

202 Elderly Housing Program History

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I. Housing Act of 1959

- Congress created the section 202 program for the elderly and handicapped
- Originally, handicapped was reference to persons who were generally mobility, or otherwise physically impaired
- HUD imposed a requirement that at least 10% of the units developed under the 202 program had to be accessible to the handicapped – these units could be made available to non-elderly handicapped persons who had need for the accessibility features of the unit

A. Direct Loans

- Funding for development of projects (through new construction and acquisition with sub rehab or mod rehab) was provided through direct loans from HUD to the borrower entity

1. Loan Limits – statute provided construction had to be done in economical manner and not be of elaborate or extravagant design or materials

- Led to strict HUD cost controls and restrictive design standards, e.g., no balconies

- Eventually HUD allowed sponsors to develop more and better amenities provided sponsor came up with additional funding that could be repaid out of surplus cash and provided that such additional amenities did not substantially increase ongoing operating costs

2. Interest Rates - in early years of the program, the interest rates on the loans were at 3%; eventually Congress amended the law to provide that the interest rate would be tied to the Government's cost of borrowing funds with an allowance to cover HUD's administrative costs in administering the program and probable losses. Just before end of the loan program in 1991, the interest rates on the section 202 program were as high as 9.5%

B. Eligible Borrowers

1. Statutory Limitations – the section 202 statute provided that loan could be made to a corporation as defined below, any limited profit sponsor approved by the Secretary, or a public body which did not receive financial assistance exclusively under U.S. Housing Act of 1937 (PHA). Corporation meant any incorporated private institution or foundation

a. no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual

b. which has a governing board (i) the membership of which is selected in a manner to assure that there is significant representation of the views of the community in which the project is located, and (ii) which is responsible for the operation of the housing projects assisted under this section

c. which is approved by the Secretary as to financial responsibility

2. Regulatory Limitations - by regulation HUD limited borrower eligibility to a nonprofit corporation (or nonprofit consumer cooperative) which was tax-exempt under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code.

- and HUD excluded participation by any public bodies

C. Rental Assistance

1. Original Structure – projects did not have any rental assistance and owners were able to establish budget-based rents, with HUD approval, which covered the cost of both debt service and project operations.

2. Section 8 – in the late 1970s, Congress enacted the section 8 housing assistance payments program which included a new construction and substantial rehab program and these programs were made available to section 202 projects

- beginning in approximately 1976, for each 202 project that was funded, HUD set-aside sufficient section 8 budget authority to provide rental assistance for twenty years and upon closing of the 202 loan, HUD and the borrower entered into a 20-year HAP contract for the project

- rent adjustments are either by annual adjustment factors or by a budget-based adjustment

3. Section 162 Project Assistance Contracts – in 1987, Congress amended the law to provide a set-aside of up to 15% of the available section 202 funds for projects for the handicapped and to provide for rental assistance through a Project Assistance Contract, under essentially the same terms as a section 8 HAP contract.

D. Eligible Families – “elderly or handicapped families”

- families eligible for occupancy in 202 project were elderly, i.e., families which consist of two or more persons the head of which (or his spouse) is 62 or over or is handicapped, or a single person who is 62 or over or handicapped which is defined as

(i) an adult having an impairment which is expected to be of long-continued duration, is a substantial impairment to his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions

(ii) a person who is developmentally disabled, i.e., has a severe chronic disability that

- is attributable to a mental or physical impairment or combination thereof
- is manifested before the person attains the age of 22
- is likely to continue indefinitely
- results in substantial functional limitations in three or more of the following (1) self-care, (2) receptive and responsive language, (3) learning, (4) mobility, (5) self-direction, (6) capacity for independent living, (7) economic self-sufficiency

(iii) chronic mental illness, i.e., severe or persistent mental or emotional impairment that seriously limits his or her ability to live independently

- long problematic history on relations between the elderly and young persons with disabilities

- also, had to be section 8 eligible, i.e., 80% or less of median income

- for units that were available for occupancy prior to October 1, 1981, 75% of the units had to be made available to very low-income families, i.e., families at 50% or less of median income

- for units that were available for occupancy after October 1, 1981, HUD essentially required beginning in 1984 that all such units must be rented to very low-income families

- in order to protect the loan from default, where there are insufficient very low-income families available to occupy the units, HUD has approved requests from owners to admit elderly families who are not very low-income or to admit near elderly families

II. National Affordable Housing Act

- in 1990, Congress substantially revised the 202 program for the elderly and handicapped. Congress essentially established two parallel programs the section 202 program for supportive housing for the elderly and the section 811 program for supportive housing for persons with disabilities

A. Capital Advances

- funds for the development of section 202 elderly projects are now provided in the form of capital advances – essentially grants which are only required to be repaid if the owner fails to operate the projects in accordance with the 202 program requirements

- although no longer an interest bearing loan, HUD has chosen to protect its long term interest in the operation of the project through a note, mortgage, and regulatory agreement similar to those used in the section 202 loan program

1. Cost Limits

- Secretary is to establish development cost limitations which reflect, among other things

- State and local housing building codes

- cost of design features necessary to make housing accessible

- cost of congregate space for supportive services, which includes space for cafeterias, dining halls, community rooms or buildings, workshops, health care facilities, or other essential service facilities

- With respect to design, the statute provides that the Secretary shall, to the extent practicable, give owner flexibility to design housing appropriate to its location and proposed resident population within broadly defined parameters; however, even if additional amenities are funded outside of capital advance, they cannot increase the operating costs paid for from tenant income and the PRAC

2. Interest rate – the capital advance from the Secretary to the borrower shall bear no interest

B. Eligible Borrowers

- Secretary is authorized to provide assistance to private nonprofit organizations and consumer cooperatives

- same definition of private nonprofit organization; with same regulatory overlay, i.e., 501(c)(3) or 501(c)(4) nonprofit entity

- public bodies are not eligible

C. Rental Assistance

- rental assistance is now provided through a Project Rental Assistance Contract (PRAC) which operates pretty much the same as a section 8 HAP contract

- statute provides for a 20-year PRAC, but for the past several years HUD has been providing only 5-year contracts based on waiver authority provided in each year's 202 appropriations act

- adjustments are provided annually on a budget-based method

D. Eligible Families

- all units are required to be made available for occupancy by very low-income families for not less than 40 years

- where there are insufficient eligible families, HUD has provided waivers to house either near-elderly or low-income elderly families

III. Title VI of FY 2000 HUD Appropriations Act

- created section 202b of the Housing Act of 1959 and authorized grants for conversion of elderly housing to assisted living facilities

1. Repairs - authorizes substantial capital repairs that are needed to rehabilitate, modernize, or retrofit aging structures, common areas, or individual dwelling units

2. Conversion – activities designed to convert dwelling units in eligible projects to assisted living facilities for the elderly

3. Eligible Projects – broader universe than 202 projects, including unused or underutilized commercial property, but appropriations have limited eligibility to 202 projects

4. Funding – application must contain evidence of firm commitment for the funding of the services to be provided in the assisted living facility

IV. Title VIII of the American Homeownership and Economic Opportunities Act of 2000

1. Section 811 of AHEO provided for increased flexibility for section 202 project owners to prepay and refinance section 202 loan projects, both those that were developed with section 8 housing assistance payments contracts and those that were not.

- HUD Notice 2002-16

2. Section 831 amended the definitional section of the section 202 statute to provide that an eligible owner of a section 202 project includes a for-profit limited partnership the sole general partner of which is an eligible non-profit entity, or a corporation wholly owned or controlled by such an entity.