MEMORANDUM

TO: Affordable Housing and Tenant Advocates, National Alliance of HUD Tenants
FROM: Jim Grow, NHLP
RE: Assessing Need for Tenant Protection Vouchers for Unassisted Tenants Facing Mortgage Maturity or Expiring Use Restrictions – Fiscal Year (FY) 2013 and 2014
DATE: June 23, 2014

Background

Certain HUD properties are experiencing or facing mortgage maturity or the expiration of use restrictions or assistance. Upon expiration of use restrictions, unassisted tenants in these properties face the risk of a rent increase. To address this issue for properties maturing in or prior to FY 14 (through Sept. 30, 2014), HUD issued Notice HUD 2014-13[1] outlining the criteria for distributing funds ($5 million) for tenant protection vouchers for unassisted tenants in affected properties. (HUD's prior effort in 2013 (HUD Notice PIH 2013-08) implementing a similar provision in the FY 12 Appropriation resulted in HUD approval of 18 properties for assistance.)

The purpose of this memorandum is to request your assistance in reviewing the attached list of properties expiring during FY 13 and FY 14 to determine whether tenant protections upon expiration might be needed. The "Next Steps" section below provides further detail.

Summary of Notice HUD 2014-13

Here are the important elements of the policy covering expirations prior to Sept. 30, 2014:

- The full $5 million authorized by Congress is being made available, which will likely fund between 500 and 700 vouchers for affected properties.
- Tenant protections are controlled by the *owner's application to HUD (no deadline, but funds are going to be distributed on a rolling basis until exhausted).* HUD will no longer rank owner applications by maturity or expiration date.
- Tenant eligibility requires that the property:
    - Experienced one of the following qualifying events *before or during FY 14 (i.e., before Sept. 30, 2014)*:
        - The maturity of a HUD-insured, HUD-held, or Section 202 loan that required HUD approval prior to prepayment;

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[1] Notice HUD 2014-13 implements statutory language in the FY 14 Appropriations Act, Pub. L. No. 113-76 (Jan. 17, 2014), which was sought by the National Alliance of HUD Tenants, the Chicago Housing Initiative, and other members of the National Preservation Working Group.

    - The expiration of a rental assistance contract for which tenants were not eligible for enhanced voucher or tenant protection assistance under other laws;
    - The expiration of affordability restrictions accompanying a HUD-administered mortgage or preservation program;
  - Be located in a low-vacancy area (as defined by HUD).[2]
- The tenants must:
  - Be in residence at the time of the maturity or expiration;
  - Be low-income; and
  - Suffer a rent burden after expiration of restrictions, including mortgage maturity, rental assistance contract expiration, or affordability restriction expiration, of more than *30% of adjusted income*.
- Tenant protection assistance can be used as either Enhanced Vouchers (with a minimum rent equal to the rent burden prior to the expiration) or Project-Based Vouchers. Project-Based Vouchers, if agreed to by the tenants, offer the possibility of preserving the affordability of the development for future tenants, while also providing current tenants who choose to remain at the property with deeper affordability (30% of income) than enhanced vouchers (minimum rent equal to pre-expiration rent) and mobility rights.

The Accompanying List of Potentially Affected Properties Expiring in FY 13 and FY 14

The attached list of properties that have expired or will expire between Oct. 1, 2012 and Sept. 30, 2014 indicates where unassisted tenants might be eligible for this assistance. (There may be other eligible properties that expired prior to October 1, 2012, but we have not included them here because despite eligibility, they did not apply in the prior FY 12 funding round, likely indicating little interest or need.) Because the policy protects only unassisted tenants, this list does not include projects that HUD's separate Section 8 database lists as having rental assistance for all of the units (except management units). Thus, it contains projects that are listed as having no project-based rental assistance, as well as those listed as having at least some, but not all, unassisted units. *Like most government data, imperfections abound, and this list is only a starting point for determining actual need for assistance and potential eligibility of properties and tenants under the statutory authority and HUD policy.*

Over-inclusiveness. Beyond the inaccuracy of the data, the properties on the list may not prove to be eligible or the number of potentially unassisted units may be inflated for many reasons, including:

- The property may not be located within any HUD-designated low-vacancy area used to limit tenant protections;
- The tenants already received enhanced vouchers, tenant protection vouchers, or project-based vouchers due to an earlier:
  - Expiration of a Rent Supplement or Section 236 RAP contract;
  - Unilateral prepayment of the mortgage by the owner (where permissible, for "eligible low-income housing" under Pub. L. No. 105-276, Admin. Prov'ns § 219); or a
  - Preservation transaction of a property that had Flexible Subsidy;

[2] "Low-vacancy area" was defined for the purposes of this assistance as a county that currently and historically demonstrates a moderate to tight rental housing market for low-income renters. HUD determined this definition with two thresholds. First, the county must be below the national vacancy rate for units affordable to low-income household in 2000, which is 7.3%. Second, the county must be below the 80th percentile vacancy rate for low-income renters as estimated by the 2005-2009 American Community Survey 5 year estimates, which is 8.7%.

- The property has a Use Agreement under LIHPRHA that may be interpreted to preclude eligibility (this issue remains unclear because each Use Agreement must be analyzed under a definitive HUD policy, which has not yet been issued);
- The property has a Rent Supplement or Section 236 RAP contract that covers all the units or will be interpreted to trigger tenant protections under existing law for all units upon expiration or termination;
- The property has more units receiving project-based Section 8 than indicated; or
- The property is a Section 202 senior/disabled property and recently received a Senior Project Rental Assistance Contract (SPRAC) to permit rehabilitation with rental assistance for the unassisted tenants.

Because project eligibility and tenant eligibility will usually differ, many potentially eligible projects may not have eligible unassisted tenants in all of the units because the post-conversion rents do not exceed the HUD-determined excessive rent burden of 30% of adjusted income.

Under-inclusiveness. Beyond the inaccuracy of the data, potentially eligible properties may not be on the list for many reasons, including that the project:

- Was a state-financed loan receiving Section 236 IRP (which might be eligible if the IRP or accompanying Use Agreement terminates);
- Had a HUD-held mortgage (assigned after default or put to HUD) that matured or was prepaid; or
- Was prepaid with HUD approval (under Section 250 of the National Housing Act).

Next Steps

1. Scan the list of properties to see if you recognize any of them;
    a. Compare any information you might have to determine whether further investigation of possible need for tenant protections is warranted;
2. Contact any tenants at the property or community organizations in the area, the owner and the local HUD office to explore possible needs for tenant protections at a particular project;
    a. Find out whether the owner has increased the rents (if restrictions have already expired), has any near-term plans to do so (any notice?), or whether market conditions in the neighborhood might support a rent increase for unassisted tenants when restrictions do expire;
3. Determine whether the owner of the property is eligible to prepay the mortgage before expiration without HUD approval. Such a prepayment triggers enhanced vouchers for all unassisted tenants and therefore provides tenant protection without utilizing any expiration set-aside that might be provided:
    a. Determine whether the property is “eligible low-income housing” under LIHPRHA (defined at 24 C.F.R. §248.101);
    b. Confirm that prepayment would be in the tenants’ best interests;
    c. Note that, even if the mortgage expiration date is within the next 150 days and the owner would not necessarily be able to provide the statutorily required minimum notice, the notice statute (Pub. L. No. 105-276, Admin. Prov’ns, §219, 112 Stat. 2487-88 (1998)) provides an exception for projects whose owners agree to operate on the same terms and conditions until the mortgage maturity date. Thus, a simple use agreement extending the term of the regulatory agreement until maturity could permit a prepayment and enhanced vouchers without a 150-day notice;

   d. If prepayment is determined advantageous, encourage owner to pursue prepayment immediately with HUD to secure enhanced vouchers;
4. Share the list and this memo with others who might be able to perform these steps.

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