

Prepayments and Loan Maturities: **Protecting Residents and Preserving Rural Development Rental Housing**



GIDEON ANDERS

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NATIONAL HOUSING LAW PROJECT

MAY 30, 2017

HOUSING JUSTICE

National Housing Law Project

www.nhlp.org

Agenda

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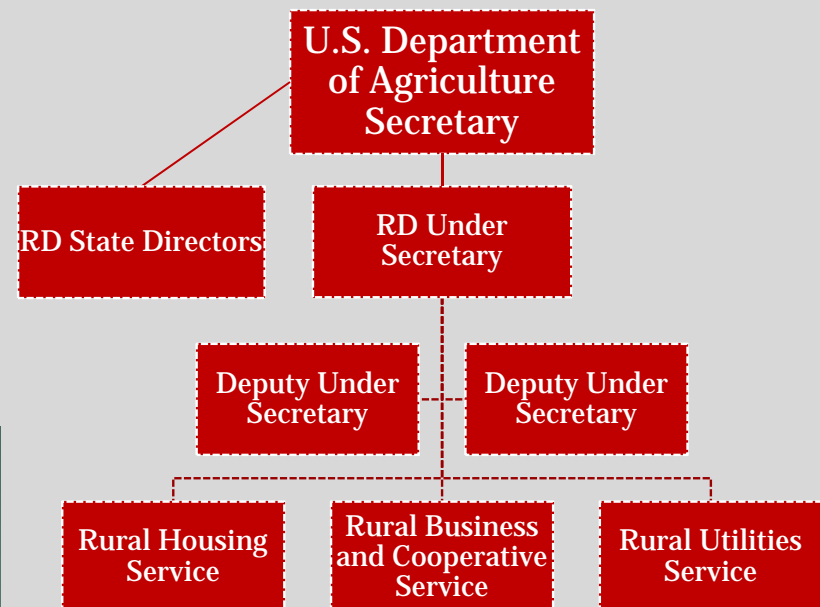
- **Background**
- **Mortgage prepayments**
 - What are they?
 - Why do prepayment restrictions exist?
 - What is the prepayment process?
 - Risks and opportunities for input and advocacy
- **Mortgage maturities**
 - What are they?
 - Why are we seeing mortgage maturities?
 - What is the mortgage maturity process?
 - Risks and opportunities for input and advocacy
- **Questions**



About Rural Development (RD)

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- Offers loans, grants, and loan guarantees to support economic development in rural communities
- Responsible for administration of all USDA housing programs
 - Washington, DC office + state offices (<https://www.rd.usda.gov/contact-us/state-offices>)



Background

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- **RD Section 515 Program—1963**
 - >550,000 total units constructed
 - ✦ ~415,000 units (14,000 developments) currently remain in the program
 - **Demographics:**
 - ✦ 60% of residents are elderly or persons with a disability
 - ✦ 30% of occupants are people of color
 - ✦ 70% of households receive rental assistance (RD's deep subsidy, allowing residents to pay 30% of their income for shelter)
 - ~5,000 units are being prepaid annually
 - 102 properties (1,000-2,500 households) w/ maturing mortgages in 2017



Background

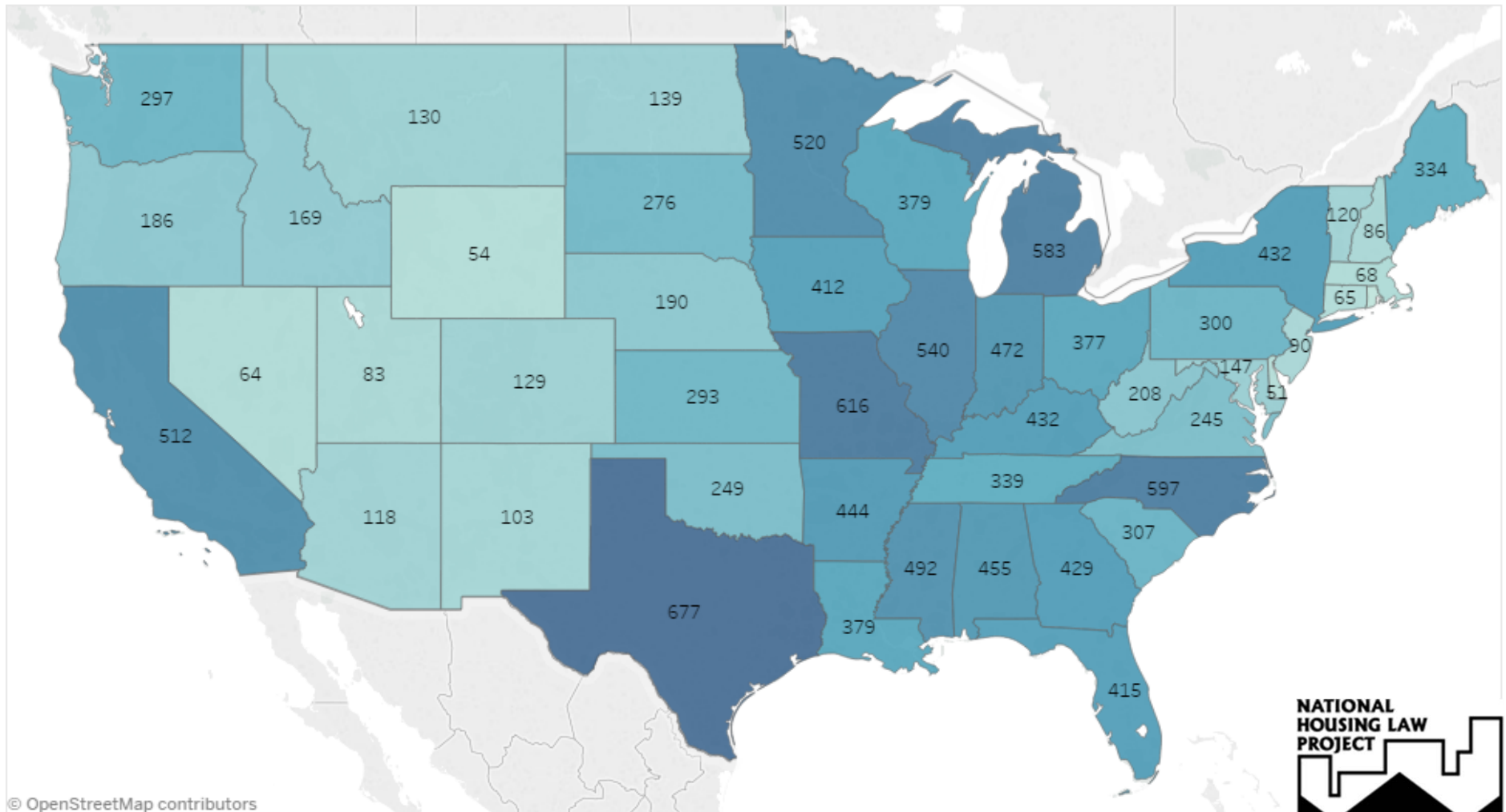
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- **RD Section 514/516 Farm Labor Housing—1965**
 - **On-Farm Housing: 514 loan without 516 grant**
 - ✦ Mostly sponsored by farmers for their own farmworkers
 - ✦ Typically, very small developments (1-20 units)
 - ✦ Prepayment restrictions not enforced
 - **Off-Farm Housing: 514 loan and 516 grant, or only 516 grant**
 - ✦ ~591 developments (16,800 units)
 - ✦ Owned by nonprofits or public agencies
 - ✦ Prepayments rare (mission-driven owners)
 - ✦ Maturing mortgages, significant because loss of subsidies



RD Section 515 and 514/516 Properties

Geographic Distribution - Number of Properties



© OpenStreetMap contributors

Does not show properties in Alaska (36), Hawaii (28) or Puerto Rico (98)

Consequences of Mortgage Prepayments and Maturities

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- **Loss of low-income housing that is decent, safe, and sanitary**
 - For current and future tenants
 - Possible frustration of local organizations' missions to serve low-income tenants
- **Loss of RD subsidies:**
 - Interest Credit
 - Rental Assistance
- **Possible tenant rent increases (to market rates)**
- **Loss of RD oversight and enforcement of tenants' statutory, regulatory, and lease protections**
 - Possible RD oversight of Restrictive Use Covenant
- **No voucher assistance (mortgage maturities only)**

Prepayment-Eligible Properties (Cumulative, 2016-2049)

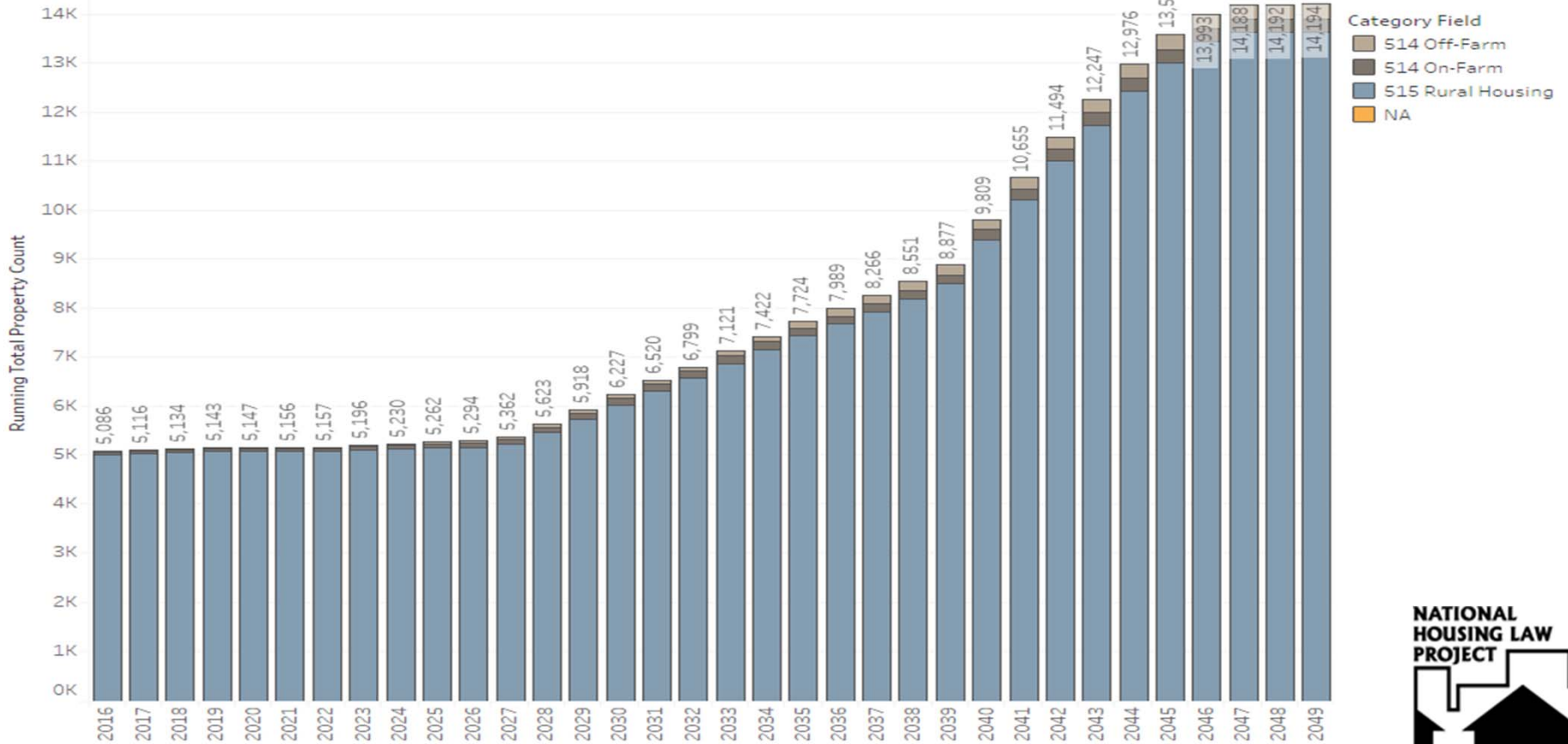
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Prepay Eligibility - Running Total

Prepay Eligible Date Rectangular Snip

Select Breakdown Category

Loan Program



Where are there prepayment-eligible projects in my community?

- PIX Prepayment data:

- <https://pix.sc.egov.usda.gov/>

- RD Exit data:

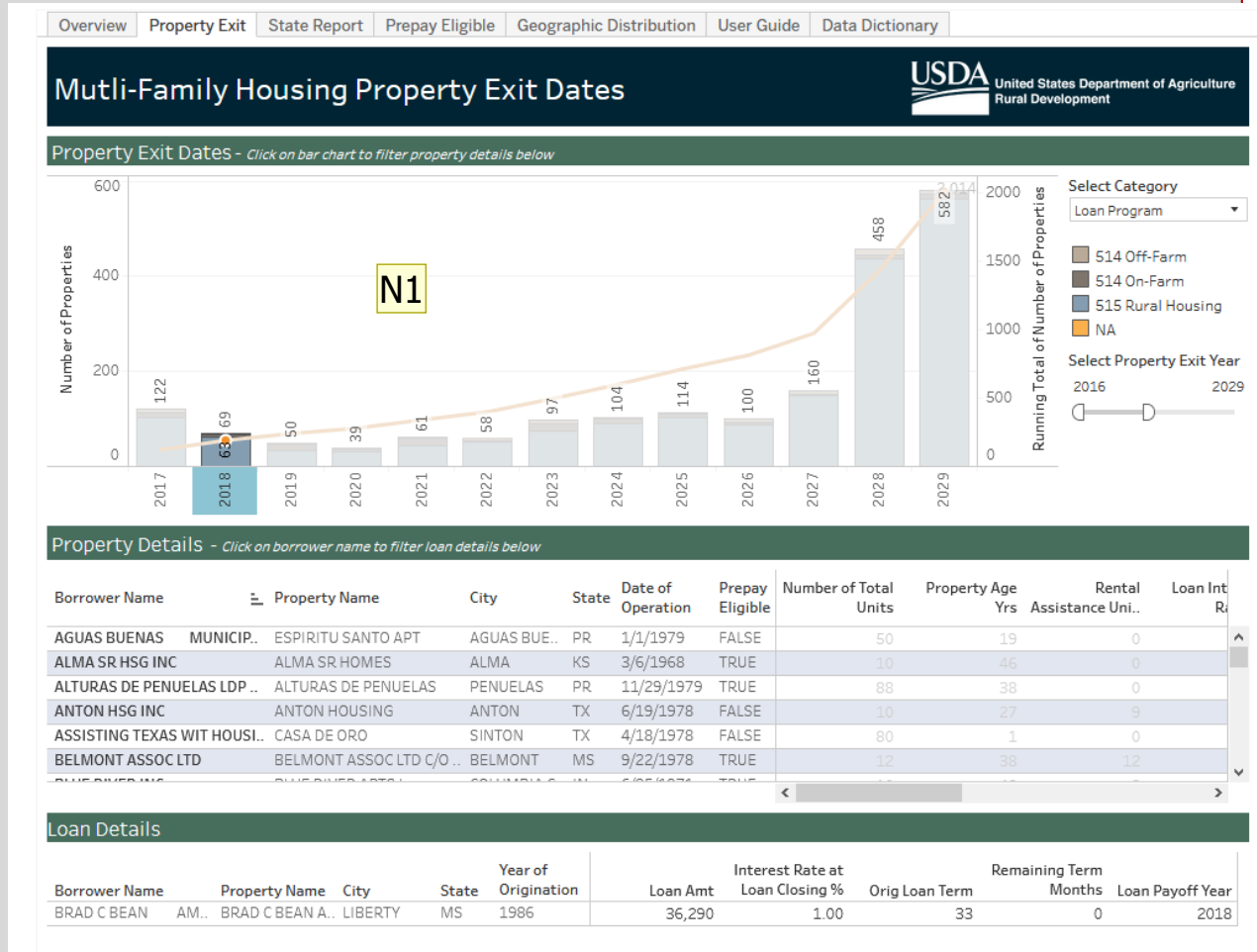
- <https://public.tableau.com/profile/greg.steck7461#!/vizhome/USDA Rural Development>

N3

[Multi-Family Housing/Overview](#)

- Policy Map data:

- <https://www.policymap.com/maps>



Slide 9

N1 THIS SLIDE IS maturing Mortgages

NHLP, 5/21/2017

N3 check

NHLP, 5/21/2017

Prepayment Information From PIX and RD Multi-Family Housing Website

(10)

Oakhurst CA Prepayment Requested Valley Oaks Apartmen
https://pix.sc.egov.usda.gov/pixdad/pub_show_property?USER_ID=942400196&PASSWORD=housing8&P_ID=564117&P_ST=ATTTC=DP

From PIX

From:

rdmfhrentals.sc.egov.usda.gov/

Property Fact Sheet

Oakhurst CA Pr
https://pix.sc.egov.usda.gov/pixdad/pub_show_property?USER_ID=942400196&PASSWORD=housing8&P_ID=781364&P_ST=ATTTC=DP

Project Name:	Valley Oaks Apartments		
Status:	Prepayment Requested		
Project Address:	40410 Redbud Dr.		
City, State Zip:	Oakhurst, CA 93644		
Appraisal Value:			
Listed For Sale Date:			
Application Accepted Date:	26-APR-17		
	Apt. Units	Bedroom Type	Basic
Total Apt. Units:	24		
Borrower:	Oak Valley Associates		
Address:	102 South Main Street		
City, State Zip:	Mt. Pleasant, MI 48858		
Telephone:	(989) 400-4839		
Fax Number:			
Borrower Contact:	Jerry Harte		
Rural Development Office:	Modesto		
Address:	3800 Cornucopia Way, Suite E		
City, State Zip:	Modesto, CA 95358		
Telephone:	(209) 491-9320		
Project Picture:	Not Available		

Portola CA Pre
https://pix.sc.egov.usda.gov/pixdad/pub_show_property?USER_ID=942400196&PASSWORD=housing8&P_ID=833507&P_ST=ATTTC=DP

Quincy CA Pre
https://pix.sc.egov.usda.gov/pixdad/pub_show_property?USER_ID=942400196&PASSWORD=housing8&P_ID=935094&P_ST=ATTTC=DP

Ramona CA Pr
https://pix.sc.egov.usda.gov/pixdad/pub_show_property?USER_ID=942400196&PASSWORD=housing8&P_ID=877300&P_ST=ATTTC=DP

Ramona CA Pr
https://pix.sc.egov.usda.gov/pixdad/pub_show_property?USER_ID=942400196&PASSWORD=housing8&P_ID=877350&P_ST=ATTTC=DP

Sonoma CA Pr
https://pix.sc.egov.usda.gov/pixdad/pub_show_property?USER_ID=942400196&PASSWORD=housing8&P_ID=794114&P_ST=ATTTC=DP

Canton CT Pre
https://pix.sc.egov.usda.gov/pixdad/pub_show_property?USER_ID=942400196&PASSWORD=housing8&P_ID=135637&P_ST=ATTTC=DP

Rental Property Information



Total Units: 24
 Units with Subsidy: 18
 Complex Type: Family
 Bedrooms: Studio: 0
 1 Bdr. 6
 2 Bdr. 18

Contact Information

Housing Management, Inc
 Phone: (517) 272-2900
 Email: JOANNE@KMGPRESTIGE.COM
 Website: Unavailable

[View Map](#)

[Contact Servicing Office](#)

[View Income Limits](#)

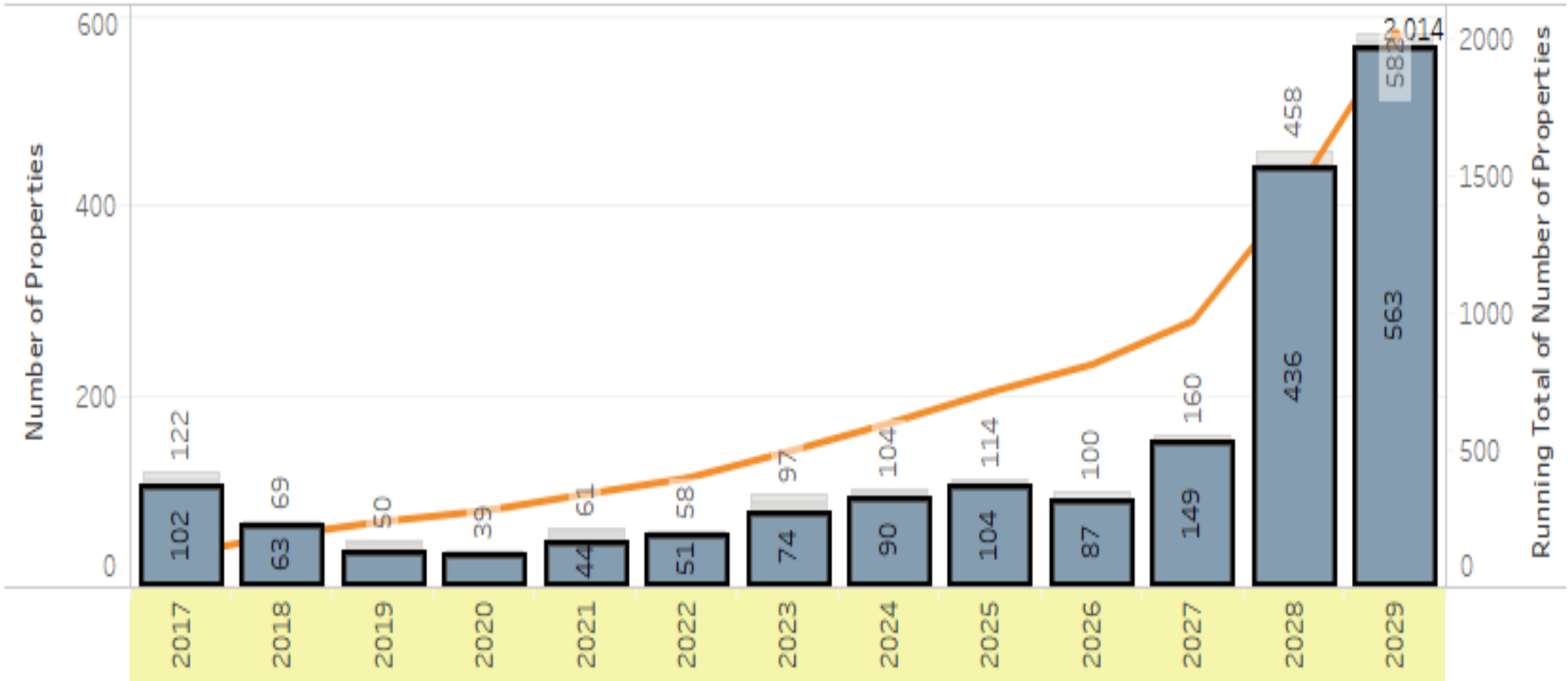
Apartment Information

Valley Oaks Apts
 40410 Redbud Drive
 Oakhurst, CA 93644

Properties with Maturing Mortgages

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Property Exit Dates - *Click on bar chart to filter property details below*



Where are there properties with maturing mortgages in my community?

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- **RD Exit Data** (current as of 12/31/2017):
 - https://www.rd.usda.gov/files/MFH_Property_Public_No_PII.xlsx
 - <https://public.tableau.com/profile/greg.steck7461#!/vizhome/USDARuralDevelopmentMulti-FamilyHousing/Overview>

Estimated Property Exit Date	State	Property Name	City	# OF UNITS	Rental Type	YR. Restrictive Clause Exp.	FY of Loan Obliga	Remaini ng Term Days	Orig Loan Term	Prepay Eligible	Prepay Eligible Date Yr	Loan Payoff Year	Estimated Property Exit Year
12/6/2023	CA	CASA PAJARO FLH	WATSONVII	34	Family	1996	1991	6.7	32.9	0	2023	2023	2023
5/30/2042	CA	WESTWOOD SENIOR	WESTWOOD	24	Elderly	2032	1991	306.0	49.9	0	2042	2042	2042
6/10/2026	CA	WHITNEY OAKS DAIR	RIVERDALE	5	Family	2013	1992	0.0	32.9	0	2026	2017	2026
5/25/2034	CA	KNOX PARK, SUNRISE	MADERA	100	Family	2024	1991	17.3	29.9	0	2034	2034	2034
8/3/2039	CA	VALLE DEL SOL TWNH	STOCKTON	76	Family	2026	2003	22.2	32.9	0	2039	2039	2039
10/22/2023	CA	SOLEDAD TOWNHOU	SOLEDAD	34	Family	2010	1991	6.2	32.9	0	2023	2022	2023
2/17/2034	CA	LEMOORE VILLA	LEMOORE	28	Family	2022	1991	208.6	49.9	1	1984	2034	2034
2/17/2034	CA	JACKSON APARTMEN	JACKSON	64	Family	2034	1991	449.0	29.9	0	2034	2034	2034

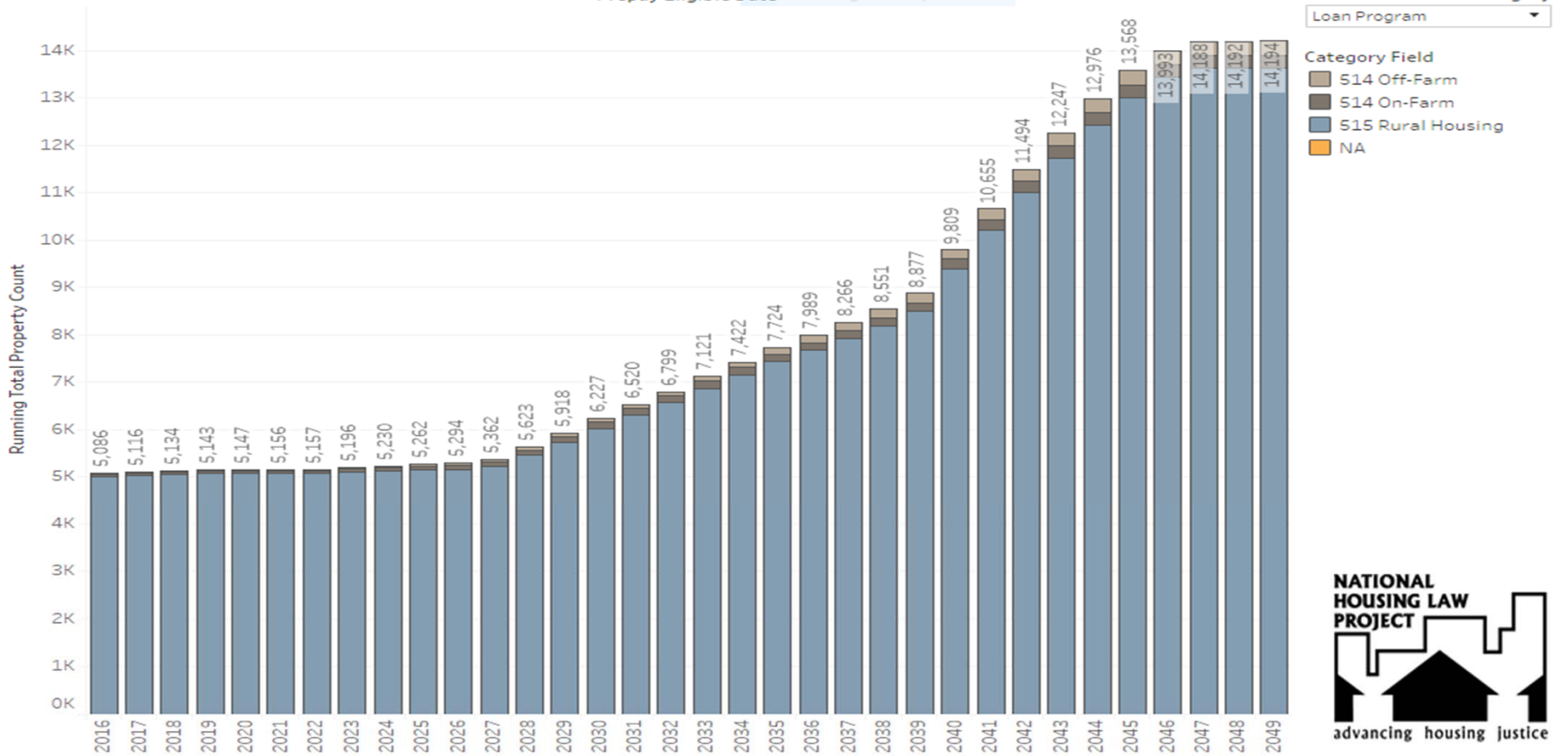
Mortgage Prepayments

Prepay Eligibility - Running Total

Prepay Eligible Date Rectangular Snip

Select Breakdown Category

Loan Program



- Category Field
- S14 Off-Farm
 - S14 On-Farm
 - S15 Rural Housing
 - NA



What is a mortgage prepayment?

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- Prepayment = payment in full of the outstanding balance on a loan prior to the loan's originally scheduled maturity date (7 CFR 3560.11)
 - Can be caused by:
 - ✦ extra principal payments advance paid in full date
 - ✦ owner has not used, or repaid, part of the original loan
 - ✦ owner sold part of property (proceeds to RD)
 - ✦ principal and interest payments were based on an annual basis but paid on a monthly basis
 - ✦ monthly payments not properly calculated
- RD may accept prepayments *only if* owner first complies with “elaborate requirements” designed to preserve low-income housing and protect residents



Why do prepayment restrictions exist?

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- **Prior to 1987:**
 - No restrictions limiting rights of Section 515 project owners (who financed their loans prior to Dec. 21, 1979) to prepay their mortgages and leave RD program
- **1980-1990s:**
 - Congress enacted ELIHPA to restrict prepayment rights of owners who had entered Section 515 loans *before* December 21, 1979
 - ✦ **1989:** amended U.S. Housing Act of 1949 to impose permanent restrictions upon prepayment of Section 515 mortgages
 - ✦ **1992:** extended ELIHPA restrictions to projects financed between 1979 and 1989



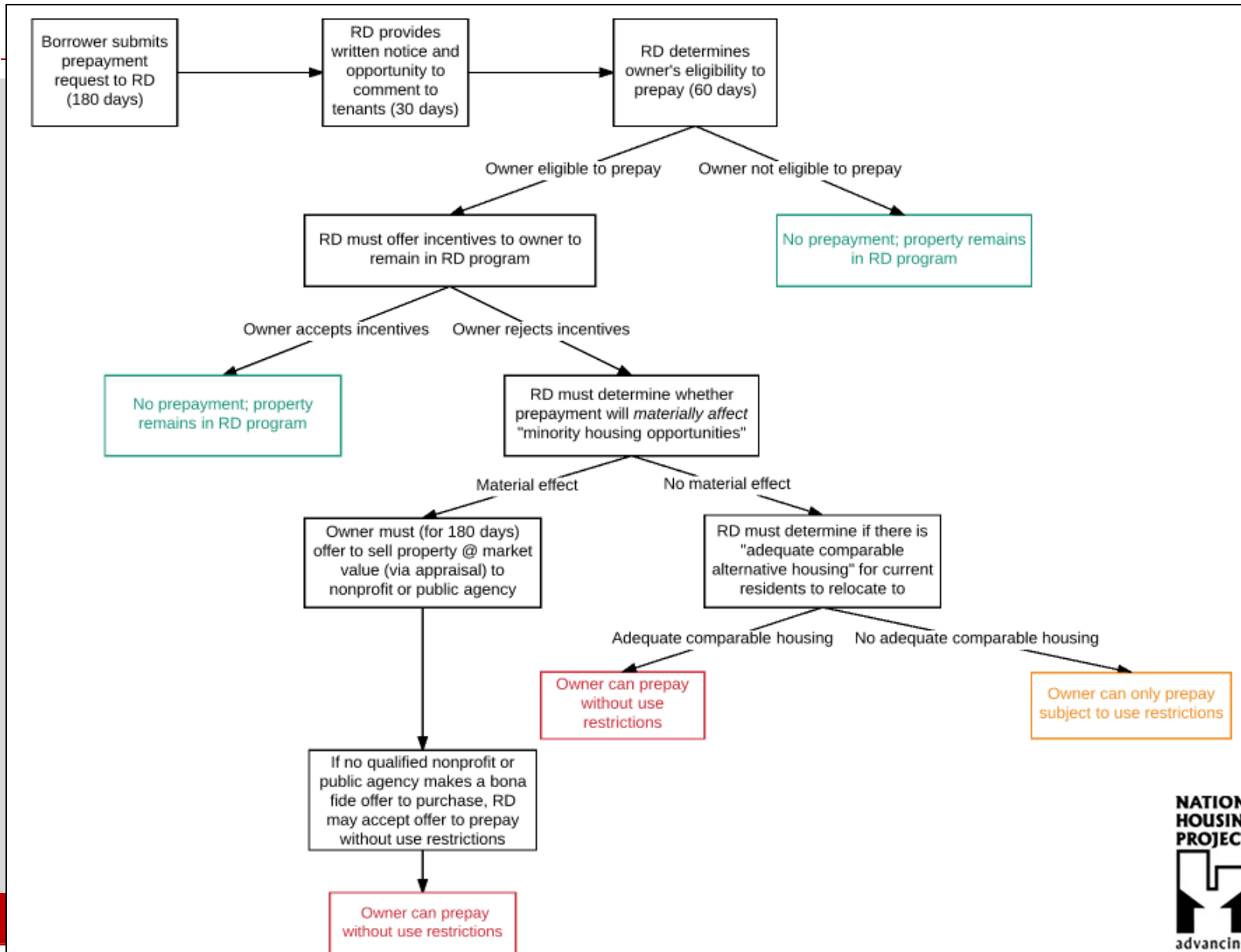
About ELIHPA

42 USC 1472(c); 7 CFR Part 3650 Subpart N; Handbook 3-3560, Chapter 15

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- Established statutory framework intended to:
 - preserve Section 515 housing,
 - avoid resident displacement, and
 - ensure that housing opportunities for minorities not materially affected
- Requires RD to *offer incentives* to owners who seek to prepay their loans

What is the prepayment process?



Risks and Opportunities for Input and Advocacy

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- Tenant notice requirements
- Tenant statutory, regulatory, and Constitutional due process appeal rights
- “Materially affect minority housing opportunities”
- “Adequate comparable alternative housing”
- Use restrictions
- RD vouchers
- Finding nonprofit or public agency purchaser



Tenant Notice and Due Process Rights

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- Residents are entitled to:
 - **written notice** stating specific reasons why RD has approved owner's prepayment request (42 USC 1480(g); 7 CFR part 11; 5th Amendment of U.S. Constitution)
 - opportunity to **appeal** any adverse decision (i.e. RD's prepayment approval) (42 USC 1480(g); 7 CFR part 11; 5th Amendment of U.S. Constitution)
- National Appeals Division (7 USC 6991, *et seq.*)
- Limited English Proficient (LEP) requirements



“Materially affect minority housing opportunities”

7 C.F.R. §§ 1970.6 and 1970.8(e); Handbook 3-3560, Chapter 15

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- “Materially affect” (statutory) v. “disproportionately impact” (regulatory) standards
- RD Handbook 3-3560 factors:
 1. % of minorities residing in the project v. % of minorities in projects in the market area where displaced tenants are most likely to move;
 2. Impact of prepayment on minority residents in the project and in the market area;
 3. If displaced minority tenants will be forced to move to other low-income housing in areas not convenient to work, to areas with concentrated minority population, and/or to areas with concentration of substandard housing;
 4. Vacancy trends and number of potential minority tenants on waiting list at property and in market area; area
 5. Impact of prepayment on opportunities for minorities residing in substandard housing in the market area.



“Adequate comparable alternative housing”

42 USC 1472; 7 CFR 3560

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- “There is an adequate supply of safe, decent, and affordable rental housing within the market area of the housing and related facilities and sufficient actions have been taken to ensure that the rental housing will be made available to each tenant upon displacement.”
 - Affordable and available on the date of prepayment _ decent, safe, and sanitary



Use Restrictions

7 CFR 3560; RD Handbook 3-3560; 42 USC § 1772(c) (5)(D)

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- “The Secretary shall, to the extent provided in appropriation Acts, provide to each nonprofit organization or public agency purchasing housing and related facilities under this paragraph financial assistance (in the form of monthly payments or forgiveness of debt) in an amount necessary to ensure that the monthly **rent payment made by each low income family** or person residing in the housing **does not exceed the maximum rent permitted under section 1490a(a)(2)(A)** of this title or, in the case of housing assisted under section 1490a(a)(5) of this title, does not exceed the rents established for the project under such section.” (emphasis added).
 - Owners may not increase rents by more than 10%/year
- Impact of lack of federal funding on use restrictions (42 USC 1472(c)(5)(F))
- RD optional enforcement of use restrictions



RD Vouchers

82 Fed. Reg. 21972 (May 11 2017)

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- RD has authority to provide residents of prepaid developments with vouchers to help them remain in their homes or find alternative housing
 - Voucher subsidy is set permanently as of date of prepayment and does not change when rents increase or household income decreases
- RD's over-issuance of vouchers is encouraging prepayments
- RD's authority to issue vouchers is limited by annual appropriations
- RD running out of vouchers

Finding nonprofit or public agency purchaser

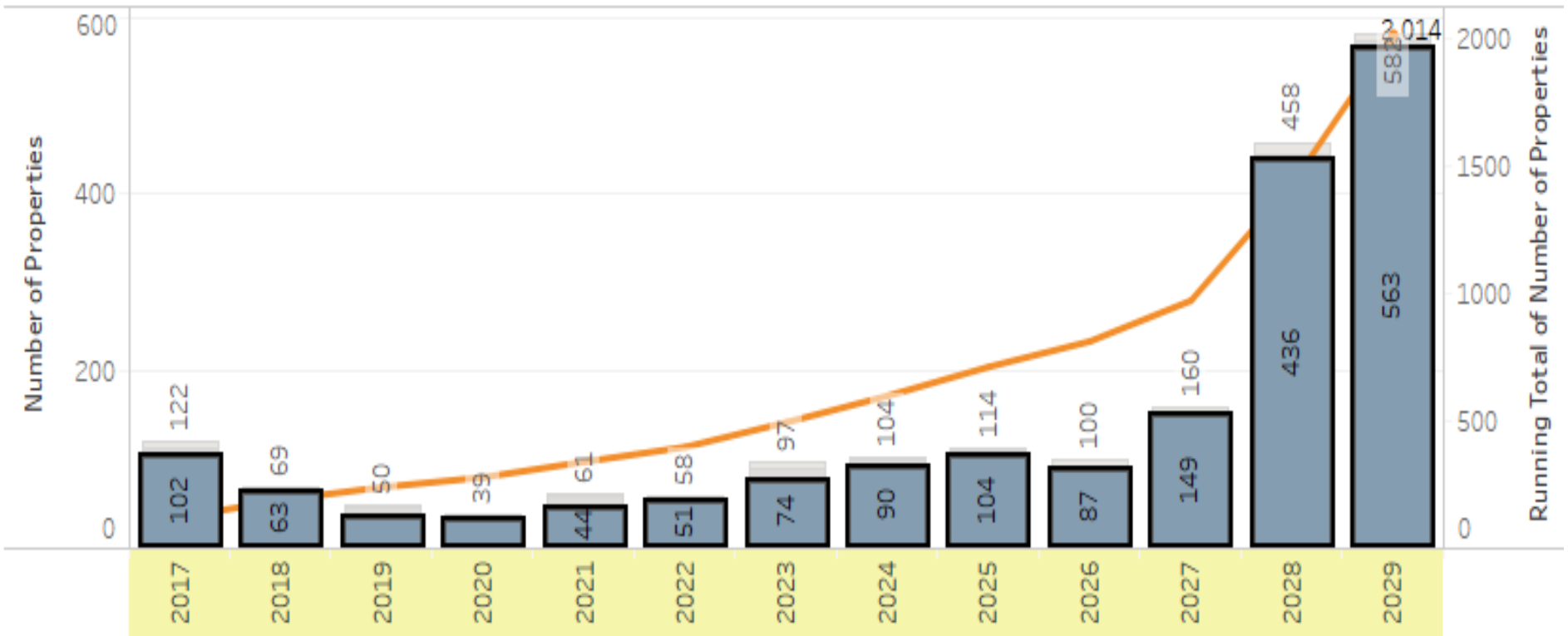
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- **Finding nonprofit or public agency purchaser:**
 - Debt deferral under the Multi-Family Preservation and Restructuring program (MPR)
 - Low-income housing tax credits
 - State and local housing financing sources
 - Section 538 RD guaranteed loan program



Mortgage Maturities

Property Exit Dates - *Click on bar chart to filter property details below*



What is mortgage maturity?

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- Mortgage maturity = date on which mortgage was originally set to end
 - Found in Promissory Note and on RD spreadsheet or Tableau
 - ‘Paid Ahead’ Status: any payment that satisfies the loan *prior* to original maturity date is a *prepayment* subject to prepayment restrictions (7 C.F.R. §3560.653(a))
 - ✦ Caused by: surplus in original loan, sale of part of property, surplus payments, etc.
 - *Franconia v. U.S.* settlements (RD Un. Ltr. Oct. 28, 2016)
 - ✦ Owners agreed to extend use restrictions for 20 years
 - Recorded in new mortgage/deed
 - New maturity date in RD spreadsheet but not identified as a *Franconia* settlement extension
 - Borrowers whose loans were suspended for some period of Time -- loan is frequently extended by term of suspension

Why are we seeing maturing mortgages?

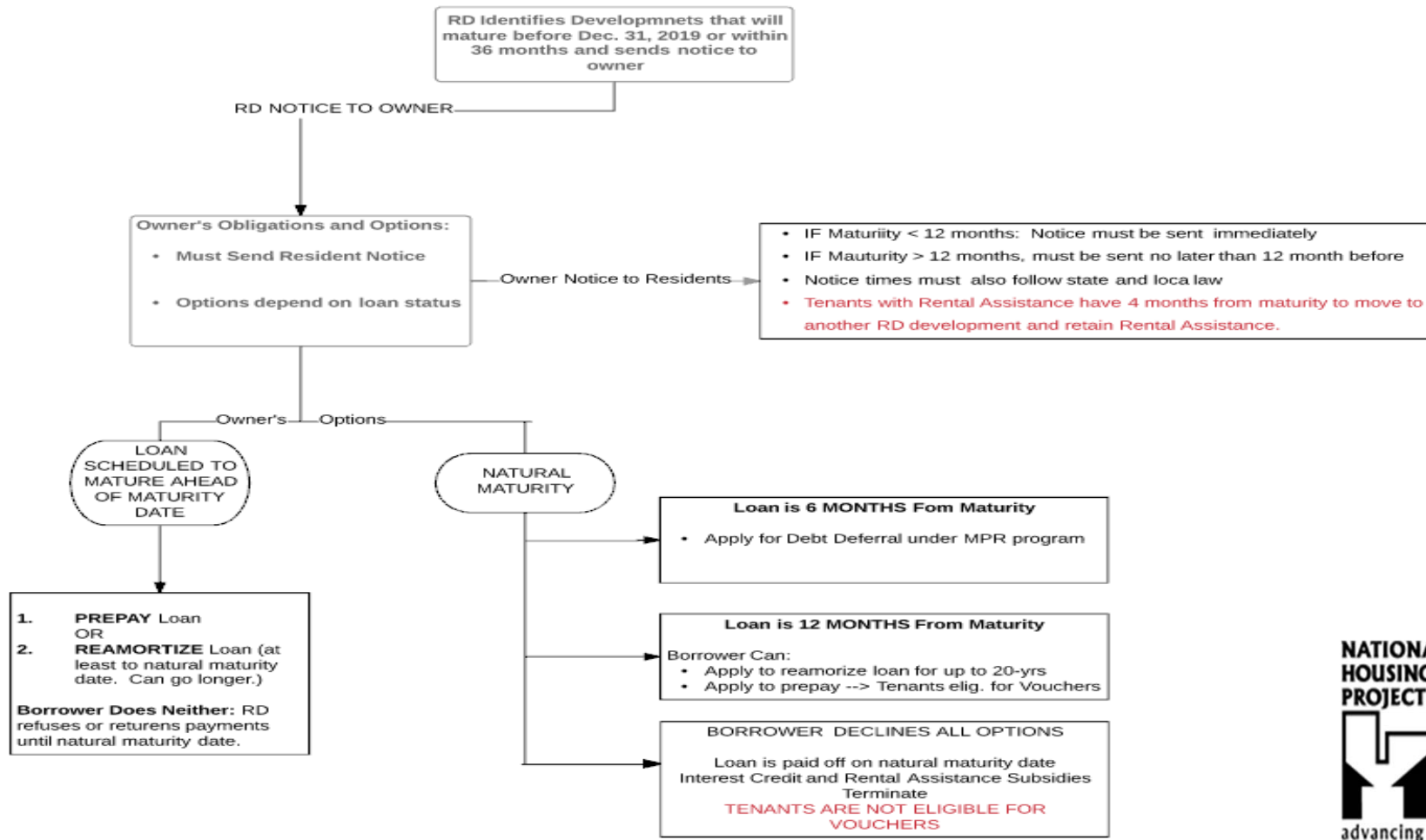
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- 515 programs started in 1962; original loans were for 40/50 yrs. After 1989: 30 years with 20-year RD extension option.
- Document Governing: RD Unnumbered Letter (Dec. 28, 2016) (no other regulations, handbooks or Administrative Notices) (available at <https://www.rd.usda.gov/files/RDUL-Payoffs.pdf>).
- RD will not accept final payment that will pay off loan prior to original maturity date.
 - ✦ If final payment received, RD will refund.



RD LOAN MATURITY PROCESS

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Notice of Loan Maturity

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- **Notice to owners**

- ‘Notification Letter to all Borrowers’ with loans maturing before Dec. 31, 2019 or with 36 or less months remaining until maturity. Letter includes:
 - ✦ Account status
 - ✦ Tenant notification letter
 - ✦ Notice of Termination of RD subsidies
 - ✦ Procedure for owner to follow if requesting to reamortize loan balance
 - Loans maturing before Dec. 31, 2019, borrowers are encouraged to reamortize loan balance for up to 20-years. (Re-Am Lite).
 - Keeps resident subsidies in place.
 - Alternatively, seek loan deferral under MPR program.
 - If neither, ask to file for prepayment if 12 months remaining on the loan.
 - Makes borrower eligible for incentives and residents eligible for RD Vouchers.
 - Reamortize loan to maturity date/or advise that final payment cannot be accepted till maturity date.

Risks and Opportunities for Input and Advocacy

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- **Tenant notices**
 - Required by RD no later than 12 months prior to maturity (UL Att. 2)
 - State/local notice requirements? (CA, Oregon)
 - ✦ CA 12 and 6 months prior to termination of subsidy.
- **Content:**
 - Date of maturity
 - Termination of RD subsidies and likely rent increase
 - RA assisted residents have 4 months to transfer to another RD property
 - List of properties in the locality or county (https://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp)
 - Possible eligibility for vouchers if owner applies for prepayment.
 - NO mention of Letters of Priority Entitlement (LOPEs)
- **State/local rent increase restrictions**

Attachment 3

TENANT NOTIFICATION

OWNER LETTER TO TENANTS – NOTIFICATION OF MORTGAGE PAYOFF

To: The Tenants of _____

Subject: Notice of Rural Development Loan Payoff

Your apartment was developed with assistance from a loan provided by the U.S. Department of Agriculture (USDA), Rural Development, an Agency of the U.S. Government. This loan is expected to be paid off on _____. When the loan is fully paid, Rural Development will no longer oversee the apartment's management, leases, and rents. The Rental Assistance (RA) subsidy will no longer be available, and as a result, rents at the apartment could go up and those tenants receiving RA, if provided, will no longer receive reduced rents.–

{Owner to provide additional information here on the rent increases, including timing and new rents}

If you are currently receiving Section 8 assistance or other subsidy to help with paying for all or part of your rent, such assistance should continue. Only Rental Assistance provided by Rural Development will no longer be available at this property after the loan has been paid off.

Monitoring and Advocacy

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- ❑ Monitor mortgage maturities in your area.
 - ✦ Make sure that original maturity date is same as payment schedule.
 - RD spreadsheet
 - Tableau
- ❑ Check if RD has sent notices to owners of developments that will mature by end of 2019.
- ❑ Check if Owner has notified residents of impending loan maturity.
- ❑ Owner's compliance with state or local law regarding termination of subsidies.
- ❑ Meet with residents individually or collectively
 - ❑ Development meeting rooms must be made available
- ❑ Urge owner and RD:
 - ❑ defer payments until natural maturity
 - ❑ reamortize loan balance and stay in the program
 - ❑ defer loan under MPR program
 - ❑ apply to prepay loan
 - ❑ sell development to a nonprofit or public agency
 - ❑ make residents eligible for RD Vouchers; helps owner transition to market rent housing.

Assist Tenants

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❑ Assist Residents

- ❑ Understand owners' notice and its consequences
- ❑ Understand rights under state or local law
- ❑ Discuss resident rights under the Lease
 - ❑ Review when rents are scheduled to increase
 - ❑ Right to terminate lease
 - ❑ Identify other RD developments in the area
 - ❑ Urge application for Section 8 vouchers
 - ❑ Approach RD for LOPEs
 - ❑ Help residents relocate
 - ❑ Physical or financial assistance
 - ❑ Bring family of elderly households into process
 - ❑ Identify service agencies that may assist

Questions?



For Technical Assistance, Training, and Other Resources

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