

HOUSING JUSTICE

National Housing Law Project

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**Protecting Residents of RD/RHS
Housing from Displacement Due to
Prepayment, Foreclosure and Loan
Maturity**

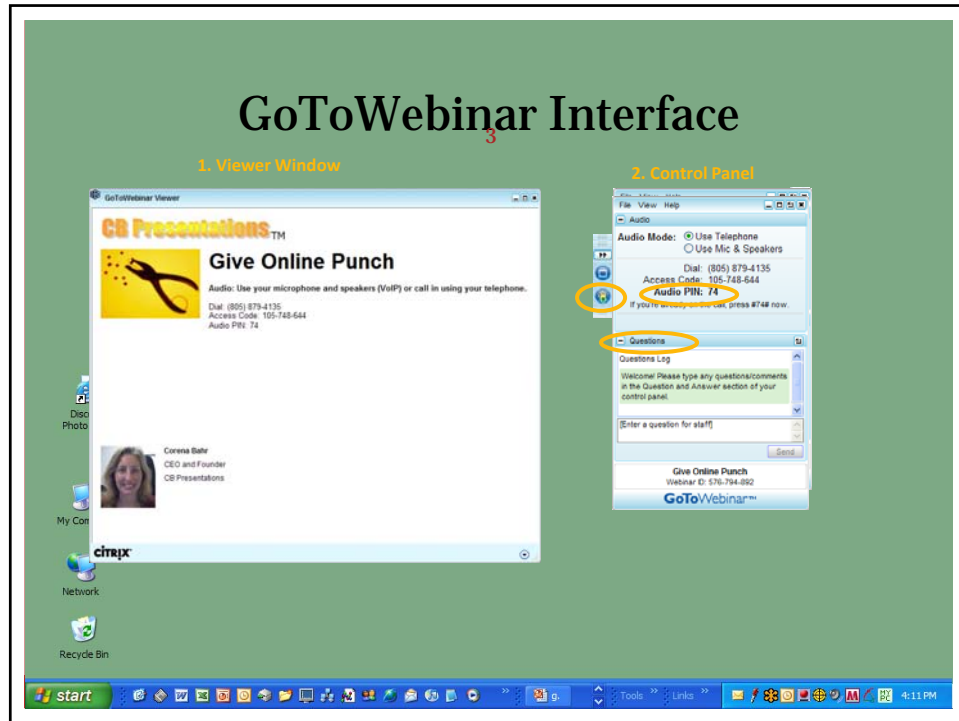
**Gideon Anders
Senior Attorney**

10.21.14

Housekeeping

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- Materials were emailed to registrants this morning.
- Evaluations will be e-mailed after the webinar.
- Materials and recording will be posted on NHLP's website on Wednesday, October 22, 2014.



Goals for Today

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- Overview of federal and state housing protections for residents of RD/RHS Rental Housing (Section 515 and 514/516) who face displacement due to loan prepayment, loan maturity, foreclosure or loss of other subsidies
- Terminology
 - RD—Rural Development
 - RHS—Rural Housing Service
 - Programs are legally vested in Rural Housing Service but are administered by Rural Development in the states.

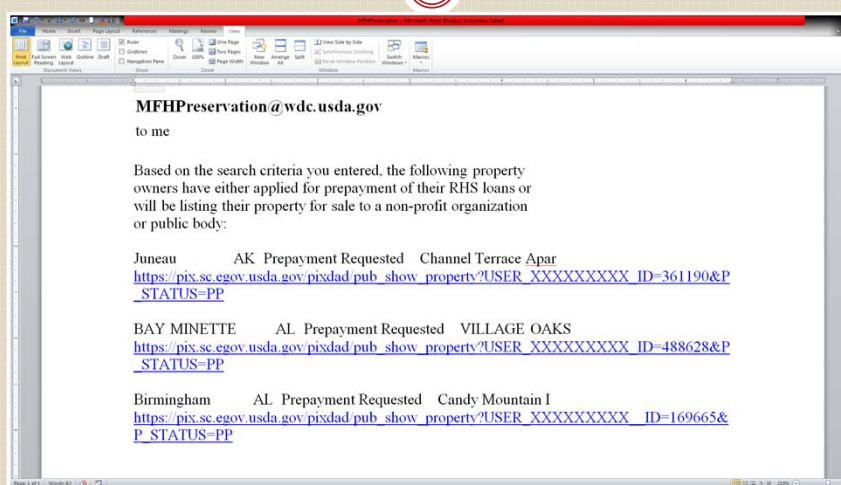
ACTIVITIES THAT THREATEN DISPLACEMENT

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- Prepayments, Maturing Mortgages, Foreclosures, Loss of Other Subsidies
 - How do you learn about these activities
- **Prepayments**
 - Preservation Information Exchange (PIX)
 - ✦ PIX Notices: sign up for regular e-mails and access to PIX website: <https://pix.sc.egov.usda.gov/>
 - ✦ Must Register: Only Available to Nonprofit and Public Agencies
 - Receive weekly e-mails
 - Conduct web searches at anytime
 - Many prepayment requests are outdated: some projects have prepaid, others have received incentives
 - Errors are frequent
 - Best to confirm with RD State Office: Multi-Family Housing Chief

Prepayments: PIX

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Prepayments: PIX-Property Fact Sheet

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The screenshot shows a web browser displaying the 'Property Fact Sheet' form. The form contains the following information:

Project Name:	Candy Mountain I																
Status:	Prepayment Requested																
Project Address:	612 22nd Avenue																
City, State, Zip:	Birmingham, AL 35233																
Appraisal Value:	\$2,000,000.00																
Listed For Sale Date:																	
Application Accepted Date:	16-JUN-03																
	<table border="1"> <thead> <tr> <th>Apt. Units</th> <th>Bedroom Type</th> <th>Basic Rent</th> <th>Market Rent</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>1 Bedroom</td> <td>337</td> <td>429</td> </tr> <tr> <td>100</td> <td>2 Bedrooms</td> <td>377</td> <td>482</td> </tr> <tr> <td colspan="4">Total Apt. Units: 101</td> </tr> </tbody> </table>	Apt. Units	Bedroom Type	Basic Rent	Market Rent	1	1 Bedroom	337	429	100	2 Bedrooms	377	482	Total Apt. Units: 101			
Apt. Units	Bedroom Type	Basic Rent	Market Rent														
1	1 Bedroom	337	429														
100	2 Bedrooms	377	482														
Total Apt. Units: 101																	
Borrower:	Candy Mountain I																
Address:	612 22nd Street South																
City, State, Zip:	Birmingham, AL 35233																
Telephone:	(205) 322-8300																
Fax Number:	(205) 472-0507																
Borrower Contact:	Mr. Charles Martin																
Rural Development Office:	TUSCALOOSA District Office																
Address:	3831-B Palmetto Dr.																
City, State, Zip:	TUSCALOOSA, AL 35405																
Telephone:	(205) 553-1733																
Project Picture:	Not Available																

Close

Prepayments: PIX-Property Fact Sheet

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- Lists Owner Who Has Filed Prepayment Request
 - Name of development and location
 - Owner, representative, and representative's phone number
 - Number of units and rents
 - **Does not disclose units with RA or type of development**
 - Information available from RD MFH website or Pix Website:
http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp
 - **Does not disclose Section 8 units**
 - Available when access PIX website and conduct a search
 - Date prepayment request accepted
 - Appraised value—if development has been appraised
 - Typically when forced to sell
 - Date advertised for sale

Prepayments: PIX Website

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The screenshot shows the USDA PIX website interface. The header includes the USDA logo and navigation links: PIX Home, MFH Search, Edit Registration, MFH Regulations, and Contact. A Logout link is also present.

On the left, there are search filters:

- Status: Prepay Requested
- States: A dropdown menu with options: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida.
- Project: Elderly
- Apt. Units: A range selector.
- Buttons: Reset Fields, Search, Clear Fields, and Save Search.

On the right, the Search Results table is displayed:

ST	City	Name	Type	Apts	RA	Sec.	8	Select
AL	BAY MINETTE	VILLAGE OAKS	E	40	0	39	*	
AZ	Sedona	Pine Creek Villas	E	24	0	0		
CA	Ione	Jose's Place	E	44	21	0		
CT	Canton	Maple Glen	E	73	62	0		
CT	Suffield	Park Place	E	40	21	0		
DE	Millsboro	Brandywine Apartment	E	32	0	32		
FL	Norlport	Villas of Norlport	E	38	33	0		
FL	Sebring	Highlands Village I	E	70	62	0		
FL	Sebring	Highlands Village II	E	35	33	0		
IN	Arcadia	Leonard Apartments	E	12	10	0		

Below the table are buttons for Select and Next.

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http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp

The screenshot shows the USDA Rural Development Multi-Family Housing Rentals website. The header includes the USDA logo and navigation links: Home, About MFH Rentals, Help, and Contact Us.

On the left, there is a search sidebar with options:

- Search by:
 - Town
 - Zip Code
 - Property Name
 - Management Agency Name

The main content area displays details for a property:

Multi-Family Housing Rentals

Rental Property Information

Apartment Information
 Village Oaks Apts
 309 Railroad St.
 Bay Minette, AL 36507

Total Units: 40
Complex Type: Mixed
Bedrooms: 0
1 Bdr: 36
2 Bdr: 4

Contact Information
 Mid-America Apartment Management Co.
 Phone: (678) 330-2000
 Email: Unavailable
 Website: Unavailable

View Map
Contact Servicing Office
View Income Limits

At the bottom, it says "Last Modified: 10/19/2014".

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USDA United States Department of Agriculture
Rural Development Multi-Family Housing Rentals

Home About MFH Rentals Help Contact Us

You are here: Home / Search by ZipCode / List of Properties / Property Detail

Multi-Family Housing Rentals

Rental Property Information

Search by

- Town
- Zip Code
- Property Name
- Management Agency Name

Apartment Information

Airport Gate Apts
106 Williams Drive
Bridgeport, AL 35740

Total Units: 24
Units with Subsidy: 20
Complex Type: Elderly
Bedrooms: Studios: 0
1 Bdr: 20
2 Bdr: 4

Contact Information
ARD, Inc.
Phone: (205) 752-0009
Email: WCORLEY@ARD-INC.NET
Website: Unavailable

[View Map](#)
[Contact Servicing Office](#)
[View Income Limits](#)

MFH Rentals Home | USDA.gov | Rural Development

Last Modified: 10/21/2014

Prepayments

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- Call from residents/Contact
 - ✦ Typically after RD/Owner letter is received
 - ✦ Could be as late as RD Notice to Residents of Prepayment Approval
 - ✦ Landlord notice of rent change
- Advertisement for Sale
 - ✦ Usually after owner forced to offer property for sale

Maturing Mortgages

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- **Maturing mortgages**
 - Local Real Estate Recorders Office: Most Reliable.
 - ✖ Search for Deed of Trust or Mortgage at Local Recorders office
 - Shows date of loan and original maturity date

Maturing Mortgages

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USDA-FHA Form 91A (27-72)

REAL ESTATE MORTGAGE FOR

KNOW ALL MEN BY THESE PRESENTS, That July 29, 1960

WHEREAS, the undersigned

residing in

County, whose post office address is

of Agriculture, herein called the "Government", being payable to the

Specified therein, withstanding account, being payable to the

Date of Instrument July 29, 1960

Due Date of Final Installment July 29, 1960

And the note contains a loan to Borrower, and the Government, at any time, may assign the note and issue the payment thereof pursuant to the Consolidated Farm and Rural Development Act, or Title V of the Housing Act of 1949.

And it is the purpose and intent of this instrument that, among other things, at all times when the note is held by the Government, or in the event the Government should assign this instrument without issuance of the note, this instrument shall secure payment of the note: but when the note is assigned to another party, this instrument shall be void.

Mortgage Maturity

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- RD State Offices—Informal or formal FOIA request
- National Housing Preservation Database: Need to Register
<http://www.preservationdatabase.org>
 - ✦ Best to search by name of development.
 - ✦ Check accuracy about development by going to
<http://rdmfhrentals.sc.egov.usda.gov>

Maturing Mortgages: Nat'l Hsng. Pres. Database

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The screenshot shows the National Housing Preservation Database website. The 'Data Grid Subsidy Filters' section on the left includes checkboxes for 'Active and Inactive', 'Subsidy Ending Before', 'HUD PDBA', 'Section 202 Direct Loans', and 'Section 515'. The 'Filter' button is highlighted. The main table displays search results for 'HOPE VILLAGE INC' with columns for Property Name, Property Address, City, State, Zip, Country, CD, Subsidy End Date, Total Units, Active Schedules, Owner, and Owner Type. A yellow box highlights the 'Subsidy End Date' column, which shows '05/26/2035'. Below the table, there is a 'Data | REAC Score' section.

Property Name	Property Address	City	State	Zip	Country	CD	Subsidy End Date	Total Units	Active Schedules	Owner	Owner Type
HOPE VILLAGE INC (2)	11579 Hope Cr	Wolcott	NY	14590			05/26/2035	25		HOPE VILLAGE INC	

RD Foreclosures

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- **Foreclosures**
 - Information is not readily available on a timely basis
 - A. Local Newspapers—Most states require newspaper ads as many as 120 days before foreclosure
 - B. RD State Office
 - C. RD “C & D” project list; informal/formal FOIA request

Assisting Resident: Prepayments

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- Complete Prepayment Request Triggers RD Notice to Residents:
 - Must be sent within 30 days of when RD received owner's request.
 - Model in HB-3-3560 Attach. 15-C (available at <http://www.rurdev.usda.gov/SupportDocuments/3560-3chapter15.pdf>)
 - Not always used
 - Long, complex, not in plain English
 - ✦ Advises resident's of owner's request
 - ✦ Opens 30-day comment period: not clear what resident should address
 - ✦ Informs residents of protections against displacement
 - ✦ Suggests possible on-site meeting with RD staff

Prepayment: Advocate Actions

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- Call owner's representative to learn of owner's plans:
 - ✦ Securing incentives to remain in the program
 - ✦ Removing development from RD program
 - 100% Section 8 subsidies
 - ✦ Converting to higher income rental development
 - ✦ Selling inside or outside program
 - ✦ Transferring/rehabbing, refinancing
 - LIHTC
 - § 538 loan
 - Seeking project based vouchers

Prepayment: Advocate Actions

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- Outreach to residents
 - ✦ Write short letter to residents advising them that owner has applied for prepayment; potentially serious repercussions; invite to call you, or suggest they contact local legal services program
 - ✦ Do door to door outreach
- Meet with Residents
 - Project meeting room must be made available; owner may not place unreasonable restrictions on use. 7 C.F.R. § 3560.157(g); owner or RD may not insist on presence during meeting; however, consideration should be given to inviting one or both
 - ✦ Discuss ramifications of prepayment
 - Review resident options and protections
 - Refer to local legal services program

Prepayment: Advocate Actions

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- Assist in submitting comments to RD
 - ✦ 30-day deadline from date of notice
 - Most of the time PIX notice appear after 30-day period has expired. Submit comments in any event.
- Objective—Impact of RD Prepayment Decision
 - On current residents
 - On minority housing opportunities

Resident Letter to RD

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Letter Content

- Adverse Impact on current residents
 - ✦ Based on subsidies at the development focus on
 - Alternative affordable housing in the community
 - Community—Original Project Market Area
 - Community may have changed: Look at reasonable distances to work, school, other services; impact on families with children: child care services, divorced parents visiting rights.
 - Waiting lists and turnover at other housing (RD and HUD) developments: **Call**
 - Waiting lists and turnover at public housing and HUD voucher program: Call local PHA or state agency

Resident Letter to RD

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○ Adverse Impact on Minority Housing Opportunities

- ✦ Minority residents in the development
- ✦ Minority residents on waiting list
- ✦ Minority residents in the community

○ Source: Census Bureau

<http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml###>

NOTE: For information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/c1.pdf>.

Geography: Mitchell city, Nebraska

Subject	Number	Percent
RACE		
Total population	1,702	100.0
One race	1,678	98.6
White	1,545	90.8
Black or African American	4	0.2
American Indian and Alaska Native	10	0.6
American Indian, specified [1]	9	0.5
Alaska Native, specified [1]	0	0.0
Both American Indian and Alaska Native, specified [1]	0	0.0
American Indian or Alaska Native, not specified	2	0.1
Asian	7	0.4
Native Hawaiian and Other Pacific Islander	0	0.0
Some Other Race	112	6.6
Two or More Races	24	1.4
Two races with Some Other Race	14	0.8
Two races without Some Other Race	10	0.6
Three or more races with Some Other Race	0	0.0
Three or more races without Some Other Race	0	0.0
HISPANIC OR LATINO		
Total population	1,702	100.0
Hispanic or Latino (of any race)	383	22.5
Mexican	306	18.0
Puerto Rican	4	0.2
Cuban	0	0.0
Other Hispanic or Latino [2]	83	4.9
Not Hispanic or Latino	1,309	77.5
RACE AND HISPANIC OR LATINO		
Total population	1,702	100.0
One race	1,678	98.6
Hispanic or Latino	379	22.5
Not Hispanic or Latino	1,299	77.5
Two or More Races	24	1.4
Hispanic or Latino	14	0.8
Not Hispanic or Latino	10	0.6

X Not applicable.
 [1] American Indian, specified includes people who provided a specific American Indian tribe, such as Navajo or Blackfoot. "Alaska Native, specified" includes people who provided a specific Alaska Native group, such as

Other Advocate Actions

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- **Monitoring RD Activities and Exploring Alternatives with Owner**
 - Incentive Offers: obligates borrower to remain in program for additional 20 years.
 - ✦ Incentives available by Statute and Regulations: Increase return on equity; offer additional rental assistance or increase in rental assistance; equity loan to borrower; extend rental assistance to cover increased rent from incentives.
 - ✦ Current Limitations:
 - Unnumbered Letter: Prepayment Incentives Processing Guide (July 11, 2014)
 - Requires National Office Concurrence for any incentive that extends additional rental assistance.
 - State must justify need for rental assistance extension based on importance of development

Other Advocate Actions

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- **Voluntary Transfer development to another entity**
 - ✦ Current Problem with rental assistance and Section 515 funding

Monitoring RD Prepayment Processing

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• RD Decision Options

- No impact on minority housing opportunities
 - ✖ Done by state civil rights officer: **No regulatory or other standards as to what constitutes “impact on minority housing opportunities”**
 - ✖ Allows prepayment provided current residents are not displaced
 - ✖ Use restrictions with respect to current residents for as long as they choose to reside in the development.
 - Tenant protections remain in place: good cause, right to grievance process
 - Vouchers
- No impact on current residents
 - ✖ There is ample alternative housing to which residents can relocate.
 - ✖ Residents eligible for RD Vouchers and Letters of Priority Entitlement (LOPE)

Monitoring RD Prepayment Processing

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- Impact on Current Residents
 - ✖ Freezes current rents
 - No downward adjustments; may allow upward adjustment. 7 C.F.R. § 3560.663 (b)
- Impact on Minority Housing Opportunities
 - ✖ Forced Sale to nonprofit or public agency
 - ✖ Appraisal process
 - ✖ Offer for sale must be open for 180-days
 - Notice on PIX (not assured)
 - Change search criterion on PIX website from “Prepay Request” to “For Sale”

Monitoring RD Prepayment Processing

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- Section 515 financing & Rental Assistance or Debt Forgiveness
 - Both required by statute—42 U.S.C. §§ 1472(c)(5)(C), 1472(c)(5)(D)
 - Current administration's position is not clear.
 - Locating and Working with Local/Regional/National Non-profits or Public Housing Authorities
 - Informing about prepayment
 - Exploring funding opportunities
- If no *bona-fide* offer received: Owner may prepay without restrictions
- **Prepayment-Allowed**
 - 60-day notice to residents
 - No tenant right to appeal decision
 - ✦ Exception—if owner appeals: tenants may participate.

Monitoring RD Prepayment Processing

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- **Securing Vouchers**
 - Must be residing in the development on date of prepayment
 - Subsidy is fixed as of that date
 - ✦ Limitations on portability
 - ✦ Impact on Elderly Households
 - RD has contracted out Voucher eligibility and issuance process.
- **Securing LOPEs**
 - Residents have right of priority admission to other RD developments
 - Have right to priority admission independent of LOPE. 7 C.F.R. § 3560.154 (g)(2)(ii).

MATURING MORTGAGES

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- **New Issue under RD Program**
 - About 70 RD rental developments have mortgages that will mature by 2020.
 - ✦ **RD has not addressed issue in any way**
 - Problem: All subsidies terminate when loan matures and residents are not entitled to any RD assistance
 - ✦ Rental Assistance terminates
 - ✦ Interest Credit terminates
 - ✦ No voucher assistance
 - ✦ No LOPE assistance
 - ✦ No RD or Landlord Notice
 - Exceptions: State & Local notice requirements
 - e.g. California Government Code § § 65863.10—65863.13

MATURING MORTGAGES

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- **Reliable Data is Not Available**
 - Preservation Database: <http://www.preservationdatabase.org/>
 - Local real estate recorder's office
 - ✦ Look for mortgage or deed of Trust for property
 - State RD Offices
- **Problem of Advanced Maturity Date Due to Advancement in Principal Payments**
 - Owner returned excess loan amounts after loan origination
 - Owner, intentionally or unintentionally, made advance principal payments
 - Owner was forced to pay principal when part of property was sold
 - Old RD accounting system advanced principal payment

MATURING MORTGAGES

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- Any maturity date prior to original date=prepayment
7 C.F.R. § 3560.11 (Definition of Prepayment)
- RD is precluded by statute from accepting payment that fully satisfies mortgage prior to original maturity date. *Charleston Housing Authority v. U.S.D.A.*, 419 F.3d 729, 738 (8th Cir. 1985) (\$112 loan balance with 20 years left till original loan maturity).
- RD can reamortize loan to avoid prepayment. *Prepayment Clarifications and Related Issues*, Unnumbered Letter, (May 14, 2012)

Loan Maturity: Advocate Actions

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- Secure Information about loan maturity date as early as possible
- Meet with residents
 - Inform them about consequences of loan maturity
 - Advise resident to get on Voucher or Public Housing waiting lists, apply to other RD or other housing in the community
 - ✦ Eligible for priority admission to RD developments without LOPEs
7 C.F.R. § 3560.154 (g)(2)(ii).

Loan Maturity: Advocate Actions

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- **Work with the current Section 515 owner**
 - Urge owner to ask RD to reamortization loan so maturity date is extended to original maturity date.
 - Urge owner to apply to prepay loan
 - ✦ Makes residents eligible for vouchers when owner prepays
 - ✦ Makes residents eligible for LOPEs
 - ✦ Advantageous to owner as it may secure smooth transition with vouchers and avoids evictions
 - ✦ Possibly preserves development if owner is forced to sell.

Loan Maturity: Other Actions

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- **A number of organizations are trying to deal with the issue nationally.**
 - Require prior notice to residents
 - Make residents eligible for Vouchers and LOPEs
 - Decouple Rental Assistance from Section 515 program

RD FORECLOSURES

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- **No publically available data**
 - RD State Offices may share information
 - Newspaper Advertising Foreclosure
 - Get RD Section 515 “C & D” project lists
 - Resident Notices
- **RD Statutory Obligations**
 - RD is obligated to operate its program in a manner consistent with program goals and objectives so that involuntary displacement of families and businesses is avoided. 42. U.S.C. §1471(g)

RD FORECLOSURES

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- ✦ **RD Handbook Obligations**
 - See RD HB-3-3560 Chapter 6. Determining Project Suitability. Available at <http://www.rurdev.usda.gov/SupportDocuments/3560-3chapter06.pdf>
 - See Turner v. Vilsack, No. 3:13-cv-1900 SI (D. Or. Nov. 18, 2013) (available on Westlaw and Lexis and on the Web: search “Turner v. Vilsack”)
- **RD Options**
 - Public sale: inside and outside program
 - Vouchers to residents if they are displaced
 - Issue LOPEs
 - Preservation of development

Foreclosure: Advocate Actions

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- Get local legal services or attorney involved

Termination of Other Subsidies

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- Some 515 developments have outside subsidies
 - Section 8
 - LIHTC
 - State/local assistance programs
 - e.g. CA, MO, NY
- No RD Vouchers or Protections
 - Not even LOPEs
 - Priority Admission under Regulations: 7 C.F.R. §3560.154(g)(2)(ii)
- State/Local Notice Requirements
 - CA Gov't Code
 - Require addition of Tenant Protections in local programs

Termination of Other Subsidies: Advocate Actions

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- **Meet with Residents**
 - Urge to apply for other RD and HUD housing programs including public housing, subsidized housing, and voucher program
 - Advocate with sponsor of subsidies to continue them and provide some transition
 - California converting subsidy to tenant vouchers using HOME program funds.
 - Advocate with RD to grant LOPEs.

More Information

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For More Information On Webinar Issues Contact

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National Housing Law Project
ganders@NHLP.org

Thank you to the Housing Assistance Council for Supporting NHLP to present this webinar and for promoting it

- A RD Preservation workshop will be part of the National Rural Housing Conference: Retool, Rebuild, Renew. Washington D.C. Dec. 2-5, 2014. For more information go to ruralhome.org