NATIONAL HOUSING LAW PROJECT
advancing housing justice

703 Market St., Suite 2000
San Francisco, CA 94103
Telephone: 415-546-7000
Fax: 415-546-7007
nhlp@nhlp.org
www.nhlp.org

January 2, 2015 (revised)

TO: Affordable Housing and Tenant Advocates, National Alliance of HUD Tenants
RE: Assessing Need for Tenant Protection Vouchers for Unassisted Tenants Facing Mortgage Maturity or Expiring Use Restrictions
FROM: Jim Grow and Stephen Knight, NHLP

Tens of thousands of units in certain HUD properties are experiencing or facing mortgage maturity or the expiration of use restrictions or assistance. Unassisted tenants in these properties face the serious risk of a rent increase. For FY 2015, Congress has again targeted $5 million for tenant protection vouchers to address this issue. HUD must issue implementing guidance by March 15, 2015, which will likely resemble the prior guidance for FY 2014 (Notice HUD 2014-13 (May 20, 2014), described infra on Attachment A).

HUD's implementation of a similar FY 12 Appropriation (HUD Notice PIH 2013-08) resulted in approval of 18 properties and about 500 tenants for assistance. HUD has not yet provided any information regarding expenditure of the FY 14 funding.

NHLP has identified a total of 27,955 unassisted units in 365 properties in 46 states at risk of mortgage maturity or the expiration of use restrictions or assistance in the FY 14 -16 window. The buildings range from 18 to 576 units in size.

Because not all of these properties present a risk of rent increases upon expiration, NHLP is requesting your assistance in identifying specific properties from the attached list that may warrant tenant protections. Note that some properties owned by nonprofits may not be at risk for rent increases, but may be able to benefit from obtaining assistance in the form of project-based vouchers both to support modest repairs and possibly to decrease unassisted tenant rent burdens.

How to Identify and Assist Tenants in Need

1. Scan the list of properties and please let us know if you recognize any of them as presenting a risk of rent increases or a need for a modest preservation recapitalization;
    a. Compare any information you might already have to determine whether further investigation of possible need for tenant protections is warranted.
    b. 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;
    c. Find out whether the owner has increased the rents (if restrictions have already expired), has issued any notice of any near-term plans to do so, or whether market conditions in the

neighborhood might support a rent increase for unassisted tenants when restrictions do expire;

2. 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, providing tenant protection without having to compete for possibly scarce funding under the $5 million set-aside;
    a. Determine whether the property is "eligible low-income housing" under LIHPRHA (24 C.F.R. §248.101);
    b. Confirm that prepayment would be in the tenants' best interests;
    c. If prepayment is determined advantageous, encourage owner to pursue prepayment immediately with HUD to secure enhanced vouchers; [1]

Please also share the memo and list with others who might be able to help identify tenants at risk of rent increase due to mortgage maturity or expiration of use restrictions, or properties in need of modest repairs.

For assistance and more information, please contact: Jim Grow at jgrow@nhlp.org, (415) 546-7000 x3104, or Stephen Knight at sknight@nhlp.org, (415) 546-7000 x3107.

[1] 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.

Attachment A: Summary of [Notice HUD 2014-13 (May 20, 2014)]

Below are the important elements of the HUD policy covering expirations prior to Sept. 30, 2014 (*implementation of this program under the FY 15 Appropriations Act is likely to be substantially similar but such guidance is not expected before March 2015*):

- The full $5 million authorized by Congress 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;
        - 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 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.

[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%.

Attachment B: Notes re List of Potentially Affected Properties

Attached is a list of properties that have expired or will expire between Oct. 1, 2013, and Sept. 30, 2016, where unassisted tenants might be eligible for special tenant protection assistance. (There may be other eligible properties that expired prior to October 1, 2013, and we have included a tab for them here in the list, in case they remain eligible and present a 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.

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:

Under-inclusiveness. Beyond 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 that matured or was prepaid; or
- Was already prepaid with HUD approval (under Section 250 of the National Housing Act).

Over-inclusiveness: 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;
- The property has a Use Agreement under LIHPRHA that may be interpreted to preclude eligibility (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.