



NATIONAL
HOUSING LAW
PROJECT

Prepayments, Loan Maturities and Vouchers:

Protecting Residents and Preserving Rural
Development Rental Housing

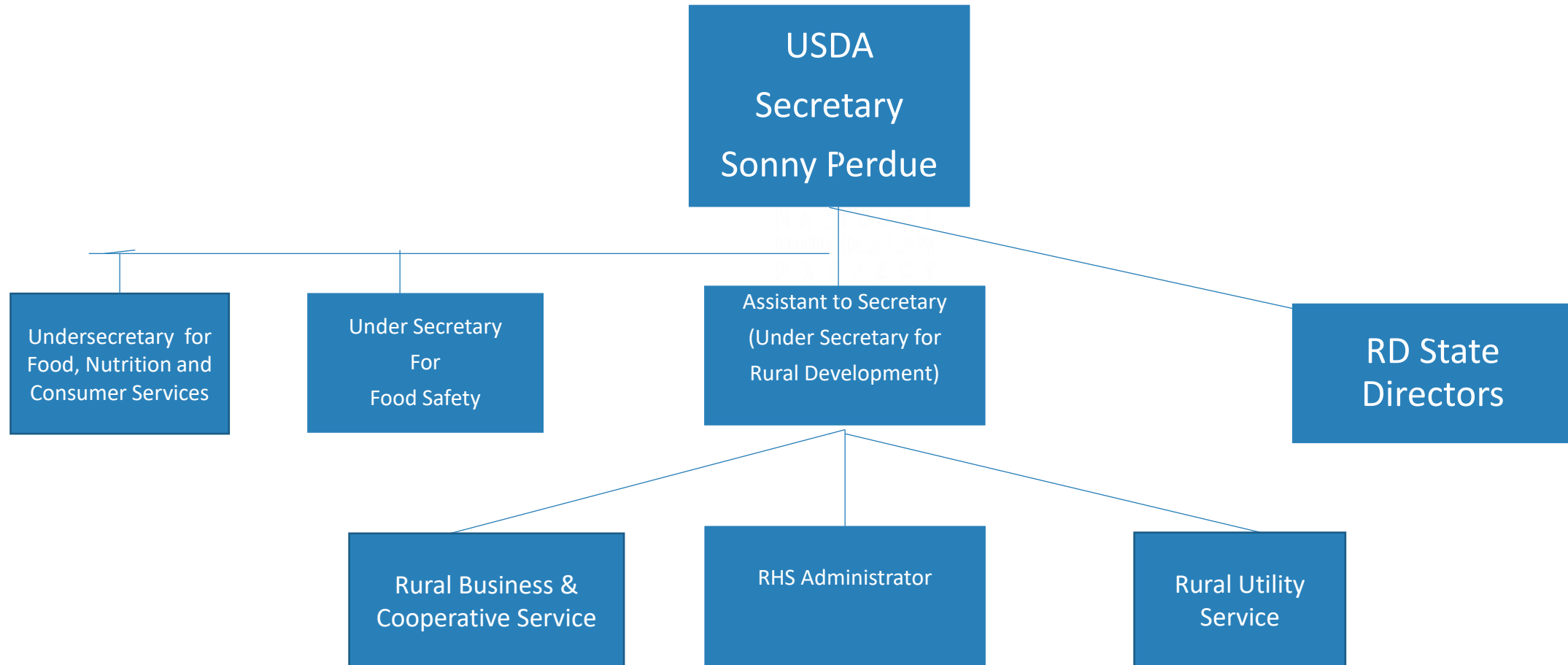
GIDEON ANDERS
Senior Attorney
March 2019

Agenda

- 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



New USDA Organizational Structure



About Rural Development (RD)



- Makes 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>)
 - Section 515 Rural Rental Housing 42 U.S.C. § 1485
 - Section 514/516 Farm Labor Housing 42 U.S.C. §§ 1484 and 1486.



Background

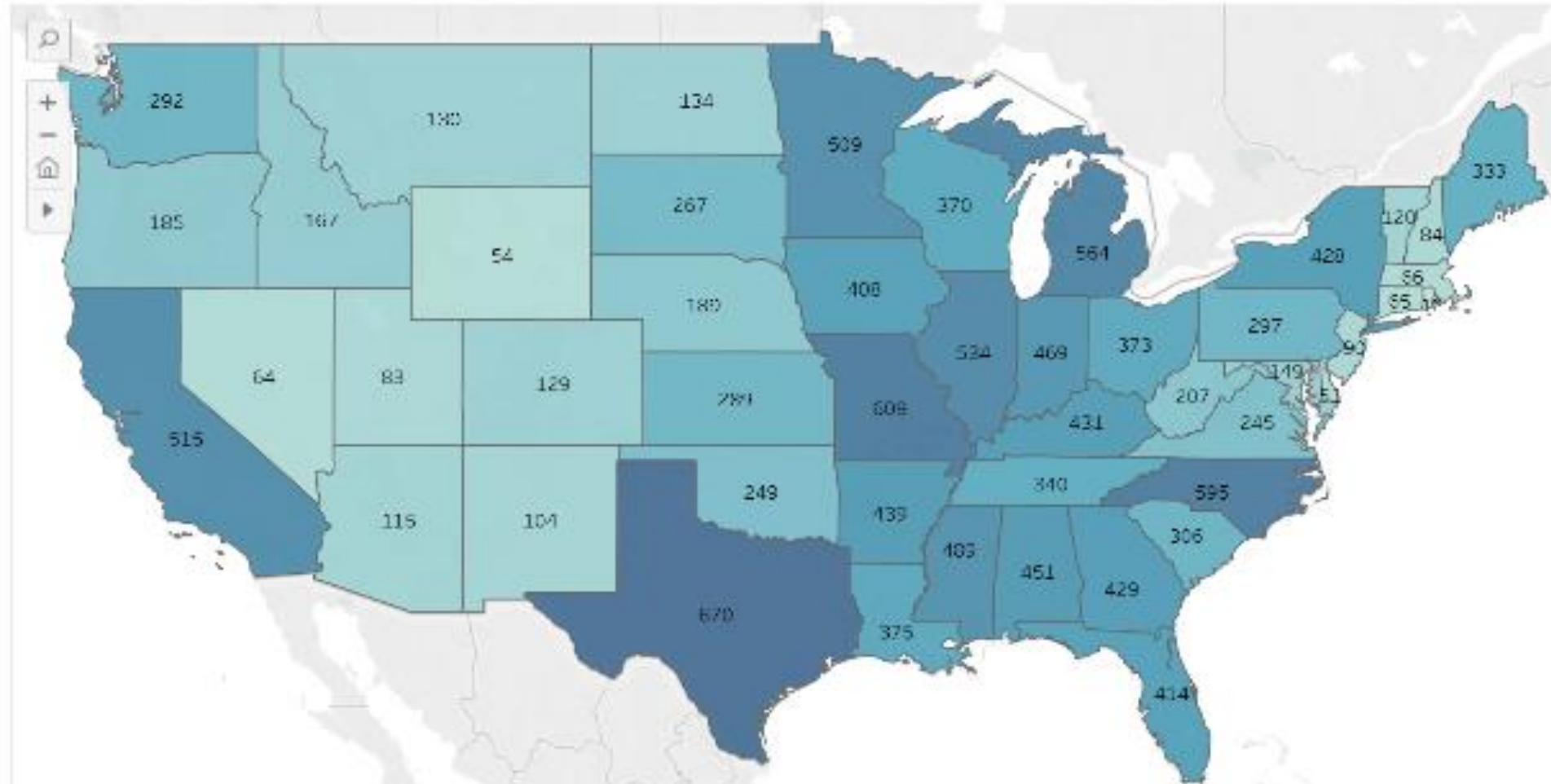
- RD Section 515 Program—1963
 - >550,000 total units constructed
 - ✦ ~415,000 units (14,000 developments) currently remain in the program
 - Demographics:
 - ✦ Over 60% of residents are elderly or persons with a disability
 - ✦ 30% of occupants are people of color
 - ✦ 70% of households are headed by a female
 - ✦ 65% of households receive rental assistance (RD's deep subsidy, allowing residents to pay 30% of their income for shelter)
 - ~5,000 units are lost annually because have loans maturity or prepayment
 - 89 properties (~2,500 households) w/ maturing mortgages in 2019-2020.

Background

- RD Section 514/516 Farm Labor Housing—1965
 - On-Farm Housing: 514 loans without 516 grants
 - ✦ 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 RD subsidies

RD Section 515 and 514/516 Properties

Geographic Distribution - Number of Properties

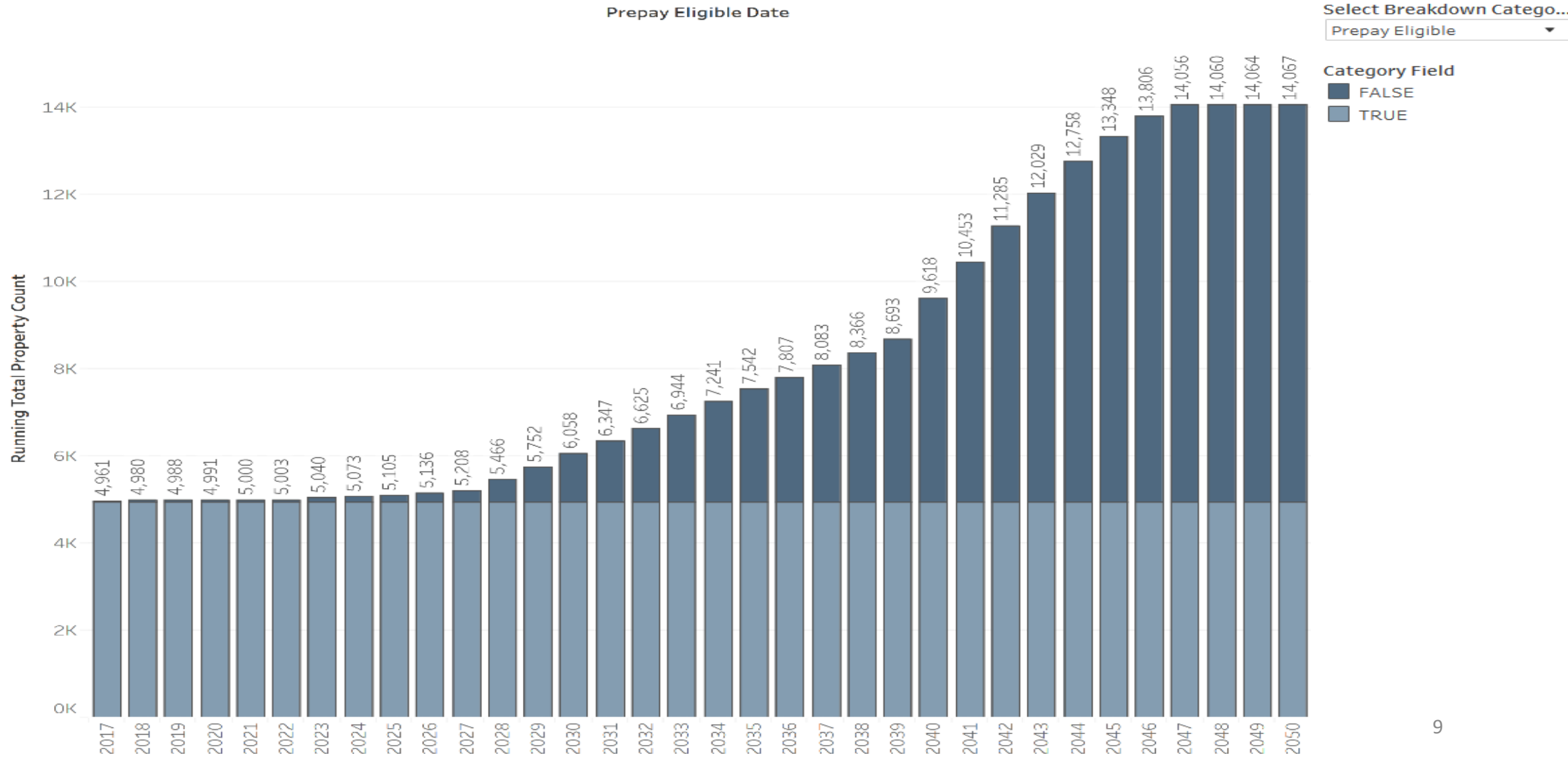


Consequences of Mortgage Prepayments and Maturities

- Permanent loss of affordable housing that is decent, safe, and sanitary
 - Frequently only such housing in the community
 - Possible frustration of local organizations' missions to serve low-income tenants
- Loss of RD subsidies:
 - Interest Credit—shallow subsidy: basic rent
 - Rental Assistance—deep subsidy: 30% of household income for shelter.
- Likely tenant rent increases (to market rates)
- Loss of RD oversight and enforcement of tenants' statutory, regulatory, and lease protections
 - RD does not oversee enforcement of Restrictive Use Covenant; tenants have a right to enforce.
- Voucher assistance (only in case of prepayments not mortgage maturities only)

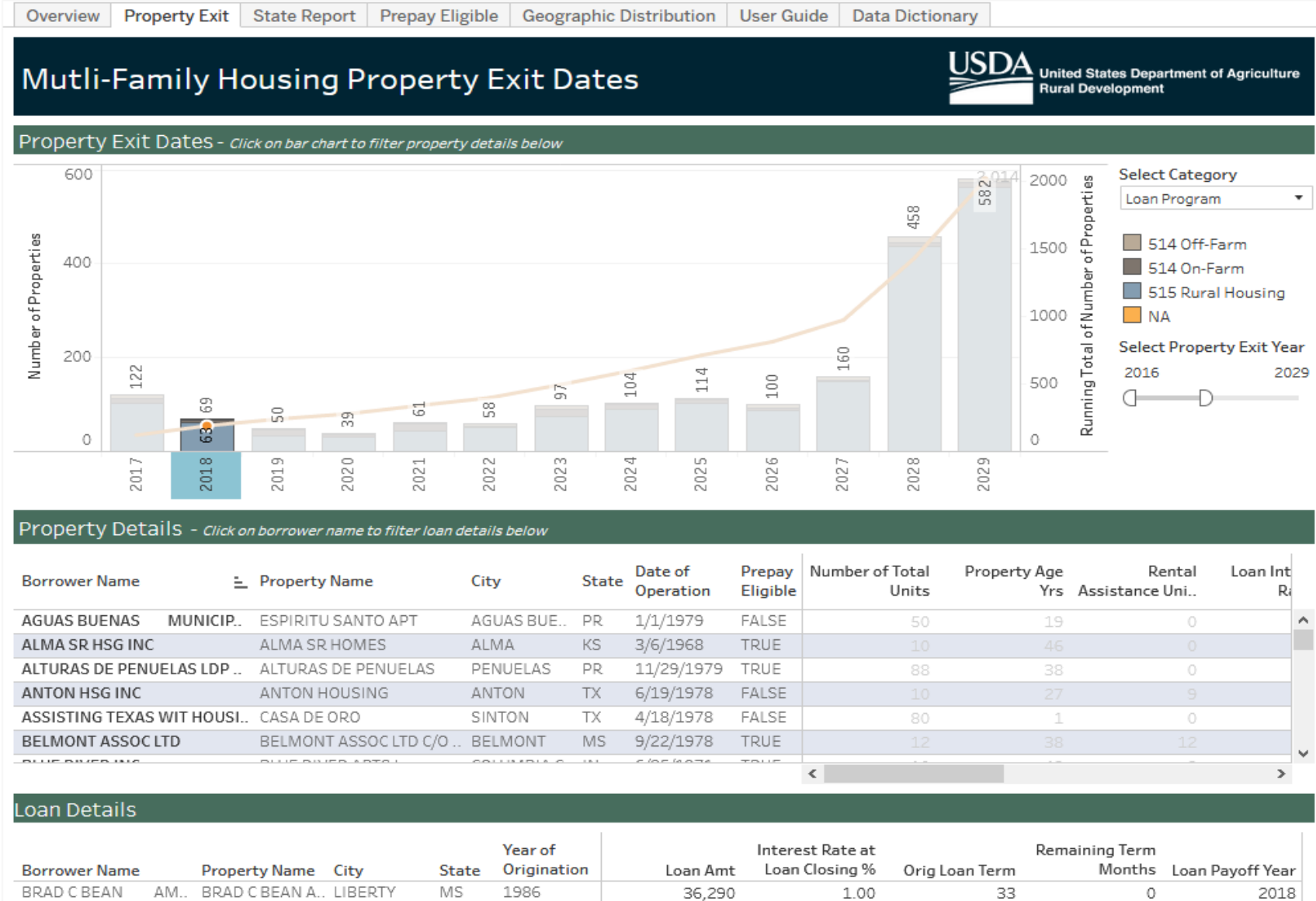
Prepayment-Eligible Properties (Cumulative, 2017-2050)

Prepay Eligibility - Running Total



Where are the 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/USDARuralDevelopmentMulti-FamilyHousing/Overview>
- Policy Map data:
 - <https://www.policymap.com/maps>



Prepayment Information From PIX and RD Multi-Family Housing Website

PIX

- Weekly e-mail of developments in each state that have applied to prepay loans, whether owner is required to sell development and appraisal amount.

CA	Name: Mariposa Oaks Apartments Addr: 5071 Circle Drive Mariposa, CA 95338 Status: For Sale RA Type: Family	Units: 24 RA Units: 20 Section 8: 0 Accept Dt: 10/18/2012 Listed Dt: 04/26/2018 Appraised: \$1,575,000	Name: Mariposa Oaks Associates Addr: 823 Colby Drive Davis, CA 95616 Contact: Al Inouye Phone: (916) 769-7768	Name: Modesto Contact: Diane Martinez Phone: (209) 287-3671 Email: diane.martinez@ca.usda.gov
CA	Name: Sonoma Village Apartments Addr: 61 W. Agua Caliente Rd. Sonoma, CA 95476 Status: Accepted RA Type: Family	Units: 30 RA Units: 3 Section 8: 1 Accept Dt: 12/10/2010 Listed Dt: Appraised:	Name: Sonoma Apartment Associates Addr: 232 W. Napa Street Sonoma, CA 95476 Contact: Richard Gullota Phone: () -	Name: California State Office Contact: Stephen Nnodim Phone: (530) 792-5830 Email: stephen.nnodim@ca.usda.gov
CA	Name: Valley Oaks Apartments Addr: 40410 Redbud Dr. Oakhurst, CA 93644 Status: For Sale RA Type: Family	Units: 24 RA Units: 18 Section 8: 0 Accept Dt: 04/26/2017 Listed Dt: 07/10/2018 Appraised: \$1,440,000	Name: Oak Valley Associates Addr: 102 South Main Street Mt. Pleasant, MI 48858 Contact: Jerry Harte Phone: (989) 400-4839	Name: California State Office Contact: Stephen Nnodim Phone: (530) 792-5830 Email: stephen.nnodim@ca.usda.gov
CA	Name: Walnut Grove Villa	Units: 39	Name: Walnut Grove Villa	

- Sign up: <https://pix.sc.egov.usda.gov/>
- Problems: Failure to post/update

Rental Property Information



Apartment Information
 Valley Oaks Apts
 40410 Redbud Drive
 Oakhurst, CA 93644

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

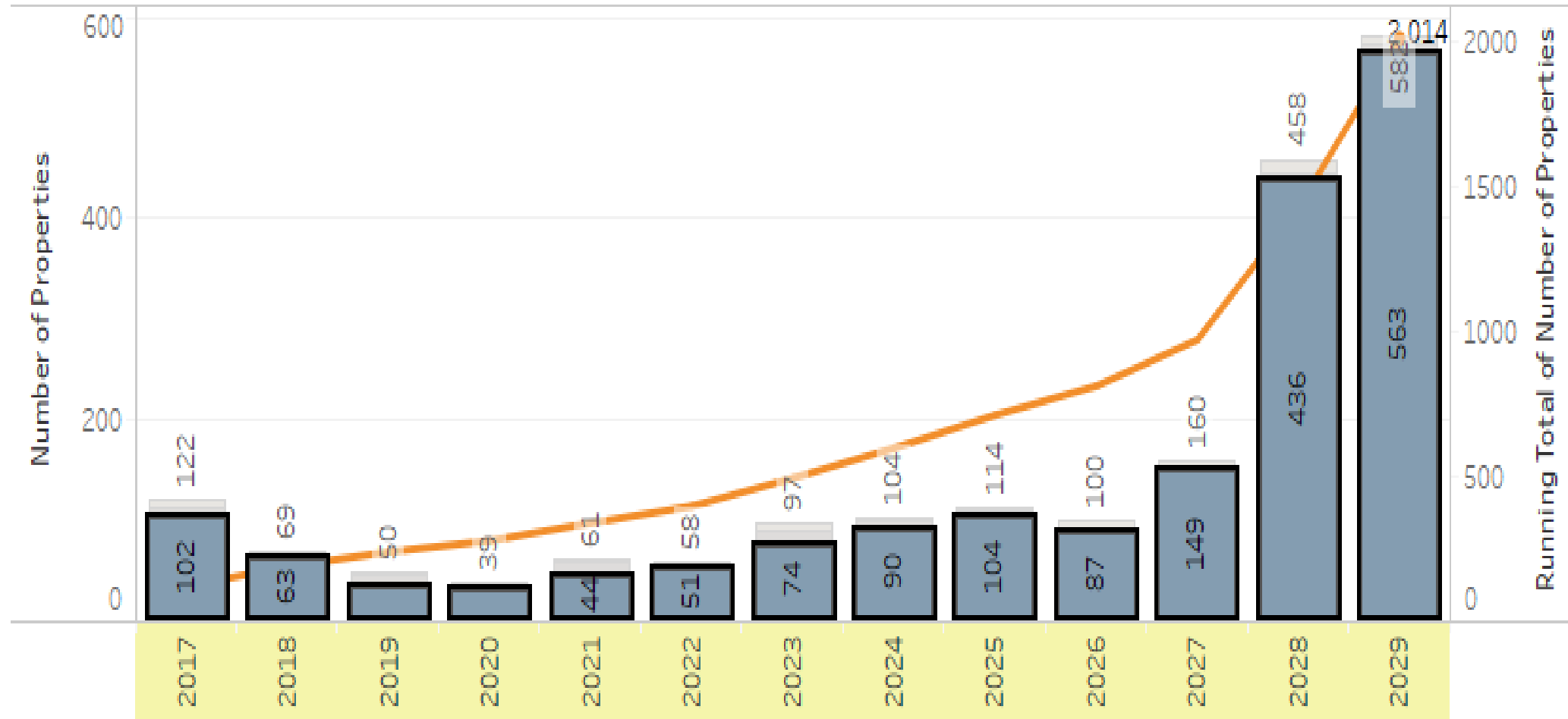
[View Map](#)

[Contact Servicing Office](#)

[View Income Limits](#)

Properties with Maturing Mortgages

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



Where are there properties with maturing mortgages in my community?

- 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	FY of 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	WATSONVIL	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 DAIRY	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

What is a loan prepayment?

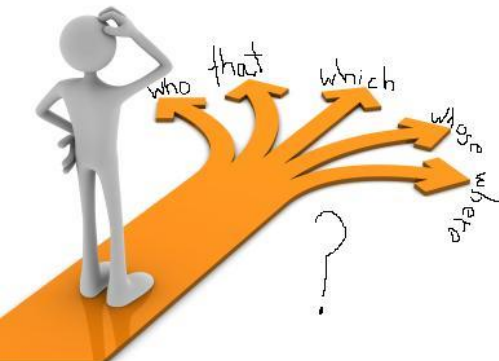
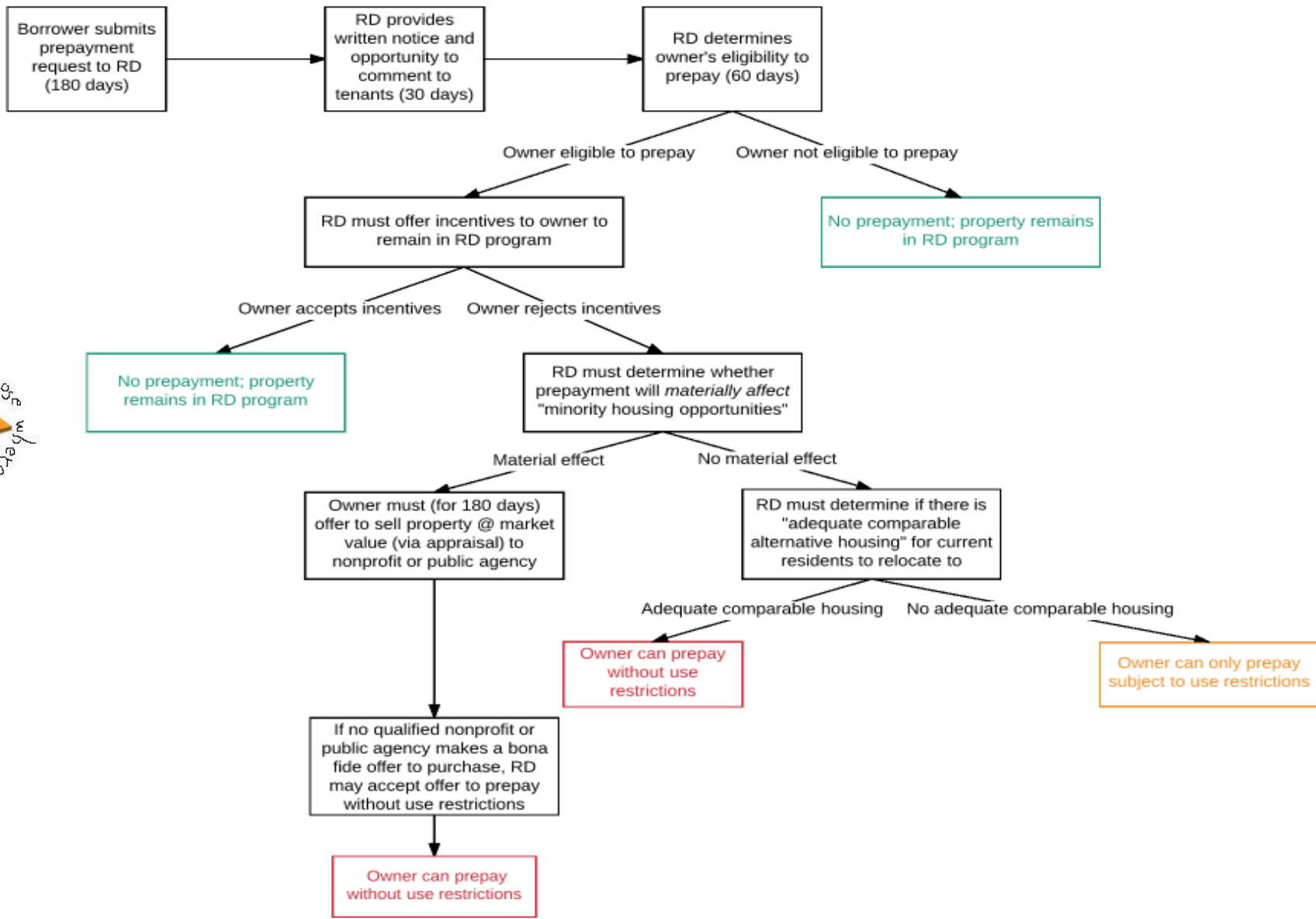
- Prepayment = payment in full of the outstanding balance on a loan prior to the loan's originally scheduled maturity date (7 CFR 3560.11)
 - Can be caused by:
 - ✦ extra principal payments that advance paid in full date
 - ✦ owner has not used, or repaid, part of the original loan
 - ✦ owner sold part 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 Emergency Low Income Housing Preservation Act of 1987 (ELIHPA) prepayment requirements designed to preserve low-income housing and protect residents from displacement.

Why do prepayment restrictions exist?

- Prior to 1988:
 - Congress for the first time put 20-year use restriction on 515 loans in 1979.
 - Owners who secured Section 515 loans prior to Dec. 21, 1979 had no restrictions on their right to prepay their mortgages and leave RD program
- 1988-1990s:
 - 1988, Congress enacted ELIHPA to restrict prepayment right of owners who had entered Section 515 loans *before* December 21, 1979
 - ✦ 1987: amended U.S. Housing Act of 1949 to impose permanent restrictions upon prepayment of Section 515 and 514 mortgages financed after Dec. 15, 1979
 - ✦ 1989: Congress extended use restriction on new projects for the term of the loan.
 - ✦ RD reduced loan term to 30 years with an option to extend for an additional 20 years.
 - ✦ 1992: extended ELIHPA restrictions to projects financed between 1979 and 1989

- Codified at 42 U.S.C. § 1472 (c)
- Established statutory framework intended to:
 - preserve Section 515 housing,
 - avoid resident displacement, and
 - ensure that housing opportunities for minorities not materially affected
- RD Regulations 7 C.F.R Part 3560, Subpart N (§§ 3560.651-3560.663)
- RD Handbook 3-3560, Chapter 15 (available at <https://www.rd.usda.gov/publications/regulations-guidelines/handbooks>).

What is the prepayment process?



Opportunities for Input and Advocacy

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



Tenant Notice and Due Process Rights

- Residents are entitled to:
 - **written notice** stating specific reasons why RD has approved owner's prepayment request
 - 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)
 - ✦ RD does not grant residents right to appeal prepayment decisions unless owner appeals, in which case residents can participate. *See* RD Handbook 3-3560, Ch. 15, Ex. C, p. 2.
- National Appeals Division & Process (7 USC 6991, *et seq.*, 42 USC 1480(g). Regulations: 7 CFR Part 11).
- Limited English Proficient (LEP) requirements
- STATE NOTICE ARE ALSO REQUIRED (CA, OR ?)

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.

“Materially affect minority housing opportunities”

42 U.S.C. § 1472(c)(5)(G)(ii)
Handbook 3-3560, Chapter 15

- RD must first offer incentives to owners who apply to prepay loans in order to keep them in the program: typically 20 years extension
- If owner rejects, RD must determine if minority housing opportunities are “Materially affected” (42 U.S.C. § 1472(c)(5)(G)(ii)). RD regulations require “disproportionate adverse impact” (7 C.F.R. §3560. 658(b)) standards.
 - Being Challenged in *McFalls v. Purdue*, 3:16-cv-02116 (D.Or. Filed Nov. 4, 2016)
 - 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.

“Materially affect minority housing opportunities”

(Continued)

- If RD finds that prepayment will have material affect on minority housing opportunities, owner must offer to sell the development to a nonprofit or public agency for a term of 180 days.
 - Good faith offer made and accepted, purchaser has 24 months to complete sale.
 - ✦ RD must make sure that residents of the development do not pay more than 30% of household income for shelter after prepayment. 42 U.S.C. § 1472(c) (5)(D).
 - ✦ Owners may not increase rents by more than 10%/year. 42 USC 1490a(a)(3)(C).
 - If no offer is made, owner is free to prepay loan without use restrictions; residents receive RD vouchers
- Finding nonprofit or public agency purchaser:
 - Purchaser assumes seller’s RD loan
 - Must finance balance of purchase price
 - Often has to also finance upgrade of the development
- Financing alternatives
 - RD loan 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



“Adequate comparable alternative housing”

42 USC 1472; 7 CFR 3560

- **If no material impact** on minority housing opportunities
 - Adequate supply of safe, decent, and affordable rental housing must be available within the market area for residents to relocate.
 - Housing has to be available on the date of prepayment.
 - ✦ If available, owner can prepay without restrictions
 - ✦ If not available, owner can only prepay subject to use restrictions.
- **Regardless of whether restrictions are imposed: Residents have a right to continue living in their units for the balance of their lease term regardless of whether prepayment is or is not subject to use restrictions.**

Use Restrictions

42 USC § 1472(c)(5)(D)

7 CFR 3560.662; RD Handbook 3-3560

- Use restrictions obligate owner to maintain the housing as affordable housing for the residents at the development as of the date of prepayment until the residents choose to vacate the development on their own. 42 U.S.C. § 1472(c)(5)(G)(ii), 7 C.F.R. §3560.662.
 - Residents that received rental assistance prior to prepayment continue to pay 30% of income for shelter as long as they live there.
 - Residents that did not receive rental assistance may be subject to rent increases provided that the increase is not attributable to prepayment.
- RD Regulations authorize RD to lift use restrictions when financial assistance to residents is terminated.
 - No statutory authority for this regulation and it conflicts with ELIHPA . Being challenged in *McFalls v. Purdue*, 3:16-cv-02116 (D. Or. Filed Nov. 4, 2016).

RD VOUCHERS

82 Fed. Reg. 21972 (May 11 2017)

- 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
 - ✦ Voucher does not cover utility allowance
 - ✦ Limits portability
 - ✦ Funding limited by annual appropriations
- RD Does not explain differences between use restrictions and vouchers and fails to advise residents who received Rental Assistance prior to prepayment that they receive better protections under use restrictions.
- RD's issuance of vouchers to residents who received Rental Assistance subsidizes owners and encourages prepayments: violation of ELIHPA.

RD VOUCHERS

(Continued)

- **RD staff does not understand purposes and differences between use restrictions and vouchers**
 - Believe that Vouchers are only resident protection; strongly promote vouchers and do not advise or explain the owner's obligations under the use restrictions. There are no regulations or handbook provisions explaining whether and how vouchers can be used in use restricted units. Practice being challenged in:
 - *McFalls v. Purdue*, 3:16-cv-02116 (D. Or. Filed Nov. 4, 2016)
 - *Bayview Plaza Tenants Association v. Bouma*, 2:17-cv-01771 (WD Wash., filed Nov. 17, 2017).
 - *Manistee Lakeview Apts. Tenant Association v. Stechschulte*, No. 1:18-cv-1250 (WD Mich., filed Nov. __ 2018).

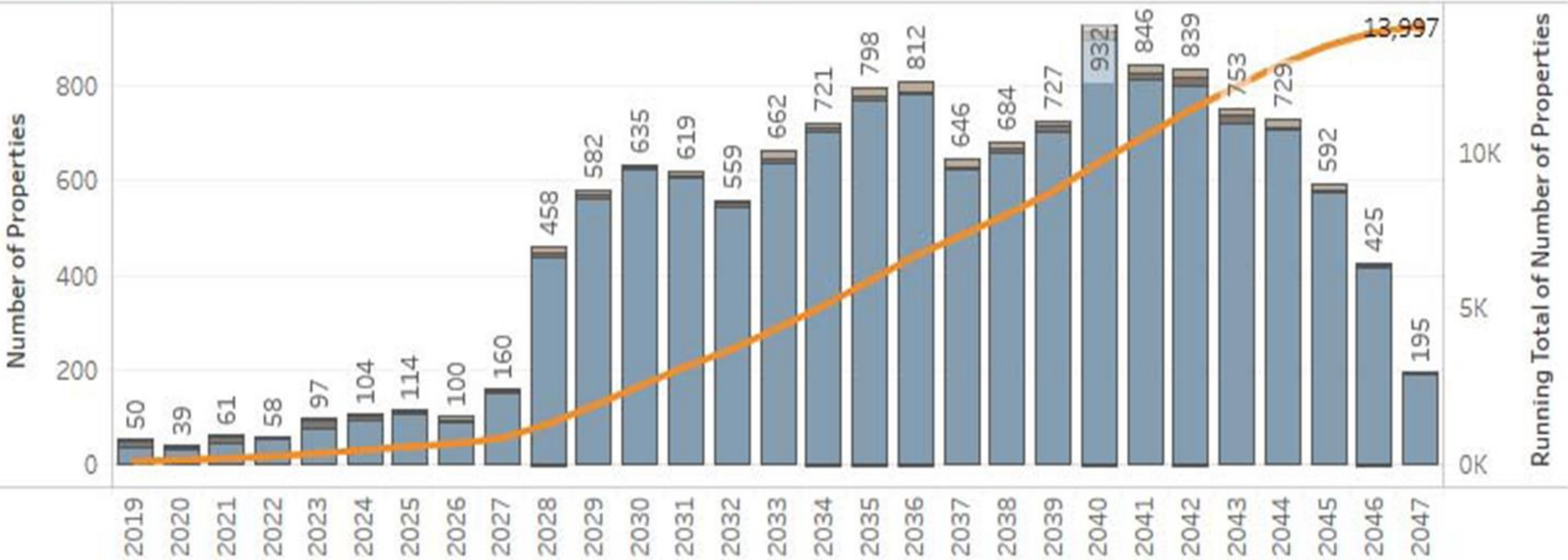
Mortgage Maturities

- Mortgage maturity = date on which mortgage was originally set to paid off
 - 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 UL 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



Mortgage Maturities by Year

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



Source: public.tableau.com; can be filtered by state

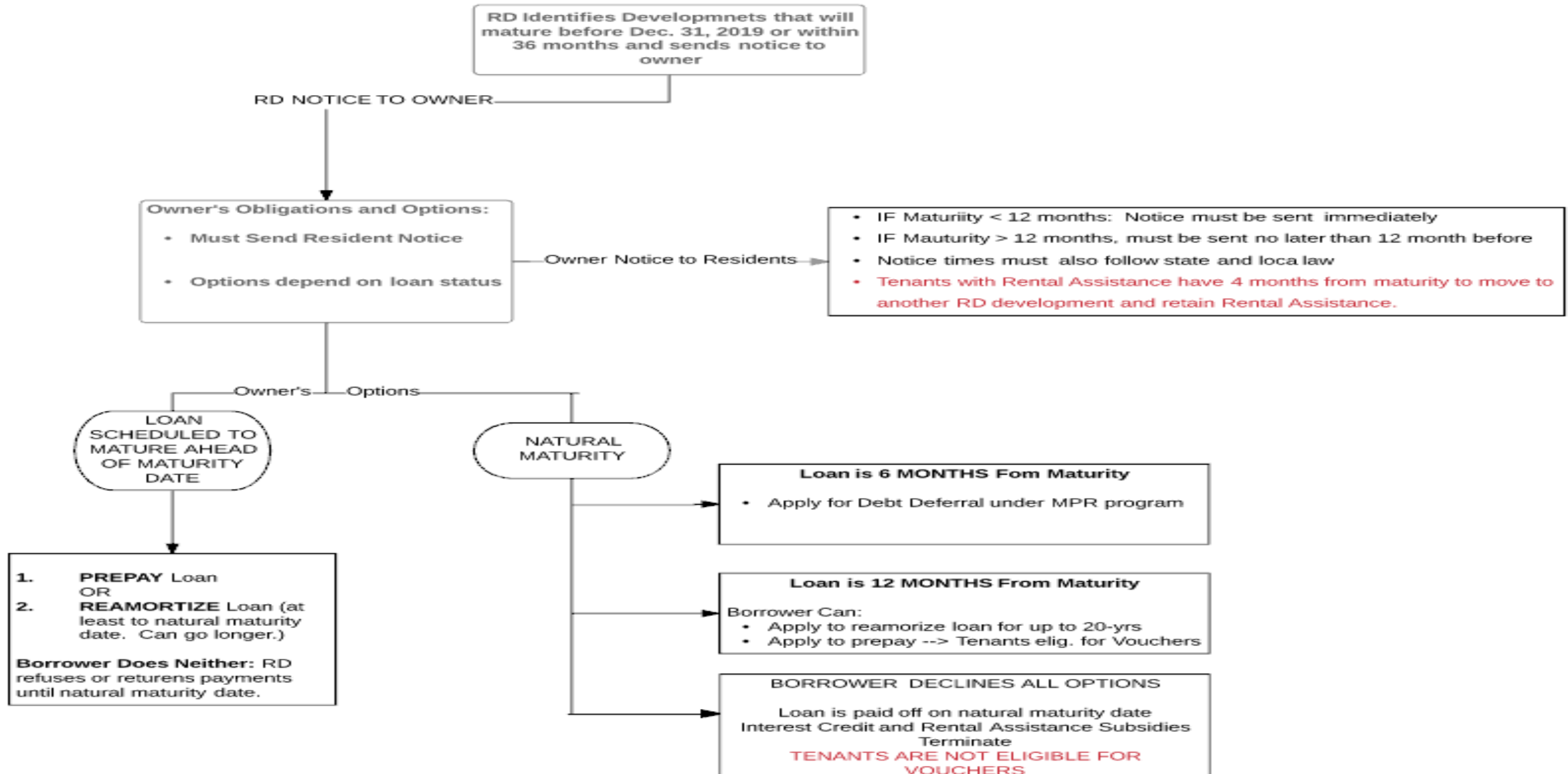
2019: 1025 units, 357 RA

2020: 837 units, 359 RA

Why are we seeing maturing mortgages?

- 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



- 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

- 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 increases
 - 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

Monitoring and Advocacy

- ❑ 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 2021.
- ❑ 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 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



Project Transfers In and Outside Prepayment Process

- A number of private buyers are purchasing multiple developments and operating them as one portfolio
 - e.g. Greystone Helps Preserve 1,085 Units of Affordable Housing in \$130 Million Tax-Exempt Bond Transaction in Florida. <https://www.greystone.com/greystone-helps-preserve-1058-units-affordable-housing-130-million-tax-exempt-bond-transaction-florida/>
 - ✦ 24 Section 515 developments in 12 counties
- Not all units in these purchases are subsidized with Rental Assistance
 - New owner will likely have to increase rents to finance purchase and rehabilitation of developments (10% rent increase limitation)

Project Transfers In and Outside Prepayment Process

- Residents without rental assistance are likely to be affected and may pay more than 30% of income for shelter.
- Some owners may set up a special fund that will subsidize rents to ensure that residents do not pay more than 30% of income for shelter.
 - After tenants leave development, owner admits higher income households
- These issues may also arise in single development transfers.
- Where residents rents are increased consider enforcing 42 U.S.C. §1490a(a)(3)(c)
 - “**No rent for a unit** financed under section [1484](#) or [1485](#) of this title **shall be increased** as a result of this subsection or other provision of Federal law or Federal regulation **by more than 10 per centum in any twelve-month period**, unless the increase above 10 per centum is attributable to increases in income which are unrelated to this subsection or other law, or regulation”
- Also consider enforcing 42 USC §1471(g)
 - **AVOIDANCE OF INVOLUNTARY DISPLACEMENT OF FAMILIES AND BUSINESSES** The programs authorized by this subchapter shall be carried out, consistent with program goals and objectives, so that the involuntary displacement of families and businesses is avoided.

Questions?



Technical Assistance, Training, and Other Resources

- AN ADVOCATE'S GUIDE TO RURAL HOUSING PRESERVATION: PREPAYMENTS, MORTGAGE MATURITIES, AND FORECLOSURES (May 2018) (available at <https://www.nhlp.org/trainings-publications/nhlp-publications/?tag=rural-housing&category=&keywords=>)



**FOR ADDITIONAL SUPPORT CONTACT
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