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

www.nhlp.org
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
About Rural Development (RD)

- Offers loans, grants, and loan guarantees to support economic development in rural communities
- Responsible for administration of all USDA housing programs
Background

• **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
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 (35), Hawaii (28) or Puerto Rico (98)
Consequences of Mortgage Prepayments and Maturities

- 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)
Where are there prepayment-eligible projects in my community?

- **PIX Prepayment data:**
  - [https://pix.sc.egov.usda.gov/](https://pix.sc.egov.usda.gov/)

- **RD Exit data:**
  - [https://public.tableau.com/profile/creg.stec:k7461#!/vizhome/USDARuralDevelopmentMulti-FamilyHousing/Overview](https://public.tableau.com/profile/creg.stec:k7461#!/vizhome/USDARuralDevelopmentMulti-FamilyHousing/Overview)

- **Policy Map data:**
  - [https://www.policymap.com/maps](https://www.policymap.com/maps)
THIS SLIDE IS maturing Mortgages
NHLP, 5/21/2017
check
NHLP, 5/21/2017
### Property Fact Sheet

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Valley Oaks Apartments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Status</td>
<td>Prepayment Requested</td>
</tr>
<tr>
<td>Project Address</td>
<td>40410 Redbud Dr.</td>
</tr>
<tr>
<td>City, State, Zip</td>
<td>Oakhurst, CA, 93644</td>
</tr>
</tbody>
</table>

### Rental Property Information

- **Total Units:** 24
- **Units with Subsidy:** 24
- **Complex Type:** Family
- **Family Size:** 18
- **Bedrooms:**
  - Studio: 0
  - 1 Bdr: 24
  - 2 Bdr: 18

### Contact Information

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

### Apartment Information

- **Valley Oaks Apts**
- **40410 Redbud Drive, Oakhurst, CA 93644**

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### Additional Listings

- **Oakhurst, CA**
- **Prepayment Requested Valley Oaks Apartments**
  - [rdmfhrentals.sc.egov.usda.gov](https://rdmfhrentals.sc.egov.usda.gov/)

- **Portola, CA**
- **Prepayment Requested**
  - [rdmfhrentals.sc.egov.usda.gov](https://rdmfhrentals.sc.egov.usda.gov/)

- **Quincy, CA**
- **Prepayment Requested**
  - [rdmfhrentals.sc.egov.usda.gov](https://rdmfhrentals.sc.egov.usda.gov/)

- **Ramona, CA**
- **Prepayment Requested**
  - [rdmfhrentals.sc.egov.usda.gov](https://rdmfhrentals.sc.egov.usda.gov/)

- **Sonoma, CA**
- **Prepayment Requested**
  - [rdmfhrentals.sc.egov.usda.gov](https://rdmfhrentals.sc.egov.usda.gov/)

- **Canton, CT**
- **Prepayment Requested**
  - [rdmfhrentals.sc.egov.usda.gov](https://rdmfhrentals.sc.egov.usda.gov/)
Properties with Maturing Mortgages

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

- Number of Properties
- Running Total of Number of Properties

- 2017: 102
- 2018: 69
- 2019: 50
- 2020: 39
- 2021: 44
- 2022: 61
- 2023: 85
- 2024: 97
- 2025: 104
- 2026: 114
- 2027: 160
- 2028: 436
- 2029: 563

- 2014: 581
- 2017: 122
- 2018: 63
- 2019: 50
- 2020: 39
- 2021: 44
- 2022: 61
- 2023: 85
- 2024: 97
- 2025: 104
- 2026: 87
- 2027: 149
- 2028: 458
- 2029: 581
Where are there properties with maturing mortgages in my community?

- **RD Exit Data** *(current as of 12/31/2017):*
  - [https://public.tableau.com/profile/greg.steck7461#!/vizhome/USDA_Rural_Development_Multi-Family_Housing/Overview](https://public.tableau.com/profile/greg.steck7461#!/vizhome/USDA_Rural_Development_Multi-Family_Housing/Overview)

<table>
<thead>
<tr>
<th>Estimated Property Exit Date</th>
<th>State</th>
<th>Property Name</th>
<th>City</th>
<th># OF UNITS</th>
<th>Rental Type</th>
<th>YR. Restrictive Clause Exp.</th>
<th>YR. of Loan Obligation</th>
<th>Remaining Term (Days)</th>
<th>Orig Loan Term</th>
<th>Prepay Eligible Date Yr</th>
<th>Prepay Eligible Year</th>
<th>Loan Payoff Year</th>
<th>Estimated Property Exit Year</th>
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<tbody>
<tr>
<td>12/6/2023</td>
<td>CA</td>
<td>CASA PAJARO FLH</td>
<td>WATSONVILLE</td>
<td>34</td>
<td>Family</td>
<td>1996</td>
<td>1991</td>
<td>6.7</td>
<td>32.9</td>
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<td>2023</td>
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<td>5/30/2042</td>
<td>CA</td>
<td>WESTWOOD SENIOR</td>
<td>WESTWOOD</td>
<td>24</td>
<td>Elderly</td>
<td>2032</td>
<td>1991</td>
<td>306.0</td>
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<td>5 Family</td>
<td>2013</td>
<td>1992</td>
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<td>1991</td>
<td>17.3</td>
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<td>32.9</td>
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<td>SOLEDAD TOWNHOU\SOLEDAD</td>
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<tr>
<td>2/17/2034</td>
<td>CA</td>
<td>LEMOORE VILLA</td>
<td>LEMOORE</td>
<td>28</td>
<td>Family</td>
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<td>1991</td>
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<td>49.9</td>
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<td>2034</td>
<td>2034</td>
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</tbody>
</table>
Mortgage Prepayments
What is a mortgage 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 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?

• 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

- 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?

1. Borrower submits prepayment request to RD (180 days)
2. RD provides written notice and opportunity to comment to tenants (30 days)
3. RD determines owner’s eligibility to prepay (60 days)
   - Owner eligible to prepay
     - RD must offer incentives to owner to remain in RD program
       - Owner accepts incentives
         - No prepayment; property remains in RD program
       - Owner rejects incentives
         - RD must determine whether prepayment will materially affect "minority housing opportunities"
           - Material effect
             - RD must determine if there is "adequate comparable alternative housing" for current residents to relocate to
               - Adequate comparable housing
                 - Owner can prepay without use restrictions
               - No adequate comparable housing
                 - Owner can only prepay subject to use restrictions
           - No material effect
             - RD must determine if there is "adequate comparable alternative housing" for current residents to relocate to
               - Adequate comparable housing
                 - Owner can prepay without use restrictions
               - No adequate comparable housing
                 - Owner can only prepay subject to use restrictions
   - Owner not eligible to prepay
     - No prepayment; property remains in RD program

Risks and Opportunities for Input and Advocacy

- 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

- 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

- “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

- “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)

• “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

- 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:

- 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

- Number of Properties
- Running Total of Number of Properties

<table>
<thead>
<tr>
<th>Year</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
<th>2023</th>
<th>2024</th>
<th>2025</th>
<th>2026</th>
<th>2027</th>
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<th>2029</th>
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<td></td>
<td>102</td>
<td>63</td>
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<td>74</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td>2014</td>
</tr>
</tbody>
</table>

- 2014: 2014 properties exit
- 2029: 2029 properties exit
What is mortgage maturity?

- 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.
    - 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?

- 515 programs started in 1962; original loans were for 40/50 yrs. After 1989: 30 years with 20-year RD extension option.

  - 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

RD Identifies Developments that will mature before Dec. 31, 2019 or within 36 months and sends notice to owner

RD NOTICE TO OWNER

Owner’s Obligations and Options:
- Must Send Resident Notice
- Options depend on loan status

Owner Notice to Residents

Owner’s Options

LOAN SCHEDULED TO MATURE AHEAD OF MATURITY DATE

1. PREPAY Loan
   OR
2. REAMORTIZE Loan (at least to natural maturity date. Can go longer.)
   Borrower Does Neither: RD refuses or returns payments until natural maturity date.

NATURAL MATURITY

Loan is 6 MONTHS From Maturity
- Apply for Debt Deferral under MPR program

Loan is 12 MONTHS From Maturity
Borrower Can:
- Apply to reamortize loan for up to 20 yrs
- Apply to prepay --> Tenants elig. for Vouchers

BORROWER DECLINES ALL OPTIONS
- Loan is paid off on natural maturity date
- Interest Credit and Rental Assistance Subsidies terminate
- TENANTS ARE NOT ELIGIBLE FOR VOUCHERS

• IF Maturity < 12 months: Notice must be sent immediately
• IF Maturity > 12 months, must be sent no later than 12 month before
• Notice times must also follow state and local law
• Tenants with Rental Assistance have 4 months from maturity to move to another RD development and retain Rental Assistance.
Notice of Loan Maturity

• 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.
        • Reamoritize loan to maturity date/or advise that final payment cannot be accepted till maturity date.
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](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 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

- 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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