensure full participation in society of persons with disabilities. Part of the New Freedom Initiative was Executive Order 13217, which implemented the *Olmstead* decision by ensuring (among other things) that all people with disabilities, not just those with mental illness, benefit from community-based treatment.

In order to ensure that persons with disabilities may live in community settings rather than in institutions, affordable and accessible housing is necessary. The Department of Housing and Urban Development (HUD) operates a number of programs that provide housing for persons with disabilities in various ways. The Section 811 Supportive Housing for Persons with Disabilities program is authorized to provide capital grants and project rental assistance to nonprofit developers of housing targeted specifically to persons with disabilities. Prior to creation of Section 811, persons with disabilities lived together with elderly residents (defined by HUD as households with one or more adults age 62 or older) in developments funded through the Section 202 Supportive Housing for the Elderly program.

The project-based Section 8 and Public Housing programs give project owners the option of dedicating facilities to elderly residents, residents with disabilities, or both populations together. Over the years, both the Section 811 and the tenant-based Section 8 programs have set aside housing vouchers for persons with disabilities. And two HUD block grant programs—HOME and the Community Development Block Grant—may be used by states and communities to construct or rehabilitate housing for persons with disabilities. In addition to these HUD programs, the Low Income Housing Tax Credit (LIHTC), administered by the Internal Revenue Service, may be used by states to target housing to special needs populations, including persons with disabilities. The LIHTC may be used in conjunction with HUD grants, including capital grants through the Section 811 program.

Congress has not appropriated capital funds for new Section 811 units since FY2011. In FY2012 through FY2014, Congress made Section 811 rental assistance funds available to be used in conjunction with capital funding from other sources (such as LIHTCs and HOME funds) rather than Section 811 capital grants, which were not appropriated. This use of rental assistance was authorized as part of the Frank Melville Supportive Housing Investment Act (P.L. 111-374), and is referred to by HUD as the Project Rental Assistance (PRA) Program. P.L. 111-374 instituted other changes to the Section 811 program: authorizing that the source of funding for Section 811 tenant-based rental assistance be converted to the Section 8 program; decreasing the concentration of housing units for persons with disabilities by limiting the units in multifamily housing dedicated to persons with disabilities to 25% of the total; and delegating the processing of mixed finance developments to state housing finance agencies.

Contents

Introduction 1
Housing for Persons with Disabilities and the Fair Housing Act 2
Reasonable Modifications 3
Reasonable Accommodations 4
Definition of Person with Disabilities in HUD Housing Programs 4
The Section 811 Program Definition 5
The Definition in Other HUD Programs 6
Section 811 Supportive Housing for Persons with Disabilities Program 7
Evolution of the Section 811 Program 7
Section 202 Housing for the Elderly or Handicapped 8
Section 202 Set-Aside for Non-elderly Handicapped Households 9
Creation of the Section 811 Program 10
Changes as Part of the Frank Melville Supportive Housing Investment Act 11
Capital Grants and Project Rental Assistance 12
Eligible Developments 13
Project Rental Assistance Contracts (PRAC) 14
Supportive Services 15
Project Rental Assistance (PRA) Program 15
Tenant-Based Rental Assistance for Persons with Disabilities 16
Section 811 Mainstream Vouchers 17
Section 8 Vouchers for Persons with Disabilities ("Non-Elderly Disabled" (NED) Vouchers) 18
Section 8 Vouchers and the Money Follows the Person Demonstration 20
Other HUD Housing Designated for Persons with Disabilities 22
Public Housing 22
Project-Based Section 8 Rental Assistance 23
Housing Financed by Low-Income Housing Tax Credits and HUD Block Grants 24
The Low-Income Housing Tax Credit 24
The HOME Investment Partnerships Program 25
The Community Development Block Grant Program 26
Issues 27
Funding for the Section 811 Program 27
Using Section 811 Capital Grants with Low-Income Housing Tax Credits 28
Housing Need for Persons with Disabilities 30
Homeless Persons with Disabilities 31

Tables

Table 1. Funding for Section 811 Capital Grants, Rental Assistance, Project Rental Assistance Program, and Vouchers, FY2003-FY2017 27

Table A-1. Definitions of Disability Applicable to HUD Housing Programs 33

Appendixes

Appendix. Definitions of Disability Applicable to HUD Housing Programs 33

Contacts

Author Information..... 34

Introduction

Persons with physical disabilities, intellectual or developmental disabilities, or mental illnesses may face difficulty in finding suitable housing, together with supportive services (often referred to as person-directed or consumer-directed services), in which they can live as active members of their community. For individuals with physical disabilities, it may be difficult to find rental units that are accessible, and some prospective residents with disabilities may face discrimination in their search for housing.[1] Zoning laws may also prevent the construction of homes where persons with disabilities live together.[2] In addition, the affordability of housing and services may be an issue due to lower participation in the workforce and lower incomes. Individuals with disabilities have lower employment rates than those without disabilities, which may be the result of factors like employer attitudes and insufficient or improper job training.[3] Insufficient income can put the costs of in-home care and supportive services out of reach, and state funding of home and community-based services through Medicaid varies by state.[4] As a result of these limitations, among other causes, persons with disabilities may have difficulty finding housing, and may live in restricted settings such as nursing homes, psychiatric hospitals, or board and care homes rather than living independently.[5] Individuals with disabilities not in such facilities may still live in group homes or small multifamily housing developments dedicated to persons with disabilities instead of on their own in the community.[6]

However, national recognition of the need for appropriate housing for persons with disabilities gained support after the 1999 Supreme Court decision in the case of *Olmstead v. L.C.* In that case, two women who had spent years in a psychiatric hospital argued that their institutionalization constituted discrimination under the Americans with Disabilities Act. The Supreme Court agreed, finding that "[s]tates are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, and the placement can be reasonably accommodated."[7] Shortly after the ruling in *Olmstead*, on February 1, 2001, President Bush announced the "New Freedom Initiative," an effort through multiple federal agencies, in cooperation with the states, to ensure full participation in society of

[1] According to the National Fair Housing Alliance, a consortium of nonprofit fair housing organizations, state and local civil rights agencies, and individuals, in 2011, 44% of the discrimination complaints filed by fair housing agencies were from persons with disabilities. National Fair Housing Alliance, *Fair Housing in a Changing Nation, 2012 Fair Housing Trends Report*, April 30, 2012, p. 3.

[2] For example, laws may limit the number or proximity of group homes, or they may limit the number of units in a multifamily development dedicated to persons with disabilities. See, for example, Daniel R. Mandelker, "Housing Quotas for People with Disabilities: Legislating Exclusion," *Urban Lawyer*, vol. 43, no. 4 (Fall 2011), pp. 915-947.

[3] See, for example, Fong Chan, David Strauser, and Patrick Maher, et al., "Demand-Side Factors Related to Employment of People with Disabilities: A Survey of Employers in the Midwest Region of the United States," *Journal of Occupational Rehabilitation*, vol. 20, no. 4 (December 2010), pp. 412-419.

[4] Ari Houser, Wendy Fox-Grage, and Kathleen Ujvari, *Across the States: Profiles of Long-Term Services and Supports, 9th Edition*, AARP Public Policy Institute, 2012, http://www.aarp.org/content/dam/aarp/research/public_policy_institute/ltc/2012/across-the-states-2012-full-report-AARP-ppi-ltc.pdf.

[5] See, for example, National Council on Disability, *The State of Housing in America in the 21st Century: A Disability Perspective*, January 19, 2010, http://www.ncd.gov/rawmedia_repository/cdd1f2d8_ae1e_44ed_b016_938405e73a26?document.pdf.

[6] See, for example, Ann O'Hara, "HR 5772—The Frank Melville Supportive Housing Investment Act of 2008—Promotes Community Integration for People with Disabilities," Opening Doors, a Publication of the Technical Assistance Collaborative and the Consortium for Citizens with Disabilities Housing Task Force, May 2008, http://www.tacinc.org/media/13665/New%20Section%20811%20Legislation%2031.pdf.

[7] *Olmstead v. L.C.*, 527 U.S. 581, 607 (1999).

persons with disabilities. Part of the New Freedom Initiative was an executive order implementing the *Olmstead* decision to ensure that all people with disabilities, not just those with mental illnesses, benefit from community-based treatment.[8] However, for many states and communities, it may be difficult to achieve the goal of treatment in a community environment without the availability of accessible and affordable housing.[9]

The federal government makes funds available to finance subsidized rental housing for persons with disabilities primarily through the Department of Housing and Urban Development (HUD). The Section 811 Supportive Housing for Persons with Disabilities program is the only federal program that funds supportive housing exclusively for persons with disabilities. However, the Section 811 program is not the only source of funds to provide housing units for persons with disabilities. Over the years, a number of other HUD programs have been used to fund housing units dedicated to persons with disabilities, and many of those units are still in service. These programs include the Section 202 Supportive Housing for the Elderly program, Public Housing, the project-based Section 8 rental assistance program, and the Section 8 voucher program. Federal block grant programs—the Community Development Block Grant and HOME Investment Partnerships program—have also been a source of funds used by states and local communities to develop and rehabilitate housing for persons with disabilities. Another source of funds is the Low Income Housing Tax Credit, administered by the Internal Revenue Service, through which state governments have the discretion to prioritize housing for persons with disabilities.

This report describes how federal funds are used to develop housing designated for persons with disabilities. It also discusses recent funding for the Section 811 program and current issues surrounding housing for persons with disabilities, including mixed financing arrangements, worst case housing needs, and persons with disabilities who are homeless.

Housing for Persons with Disabilities and the Fair Housing Act

This report discusses federal programs that provide funds to develop affordable rental housing units specifically for persons with disabilities. Individuals with disabilities may also live in housing that has not been specifically designed for their needs, however. The Fair Housing Act (FHA), enacted as part of the Civil Rights Act of 1968, contains provisions that are meant to ensure that persons with disabilities may obtain accessible rental housing even in facilities not specifically designed for them.

The FHA was created to prevent discrimination in the provision of housing based on "race, color, religion, and national origin."[10] In 1988, the Fair Housing Amendments Act (P.L. 100-430) amended the FHA to prevent discrimination based on "handicap." The Fair Housing Act defines a "handicap" as (1) having a physical or mental impairment that substantially limits one or more major life activities, (2) having a record of such impairment, or (3) being perceived as having

[8] Executive Order 13217, "Community-Based Alternatives for Individuals with Disabilities," *Federal Register*, vol. 66, no. 120, June 21, 2001, p. 33155.

[9] See, for example, Linda Velgouse and Molly Dworken, *Olmstead Update*, Presentation for the American Association of Homes and Services for the Aging Annual Meeting, October 2002.

[10] The Fair Housing Act is codified at Title 42, Chapter 45 of the United States Code. See sections 3601-3619. For more information about the Fair Housing Act, see CRS Report 95-710, *The Fair Housing Act (FHA): A Legal Overview*, by Jody Feder.

such impairment.[11] In addition to prohibiting discrimination against persons based on handicap, the FHA imposes affirmative duties on housing providers.

Under the Fair Housing Amendments Act of 1988, if a landlord fails to follow certain requirements to make housing accessible to persons with disabilities, it is considered discrimination. In the area of new construction, beginning 30 months after implementation of P.L. 100-430 (in 1988), it became unlawful for multifamily housing developers to design and construct housing of four or more units that fails to (1) have common areas that are accessible and useable by persons with disabilities, (2) have doors wide enough to accommodate wheelchairs, and (3) include units with accessible routes through the unit; bathrooms and kitchens that are wheelchair accessible; electrical outlets, light switches and thermostats that are accessible; bathrooms with reinforcements where grab bars may be installed; and kitchens and baths that may be maneuvered through with a wheelchair.[12]

For units in older facilities, or in units not covered by the FHA, the Fair Housing Amendments Act recognized that modifications to units may be necessary to make them accessible to persons with disabilities. Under the law, it is discriminatory for landlords to refuse to allow tenants to make physical changes to the premises—referred to as "reasonable modifications"—where changes are necessary to afford tenants full enjoyment of the premises.[13] In addition, the law gives tenants the right to ask their landlords for "reasonable accommodations" in the rules, policies, practices, or services that ordinarily apply to tenants living in rental property. It is considered discrimination under the FHA for a landlord to refuse to make a reasonable accommodation where it is necessary to give residents with disabilities an equal opportunity to use and enjoy their dwelling unit.[14] Reasonable modifications and reasonable accommodations are described below.

Reasonable Modifications

While the FHA may require landlords to permit tenants to make reasonable modifications to the rental premises, the statute neither defines the term "reasonable modification," nor the circumstances under which modifications might be required to ensure a tenant's enjoyment of the premises. However, HUD and the Department of Justice (DOJ) have published joint guidance describing reasonable modifications.[15] They may include changes to a rental unit such as widening doorways, installing a ramp or grab bars, or lowering cabinets.[16] The HUD/DOJ guidance requires that there be an identifiable relationship between the tenant's disability and the modification; if there is not, a landlord may refuse to allow the alteration.[17] Landlords are not required to pay for modifications, and, if the modifications would prevent a future tenant's enjoyment of the premises, the landlord may require tenants to restore the unit to its original state when moving out. In order to ensure that this occurs, a landlord may require tenants to deposit

[11] 42 U.S.C. §3602(h).

[12] 42 U.S.C. §3604(f)(3)(C).

[13] 42 U.S.C. §3604(f)(3)(A).

[14] 42 U.S.C. §3604(f)(3)(B).

[15] Examples of reasonable modifications are also in regulation. See 24 C.F.R. §100.203.

[16] See *Reasonable Modifications Under the Fair Housing Act*, Joint Statement of The Department of Housing and Urban Development and the Department of Justice, March 5, 2008, p. 4, http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf.

[17] Ibid., p. 3.

funds into an escrow account to pay for restoration.[18] However, landlords cannot require tenants to pay a higher security deposit because of modifications to the property.

While no federal program exists specifically to help tenants with disabilities pay for home modifications, funding may be available at the state or local level. For example, some states make funds available through their Medicaid waiver programs to allow persons with disabilities to make modifications.[19] States may also set up grant or loan programs using state, local, or federal funds to assist with home modifications. Sources of federal funds that could be used for this purpose include the HOME Investment Partnerships block grant and the Community Development Block Grant (these programs are described later in this report).

Reasonable Accommodations

In addition to permitting tenants to make reasonable modifications to their units under the FHA, landlords may be required to make "reasonable accommodations" to ensure that tenants with disabilities may use and enjoy their dwelling. Reasonable accommodations may involve altering or making an exception to rules, policies, practices, or services that would otherwise apply to tenants, but when applied to an individual with a disability may prevent them from maintaining their tenancy or fully enjoying use of the facility.[20] As with reasonable modifications, there must be a relationship between the disability and the requested accommodation. However, unlike reasonable modifications, a tenant may request an accommodation that will involve a cost to the housing provider, although the requested accommodation cannot pose an undue financial or administrative burden, and cannot fundamentally alter the provider's operations.[21] If the requested accommodation is reasonable, tenants cannot be charged an extra fee or be required to make a deposit into an escrow account. Examples of reasonable accommodations include changing the manner of rental payment for a tenant with a mental illness so that he or she need not leave the apartment or allowing assistance animals in a building that does not otherwise allow pets.

Definition of Person with Disabilities in HUD Housing Programs

This report discusses several HUD housing programs that designate housing units for persons with disabilities. These are the Section 811 Supportive Housing for Persons with Disabilities program, Public Housing, and the tenant- and project-based Section 8 programs. In addition, prior to creation of the Section 811 program, the Section 202 Supportive Housing for the Elderly program set aside units for persons with disabilities. Each of the programs defines "person with disabilities," and while the definitions are similar, there are some differences among them.

[18] 24 CFR §100.203(a).

[19] Terry Moore and Beth O'Connell, *Compendium of Home Modification and Assistive Technology Policy and Practice Across the States*, Abt Associates, prepared for the U.S. Department of Health and Human Services, October 27, 2006, http://www.hcbs.org/files/138/6854/assistive_tech_final_report.pdf.

[20] See *Reasonable Accommodations Under the Fair Housing Act*, Joint Statement of the Department of Housing and Urban Development and the Department of Justice, May 17, 2004, http://www.nhl.gov/offices/fheo/library/huddojstatement.pdf.

[21] Ibid., pp. 8-9.

This section of the report uses the Section 811 program definition as the baseline with which to compare the definitions in the other three programs (Section 8, Public Housing, and Section 202). For a table comparing the definitions, see the **Appendix**.

The Section 811 Program Definition

To qualify for Section 811 housing, residents must be a person with a disability who is 18 years or older but younger than age 62.[22] Families of persons with disabilities are included in the definition so that households composed of one or more persons, at least one of whom is an adult with a disability, may be served by the program.[23]

Under the Section 811 statute, a person with disabilities is defined as an individual having a physical, mental, or emotional impairment (1) that is expected to be of long-continued and indefinite duration, (2) that substantially impedes his or her ability to live independently, and (3) is of such a nature that the ability to live independently could be improved by more suitable housing conditions.[24] In addition, under the Section 811 statute, persons with developmental disabilities as defined under the Developmental Disabilities Assistance and Bill of Rights Act (P.L. 106-402) qualify for Section 811 housing.[25]

The regulations governing Section 811 elaborate further on the definition of "person with disabilities."[26] First, the regulation details what it means to be "developmentally disabled" (described in the section below) and specifies that a person with a "chronic mental illness" that seriously limits his or her ability to live independently and whose impairment could be improved by suitable housing meets the Section 811 definition of person with disabilities. The regulation goes on to state that persons with acquired immunodeficiency virus (HIV), alcoholism, or drug addiction *may* be considered disabled *if* they also have a disability as defined by the Section 811 statute. According to the regulation, "a person whose sole impairment is a diagnosis of HIV positive or alcoholism or drug addiction (i.e., does not meet the qualifying criteria in [the statute]) will not be eligible for occupancy in a section 811 project."[27]

Developmental Disability

According to Section 811 regulations—which mirror the Developmental Disabilities and Bill of Rights Act—a person has a developmental disability if he or she has a severe, chronic disability that (1) is attributable to a physical or mental impairment (or combination of physical and mental impairments), (2) manifests before age 22, (3) is likely to continue indefinitely, and (4) results in substantial functional limitations in at least three major life activities. Life activities are defined as

- self care,
- receptive and expressive language,

[22] The portion of the law specifying age was added to the Section 811 statute as part of the Frank Melville Supportive Housing Investment Act (P.L. 111-374).

[23] 42 U.S.C. §8013(k)(2).

[24] Ibid.

[25] 42 U.S.C. §15002(8).

[26] 24 C.F.R. §891.305.

[27] HUD funds housing specifically for persons living with HIV/AIDS through the Housing Opportunities for Persons with AIDS (HOPWA) program. For more information about HOPWA, see CRS Report RL34318, *Housing for Persons Living with HIV/AIDS*, by Libby Perl.

- learning,
- mobility,
- self direction,
- capacity for independent living, and
- economic self-sufficiency.

A fifth component of the definition is that the developmental disability reflects the need for individually planned and coordinated care, treatment, or other services for a lifetime or an extended duration.

The Definition in Other HUD Programs

The definition of the term "person with disabilities" in the Section 811 program differs somewhat from the definition for both the tenant- and project-based Section 8 programs (referred to here by the blanket term "Section 8") and the Public Housing program, which are defined together in the same statute and regulation,[28] and properties developed under the Section 202 loan program, which is found in regulation.[29]

While the Section 8/Public Housing definition of person with disabilities includes the Section 811 statutory definition—a physical, mental, or emotional impairment and developmental disabilities—it also adds to the definition persons who are considered disabled under Title II of the Social Security Act.[30] Neither the Section 811 statute nor the regulations governing the program include the Social Security definition of disability. Under the Social Security definition, a person is considered disabled if he or she is unable to work ("engage in any substantial gainful activity") due to a medically determinable physical or mental impairment that is expected to last at least 12 months or to result in death. A person may also be considered disabled under the Social Security Act definition if he or she is age 55 or older, is blind, and is unable to engage in substantial gainful activity.[31]

The statute governing disability under Section 8 and Public Housing further specifies that the term person with disabilities "shall not exclude" those living with acquired immunodeficiency syndrome (AIDS) or conditions arising from its etiologic agent. Unlike the Section 811 regulation, the Section 8/Public Housing definition does not exclude persons whose only diagnosis is that of HIV positive. However, the Section 8/Public Housing regulation is similar to the Section 811 regulation in stating that an individual shall not be considered a person with disabilities based *solely* on drug or alcohol dependence.

The term "handicapped person or individual" for purposes of facilities developed with Section 202 loans[32]—which contain units for persons with disabilities—is defined in regulation. The Section 202 program definition is very similar to the Section 811 definition, and differs only in the way in which it describes a person who is living with HIV/AIDS. According to the regulation, those who are infected with HIV, and who are disabled as a result of the infection, are eligible for

[28] The definition of person with disabilities for the Section 8 and Public Housing programs is at 42 U.S.C. §1437a(b)(3) and 24 C.F.R. §5.403.

[29] 24 C.F.R. §891.505.

[30] See 42 U.S.C. §423(d).

[31] For a more detailed discussion of the Social Security Act definition of "disability," see CRS Report RL32279, *Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)*, by William R. Morton.

[32] Non-elderly persons with disabilities do not reside in Section 202 developments funded through capital grants.

housing built through the Section 202 loan program. The type of housing for which those individuals would be eligible, according to the regulation, depends upon the nature of the person's disability—that is, housing that is designed for persons with physical disabilities, developmental disabilities, or chronic mental illnesses. Finally, like the law and regulations governing Section 811, Section 8, and Public Housing, Section 202 regulations make ineligible any person whose "sole impairment" is alcoholism or drug addiction.

Section 811 Supportive Housing for Persons with Disabilities Program

The Section 811 Supportive Housing for Persons with Disabilities program is administered by HUD and funds permanent supportive housing for very low-income persons with disabilities (those with family income at or below 50% of area median income). Over the years, since its inception in 1990, the program has provided assistance in several ways.

- Until 2011, Section 811 primarily provided capital grants and project rental assistance to nonprofit housing developers. Section 811 capital grants were used for construction, rehabilitation, or acquisition of buildings to be used as housing for persons with disabilities.[33] Nonprofit developers that obtained the grants need not repay them as long as the housing remains available and affordable for at least 40 years to very low-income persons with disabilities.
- Until 2011, the Section 811 program also funded tenant-based vouchers—sometimes referred to as "mainstream vouchers"—that are used by eligible tenants to rent housing in the private market. However, the Section 811 program has not funded new vouchers since FY2006, and the funding for existing vouchers was fully absorbed by the Section 8 tenant-based voucher account in FY2012.
- Beginning with the FY2012 appropriation, the Section 811 model of assistance has become one of "rental assistance only," whereby Section 811 funds are used to subsidize units developed with capital funding from sources other than Section 811.

This section of the report describes the evolution of the Section 811 program and how it currently operates.

Evolution of the Section 811 Program

The Section 811 Supportive Housing for Persons with Disabilities program was created as part of the Cranston-Gonzalez Affordable Housing Act of 1990 (P.L. 101-625). Until enactment of Cranston-Gonzalez, HUD had funded housing units for persons with disabilities largely through the Section 202 Supportive Housing for the Elderly program, created in 1959. Over the years, the individuals with disabilities who were eligible for Section 202 housing expanded from persons with physical disabilities to those with developmental disabilities and eventually to individuals with chronic mental illnesses. Over time, Congress also began to implement a split between housing for elderly residents[34] and those with disabilities, ultimately resulting in creation of the

[33] 42 U.S.C. §8013(b).

[34] Although other terms may be preferred, this report uses the term "elderly" to refer to those individuals eligible for

Section 811 program. However, units for persons with disabilities that were created as part of the Section 202 program continue to be financed through that program and governed by its rules, so the history of their development continues to be important.[35]

Section 202 Housing for the Elderly or Handicapped

The Section 202 program was created as part of the Housing Act of 1959 (P.L. 86-372) and provided low-interest loans to non-profit developers to construct multifamily housing for families where one or more person is age 62 or older. Section 202 did not initially provide housing for persons with disabilities. Five years after the creation of the Section 202 program, the Housing Act of 1964 (P.L. 88-560) added non-elderly "handicapped" individuals and families to the definition of "elderly families" under the Section 202 program. At the time, "handicapped" was defined by P.L. 88-560 as a physical impairment (1) expected to be of long-continued or indefinite duration, (2) that substantially impedes the ability to live independently, and (3) is of such a nature that the ability to live independently could be improved by more suitable housing conditions. Mental, intellectual, or developmental disabilities were not included in the definition. The Housing Act of 1964 also changed the name of the Section 202 program to "Housing for the Elderly or Handicapped." However, the law did not require that a certain number of units be set aside for tenants with disabilities or direct that units be made accessible. Very few tenants who were considered non-elderly handicapped participated in the Section 202 program between 1964 and 1974. Although data were not collected, HUD estimated that through 1977, less than 1% of Section 202 tenants were non-elderly handicapped,[36] and that "the vast majority of Section 202 projects [were] not designed to serve the handicapped."[37]

The Housing and Community Development Act of 1974 (P.L. 93-383) removed the word "physical" from the term "physical impairment" in the definition of handicap and also expanded the definition of handicap to include developmental disabilities.[38] The removal of the word "physical" was meant to make persons with mental illnesses eligible for Section 202 housing.[39] However, the development of housing for this population did not occur immediately. In 1978, in the conference report accompanying the Housing and Community Development Amendments (P.L. 95-557), Congress acknowledged that "there has been some confusion over whether chronically mentally ill persons are eligible for section 202 housing," and that it was "never the intent of Congress to exclude chronically mentally ill persons from participating in the section 202 program."[40] The report went on to direct HUD to develop criteria and standards for providing housing for this population. In 1978, HUD undertook a demonstration program together with the

HUD-assisted housing for persons age 62 or older because it is the term used by HUD.

[35] For more information about the Section 202 program, see CRS Report RL33508, *Section 202 and Other HUD Rental Housing Programs for Low-Income Elderly Residents*, by Libby Perl.

[36] 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. 36 (hereinafter *Housing for the Elderly and Handicapped*).

[37] Ibid., p. 67.

[38] See Section 210 of P.L. 93-383. "A person shall also be considered handicapped if such person is a developmentally disabled individual as defined in section 102(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1950."

[39] See discussion in U.S. Department of Housing and Urban Development, *Standards and Criteria for Housing for the Chronically Mentally Ill in the Section 202/8 Direct Loan Program*, April 1983, pp. 1-3 (hereinafter *Standards and Criteria for Housing for the Chronically Mentally Ill*).

[40] Conference Report to accompany S. 3084, The Housing and Community Development Amendments of 1978, 95th Cong., 2nd sess., H.Rept. 95-1792.

Department of Health and Human Services (then the Department of Health, Education, and Welfare), "to better understand the housing needs of the mentally ill."[41] In FY1982, the Section 202 program funded housing for chronically mentally ill individuals for the first time, making funds available for group homes and independent living facilities.[42]

Section 202 Set-Aside for Non-elderly Handicapped Households

In 1978, the Housing and Community Development Amendments (P.L. 95-557) required that, beginning in FY1979, at least $50 million of the amounts available for loans under the Section 202 program be devoted to housing for non-elderly "handicapped" individuals.[43] The new requirement was meant to "meet special needs [of the handicapped] which have not been adequately addressed in Section 202 projects."[44] Until enactment of the Housing and Community Development Amendments of 1978, a small number of accessible units in larger Section 202 developments designed primarily for elderly residents had been dedicated to persons with disabilities (about 1% of units). These Section 202 developments tended to be large multifamily rental buildings—the average number of units in Section 202 developments built prior to enactment of the Housing and Community Development Act of 1974 was 135.[45] HUD suggested that one of the reasons for the low number of units designed for persons with disabilities through the Section 202 program was the additional cost of making units accessible, putting project sponsors at a disadvantage in applying for funds.[46] The set-aside was meant to address this issue.

In addition, P.L. 95-557 specified that non-profit sponsors of Section 202 housing were expected to develop innovative ways of providing housing for persons with disabilities, including group homes and independent living complexes integrated into the surrounding community, together with supportive services tailored to resident needs.[47] After enactment of the Housing and Community Development Amendments of 1978 with its set-aside for housing for persons with disabilities, the number of developments built specifically for these households (versus elderly households) increased.[48] HUD estimates that by the end of the 1980s, approximately 10% of units funded through the Section 202 program were in facilities designed for persons with disabilities.[49]

Nearly 10 years after enactment of the Housing and Community Development Amendments, another law made changes to the way in which persons with disabilities were served under the

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[41] *Standards and Criteria for Housing for the Chronically Mentally Ill*, p. 2.

[42] See U.S. Department of Housing and Urban Development, "Section 202 Loans for Housing for the Elderly or Handicapped; Announcement of Fund Availability, FY1982," *Federal Register*, vol. 47, no. 76, April 20, 1982, pp. 16892-16894.

[43] Housing provided for persons with disabilities through the Section 202 program is sometimes referred to as "Section 202(h)" housing, referring to the subparagraph that was added to the Section 202 statute by P.L. 95-557.

[44] See Senate Committee on Banking, Housing, and Urban Affairs, S.Rept. 95-871, Senate report to accompany S. 3084, the Housing and Community Development Act of 1977, 95th Cong., 2nd sess., May 15, 1978. The Senate bill became the Housing and Community Development Amendments of 1978 (P.L. 95-557).

[45] *Housing for the Elderly and Handicapped*, pp. 16-17.

[46] U.S. Department of Housing and Urban Development, FY1980 Budget Justifications, p. K-3.

[47] See H.Rept. 95-1161, House Committee on Banking, Finance, and Urban Affairs Report to accompany H.R. 12433, The Housing and Community Development Amendments of 1978, 95th Cong., 2nd sess. Portions of H.R. 12433 were inserted in the Senate version of the Housing and Community Development Amendments (S. 3084) which was enacted as P.L. 95-557.

[48] House Committee on Aging, Subcommittee on Housing and Consumer Interests, *The 1988 National Survey of Section 202 Housing for the Elderly and Handicapped*, 101st Cong., 1st sess., December 1, 1989, p. 99.

[49] U.S. Department of Housing and Urban Development, *Evaluation of Supportive Housing Programs for Persons with Disabilities*, July 1995, p. 8, http://www.huduser.org/Publications/pdf/suphous1.pdf.

Section 202 program. The Housing and Community Development Act of 1987 (P.L. 100-242) amended the law to require that 15% of the total amount available for Section 202 loans be set aside for persons with disabilities rather than the $50 million established in the 1978 Act (P.L. 95-557). In appropriations acts from FY1988 through FY1991, Congress went beyond the statutory set-aside, however, and required that 25% of Section 202 loan authority be used for housing for persons with disabilities.[50]

Another change made by P.L. 100-242 involved rental subsidies for those Section 202 units for persons with disabilities. Since the enactment of the Housing and Community Development Act of 1974, Section 202 units for both elderly and disabled residents had been subsidized through the project-based Section 8 rental assistance program. However, there was a growing acknowledgment that Section 8 rental assistance was not sufficient to support units for persons with disabilities because it did not take account of the higher cost of providing housing in smaller developments such as group homes.[51] P.L. 100-242 specified that rental assistance in projects for persons with disabilities should be provided through a separate subsidy program based on the "total actual and necessary reasonable costs of developing and operating the project," not including, however, the costs of supportive services.[52] The FY1989 HUD Appropriations Act (P.L. 100-404) provided rental assistance funds for housing for persons with disabilities separately from those for elderly residents. This separate rental assistance was the means of subsidizing Section 202 units for persons with disabilities until the creation of the Section 811 program.[53]

Creation of the Section 811 Program

The incremental separation of housing for persons with disabilities from housing for elderly residents that began in 1978 with a set-aside in the Section 202 program and continued with separate rental assistance in 1987 was made permanent in the Cranston-Gonzalez National Affordable Housing Act of 1990 (P.L. 101-625). Congress completely separated housing for persons with disabilities from the Section 202 program by creating the Section 811 Supportive Housing for Persons with Disabilities program.

Not only did P.L. 101-625 separate the housing for persons with disabilities program from the housing for the elderly program, it also changed the way in which units would be financed under both the Section 202 and Section 811 programs. Until the enactment of P.L. 101-625, units created through the Section 202 program had been financed with a combination of loans and project-based Section 8 rental assistance contracts. P.L. 101-625 instituted a method of financing in which Section 202 and Section 811 developments would be financed through capital grants rather than loans. As long as units remain affordable to very low-income residents for at least 40 years, project owners need not repay the capital grants. The law also created a new form of rental assistance similar to Section 8, called PRAC, or project rental assistance contracts. In addition, the law instituted a new way of determining development cost limitations for both Section 202

[50] See H.Rept. 100-498, Conference Report to accompany H.J.Res. 395, a joint resolution making continuing appropriations for FY1988; P.L. 100-404, the FY1989 HUD Appropriations Act; P.L. 101-144, the FY1990 HUD Appropriations Act; and P.L. 101-507, the FY1991 HUD Appropriations Act.

[51] House Committee on Banking, Finance, and Urban Affairs, H.Rept. 100-122, to accompany H.R. 4, the Housing, Community Development, and Homeless Prevention Act of 1987, 110th Cong., 1st sess., June 2, 1987.

[52] See Section 162 of P.L. 100-242.

[53] The Section 202 units funded with this new rental assistance are sometimes called "Section 202/162 PACs," referring to the section of the Housing and Community Development Act of 1987, as well as the new "project assistance contracts" created by P.L. 100-242.

and Section 811 facilities. The new method was to take account of special design features for persons with disabilities and congregate space for supportive services, among other factors.

The provisions creating the Section 811 program originated in the Senate version of the bill (S. 566) that would become the Cranston-Gonzalez National Affordable Housing Act. The Senate Banking Committee, in its report accompanying the bill, described the reasons behind creating a program separate from Section 202:

> The Committee believes that separation of the programs for elderly and persons with disabilities would further the goal of developing a program that meets the housing and related needs of nonelderly persons with disabilities. A separate program would spur the development of a bureaucracy knowledgeable about and sensitive to the special needs of tenants with disabilities, needs which can differ from those of many elderly residents.... A separate program would also create an institutional voice for housing concerns that are particular to this constituency.[54]

The report also stressed the importance of changing the terminology used to refer to persons served through the Section 811 program, replacing "handicapped persons" with "persons with disabilities."[55] Community integration was another important goal of the new Section 811 program. In the years leading up to the enactment of P.L. 101-625, group homes and other facilities dedicated only to persons with disabilities had been the focus of housing funded through the Section 202 set aside. Under the Section 811 program, however, the HUD Secretary was to look to a variety of housing options, including scattered units in multifamily housing developments, condominiums, and cooperative housing.

Cranston-Gonzalez authorized capital grants for the new Section 811 program at $271 million for FY1992 and project rental assistance at $246 million. In FY1992, Congress funded the new Section 811 program by appropriating $103 million for capital grants and $100 million for new project rental assistance contracts (P.L. 102-139).

Changes as Part of the Frank Melville Supportive Housing Investment Act

The most recent substantive changes to the Section 811 program occurred when Congress passed the Frank Melville Supportive Housing Investment Act (P.L. 111-374) in 2010, at the end of the 111th Congress, making changes to the Section 811 program for the first time since 2000. The law changed the way in which Section 811 units are financed and focused on the integration of units into community settings. The Melville Act reauthorized the Section 811 program from FY2011 through FY2015 at $300 million per year.

P.L. 111-374 made changes to the way in which Section 811 rental assistance can be used. Until the law's enactment, Section 811 PRAC was used only in conjunction with units developed with Section 811 capital grants. However, P.L. 111-374 provided that Section 811 rental assistance can be used to assist multifamily housing units developed using other, non-Section 811 sources of funding such as Low Income Housing Tax Credits (LIHTCs), HOME funds, or other public or private sources. HUD has referred to this funding as the "Project Rental Assistance Demonstration."[56]

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[54] S.Rept. 101-316, Report of the Senate Committee on Banking, Housing, and Urban Affairs, to accompany S. 566, the National Affordable Housing Act, 101st Cong., 2nd sess., June 8, 1990, p. 148.

[55] Ibid.

[56] As introduced in P.L. 111-374, the use of rental assistance in this way would have been part of a demonstration program, but an amendment to the bill prior to passage in the Senate modified Section 811 law to make the use of rental assistance with other capital funding sources a part of the Section 811 program rather than a demonstration. Despite this, the rental assistance component of the program is referred to as a demonstration.

To the extent that Congress may still appropriate new capital grants for Section 811, P.L. 111-374 also limited the number of units in multifamily housing developed with Section 811 funds that can be occupied by persons with disabilities to 25% of the total units in the building. Due to the need to finance the remaining 75% of units, this limitation is meant to encourage developers to use other funding sources, such as LIHTCs and HOME funds, to supplement the Section 811 funding. This 25% limitation does not apply to group homes or independent living facilities. In addition, in cases where grantees combine Section 811 capital grants with funding from other sources, the review and processing of the project will be delegated to state or local housing finance agencies (HFAs) rather than HUD. Because HFAs are the agencies that administer tax credits, delegating the processing of the Section 811 capital grant to the HFA, together with the tax credit, is thought to be more efficient.

Both of the changes implemented by the Melville Act could mark a move away from developments dedicated to persons with disabilities and toward units interspersed throughout larger developments. In addition, one of the justifications for the Melville Act changes is that Section 811 funding can go further (assuming similar appropriations levels) if the funds are not needed to pay capital costs.

Capital Grants and Project Rental Assistance

In the years that Section 811 has existed, most program funding has been distributed as capital grants and project rental assistance to nonprofit housing sponsors (until recently, the program also funded tenant-based vouchers, described in the next section). With the capital grants, nonprofit grantees build or rehabilitate housing to be used for persons with disabilities and their families. HUD distributes the Section 811 capital grants through a two-step process. First, a formula is used to allocate available funds to 18 multifamily hubs based on the number of non-institutionalized persons within the jurisdiction of the local office who are between 16 and 64 years of age and have a disability.[57] HUD then awards Section 811 grants through a competitive process in which nonprofit organizations submit applications, and awards are limited by the amount allocated to the hub.

Grantees need not pay back the capital grants as long as the property remains affordable to very low-income tenants with disabilities (those with incomes at or below 50% of area median income) for at least 40 years.[58] The project sponsors also receive rental assistance from HUD to make up the difference between the rent paid by residents and the costs of operating the housing development. In addition, project sponsors must ensure that residents in Section 811 housing receive appropriate supportive services. There are approximately 27,000 Section 811 units receiving rental assistance.[59] HUD last awarded capital grants with project rental assistance by combining the FY2010 and FY2011 appropriations, awarding a total of $149 million to 92

[57] U.S. Department of Housing and Urban Development, *Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2010 Section 811 Housing for Persons with Disabilities*, April 7, 2011, p. 5, http://archives.hud.gov/funding/2010/811nofa.pdf. The FY2010 NOFA was amended to include funds appropriated in FY2011. See *Amendment to Add FY2011 Funding and Technical Corrections*, May 13, 2011, http://archives.hud.gov/funding/2010/811nofa-tc.pdf. Hereinafter these two NOFAs are referred to as *FY2010/FY2011 Section 811 NOFA*.

[58] 42 U.S.C. §8013(e)(1).

[59] U.S. Department of Housing and Urban Development, *FY2017 Congressional Budget Justifications*, p. 27-1, http://portal.hud.gov/hudportal/documents/huddoc?id=27-HSNGforPersons.w.Disab..pdf.

projects in 34 states.[60] This section of the report describes these components of the Section 811 program.

Eligible Developments

The Section 811 statute governs the type of housing that may be provided through the program, but in some cases, the statutory definitions have been further refined through HUD regulation and policy. The physical design of Section 811 housing may take on several forms:[61]

- **Multifamily Rental Housing:** Until enactment of the Frank Melville Supportive Housing Investment Act (P.L. 111-374), multifamily rental housing typically consisted of small developments with rental units available for persons with disabilities. However, any rental units for persons with disabilities developed from 2011 forward are limited to 25% of the total units available in any building.[62]
- **Group Home:** The Section 811 statute defines a group home as a single-family residence designed for occupancy by not more than eight individuals with disabilities. However, HUD's annual Notice of Funding Availability (NOFA) that guides applicants for Section 811 funds specifies that no more than six individuals with disabilities may live in a group home.[63] Bedrooms may be single or double occupancy, but in the latter case, only when requested by the residents.[64] There must be at least one bathroom for every four residents,[65] and an additional bedroom may be provided for a staff person.[66] Project sponsors may not place more than one group home on a single site or on a site adjacent to another group home.[67]
- **Independent Living Facility:** According to the Section 811 statute, an independent living facility has individual dwelling units with separate bedrooms, kitchens, and baths for each resident, with a maximum occupancy of 24 persons with disabilities per development (higher numbers may be allowed with approval from HUD).[68] The Section 811 NOFA restricts the maximum number of persons in an independent living facility to 14 if the site already contains housing for persons with disabilities or is adjacent to such a site. Further, if the housing is part of a larger non-202/non-811 multifamily development, units for persons with disabilities cannot comprise more than 25% of the total.[69] The independent living

[60] U.S. Department of Housing and Urban Development, "Obama Administration Announces $749 Million to Fund Housing for Very Low-Income Seniors and Persons with Disabilities," press release, November 16, 2011, http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2011/HUDNo.11-266.

[61] 42 U.S.C. §8013(c)(1).

[62] 42 U.S.C. §8013(e)(4)(A).

[63] *FY2010/FY2011 Section 811 NOFA*, p. 15.

[64] Ibid.

[65] 24 C.F.R. §891.310.

[66] *FY2010/FY2011 Section 811 NOFA*, p. 15.

[67] 42 U.S.C. §8013(k)(1).

[68] 42 U.S.C. §8013(k)(4).

[69] *FY2010/FY2011 Section 811 NOFA*, p. 15. Project sponsors may request an exception to the project size limitations if they can show site control.

units may also be located on scattered sites.[70] Independent living facilities differ from multifamily housing in that there may be a unit included in the capital grants for a resident manager.[71]

- **Condominium Projects:** Condominium units are similar to independent living facilities, with separate bedrooms, baths, and kitchens for each resident. Standards for condominium units under the Section 811 program are not provided in statute or regulation, but are outlined in the annual HUD NOFA. The standard for maximum number of units follows the same rules as for independent living facilities.[72] However, unlike independent living facilities (or group homes), a unit may not be used by a staff person.[73]

Project sponsors may choose to serve residents that fall within one of three major disability categories—physical disability, developmental disability, and chronic mental illness—or any combination of the three.[74] In addition, with HUD approval, project sponsors may further restrict residency to a subcategory of disability that falls within one of these three categories. For example, a group house dedicated to individuals with developmental disabilities could choose specifically to serve persons with autism (with HUD's consent). However, if HUD approves the restriction, a project sponsor cannot deny occupancy to an otherwise qualified applicant who meets the definition of the broader disability category.[75] For example, in the case of a group home for persons with autism, the owners could not deny a qualified application from a person with another developmental disability, but could deny a qualified application from a person with a physical disability. In order to qualify to restrict residency by categories of disability, applicants for Section 811 funds must explain why it is necessary to restrict residency, and why it is not possible to serve residents in a more integrated setting.[76]

Project Rental Assistance Contracts (PRAC)

Nonprofit organizations that are awarded capital grants to build or rehabilitate Section 811 housing facilities also enter into contracts with HUD to receive project rental assistance (referred to as PRAC). The initial term of PRAC contracts is three years, and they are renewable on an annual basis subject to appropriations. The rental assistance is paid to project sponsors by HUD in order to make up the difference between the rent paid by tenants and the cost of operating the Section 811 housing facility.[77] Residents in Section 811 housing must be "very low income" (with income at or below 50% of area median income),[78] and they pay the higher of 30% of their adjusted income or 10% of their gross income toward rent.[79] (For more information about resident

[70] Ibid., p. 14.

[71] The HUD Handbook for the Section 811 program describes eligible properties. It states that project size limitations for group homes and independent living facilities do not include an extra unit for staff. See U.S. Department of Housing and Urban Development, *Handbook 4571.2, Section 811 Supportive Housing for Persons with Disabilities*, June 1991, pp. section 1-7, http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4571.2/45712trnHSGH.pdf.

[72] *FY2010/FY2011 Section 811 NOFA*, p. 15.

[73] Ibid.

[74] Ibid., p. 3.

[75] Ibid.

[76] Ibid., p. 38.

[77] 42 U.S.C. §8013(d)(2).

[78] 42 U.S.C. §8013(d).

[79] 42 U.S.C. §8013(d)(3).

eligibility and rent, see CRS Report R42734, *Income Eligibility and Rent in HUD Rental Assistance Programs: Responses to Frequently Asked Questions*, by Libby Perl and Maggie McCarty.)

Supportive Services

Housing developed through Section 811 capital grants must be supportive housing, that is, owners must make supportive services available to residents to help them live independently. Supportive housing is a model used to assist a variety of populations for whom it might be difficult to maintain housing, not just persons with disabilities. These groups include elderly residents, families with young children whose parents are making the transition to work, formerly homeless individuals, and those living with HIV/AIDS. Services are to be tailored to the individual needs of residents and so depend upon the population being served. Specifically, the Section 811 statute requires property owners to ensure the availability of supportive services to address the health (including mental health), and other individual needs of residents.[80] However, Section 811 funds cannot themselves be used to fund supportive services for residents.[81] Owners may provide supportive services directly to residents, or may coordinate the availability of services through outside agencies or service providers. Services may include assistance with activities of daily living; counseling for mental health issues, drug, or alcohol addictions; case management; and employment assistance.

When organizations apply to HUD for Section 811 capital grants, they must submit a supportive services plan that has been certified by the appropriate state or local agency responsible for overseeing services to persons with disabilities as being well-designed to serve the needs of the prospective residents.[82] The supportive services plans must include the following information (among other requirements): (1) a detailed description of the service needs of the population that will be served; (2) a list of community service providers that will provide services, and letters of intent from those providers; (3) the experience of the proposed service providers; (4) a description of how state and local agencies will be involved in the project; and (5) the applicant's commitment to provide services for residents.[83] While project sponsors are required to ensure that supportive services are available, they cannot require residents to accept them.

Project Rental Assistance (PRA) Program

As part of P.L. 111-374, enacted at the end of the 111th Congress, the Section 811 program was changed to allow rental assistance funds to be used to assist multifamily housing units developed using other, non-Section 811 sources of funding such as LIHTCs, HOME, or other public or private sources. Properties may be new or existing, but the Section 811 rental funding may not be used to support units already dedicated to persons with disabilities, units that received Section 8 assistance in the previous six months, or units designated for elderly residents. No more than 25% of units in any development may receive rental assistance, nor may more than 25% of units be set aside for persons with disabilities whether the units receive a rental subsidy or not. Recipients of rental assistance are required to operate the rent-assisted units for at least 30 years as supportive

[80] 42 U.S.C. §8013(k)(3).

[81] *FY2010/FY2011 Section 811 NOFA,* p. 44.

[82] Ibid., p. 13.

[83] Ibid., pp. 38-39.

housing for persons with disabilities. HUD refers to this model as the Project Rental Assistance (PRA) program.

Funds have been set aside for the PRA program from the FY2012-FY2014 appropriations, with HUD awarding funds in two rounds. On February 12, 2013, HUD announced that $98 million would fund 3,530 units of housing, and on March 3, 2015, HUD announced that another 4,584 units would be funded with $150 million.[84] The rental assistance contract between the state grantee and the property owner is to be for at least 20 years. Funding is provided for the first five years, with the subsequent years subject to appropriation.[85]

In addition to the differences in capital funding and the percentage of units dedicated to individuals with disabilities, there are several other requirements that differ from the original Section 811 program.

- Eligible applicants are state agencies that administer Low Income Housing Tax Credits or the HOME Investment Partnership program. Unlike Section 811 capital grants, nonprofit organizations are not eligible applicants for funding. However, state agencies may partner with public or private entities that have experience in administering rental assistance contracts, such as Public Housing Authorities, or private contractors.[86]
- Grantees must administer the funds to provide rental assistance to extremely low-income, non-elderly persons with disabilities (those with income at or below 30% of area median income). Units developed with Section 811 capital grants are available to residents who are low-income (those with income at or below 50% of area median income).
- Applicants must establish a partnership with both the state health and human services agency as well as the state agency that administers Medicaid (this may be the same agency in some states) with the goal of delivering services and supports to residents.

There may only be one application for each state health and human services and Medicaid agency, effectively limiting the program to one application per state. Resident participation in services is voluntary.

Tenant-Based Rental Assistance for Persons with Disabilities

Tenant-based rental assistance allows individuals and families to find rental housing on the private market rather than in specific housing developments (i.e., the rental assistance goes with the tenant rather than being tied to a specific housing unit). Rental assistance is provided in the

[84] Department of Housing and Urban Development, "HUD and HHS Partner to Provide Permanent Housing and Services to Low-Income People with Disabilities," press release, February 12, 2013, http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13-024, and "HUD Awards $150 Million to Provide Permanent Homes and Services to Extremely Low-Income Persons with Disabilities," press release, March 2, 2015, http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2015/HUDNo_15-026.

[85] U.S. Department of Housing and Urban Development, *FY2012 Notice of Funding Availability (NOFA) for Section 811 Project Rental Assistance Demonstration Program*, May 15, 2012, p. 9, http://portal.hud.gov/huddoc/2012sec811prademonofa.pdf.

[86] Ibid., p. 7.

form of a voucher, through which HUD pays a portion of a tenant's rent to landlords who are willing to accept the vouchers (federal law does not require landlords to accept vouchers) and whose units meet HUD's housing quality standards. The tenant-based Section 8 rental assistance program is the primary way in which HUD provides tenant-based rental assistance, although tenant-based assistance has been made available through other programs, including Section 811.[87] In voucher programs, tenants with vouchers pay between 30% and 40% of their income toward rent and HUD pays the difference between the family's contribution and the rent for the unit, subject to certain limits.[88]

Both Section 811 and Section 8 have provided tenant-based rental assistance to persons with disabilities over the years. However, due to a change in law made by the Frank Melville Supportive Housing Investment Act (P.L. 111-374), all vouchers that were originally funded through the Section 811 program are now funded through the tenant-based Section 8 rental assistance account instead. This section of the report describes Section 811 vouchers for persons with disabilities, Section 8 vouchers for persons with disabilities, and a collaboration in which Section 8 vouchers are used in conjunction with the Medicaid-funded demonstration program called "Money Follows the Person," in which vouchers have been set aside to help persons with disabilities who are transitioning institutions such as from nursing homes into the community.

Section 811 Mainstream Vouchers

The Housing and Community Development Act of 1992 (P.L. 102-550) made tenant-based rental assistance part of the Section 811 program by authorizing the use of vouchers for eligible households.[89] The vouchers, sometimes referred to as "mainstream vouchers," are administered using the same rules that govern the Section 8 voucher program. Unlike Section 8 vouchers, however, when the vouchers were created, they were funded through the Section 811 account for initial five-year terms (Section 8 vouchers are funded on an annual basis), though their funding has now been absorbed into the Section 8 account.

The first year in which Congress set aside funding for Section 811 mainstream vouchers was FY1997. The HUD Appropriations Act for that year (P.L. 104-204) specified that HUD could use up to 25% of the amount appropriated for the Section 811 program for five-year vouchers. In the first two years that the Section 811 vouchers were distributed, only public housing authorities (PHAs) could administer the vouchers, but beginning in FY1999, private nonprofit organizations were eligible to apply to administer them.[90] The last year in which Congress funded new vouchers was FY2006.[91]

HUD made Section 811 vouchers available through an annual Notice of Funding Availability (NOFA) process through which PHAs and private nonprofit organizations interested in

[87] For example, programs funded through the HUD Homeless Assistance Grants account make tenant-based rental assistance available for homeless individuals. For more information about these programs see CRS Report RL33764, *The HUD Homeless Assistance Grants: Programs Authorized by the HEARTH Act*, by Libby Perl.

[88] The 40% cap on a tenant's contribution is in effect only for the first year. After the first year, if rent increases and the family wishes to continue to live in the unit, then the family can choose to contribute more than 40% of its income toward rent.

[89] 42 U.S.C. §8103(d)(4).

[90] U.S. Department of Housing and Urban Development, "Mainstream Housing Opportunities for Persons with Disabilities FY1999 Funding Availability," *Federal Register*, vol. 64, no. 44, March 8, 1999, p. 11303.

[91] U.S. Department of Housing and Urban Development, *Congressional Justifications for 2009 Estimates*, p. C-5, http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11899.pdf.

administering the vouchers applied to HUD. Applicants were scored based on a number of factors, which included the number of persons with disabilities at or below poverty in the area to be served by the applicant as well as the existence of agreements with organizations that would provide supportive services to voucher holders.[92] Since 2005, HUD required voucher administrators (PHAs and private nonprofit organizations) to help persons with disabilities who have Section 811 vouchers to obtain supportive services if they request them, as well as to provide technical assistance to landlords in making reasonable accommodations or reasonable modifications.[93]

In 2011, the funding source for Section 811 vouchers changed from the Section 811 account to the Section 8 tenant-based rental assistance account. P.L. 111-374 provided that new Section 811 tenant-based assistance would be funded via the Section 8 account, and it authorized appropriations to the Section 8 account sufficient to convert existing vouchers to Section 8 assistance. In FY2011, funding to renew existing Section 811 vouchers was split between the Section 811 and tenant-based Section 8 accounts (P.L. 112-10), and in FY2012 and thereafter all funding to renew Section 811 vouchers has been provided through the Section 8 account (P.L. 112-55). (See **Table 1**.) As of the end of FY2015, HUD reported that vouchers originally funded through the Section 811 account totaled 13,905.[94]

Section 8 Vouchers for Persons with Disabilities ("Non-Elderly Disabled" (NED) Vouchers)

In addition to housing vouchers made available through Section 811, HUD has set aside Section 8 vouchers for families with an adult member who has a disability.[95] Congress appropriated funds for Section 8 vouchers for persons with disabilities, sometimes referred to as "designated housing vouchers" or vouchers for "certain developments," in response to enactment of the Housing and Community Development Act of 1992 (P.L. 102-550).[96] Provisions in P.L. 102-550 permitted owners of Public Housing and project-based Section 8 developments where elderly residents and residents with disabilities lived together to either designate buildings as elderly only or to prioritize elderly tenants.[97] Section 8 owners were given the authority to create a preference for

[92] For more information on criteria used to select applicants, see, for example, U.S. Department of Housing and Urban Development, "Notice of Funding Availability for FY2005 Mainstream Housing Opportunities for Persons with Disabilities Program," *Federal Register*, vol. 70, no. 211, November 2, 2005, pp. 66730-66732.

[93] See Department of Housing and Urban Development Notice PIH-2005-5, "New Freedom Initiative, Executive Order 13217: 'Community-Based Alternatives for Individuals with Disabilities,' and the Housing Choice Voucher Program," February 1, 2005, http://www.hud.gov/offices/adm/hudclips/notices/pih/files/05-5PIHN.doc (hereinafter "HUD Notice PIH-2005-5"). PIH-2005-5 was extended indefinitely by PIH Letter L-2007-01, http://www.hud.gov/offices/adm/hudclips/letters/07-1PIHL.doc.

[94] HUD Voucher Management System data accessed December 3, 2015, http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/psd.

[95] The voucher portion of the Section 8 program was created in 1983 as part of the Supplemental Appropriations Act of 1984 (P.L. 98-181). For more information about the Section 8 program, see CRS Report RL32284, *An Overview of the Section 8 Housing Programs: Housing Choice Vouchers and Project-Based Rental Assistance*, by Maggie McCarty.

[96] The portion of P.L. 102-550 that addresses Public Housing designation is entitled "Authority for Public Housing Agencies to Provide Designated Public Housing and Assistance for Disabled Families," while the portion that addresses properties with project-based Section 8 assistance is entitled "Authority to Provide Preferences for Elderly Residents and Units for Disabled Residents in Certain Section 8 Assisted Housing."

[97] See Title VI, Subtitle B of P.L. 102-550 for Public Housing and Title VI, Subtitle D for Section 8. The law also gave authority to owners of Section 202, Section 221(d)(3), and Section 236 properties to continue to restrict occupancy to elderly families according to the rules in place at the time the projects were developed (see Section 658).

elderly families in their buildings, though they could not exclude disabled families altogether. PHAs were given the authority to designate entire buildings as elderly only. Although PHAs cannot evict tenants with disabilities if a building is designated as elderly only, through attrition a building may eventually have only elderly residents. These policy changes affected the ability of tenants with disabilities to live in these developments.

Beginning in FY1997, Congress has appropriated funds for Section 8 vouchers in order to assist tenants with disabilities who would have been eligible to reside in Section 8 and Public Housing developments prior to their designation as elderly only or elderly preference. As with Section 811 vouchers, PHAs must assist tenants who request help in finding supportive services, and provide technical assistance to landlords in providing reasonable accommodations and modifications. PHAs applied for the designated housing vouchers, which they then provided to eligible tenants. Congress appropriated funds in each year from FY1997 through FY2002, and then again in FY2008 and FY2009.[98] According to HUD data, there are approximately 54,000 vouchers available for residents with disabilities.[99]

Turnover of Section 811 and Section 8 Vouchers for Persons with Disabilities

An issue with vouchers targeted to persons with disabilities is whether vouchers, when given up by current vouchers holders, are turned over to another person with a disability or made available to all families eligible for tenant-based rental assistance. In the case of Section 811 vouchers, the NOFAs issued by HUD in FY1997-FY1999 specified that the vouchers should remain available to disabled families during the initial funding term of the voucher (five years), but were silent on who could use the voucher if the original family left the program (either voluntarily or due to eviction or other non-voluntary reason) after the initial funding period was over. Advocates for persons with disabilities have pointed out that these vouchers may have been provided to non-disabled households after the original tenant left the program.[100] However, in annual appropriations acts for vouchers funded from FY2005 through FY2011, Congress required that Section 811 vouchers be made available to disabled families upon turnover.[101] Further, in 2004, HUD began to require that PHAs track the disability status of families using Section 811 vouchers and provide the records to HUD.[102] Prior to 2004, HUD did not collect this information.

Unlike Section 811 mainstream vouchers, the appropriations laws for Section 8 designated housing vouchers for persons with disabilities had specified that the vouchers shall remain available to other disabled households upon turnover "*to the extent practicable* [emphasis added]."[103] (According to appropriations law language, Section 811 vouchers must be made

[98] Amounts appropriated from FY1997 through FY2002 were $50 million in FY1997 (P.L. 104-204) and $40 million in each of FY1998 (P.L. 105-65), FY1999 (P.L. 105-276), FY2000 (P.L. 106-74), FY2001 (P.L. 106-377), and FY2002 (P.L. 107-73). Congress appropriated $30 million for Section 8 vouchers in FY2008 (P.L. 110-161) and $30 million in FY2009 (P.L. 111-8).

[99] HUD list of PHAs with NED vouchers, accessed December 3, 2015, http://portal.hud.gov/hudportal/documents/huddoc?id=NED-BASELINE-DB.XLSX.

[100] See, for example, the Consortium for Citizens with Disabilities, Letter to Josh B. Bolton, Director of the Office of Management and Budget, January 14, 2005. "[T]he CCD Housing Task Force believes there is a high likelihood that at least some of these precious 811 tenant based funds are being used to support non-disabled households."

[101] The first appropriations act to have this requirement was the FY2005 Consolidated Appropriations Act, P.L. 108-447.

[102] In a notice dated August 5, 2004, HUD noted that mainstream vouchers would be tracked in its data set. See Notice PIH-2004-13, "Codes for Special Programs Reported on the Family Report," available at http://www.hud.gov/offices/adm/hudclips/notices/pih/files/04-13PIHN.doc.

[103] The phrase "to the extent practicable" appeared in appropriations laws beginning in FY2003 (P.L. 108-7) through

available *only* to families where an adult member has a disability.) HUD defined the term "to the extent practicable" to mean that before a voucher can be provided to a non-disabled household, every eligible non-elderly disabled family on a PHA's waiting list must have received a voucher, and that outreach must not have resulted in finding an eligible family.[104]

The Frank Melville Supportive Housing Investment Act (P.L. 111-374) changed the law in 2011 so that vouchers initially funded through the Section 811 account and Section 8 tenant-based account will be treated the same. The law amended the Section 811 statute to provide that HUD develop guidance to ensure that all tenant-based assistance for persons with disabilities, whether funded initially through the Section 811 or Section 8 accounts, "to the maximum extent possible ... continue to be provided upon turnover to qualified persons with disabilities or to qualified non-elderly disabled families, respectively."

Section 8 Vouchers and the Money Follows the Person Demonstration

The Money Follows the Person (MFP) Rebalancing Demonstration was originally authorized through FY2011 as part of the Deficit Reduction Act (P.L. 109-171), and was extended through FY2016 by the Patient Protection and Affordable Care Act (P.L. 111-148). The program is administered by the Department of Health and Human Services (HHS).

The purpose of MFP is to give states the flexibility to use Medicaid funds to help elderly people and persons with disabilities transition from institutional settings such as nursing homes to home- and community-based care. Nearly all states (44) have received grants and participate in MFP.[105] Persons with disabilities make up most of the MFP participants. Of those participating in MFP since 2008, 38% were non-elderly persons with a physical disability, 16% had a developmental or intellectual disability, and another 8% had a serious mental illness or other condition; 37% of participants were elderly (age 65 and older).[106]

In general, MFP funds may be used to pay for services once individuals have transitioned from institutional care to the community. However, the statute allows grantees to use funds for certain supplemental services to help an individual make the transition.[107] These supplemental services could include housing-related services such as housing or vehicle modifications to make them suitable for MFP participants, security and utility deposits, basic furnishings and groceries, and other housing-related transitional planning activities.[108] Some states are also using MFP funds as a bridge subsidy to pay for rent until participants qualify for HUD-assisted housing or to

FY2006 (P.L. 109-115). The FY2007 House-passed HUD appropriations bill (H.R. 5576) also contained this phrase, but a year-long continuing resolution was enacted in lieu of separate appropriations laws. The FY2008 HUD Appropriations Act did not contain this phrase, and the FY2009 law stated that "assistance made available under this paragraph shall continue to remain available for the same population upon turnover."

[104] HUD Notice PIH-2005-5.

[105] Originally 47 states received grants, but three rescinded them. Eric Morris, Melissa Medeiros, and Noelle Denny-Brown, et al., *Money Follows the Person Demonstration: Overview of State Grantee Progress, January to December 2014*, Mathematica Policy Research, June 10, 2015, p. 1, http://www.mathematica-mpr.com/~/media/publications/pdfs/health/mfp-grantee-progress-jandec2014-final.pdf (hereinafter *MFP 2014 Overview of State Grantee Progress)*.

[106] Ibid., p. A.4.

[107] U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Funding Opportunity Announcement for Money Follows the Person Rebalancing Demonstration*, July 26, 2006, p. 14, http://www.cms.hhs.gov/NewFreedomInitiative/downloads/MFP_2007_Announcement.pdf.

[108] Ibid., Appendix C.

encourage developers to set aside units for MFP participants.[109] These supplemental services may be funded through MFP during the first 12 months of the demonstration.

Despite the availability of supplemental services for housing, one of the difficulties with transition programs such as MFP is finding permanent housing for individuals who are leaving institutions. According to an early report regarding MFP, "[t]he ability to find and secure affordable, accessible housing is a key determinant of successful transition programs—as well as the most frequently cited barrier."[110] A more recent report, released in 2015, noted that "[b]y far, the two most common challenges facing states during both 2014 reporting periods were an insufficient supply of affordable accessible housing ... and an insufficient supply of rental vouchers."[111]

Shortly after MFP was enacted, then-HUD Secretary Alphonso Jackson issued a letter to Public Housing Authority (PHA) directors encouraging them to use their resources to work with state Medicaid offices to provide housing options for those involved with MFP.[112] HUD made a portion of the FY2009-funded Section 8 vouchers for persons with disabilities available to individuals participating in MFP or similar programs. On April 7, 2010, HUD released a NOFA for these FY2009 vouchers in which it stated that approximately 1,000 vouchers would be available to non-elderly individuals with disabilities who are leaving institutions and moving into the community.[113] (Another 4,300 vouchers were distributed to PHAs for non-elderly persons with disabilities generally.)[114] On January 6, 2011, HUD announced that it had awarded the vouchers to eligible housing authorities in 15 states.[115] According to a 2012 report about the progress of Money Follows the Person, the availability of housing vouchers, among other housing options, may have increased the rate at which persons with physical disabilities transition to the community.[116]

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[109] Debra J. Lipson and Susan R. Williams, *Implications of State Program Features for Attaining MFP Transition Goals*, The National Evaluation of the MFP Demonstration Grant Program, Reports from the Field, Number 2, June 2009, pp. 4-5, http://www.cms.hhs.gov/DeficitReductionAct/Downloads/MFPfieldrpt2.pdf.

[110] Ibid, p. 4.

[111] *MFP 2014 Overview of State Grantee Progress*, p. 38.

[112] A copy of the letter is available on the HHS website, http://www.cms.hhs.gov/DeficitReductionAct/Downloads/MFP_PHALetterSigned.pdf.

[113] For the funding announcement, see U.S Department of Housing and Urban Development, "Notice of Funding Availability (NOFA) for HUD's FY2009 Rental Assistance for Non-Elderly Persons with Disabilities," 75 *Federal Register* 18874, April 13, 2010. The detailed NOFA is available at http://portal.hud.gov/portal/page/portal/HUD/program_offices/administration/grants/fundsavail/nednofa.pdf (hereinafter, FY2009 MFP NOFA).

[114] For recipients, see U.S. Department of Housing and Urban Development, "HUD Provides Rental Assistance to 4,300 Persons with Disabilities," press release, October 1, 2010, http://portal.hud.gov/portal/page/portal/HUD/press/press_releases_media_advisories/2010/HUDNo.10-214. Originally, 3,000 non-MFP vouchers for persons with disabilities were to be made available. However, funds remaining from the FY2008 appropriation for vouchers for persons with disabilities increased the FY2009 voucher allotment to 4,300. U.S. Department of Housing and Urban Development, "Proposed Notice of Funding Availability for FY2009 Rental Assistance for Non-Elderly Persons with Disabilities," 74 *Federal Register* 29504, June 22, 2009.

[115] U.S. Department of Housing and Urban Development, "HUD, HHS Announce Joint Effort to Assist Nearly 1,000 Non-Elderly Persons With Disabilities To Move From Institutions to Independence," press release, January 6, 2011, http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2011/HUDNo.11-003. The list of grantees is available at http://portal.hud.gov/hudportal/documents/huddoc?id=rane2_pr2.pdf.

[116] *Money Follows the Person 2011 Annual Evaluation Report*, p. 7.

Other HUD Housing Designated for Persons with Disabilities

While the Section 811 program is dedicated solely to persons with disabilities, HUD also funds housing for persons with disabilities through programs that serve all tenant populations, but that also give project owners the ability to designate buildings to special populations, including elderly persons and persons with disabilities.[117] In addition to housing historically provided through the Section 202 program (described in the "Evolution of Section 811" section of this report), property owners that participate in the project-based Section 8 rental assistance program and Public Housing Authorities (PHAs) that administer the Public Housing program may choose to designate buildings specifically for elderly residents and residents with disabilities together (sometimes referred to as "mixed population" developments) or for residents with disabilities alone.

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).[118] The program provides housing for very low-income households (those with incomes at or below 50% of area median income) and requires tenants to pay 30% of their income toward rent. 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.[119] The first elderly-only public housing development was built by 1960.[120] Beginning in 1961, the HUD definition of "elderly family" was amended to include individuals with disabilities of any age.[121] Since then, persons with disabilities have lived in public housing facilities designated for elderly residents (defined as households where one or more person is age 62 or older).

Public housing developments designated for elderly residents, and where a mixed population of elderly residents and residents with disabilities live together, have been controversial. During the early years of public housing for elderly persons, disabled residents made up only a small proportion of residents. The number of residents with disabilities living in public housing for the elderly began to increase in the 1980s and early 1990s for at least two reasons. First, individuals with mental illnesses were less likely to be institutionalized as a result of the availability of outpatient mental health care, and were therefore in need of affordable housing.[122] A second factor was passage of the 1988 Fair Housing Amendments Act (P.L. 100-430). The amendments added persons with a "handicap" to the class of individuals protected from discrimination in the provision of housing. The definition of "handicap" included individuals with alcohol and drug

[117] Tenants with disabilities may also live in assisted housing units that are not specifically designated for their use.

[118] For more information about Public Housing, see CRS Report R41654, *Introduction to Public Housing*, by Maggie McCarty

[119] Prior to this, HUD's definition of elderly families did not include single individuals.

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

[121] The Housing Act of 1961 (P.L. 87-70) made all households in which an adult member has a disability eligible for public housing. Prior to this, in the Housing Act of 1959 (P.L. 86-372), near-elderly households with an adult member with a disability were made eligible. Near-elderly households are those with an adult member age 50 and older.

[122] See General Accounting Office, *Housing Persons with Mental Disabilities with the Elderly*, GAO/RCED-92-81, August 1992, pp. 10-11, http://archive.gao.gov/d33t10/147294.pdf.

addictions.[123] Following these changes, Public Housing experienced an increase in the number of younger residents with disabilities, often with mental illnesses and addictions. Along with the increase, Public Housing Authorities reported a greater number of incidents of disruptive behavior, and some elderly residents reported feeling unsafe.[124]

Due to tension between elderly residents and residents with disabilities, in the Housing and Community Development Act of 1992 (P.L. 102-550) Congress allowed PHAs to designate buildings or portions of buildings as elderly only, disabled only, or as mixed population facilities.[125] In 1996, The Public Housing Opportunity Extension Act of 1996 (P.L. 104-120) streamlined the process for designating public housing projects. If a PHA wants to change the composition of a building to elderly residents only or to residents with disabilities, it must submit a plan to HUD to ask for approval. If the plan is approved, PHAs cannot evict non-eligible residents. For example, if a PHA designates a building with a mix of elderly residents and residents with disabilities as elderly only, tenants with disabilities may not be evicted. If tenants want to move, however, PHAs may help them relocate. HUD makes available on its website data on the number of PHAs with approved designated housing plans that set aside projects, or portions of projects, for persons with disabilities or developments for elderly residents and residents with disabilities together.[126]

Project-Based Section 8 Rental Assistance

Between 1974 and 1983, the Section 8 new construction and substantial rehabilitation program made rental assistance available to developers that were creating new and rehabilitated rental housing for low-income families.[127] From the inception of the program, owners were able to develop properties designated for use by elderly residents together with tenants with disabilities. The Housing and Community Development Act of 1992 (P.L. 102-550) gave owners of properties designed primarily for occupancy by mixed populations—elderly families together with tenants with disabilities—the ability to establish a preference for elderly families when selecting tenants.[128] However, unlike Public Housing, most Section 8 properties may not completely exclude residents with disabilities. The statute requires owners that choose to create a preference for elderly residents to continue to reserve some units for households where an adult member has a disability and where the household is not considered elderly or near elderly (defined as at least 50 years old but below the age of 62).[129] Specifically, owners are required to set aside the lower of the number of units occupied by disabled families in 1992[130] or 10% of units. If owners are

[123] According to the House Judiciary Committee Report accompanying H.R. 1158, the Fair Housing Amendments Act of 1988, enacted as P.L. 100-430, the bill used the same definitions and concepts from the Rehabilitation Act of 1973 (P.L. 93-112), which included drug addiction and alcoholism as physical or mental impairments (see 28 CFR §41.31). However, under P.L. 100-430, handicap does not include "current, illegal use of or addiction to a controlled substance."

[124] *Housing Persons with Mental Disabilities with the Elderly*, p. 17. See, also, remarks of Representative Peter Blute, *Congressional Record*, daily edition, vol. 142 (February 27, 1996), p. H1274.

[125] The provisions are codified at 42 U.S.C. §1437e; the regulations are at 24 CFR §§945.101-945.303.

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

[127] The new construction and substantial rehabilitation program was created in P.L. 93-383; authority to enter into new contracts was suspended in P.L. 98-181. For more information on Section 8 housing, see CRS Report RL32284, *An Overview of the Section 8 Housing Programs: Housing Choice Vouchers and Project-Based Rental Assistance*, by Maggie McCarty.

[128] The provisions are codified at 42 U.S.C. §§13611-13620.

[129] 42 U.S.C. §1437a(b)(3).

[130] Specifically, the statute refers to the higher of the number of units occupied by individuals or families with

unable to rent the units reserved for elderly residents to eligible families, they may give a preference to near elderly families with an adult member who has a disability.[131] If owners are unable to rent units designated for non-elderly and non-near elderly persons with disabilities, they may rent them to near elderly persons with disabilities.

Housing Financed by Low-Income Housing Tax Credits and HUD Block Grants

Beginning in the 1980s, the federal government took a less direct role in the development of affordable housing. At the same time, the production and rehabilitation of housing at the state and local level began to increase.[132] This occurred, in part, due to the enactment of the Low-Income Housing Tax Credit (LIHTC) and the HOME Investment Partnerships program. These programs distribute funds to states and localities for the production of affordable housing. States and localities may, in turn, decide to target a portion of the funds from these programs to develop affordable housing for persons with disabilities. This section of the report describes the LIHTC and the HOME program, as well as the Community Development Block Grant (CDBG), a program created in 1974 to assist states and localities with economic development, including housing activities that benefit low- and moderate-income households.

The Low-Income Housing Tax Credit

The Low-Income Housing Tax Credit (LIHTC) was enacted as part of the Tax Reform Act of 1986 (P.L. 99-514). The program provides incentives for the development of affordable rental housing through federal tax credits administered by the Internal Revenue Service (IRS). The IRS allocates tax credits to states based on population, and states award the credits to developers to use as a source of financing for the development of affordable rental housing.[133]

The states, generally through their state housing finance agencies (HFAs), award the tax credits to housing developers through a competitive process that is based on state priorities as set out annually in their Qualified Allocation Plan (QAP). Developers may either retain the credits themselves or sell them in exchange for equity to fund a housing development. Developers of LIHTC-financed housing must ensure that at least 40% of the units are affordable to households with incomes at or below 60% of the area median income, or that at least 20% of units are affordable to households with incomes at or below 50% of the area median income.[134] The projects must remain affordable for at least 15 years, although there are incentives in place to encourage developers to maintain affordability for 30 years. Rent charged for the rent-restricted units in a development may not exceed 30% of an imputed income limitation—calculated based on area median incomes.

disabilities on either October 28, 1992 or January 1, 1992. 42 U.S.C. §13612(b).

[131] 42 U.S.C. §13613.

[132] For more background on the evolution of federal housing assistance policy, see CRS Report RL34591, *Overview of Federal Housing Assistance Programs and Policy*, by Maggie McCarty, Libby Perl, and Katie Jones

[133] For more information on the LIHTC, see CRS Report RS22389, *An Introduction to the Low-Income Housing Tax Credit*, by Mark P. Keightley and Jeffrey M. Stupak.

[134] 26 U.S.C. §42(g).

In their Qualified Allocation Plans, states set forth the criteria they will use in selecting projects to receive the tax credits.[135] By statute, states must prioritize LIHTC projects that serve the lowest income tenants for the longest period of time in their QAPs. In addition, the LIHTC statute requires states to consider certain criteria in determining how they will set housing priorities in the QAP. One of the 10 criteria that states must consider is tenant populations with special needs.[136] Tenant populations with special needs may include persons with disabilities (others with special needs include individuals and families who are homeless, elderly individuals, or other populations in need of housing with supportive services).[137]

States may choose to make housing units for populations with special needs one of the priorities in the competition for tax credits in several ways: by requiring developers to set aside a portion of units for special needs populations; by setting aside a certain dollar value or percentage of available tax credits for a specified population; or by developing a scoring system in the competition for tax credits that awards additional points for proposals that take account of certain special needs populations.[138]

The HOME Investment Partnerships Program

The HOME Investment Partnerships program (referred to as the HOME program) is a block grant to states and local jurisdictions—referred to as "participating jurisdictions"—distributed via a formula for the purpose of developing both affordable rental housing and affordable housing for homeowners.[139] The factors used to distribute HOME funds to eligible states and jurisdictions include population, the number of rental units occupied by households in poverty, housing overcrowding, the number of units with incomplete kitchens or plumbing, and the age of housing.[140] HOME funds can be used to build or rehabilitate housing, to provide tenant-based rental assistance, and to provide assistance to homeowners and homebuyers. Assistance must go to low-income households (at least 90% of funds must assist those with incomes at or below 60% of area median income), and any housing provided must be affordable.

Like funds provided to states through the LIHTC, states and localities that receive HOME funds have discretion in choosing the populations they wish to serve. Also like the LIHTC, jurisdictions that receive HOME funds develop a plan regarding how they will distribute funds. This is done through HUD's Consolidated Plan process. Jurisdictions applying for funds from four HUD formula grant programs, including HOME,[141] submit a single Consolidated Plan to HUD. The plan includes an assessment of community needs and a proposal to address those needs, using both federal funds and community resources. State and local plans must also contain a housing

[135] 26 U.S.C. §42(m)(1)(B).

[136] Until enactment of P.L. 110-289, the Housing and Economic Recovery Act of 2008, the LIHTC statute contained eight selection criteria. P.L. 110-289 added two more. See 26 U.S.C. §42(m)(1)(C).

[137] See Joseph Guggenheim, *Tax Credits for Low Income Housing* (Glen Echo, MD: Simon Publications, 1996) p. 33.

[138] For examples of how state QAPs have promoted housing for populations with special needs, see The Corporation for Supportive Housing, *Housing Credit Policies in 2011 that Promote Supportive Housing*, 2011, http://www.csh.org/wp-content/uploads/2011/12/Report_QAP2011.pdf.

[139] The HOME program is codified at 42 U.S.C. §§12741-12756. For more information about HOME, see CRS Report R40118, *An Overview of the HOME Investment Partnerships Program*, by Katie Jones.

[140] 24 C.F.R. §92.50(c). In general, in order to be considered a "participating jurisdiction" eligible for HOME funds, a locality must qualify for at least $750,000 under the HOME formula. 42 U.S.C. §12746. All states receive allocations under the HOME formula. 42 U.S.C. §12747(b)(2).

[141] The other three programs are the Community Development Block Grant, Housing Opportunities for Persons with AIDS, and the Emergency Shelter Grants.

needs assessment, including the need for housing for persons with disabilities.[142] In developing the plan, states and communities must adopt a citizen participation plan, through which they are encouraged to consult with citizens with disabilities.[143] States are further required to consult with organizations that provide services (including fair housing services) to persons with disabilities when preparing their consolidated plan.[144]

After taking into consideration the needs of persons with disabilities, HOME recipient jurisdictions may choose to prioritize housing for persons with disabilities as part of their Consolidated Plans.[145] In the tenant-based rental assistance portion of the program, the HOME regulations specify that recipient jurisdictions may choose to establish a preference for tenants with special needs, including persons with disabilities.[146] Further, recipients of HOME funds may choose to target tenant-based rental assistance to individuals with a specific disability. In terms of new or rehabilitated rental housing that may be developed with HOME funds, communities can choose to develop not only multifamily rental housing and single family homes, but also transitional housing, single room occupancy projects, and group homes.[147] Some jurisdictions may find that these types of housing developments are well suited for tenants with disabilities.

The Community Development Block Grant Program

The Community Development Block Grant (CDBG) program was enacted as part of the Housing Act of 1974 (P.L. 93-383) with the purpose of developing viable urban communities by funding housing, community, and economic development activities that principally benefit low- and moderate-income households.[148] The CDBG program distributes 70% of total funds through formula grants to entitlement communities—central cities of metropolitan areas, cities with populations of 50,000 or more, and urban counties—and the remaining 30% goes to states for use in small, non-entitlement communities.[149] The allocation of CDBG funds is determined through a formula that targets an area's need for community development using a variety of factors including population, poverty, overcrowded housing, age of housing, and the lag in community growth.[150] The CDBG program is subject to the same Consolidated Plan requirements as the HOME program (described previously) in which the needs of persons with disabilities must be taken into consideration. In addition, in response to the Bush Administration's New Freedom Initiative, HUD issued guidance to assist CDBG recipients with "identifying the needs of persons with disabilities and targeting CDBG resources to meet those needs during the development of the jurisdictions' consolidated plans."[151]

While many of the purposes of CDBG funds involve the improvement of neighborhoods, the creation of public facilities, or the promotion of economic opportunity, funds may also be used to

[142] 24 C.F.R. §91.205 and §91.305.

[143] 24 C.F.R. §91.105 and §91.115.

[144] 24 C.F.R. §91.110.

[145] 24 C.F.R. §91.215 and §92.209.

[146] 24 C.F.R. §92.209(c)(2).

[147] 24 C.F.R.§92.2.

[148] 42 U.S.C. §5301(c). For more information about CDBG, see CRS Report R41754, *Community Development Block Grants: Funding Issues in the 112th Congress and Recent Funding History*, by Eugene Boyd

[149] 42 U.S.C. §5306.

[150] Ibid.

[151] HUD Notice CPD-050-03, "Implementing the New Freedom Initiative and Involving Persons with Disabilities in the Preparation of the Consolidated Plan through Citizen Participation," June 6, 2005, http://www.hud.gov/offices/adm/hudclips/notices/cpd/05-3c.doc.

rehabilitate housing, including making housing accessible for persons with disabilities. CDBG funds may also be used to make public facilities accessible to persons with disabilities.[152] In addition, communities may use CDBG funds for "public services," which include such services as employment counseling. According to HUD, promoting economic opportunities for persons with disabilities through job training and employment counseling are valid uses of CDBG funds.[153]

Issues

Funding for the Section 811 Program

The funding structure of the Section 811 program changed beginning in FY2011, in part as a result of the enactment of the Frank Melville Supportive Housing Investment Act of 2010 (P.L. 111-374). Changes occurred in both the voucher portion of the Section 811 program as well as with capital grants funding for new projects. Regarding Section 811 vouchers, the Melville Act authorized that funds to renew Section 811 vouchers could be provided through the tenant-based Section 8 rental assistance account. In FY2011, renewals were split between the Section 811 and Section 8 accounts, and starting in FY2012, all voucher renewal funding was provided through the Section 8 account. See **Table 1**.

A second change authorized through P.L. 111-374 was funding for Section 811 rental assistance only (i.e., not provided in conjunction with Section 811 capital grants), called the Project Rental Assistance (PRA) program. In FY2012, for the first time since the creation of Section 811, Congress provided no new funding for Section 811 capital grants. Instead, funds were available to renew existing rental assistance contracts and for PRA program rental assistance to be applied to units of housing developed with Low Income Housing Tax Credits, funds through the HOME program, or other funding sources. For more information, see the section "Project Rental Assistance (PRA) Program."

See **Table 1** for Section 811 funding levels, including vouchers, through FY2016 and proposed FY2017 funding.

Table 1. Funding for Section 811 Capital Grants, Rental Assistance, Project Rental Assistance Program, and Vouchers, FY2003-FY2017

(dollars in thousands)

		Section 811 Capital Grants, PRAC, and Project Rental Assistance Program[a]			Section 811 Vouchers[b]			
					Section 811 Account[c]		Section 8 Account	
Fiscal Year	Total Section 811 Appropriation[de]	President's Request	Appropriation	Project Rental Assistance Set-Aside[f]	President's Request	Appropriation	President's Request	Appropriation
2003	248,886	—[g]	166,787	—	—[g]	81,851	—	—
2004	249,092	—[g]	173,721	—	—[g]	74,904	—	—
2005	238,080	149,556	149,455	—	99,969	88,179	—	—
2006	231,268	39,450	152,603	—	80,000	78,269	—	—

[152] 42 U.S.C. §5305(a)(5).

[153] HUD Notice CPD-050-03.

		Section 811 Capital Grants, PRAC, and Project Rental Assistance Program[a]			Section 811 Vouchers[b]			
					Section 811 Account[c]		Section 8 Account	
Fiscal Year	Total Section 811 Appropriation[de]	President's Request	Appropriation	Project Rental Assistance Set-Aside[f]	President's Request	Appropriation	President's Request	Appropriation
2007	236,610	28,215	158,697	—	89,595	77,517	—	—
2008	237,000	34,655	161,655	—	74,745	74,745	—	—
2009	250,000	61,300	161,300	—	87,100	87,000	—	—
2010	300,000	162,900	209,900	—	87,100	87,100	—	—
2011[h]	149,700	89,137	117,764	—	0	31,936	113,663	34,930
2012	165,000	196,000	165,000	*74,704*	0	0	114,056	112,018
2013	156,370[i]	150,000	156,370	*100,443*	0	0	111,335	106,159[i]
2014	126,000	126,000	126,000	*20,000*	0	0	110,564	106,691
2015	135,000	160,000	135,000	—	0	0	108,450	83,160
2016	150,600	177,000	150,600	—	0	0	107,643	107,074
2017	—	154,000	—	—	0	—	110,000	—

Source: Department of Housing and Urban Development Budget Justifications for FY2005 through FY2017 and the FY2016 Consolidated Appropriations Act (P.L. 114-113).

a. PRAC refers to "project-based rental assistance contracts." Amounts for PRAC include renewals of existing contracts as well as rental assistance for new units.

b. Amounts for Section 811 vouchers include funds to renew existing vouchers. FY2006 was the last year in which funds were appropriated for new Section 811 vouchers.

c. The Frank Melville Supportive Housing Investment Act (P.L. 111-374) authorized funding for Section 811 vouchers through the Section 8 tenant-based rental assistance account.

d. Total does not include amounts appropriated to the tenant-based Section 8 voucher account to fund Section 811 voucher renewals in FY2011.

e. The total may be slightly greater than the sum of funds allocated for capital grants, PRAC, and vouchers due to funds appropriated for the working capital fund that are included in the total.

f. HUD has indicated in its budget documents that it may also use funds available through residual receipts collections, recaptures, and other unobligated balances.

g. In both FY2003 and FY2004, the President's proposed budget would have allocated $250.5 million for Section 811. However, the proposal did not separately specify exact amounts for capital grants, PRAC, and Section 811 vouchers.

h. The amounts for Section 811 in FY2011 reflect an across-the-board rescission of 0.2% that was applied to all discretionary accounts.

i. Total FY2013 appropriations were reduced by an across-the-board rescission of 0.2% and sequestration. The totals reflect these reductions.

Using Section 811 Capital Grants with Low-Income Housing Tax Credits

Financing affordable housing, including housing for persons with disabilities, may require multiple streams of funding in order to support the design, construction, and ongoing operating costs of a project. In addition to federal funds provided through HUD programs, affordable

housing developers may use mortgage revenue bonds, tax credits, and local housing trust fund resources, among other sources, to develop housing for low-income and special needs populations. While HUD funds once might have been sufficient on their own to develop an affordable housing project, that is rarely the case today. This is true for Section 811 developers, who often must bring together multiple sources of funding to develop a project. In 2000, in order to help Section 811 developers bring together multiple financing sources, Congress enacted a law that makes the interaction of Section 811 funds and the Low-Income Housing Tax Credits (LIHTCs) more feasible by changing the definition of "private nonprofit organization" in the Section 811 statute. This change, and its implication for Section 811 developers, is described below.

The value of LIHTCs is determined, in part, based on the cost of developing a property—referred to as the qualified basis.[154] The costs of constructing, acquiring, and rehabilitating a property (among other costs)[155] are included in calculating the qualified basis, but the amount must then be reduced by any federal grants received by the developer, which in turn reduces the value of the tax credits. Therefore, if a nonprofit developer were to receive a Section 811 capital grant, its value would be subtracted in calculating the qualified basis which could result in minimal LIHTCs. The Homeownership and Economic Opportunity Act (P.L. 106-569), enacted in 2000, allowed for-profit limited partnerships, where a nonprofit organization is the sole general partner, to be eligible Section 811 owners. The changed law allows a nonprofit Section 811 grantee to loan the Section 811 capital grant to the limited partnership. Under this arrangement, the Section 811 funds are no longer a "federal grant" to be subtracted in calculating the qualified basis, potentially increasing the value of LIHTCs.

The change in the law to allow for-profit limited partnerships to own Section 811 housing developments did not immediately make mixed financing arrangements common, however. The transactions are complicated and may require extensive expertise in housing finance to make them work. HUD acknowledges that "most developers seek to avoid the use of federal grant financing in most LIHTC projects."[156] In addition, the treatment of Section 811 PRAC in tax credit transactions has been unclear. Although the IRS has created exceptions to the rule that federal grants do not count toward the qualified basis of a property for certain categories of rental assistance, Section 811 PRAC has not been among the exceptions. The programs that have been exempted from the requirement include project-based Section 8 rental assistance payments and public housing capital and operating funds,[157] the Native American Housing Block Grant

[154] Specifically, a property's qualified basis is determined as follows: (1) the cost of constructing, acquiring, or rehabilitating the property is calculated, (2) this amount is reduced by federal grants received by the developer, and (3) the resulting value is then multiplied by the percentage of space in the housing development that is devoted to low-income use. This percentage is the lower of either the "unit fraction"—the ratio of low-income units to all units in the building—or the "floor space fraction"—the ratio of square footage in low-income units to total square footage. 26 U.S.C. §42(c). The qualified basis is then multiplied by the value of the tax credits—these are roughly either 9% or 4%—to determine the total annual value of the tax credits.

[155] In addition to the costs of materials, construction, and/or rehabilitation, among the costs included in determining qualified basis are: contractor fees, developer fees, engineering fees and the cost of drawing up architectural specifications. Among the costs that are not included are the cost of land and fees associated with long-term financing. See Joseph Guggenheim, *Tax Credits for Low Income Housing* (Glen Echo, MD: Simon Publications, 1996) p. 37.

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

[157] 26 C.F.R. §1.42-16.

Program,[158] Rent Supplement and Rental Assistance Payments programs,[159] the Shelter Plus Care and Single Room Occupancy programs,[160] and the Housing Opportunities for Persons with AIDS program.[161] Despite language in the Homeownership and Economic Opportunity Act of 2000 indicating that Congress intended Section 811 assistance to be included in calculating qualified basis (rather than subtracted from it), the IRS has not issued a ruling that would be necessary to make this possible.[162]

Another possible limitation in developing mixed finance projects using federal grants such as Section 811 together with the LIHTC was removed with passage of the Housing and Economic Recovery Act of 2008 (P.L. 110-289). Under LIHTC law, developers may qualify for tax credits worth roughly 9% or 4%.[163] Under previous LIHTC law, the higher 9% credit was available for new construction that was *not* federally subsidized, while the 4% credit was available for either federally subsidized new construction or existing buildings. The statutory definition of "federally subsidized" included below market federal loans (the structure used by limited partnerships to loan Section 811 capital grants).[164] The fact that developers of federally subsidized buildings did not qualify for the higher tax credit made financing projects with the LIHTC less lucrative. Developers either had to accept the lower, 4% credit, or to set up a system through which federal grants were loaned to the project at a market rate of interest.[165]

However, P.L. 110-289 removed the phrase "below market federal loans" from the definition of federal subsidy in the LIHTC statute. This makes all federally subsidized new construction placed in service after the effective date of P.L. 110-289 eligible for 9% tax credits. The 9% credits are very competitive,[166] however, and it may still be difficult for Section 811 developers to obtain them.

Housing Need for Persons with Disabilities

According to both advocates for persons with disabilities and HUD, persons with disabilities have a need for affordable housing. Since 1991, HUD has regularly released reports on the worst case

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

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

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

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

[162] P.L. 106-569 amended the Section 811 statute to state that "[n]otwithstanding any other provision of law, assistance amounts provided under this section may be treated as amounts not derived from a Federal grant." See Section 842. On September 17, 2003, the IRS issued a letter stating that it was reviewing the applicability of the LIHTC section of federal grants to PRAC under the Section 202 program. The letter is available at http://www.irs.gov/pub/irs-wd/04-0061.pdf.

[163] These credit rates are not set exactly at 9% and 4%—they vary depending on the current interest rate used in the Department of the Treasury credit rate formula. For more information about this issue, see CRS Report RS22917, *The Low-Income Housing Tax Credit Program: The Fixed Subsidy and Variable Rate*, by Mark P. Keightley and Jeffrey M. Stupak.

[164] The statute also specifically exempted funds received under CDBG, HOME, and Native American Housing and Self Determination Act programs from the definition of federally subsidized, so those projects have been eligible for the 9% credit all along.

[165] See U.S. Department of Housing and Urban Development, "Mixed Finance Development for Supportive Housing for the Elderly or Persons with Disabilities: Final Rule," *Federal Register* vol. 70, no. 176, September 13, 2005, p. 54202.

[166] See, for example, Liz Enochs, "Affordable Housing Equity: Developers Share Tips for Converting Projects That Fail to Win 9% LIHTCs into 4% Deals," *Affordable Housing Finance*, July 2007, http://www.housingfinance.com/ahf/articles/2007/jul/AFFORDABLE0707.htm.

needs for affordable housing in the United States.[167] HUD defines households with worst case housing needs as very low-income renter households (households with incomes at or below 50% of area median income) that do not receive rental assistance and either (1) pay more than half their income toward rent, or (2) live in severely inadequate housing. Severely inadequate housing is measured using the American Housing Survey definition of housing with severe physical problems. These are varying degrees of problems with plumbing, heating, electrical wiring, and upkeep of the physical unit or public areas.[168] Using data from the 2013 American Housing Survey, HUD found in its most recent report—*Worst Case Housing Needs 2015*—that 18.50 million renter households were very low income. Of those, 7.72 million households had worst case housing needs, a decrease of 9% compared to 2011 but an increase compared to years prior to 2011.[169]

To determine disability status, the American Housing Survey asks questions about functional limitations (hearing, visual, cognitive, and ambulatory) and ability to perform activities of daily living (self care and independent living. Using the AHS data, HUD estimated that 2.8 million very low-income rental households (15% of all households) had a non-elderly member who answered yes to at least one of the questions regarding disability in 2013. Further, 39% of very low-income renter households that included a nonelderly person with a disability (about 1.09 million) had worst-case housing needs.[170]

Homeless Persons with Disabilities

Although homelessness in the United States has always existed, it became a more prevalent phenomenon in the 1970s and 1980s, when the homeless population began to grow and become more visible to the general public. Explanations for the growth in homelessness include the demolition of skid rows,[171] the decreased availability of affordable housing generally, the reduced need for seasonal unskilled labor, the reduced likelihood that relatives will accommodate homeless family members, the decreased value of public benefits, and changed admissions standards at mental hospitals.[172]

In the early 2000s, attention was again turned to homeless individuals, this time to those persons who experience so-called "chronic homelessness," when President Bush announced an initiative to end chronic homelessness within 10 years.[173] In the late 1990s, researchers identified chronically homeless individuals as those who have a disability (including those who suffer from mental illness and/or substance use disorders) and who have been homeless for long periods of time.[174] Later, HUD defined what it means to be chronically homeless in regulation, and the

[167] For the most recent report, see Barry L. Steffen, George R. Carter, and Marge Martin, et al., *Worst Case Housing Needs 2015 Report to Congress*, U.S. Department of Housing and Urban Development, April 2015, http://www.huduser.gov/portal//Publications/pdf/WorstCaseNeeds_2015.pdf. (hereinafter *Worst Case Housing Needs 2015*).

[168] For more information, see *Worst Case Housing Needs 2015*, pp. 68-69.

[169] Ibid., pp. 1-2.

[170] Ibid., p. 6.

[171] Peter H. Rossi, *Down and Out in America: The Origins of Homelessness* (Chicago: The University of Chicago Press, 1989), p. 33.

[172] Ibid., pp. 181-194, 41. See, also, Martha Burt, *Over the Edge: The Growth of Homelessness in the 1980s* (New York: Russell Sage Foundation, 1992), pp. 31-126.

[173] For more information about chronic homelessness, see CRS Report R44302, *Chronic Homelessness: Background, Research, and Outcomes*, by Libby Perl and Erin Bagalman.

[174] See Randall Kuhn and Dennis P. Culhane, "Applying Cluster Analysis to Test a Typology of Homelessness by

definition was adapted and incorporated into statute in 2009 as part of the Helping Families Save Their Homes Act (P.L. 111-22). The definition was again refined by regulation in 2015.[175]

According to the definition, a person is chronically homeless if they have a disability and have been living in a place not meant for human habitation, an emergency shelter, or safe haven continuously homeless for 12 months or have experienced four episodes of homelessness totaling 12 months in the past three years.[176] A family is chronically homeless if the adult head of household (or minor in the absence of an adult) has a disability.

In 2015, HUD estimated that approximately 15% of the total homeless population were chronically homeless individuals and 2.3% were in chronically homeless families.[177] Rates of mental health problems are estimated to exist in more than 60% of chronically homeless individuals, and more than 80% of individuals are estimated to have alcohol or drug problems.[178] Medical problems, including HIV/AIDS, are also prevalent among chronically homeless individuals.[179]

Communities across the country have addressed chronic homelessness through a strategy called "housing first," in which permanent supportive housing is found for homeless individuals prior to treatment of their illnesses and addictions. HUD makes funds available through its Homeless Assistance Grants for the construction or rehabilitation of new permanent supportive housing for chronically homeless individuals.[180] HUD estimates that 108,000 beds in permanent supportive housing units have been funded since 2001, many devoted to individuals who had been chronically homeless.[181] Perhaps in part for that reason, HUD estimates that the number of individuals considered chronically homeless has fallen by more than 30% between 2007 and 2015.[182]

Pattern of Shelter Utilization: Results from the Analysis of Administrative Data," *American Journal of Community Psychology* 26, no. 2 (April 1998): 210-212.

[175] U.S. Department of Housing and Urban Development, "Homeless Emergency Assistance and Rapid Transition to Housing: Defining "Chronically Homeless"," 80 *Federal Register* 75791, December 4, 2015.

[176] 42 U.S.C. §11360(2) and 24 C.F.R. § 578.3.

[177] Based on data in the U.S. Department of Housing and Urban Development, *The 2015 Annual Homeless Assessment Report (AHAR) to Congress, Part 1: Point-in-Time Estimates of Homelessness*, November 2015, https://www.hudexchange.info/resources/documents/2015-AHAR-Part-1.pdf.

[178] Carol L. M. Caton, Carol Wilkins, and Jacquelyn Anderson, *People Who Experience Long-Term Homelessness: Characteristics and Intervention*, 2007 National Symposium on Homelessness Research, September 2007, p. 4-4, http://www.huduser.org/publications/pdf/p4.pdf.

[179] See, for example, D.P. Culhane, E. Gollub, R. Kuhn, and M. Shpaner, "The Co-Occurrence of AIDS and Homelessness: Results from the Integration of Administrative Databases for AIDS Surveillance, and Public Shelter Utilization in Philadelphia," *Journal of Epidemiology and Community Health* 55, no. 7 (2001): 515-520. Marjorie Robertson, et al., "HIV Seroprevalence Among Homeless and Marginally Housed Adults in San Francisco," *American Journal of Public Health* 94, no. 7 (2004): 1207-1217. Angela A. Aidala and Gunjeong Lee, *Housing Services and Housing Stability Among Persons Living with HIV/AIDS*, Joseph L. Mailman School of Public Health, May 30, 2000, http://www.nyhiv.org/pdfs/chain/CHAIN%20Housing%20Stability%2032.pdf.

[180] For more information about these grants, see CRS Report RL33764, *The HUD Homeless Assistance Grants: Programs Authorized by the HEARTH Act*, by Libby Perl.

[181] U.S. Department of Housing and Urban Development, *FY2016 Congressional Budget Justifications*, p. 21-7, http://portal.hud.gov/hudportal/documents/huddoc?id=24-FY16CJ-HAGrants.pdf.

[182] *2015 Annual Homeless Assessment Report*, p. 60.

Appendix. Definitions of Disability Applicable to HUD Housing Programs

Table A-1. Definitions of Disability Applicable to HUD Housing Programs

Provision	Section 811	Section 8 and Public Housing	Section 202 Loan Program
Mental, Physical, or Emotional Impairment	A physical, mental, or emotional impairment that is (1) expected to be of long-continued and indefinite duration, (2) substantially impedes a person's ability to live independently, and (3) could be improved by more suitable housing conditions.	Same	Same
Chronic Mental Illness	*A severe and persistent mental or emotional impairment.*	*No Provision*	*Same as Section 811*
Developmental Disability	A severe, chronic disability that (1) is attributable to a mental or physical impairment or a combination of mental or physical impairments, (2) manifests before age 22, (3) is likely to continue indefinitely, and (4) results in substantial functional limitations in three or more major life activities.	Same	Same
Social Security Definition	No provision	Inability to engage in substantial gainful activity by reason of a physical or mental impairment that can be expected to result in death or to last for not less than 12 months.	No Provision
HIV/AIDS Status	"A person infected with the human acquired immunodeficiency virus (HIV)" if they meet the definition of "person with disabilities" in the statute. "A person whose sole impairment is a diagnosis of HIV positive ... (i.e. does not meet the qualifying criteria in [the statute]) will not be eligible for occupancy in a Section 811 project."	The term person with disabilities "shall not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent.... "	"Persons infected with the human acquired immunodeficiency virus (HIV) who are disabled as a result of infection with the HIV are eligible for occupancy in Section 202 projects ..."
Drug and/or Alcohol Addiction	"A person whose sole impairment is a diagnosis of ... alcoholism or drug addiction ... will not be eligible for occupancy in a Section 811 project."	Substantially the same	Substantially the same
Age	18 or older, but less than 62	No provision	No provision[a]

Source: 42 U.S.C. §4013(k)(2) and 24 C.F.R. §891.305 (Section 811); 42 U.S.C. §1437a(b)(3)(E) and 24 C.F.R. §5.403 (Section 8 and Public Housing); and 24 C.F.R. §891.505 (Section 202).

a. The regulations governing the Section 202 loan program do not include age in the definition of "handicapped person or individual." However, the regulation does define a handicap family to include a "single handicapped person over the age of 18."

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