

# Elder Subsidized Housing

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The National Consumer Law Center uses its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults and people of color. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

## Introduction

Access to housing impacts the physical and mental health of older adults. Yet, many older adults struggle to find affordable rental housing that is well-maintained and close to transportation and other essential resources in their community. Housing with appropriate assistive technology and physical modifications keeps older adults healthy and aging in place. Despite the demand for affordable housing, publicly subsidized rental units remain in short supply, and waiting lists are often long. Advocates working with older adults must become familiar with the types of housing programs available to older adults, the limitations on those programs, and the rights residents possess if they are threatened with the loss of a subsidy or eviction.

## Key Lessons

1. Older adults face many barriers to obtaining and keeping adequate housing, including accessing affordable housing and paying for rent and utilities on a fixed or reduced income.
2. Disabled older adults face additional challenges as not enough properties in the United States are properly modified to support people with disabilities. The federal government provides the vast majority of subsidized housing for older and disabled adults.
3. Older adults on fixed or limited income face challenges in sustaining housing even with rent subsidies or other protections.

The federal government provides the bulk of funding for affordable housing. Money is allocated to build or lower the cost of housing for low-income individuals, older adults, and people with disabilities through a wide variety of programs and subsidies. Most of these programs are run or administered by the U.S. Department of Housing and Urban Development (HUD), or the U.S. Department of Agriculture (USDA) for programs in rural areas. These programs have different rules, eligibility requirements, and protections for tenants. They target low to very low income individuals, generally those with incomes below (or substantially below) 80% of the area median income, older adults, and people with disabilities.

This Chapter Summary summarizes the major low-income housing programs subsidized by HUD, the USDA, and the Low-Income Housing Tax Credit program administered by the United States Department of Treasury. A detailed discussion of the programs, HUD or Treasury's supervision of the programs, and residents' rights is contained in *HUD Housing Programs: Tenants Rights* (known as the "Green Book") 5th ed. 2018 published by the National Housing Law Project.

## Public and Subsidized Housing for Older Adults and People with Disabilities

Affordable housing is provided through a collection of public agencies, private landlords, and non-profit organizations. Public housing authorities (PHAs) were established by state law to provide affordable housing for low-income people and other vulnerable populations, including older adults. PHAs own and manage public housing, enter into agreements with private owners to provide affordable housing, and provide vouchers to tenants to rent private properties.

Though HUD administers or oversees many affordable housing programs, the PHAs run most of the programs locally and provide the rental subsidies. Rental assistance, including assistance provided through the voucher programs described below, pays private landlords the difference between 30 percent of the household's adjusted income and the actual rent charged by the landlord.

HUD housing or rental assistance programs fall into the following general categories:

- **Public Housing:** Conventional public housing that is owned and managed by a local PHA.
- **Tenant-based Section 8 Housing Choice Voucher:** Provides vouchers for eligible individuals to rent private homes and apartments. The tenant can use the voucher in a new residence if they move. Landlords enter into payment contracts with PHAs and sign leases with tenants.
- **Project-based Section 8 Vouchers:** Involve contracts between HUD and private landlords for an extended term to subsidize units in a specific project or building.
- **Sections 202 and 811 Programs for the Elderly or Persons with Disabilities:** HUD administers several multi-family programs which provide loans, subsidies, mortgage insurance or loan guarantees to develop or rehabilitate rental properties. The Section 202 program has funded development of affordable housing for elderly households. The Section 811 program provides non-profit organizations with funding to provide supportive housing for disabled low-income persons. Newer Section 202 and 811 units receive rental assistance, meaning that tenants pay 30 percent of their adjusted income.

Program	Landlord	Subsidy	General or Elder/Disabled <sup>1</sup>	Eviction/ Loss of subsidy
Public Housing	Public Housing Authority (PHA)	No	General	Good cause
Tenant-based Section 8 Housing Choice Voucher	Private owner	Subsidy stays with tenant	General	Good cause during lease term – state law or lease may provide additional rights
Project-based Section 8	Private owner, non-profit	Subsidy stays with the property	General	Good cause
Section 202 or Section 811	Non-profit	Subsidized loan	Elder or disabled	Good cause
Section 515 Rural Rental Housing Program	Private owner, nonprofit	Subsidized loan	General, elder and disabled	Good cause
Low-Income Housing Tax Credit (LIHTC)	Private owner	Subsidy stays with property	General	Good cause

Other housing programs include:

- **USDA programs:** USDA operates its housing programs through the Rural Housing Service (RHS) in towns and areas of 20,000 or fewer people. USDA programs include:
  - » Rural Development Voucher Program provides renewable, year-long housing vouchers to eligible households. When approved, the tenant rents a unit and the USDA contracts with the owner.

<sup>1</sup> Housing is for general occupancy by all families or is restricted to the elderly or disabled.

- » Section 515 Rural Rental Housing Program provides low interest loans to construct, purchase or rehabilitate properties to provide affordable rental housing or cooperatives to low-income families, including older and disabled adults. Some residents may receive rental assistance and pay 30% of their income for rent and utilities.
- **Low-Income Housing Tax Credit (LIHTC):** LIHTC is an IRS program that incentivizes the construction of new low-income housing units. Under the program, state allocating agencies award federal tax credits to developers of new or rehabilitated affordable housing. Entities accepting the credits agree to charge rents at or below 30% of a specified income figure based on area median incomes (AMI). LIHTC does not provide income-based rents, but many renters who qualify use Section 8 vouchers to afford LIHTC units that would otherwise be unaffordable to them.

## How to Identify the Housing Program

Federally subsidized tenancies have many rules and protections. To understand which rules apply, advocates must first determine whether the older tenant lives in housing subsidized under a federal program and, if so, which program (or programs) provides the subsidy or other forms of assistance.

To determine which program(s) are involved, advocates can speak to the local PHA, non-profit affordable housing providers or consult local governments' housing departments or websites. If the landlord is a PHA, most likely the housing is conventional public housing. If the landlord is a private owner, the housing could be provided through a Section 8 Housing Choice Voucher, Project-Based Section 8, Section 202/811, Section 515 (in rural areas) or the Low-Income Housing Tax Credit program. Additionally, if the tenant's lease references payments to the landlord from the PHA or the landlord's duty to notify the PHA when terminating the tenancy, the client is probably participating in a voucher program.

Additional information can be obtained from the following sources:

- [National Housing Preservation Database](#)
  - » Searchable by location and/or type of federal assistance.
- [NOVOGRADAC LIHTC Mapping Tool](#)
  - » Information about properties subsidized by federal tax credits.
- [USDA Multi-family Housing Rentals Map](#)
  - » Information about subsidies for rural properties, searchable by location.

Some older adults receive multiple forms of assistance. For example, an older adult with a voucher may rent a unit in a LIHTC building. In that case, the rules for both programs will generally apply to the tenancy.

## Admission and Occupancy Problems Faced By Older Tenants

Older adults face many of the same problems other tenants in public or subsidized housing face, plus some unique challenges. Most of the problems center on admissions, rents, evictions, and maintenance. Each housing program has guidelines regarding admissions. PHAs may have separate admission policies for public housing and voucher programs, and the policies may be different for each public housing development. Rules for each program and provider are included in statutes, regulations, and handbooks and other guidance.

Applicants are screened for eligibility with respect to criteria including income and asset limits, family composition,<sup>2</sup> and immigration status. Only citizens and certain immigrants are eligible for HUD subsidized

<sup>2</sup> An elderly family or household is one whose head, spouse, or sole member is a person who is at least 62 years old. An elderly family may include two or more elderly people living together, even if not related by blood or marriage, or one or more elderly persons living with one or more live-in aides. An elderly family may include children.

housing. PHAs and private owners deciding whether to rent to a voucher holder may screen an applicant for suitability, including a review of the applicant's tenant history, credit, and criminal background.

Tenants must regularly recertify income and family composition status. As part of the recertification process, tenants and household members must verify income, and provide Social Security numbers for any new household members except for those with ineligible immigration status. PHAs and owners may also conduct criminal background and possibly credit checks for all family members over 18 as part of the recertification process.

Some occupancy issues that older adults may face involve:

- **Live-in aides:** Live-in aides do not need to meet eligibility requirements to live in public housing or other HUD-assisted housing, including private subsidized rentals. To qualify, live-in aides must be essential to the well-being and care of an older or disabled adult and may only live in the unit to provide such aid. A PHA or owner may require evidence that the resident requires the assistance of a live-in aide.
- **Pets and service animals:** Public housing owners may not prohibit common household pets or discriminate against pet owners. Reasonable rules regulating pet ownership are permitted. Property owners maintain the right to remove pets when they pose a danger to the health or safety of others, or if they become a nuisance. Service animals are not pets. Property owners must accommodate service animals unless it is unreasonably burdensome or fundamentally alters the housing service. Service animal owners must show how their service animal assists them with their disability.
- **Guests and household members:** Rules that require tenants to register guests or obtain pre-approval for overnight or short-term guests are generally not allowed. Tenants are commonly held responsible, and subject to eviction for certain drug-related or criminal acts of guests or household members or others under their control. However, the federal Violence Against Women Act restricts PHAs' and private landlords' ability to terminate a tenancy of the victim of a violent crime based on the conduct of a perpetrator.

## Tenant's Rights

There are various formal and informal administrative procedures available to tenants under HUD's housing programs, including a public housing grievance procedure and informal hearings for voucher recipients. The grievance procedure is used to resolve disputes concerning the tenant's rights, duties or status as outlined in the PHA's rules or lease. Leases must require the PHAs give notice to tenants of their right to a grievance hearing, unless the eviction is based on a ground for which the grievance procedure does not apply (such as a criminal act).

Voucher recipients or applicants are entitled to notice and can request an informal review or hearing on specific issues. Administrative procedures vary extensively by program and for some HUD programs and the Low-Income Housing Tax Credit program, there is generally no federally required procedure.

Good cause is needed to evict tenants, except for a Tenant-Based Section 8 Housing Choice Voucher after the lease expires.<sup>3</sup> Typical causes include nonpayment of rent or a serious violation of the lease. Tenants facing termination must receive notice describing the reason for the termination and the tenant's appeal rights. For the LIHTC program, good cause is also required to terminate the tenancy. Some USDA programs also provide administrative and substantive protections. For example, residents of Section 515 housing have a right to challenge owner actions or decisions that adversely affect them through a grievance and appeals process. However, evictions, which must be for good cause, are exempted from this appeals process. State eviction laws and procedures may provide additional protections.

<sup>3</sup> Generally PHAs are required to issue leases that do not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause. 42 U.S.C. § 1437d and 24 C.F.R. Part 966.

Tenants' rights are outlined in federal and state law, HUD and USDA handbooks, notices and other guidance, and the lease. Applicable laws include:

- The Fair Housing Act (FHA) which prohibits discrimination on the basis of race, color, religion, sex, familial status, national origin, and disability in a wide variety of housing-related transactions.<sup>4</sup> Specific prohibitions include refusing to sell or rent property to members of a protected class and failing to provide a reasonable accommodation to people with disabilities.
- The Violence against Women Act (VAWA), actual or threatened incidents of domestic violence, dating violence, sexual assault, or stalking are not considered lease violations where the tenant is the victim, and are not good cause for terminating the victim's tenancy or subsidy.<sup>5</sup>

## Conclusion

Federally subsidized tenancies provide affordable housing for many older adults and people with disabilities.. Such housing comes with many important substantive and procedural rights that may allow older tenants to sustain housing and remain in the community.

## Additional Resources

- [U.S. Department of Housing and Urban Development \(HUD\)](#)
  - » [Find a HUD-approved housing counseling agency](#)
  - » [HUD Rental Assistance Information](#)
- [USDA Rural Housing Service Multit-Family Housing Rentals](#)
- Publications
  - » National Housing Law Project, *HUD Housing Programs: Tenants Rights* (the “Green Book”) 5th ed. 2018
  - » National Consumer Law Center, *Guide to Surviving Debt*, 2019 ed.
- Legal Assistance
  - » [Legal services/ Legal aid](#)
  - » [Volunteer lawyers](#)
  - » [National Association of Consumer Advocates](#)
- Organizations
  - » [National Housing Law Project](#)
  - » National Low Income Housing Coalition—[State and City Funded Rental Housing Programs](#)

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**Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).**

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<sup>4</sup> 42 U.S.C. 3601 et seq.

<sup>5</sup> 34 U.S.C § 12471.