



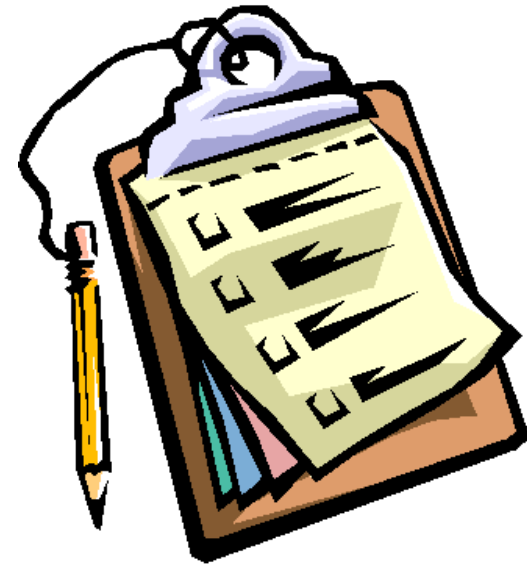
***Protecting RD Residents and
Preserving RD Rental Housing:***
Prepayments, Use Restrictions, RD Vouchers,
and Loan Maturities

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Jessie Cassella

December 12, 2017

Agenda

- What are the key rural preservation risks? Where do they exist in my community?
- What are the risks and challenges of rural prepayments?
- What are the long-term affordability challenges after prepayment?
- What are the risks of rural loan maturities? What can be challenged and how can tenants be protected?



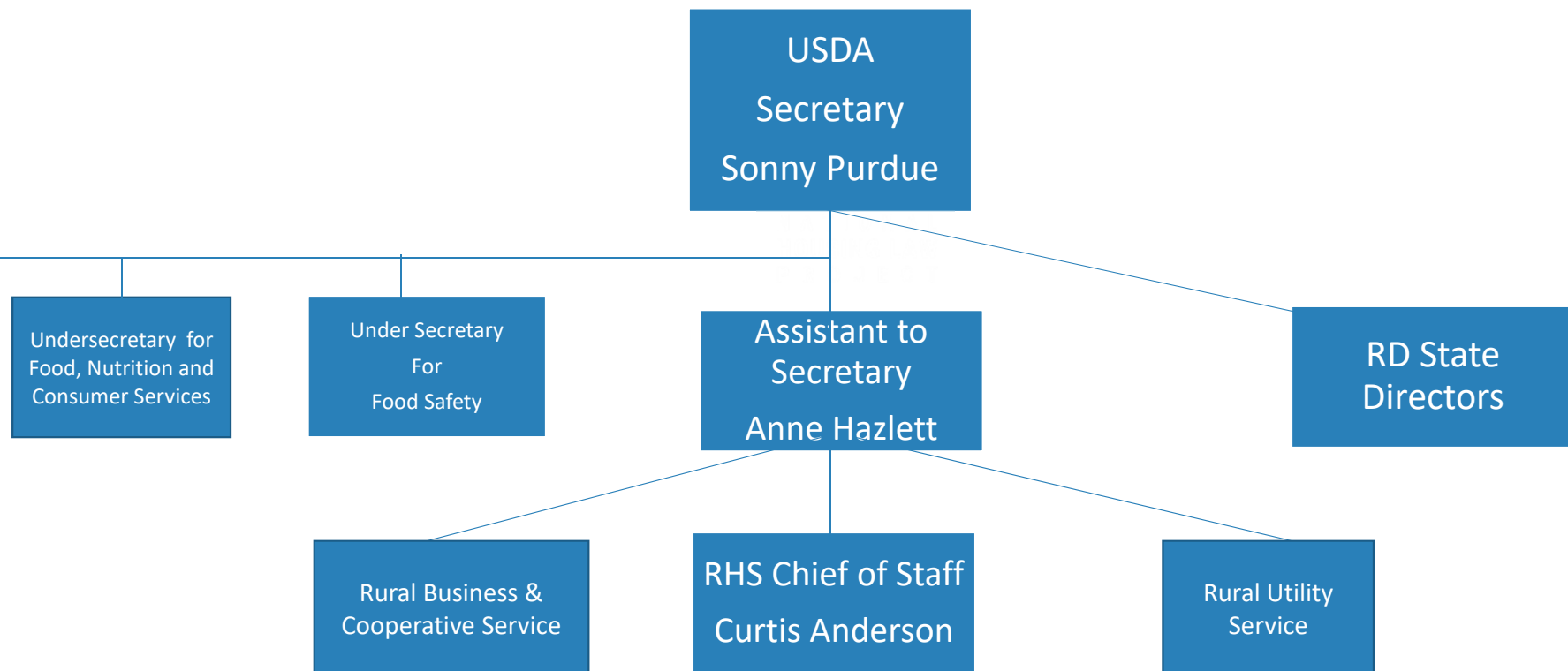
For more information on rural prepayments and maturing mortgages, please see NHLP's prior rural preservation webinar:

<https://www.nhlp.org/webinars/may-30-2017-prepayments-loan-maturities-protecting-residents-preserving-rd-rental-housing/>

Understanding Rural Preservation Risks and Where They Exist in Your Community

New USDA Organizational Structure

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RD Section 515 Program

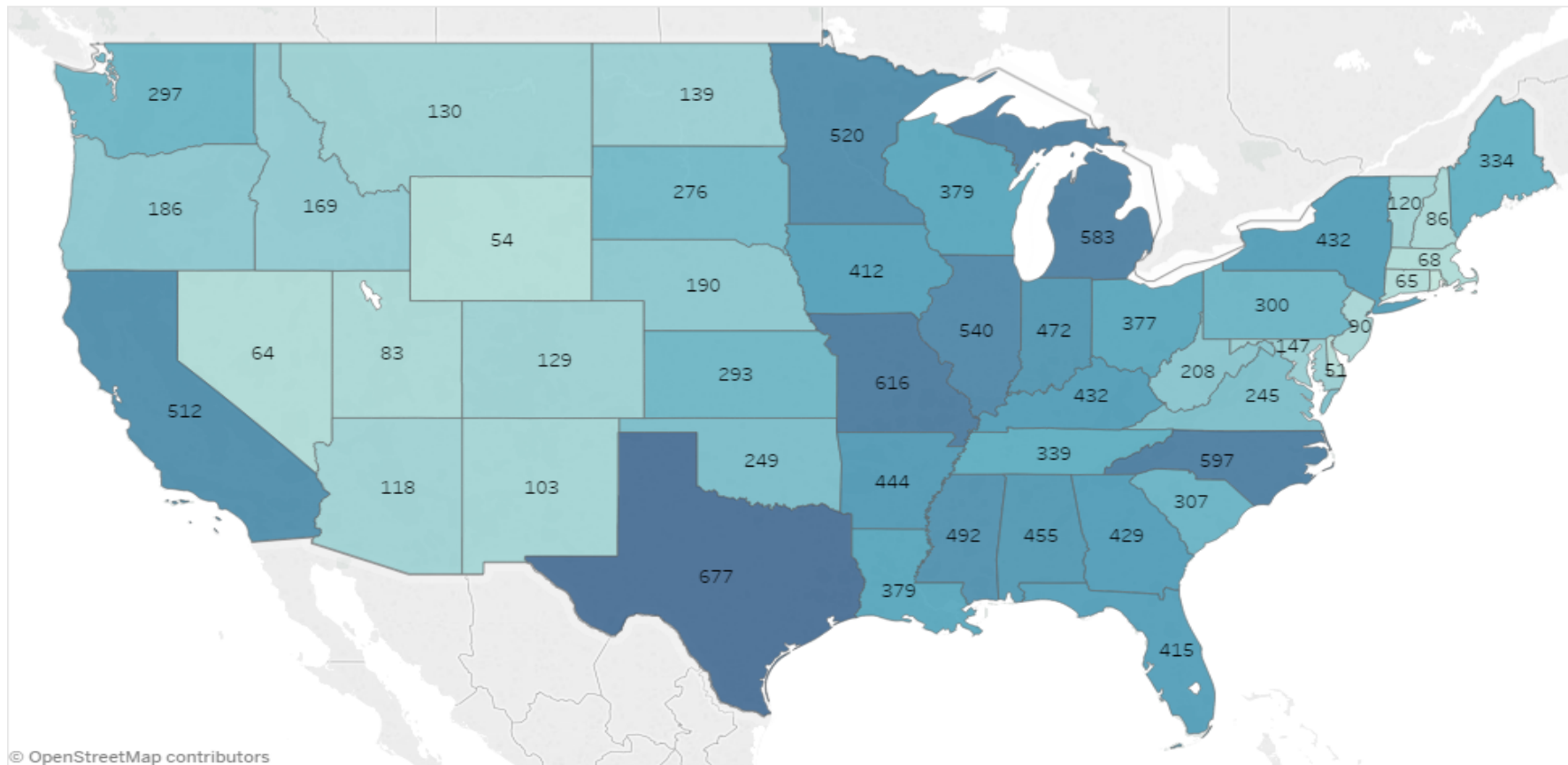
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- Number of units:
 - >550,000 total units constructed
 - ~410,000 units (13,600 properties) currently remain
- Demographics:
 - 60% of residents are elderly or persons with a disability
 - 30% of occupants are people of color
 - 70% of households receive RD Rental Assistance
- Preservation risks:
 - ~5,000 units are prepaid annually
 - 63 properties (1,000-2,500 households) w/ maturing mortgages in 2018



Section 515 & 514/516 Properties

Geographic Distribution - Number of Properties



© OpenStreetMap contributors

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

Prepayment Eligible Properties (cumulative 2016-2049)

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Prepay Eligibility - Running Total

Prepay Eligible Date Rectangular Snip

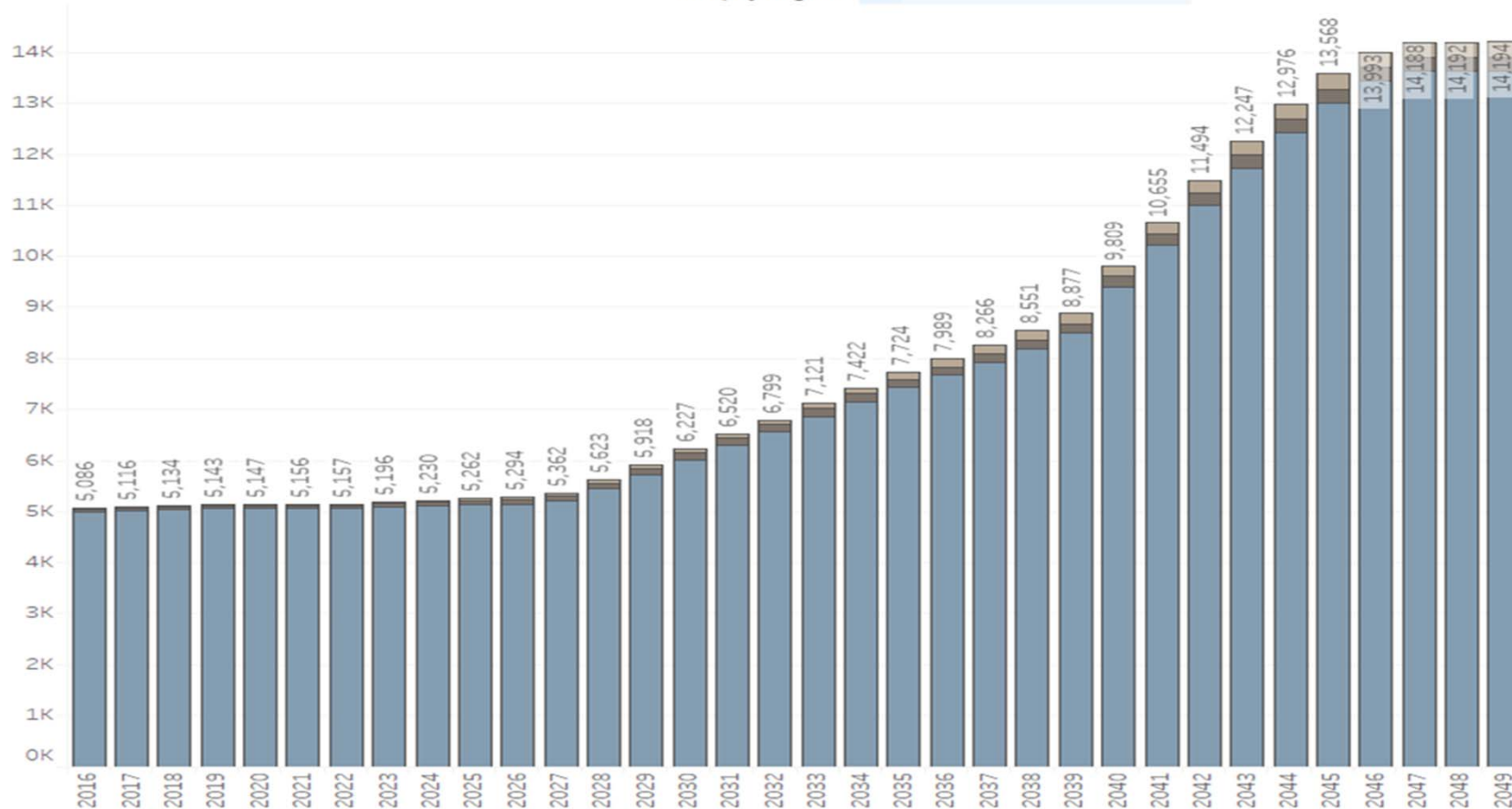
Select Breakdown Category

Loan Program

Category Field

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

Running Total Property Count



PIX: How to Find Developments That Have Applied to Prepay

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Oakhurst CA Prepayment Requested Oakhurst Apartments
https://pix.sc.egov.usda.gov/pixdad/pub_show_property?USER_ID=942400196&PASSWORD=housing8&P_ID=781364&P_STATUS=PP

Quincy CA Prepayment Requested Quincy Garden Apartm
https://pix.sc.egov.usda.gov/pixdad/pub_show_property?USER_ID=942400196&PASSWORD=housing8&P_ID=935094&P_STATUS=PP

Ramona CA Prepayment Requested Countryside Apts
https://pix.sc.egov.usda.gov/pixdad/pub_show_property?USER_ID=942400196&PASSWORD=housing8&P_ID=877300&P_STATUS=PP

Ramona CA Prepayment Requested Countryside II
https://pix.sc.egov.usda.gov/pixdad/pub_show_property?USER_ID=942400196&PASSWORD=housing8&P_ID=877350&P_STATUS=PP

Sonoma CA Prepayment Requested Sonoma Village Apart
https://pix.sc.egov.usda.gov/pixdad/pub_show_property?USER_ID=942400196&PASSWORD=housing8&P_ID=794114&P_STATUS=PP

Canton CT Prepayment Requested Maple Glen
https://pix.sc.egov.usda.gov/pixdad/pub_show_property?USER_ID=942400196&PASSWORD=housing8&P_ID=135637&P_STATUS=PP

Colchester CT Prepayment Requested Nutmeg Park
https://pix.sc.egov.usda.gov/pixdad/pub_show_property?USER_ID=942400196&PASSWORD=housing8&P_ID=835671&P_STATUS=PP

Suffield CT Prepayment Requested Park Place
https://pix.sc.egov.usda.gov/pixdad/pub_show_property?USER_ID=942400196&PASSWORD=housing8&P_ID=912046&P_STATUS=PP

Lewes DE Prepayment Requested Jefferson Apartments
https://pix.sc.egov.usda.gov/pixdad/pub_show_property?USER_ID=942400196&PASSWORD=housing8&P_ID=150021&P_STATUS=PP

Register to receive weekly emails
for specific states:

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

Understanding Key Data

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Property Fact Sheet

Project Name:	Braidwood Apts Tr 3827
Status:	Prepayment Requested
Project Address:	185 E Reed St
City, State Zip:	Braidwood, IL 60408
Appraisal Value:	
Listed For Sale Date	
Application Accepted Date	29-SEP-17
Total Apt. Units	Apt. Units
	24
Borrower:	Beneficiary Royce A Winans Executor
Address:	PO Box 200
	North Garrard
City, State Zip:	Rantoul, IL 61866
Telephone:	
Fax Number:	
Borrower Contact:	Allen & Korkowski & Assoc.
Rural Development Office:	Illinois State Office
Address:	2118 West Park Court
	Suite A
City, State Zip:	Champaign, IL 61821
Telephone:	(217) 403-6200
Project Picture:	Not Available

<https://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/>

Rental Property Information



Total Units: 24
Units with Subsidy: 14
Complex Type: Family
Bedrooms: **Studio:**
 0
1 Bdr. 12
2 Bdr. 12

Contact Information

Palen Management
 Phone: (815) 657-8259
 Email: Unavailable
 Website:
WWW.PALENREALESTATE.COM

Apartment Information

Braidwood Apts Tr 3827
 405 E Reed St
 Braidwood, IL 60408

[View Map](#)

[Contact Servicing Office](#)

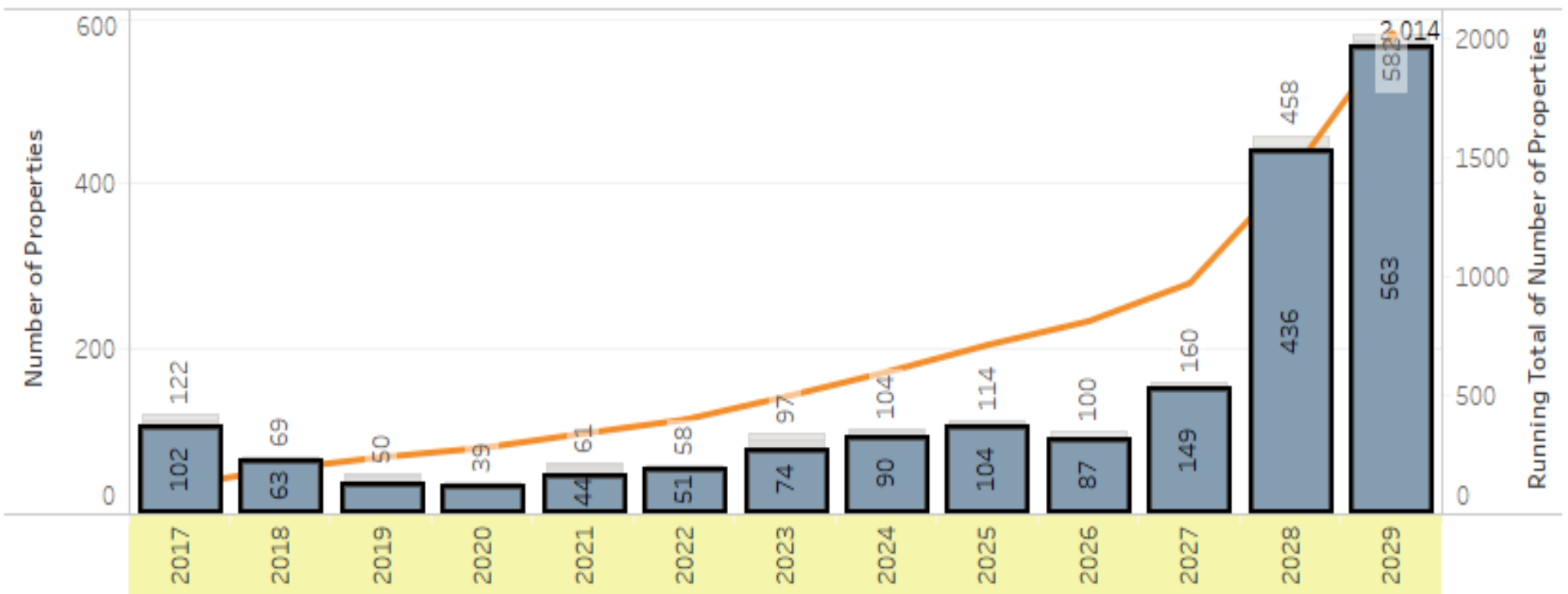
[View Income Limits](#)

Last Modified: 7/11/2015

Maturing Mortgage Properties

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

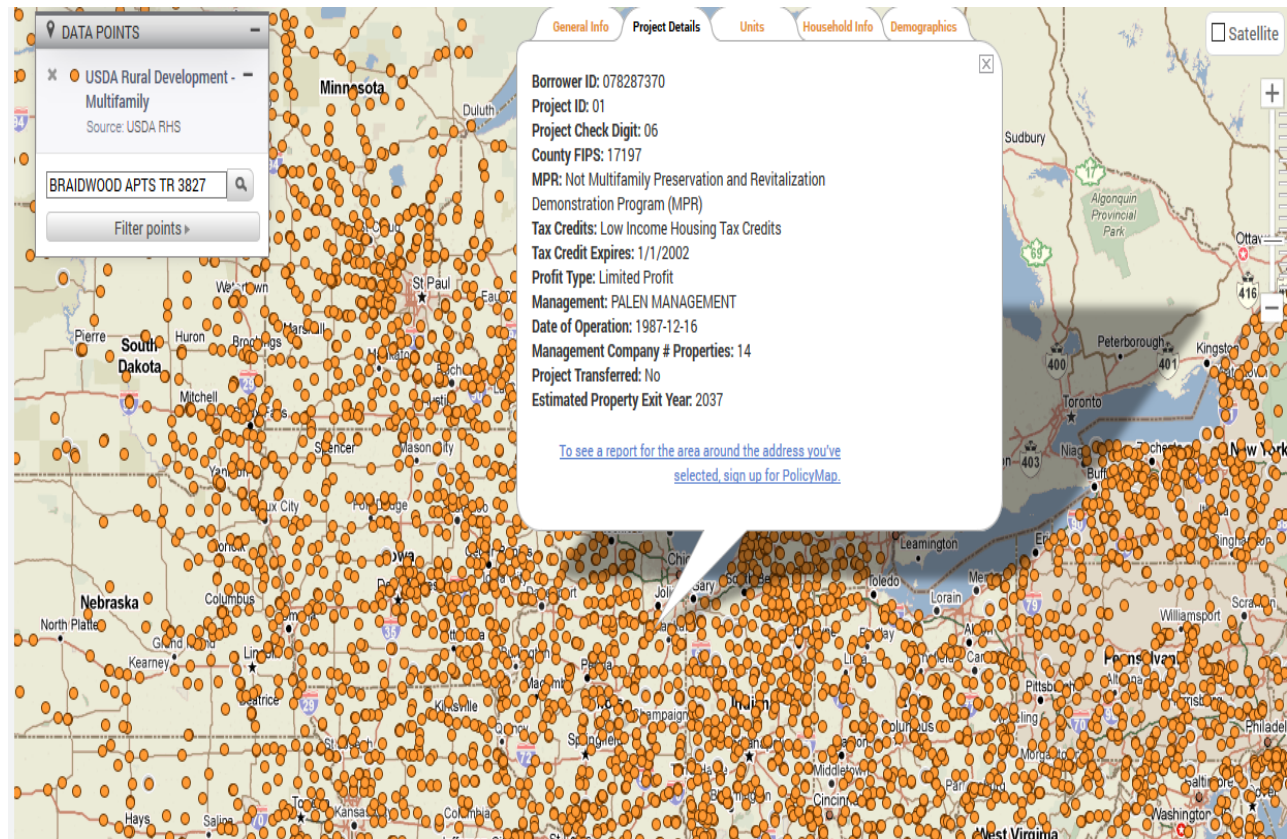


Source: public.tableau.com; can be filtered by state

Other Sources of Data

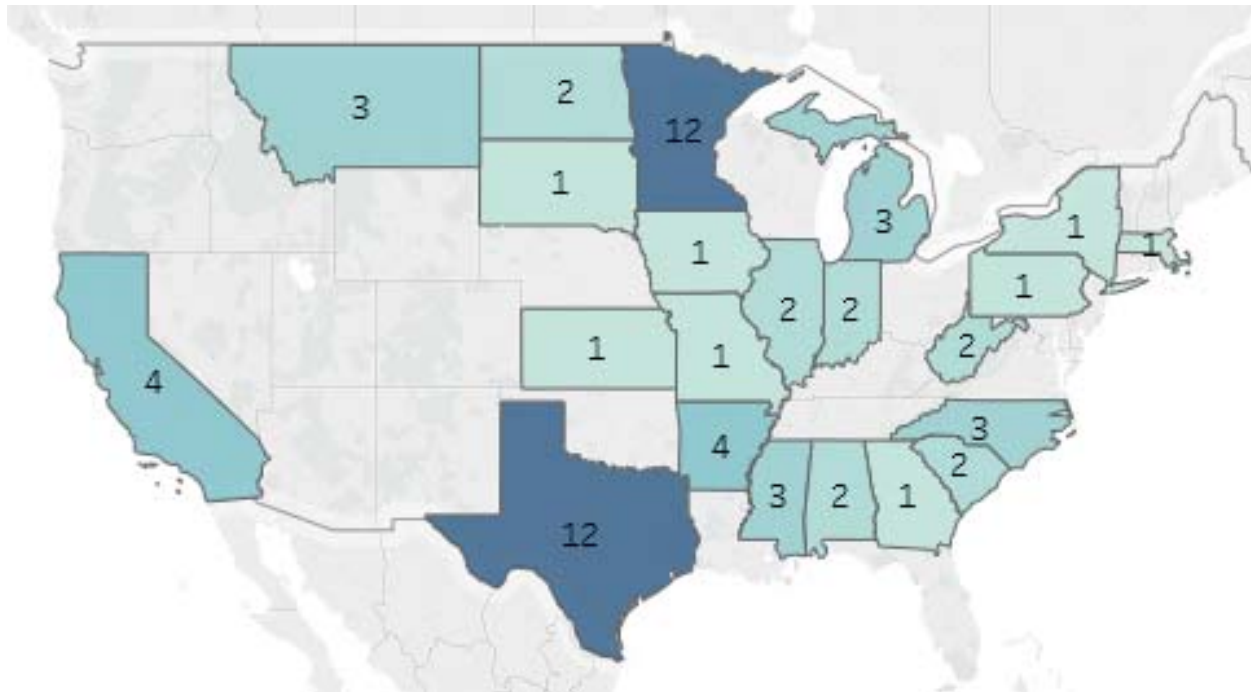
<https://www.policymap.com/maps>

- Search by project name
- Provides:
 - General information
 - Project details, including owner loan maturity date, whether project has tax credits or MPR assistance
 - Types of units and subsidies
 - Tenant household info
 - Tenant demographics



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<https://public.tableau.com/profile/greg.steck7461#!/vizhome/USDARuralDevelopmentMulti-FamilyHousing4Q16/States>



2018 Loan Maturities by State

Risks and Challenges of Rural Prepayments

What is a Mortgage Prepayment?

- Prepayment = full payment of the outstanding loan balance before 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 + interest payments were based on an annual basis but paid on a monthly basis, or
 - monthly payments not properly calculated
- RD may accept prepayments *only if* owner first complies with prepayment restrictions to preserve low-income housing and protect residents
 1. Effect on minority housing opportunities, and
 2. Adequate comparable housing opportunities



Effect on Minority Housing Opportunities

- “Materially affect” (statutory: 42 U.S.C. §1472(c)(5)(G)(ii)) V.
“disproportionately impact” (regulatory: 7 C.F.R. §3560.658(b))
- Relevant factors (RD Handbook 3-3560, Chap. 15, ¶ 15.21):
 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



Problems with RD Determining Minority Impact

- Uses **wrong definition of impact** in regulations and in CRIA
 - “Disproportional” v. “material”
- RD has never adopted **standards** for assessing RD Handbook factors
- Often concludes no disproportional impact because:
 - *All* residents will be displaced
 - *All* residents will receive vouchers
 - More minorities in community than in development (fails to consider or compare income of residents and minorities in community)
- Census **data** is based on *persons*, RD data on *households*



Problems with RD Determining Housing Availability

- Does not compare residents' shelter payment with rent for other housing particularly when residents receive Rental Assistance
 - does not include utility costs/allowances
 - assumes residents will have vouchers to pay higher rents
- Does not adequately assess availability as of date of prepayment



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** adverse decision (42 USC 1480(g); 7 CFR part 11; 5th Amendment of U.S. Constitution)

• Instead, residents often get:

- Conclusory statements of decision
- No right to appeal under regulations
- No/generic notice of appeal



Tips for Challenging Prepayment Decisions

- Who could be **plaintiffs**? Individual tenants, local nonprofit, potential purchaser
- Who is the **defendant**? Owner, RD state office, RD headquarters
- What standards were used to determine impact on **minority housing opportunities**?
- Has RD determined that there is **adequate comparable housing** in the community?
- Were tenants **notified** of, or provided opportunity to, enforce their rights?
- What are the **risks** of challenging the prepayment? Potential loan maturity? No willing nonprofit purchaser?
 - Seek to enforce Use Restrictions instead
 - Pursue prompt issuance of RD Vouchers
- What **harm** have plaintiffs experienced and what **relief** is needed?



Long-Term Affordability After Rural Prepayments

RD Use Restrictions

- Intended to protect existing residents from displacement as of prepayment date
 - Owner must continue to operate development *as if still under Section 515 program*
 - Shelter costs for Rental Assistance residents must continue
 - Shelter costs for residents paying basic rent or more may increase as operating costs, not related to prepayment increase
 - All RD resident protections remain in place (good cause, right to grieve, etc.)
 - Residents have express right to enforce use restrictions; RD has discretion
- But RD regulations authorize lifting of use regulations when tenant assistance (i.e. RD Voucher funding) stops



Owners' and RD's Interpretation of Use Restrictions

Requirements:

- Use Restriction requires continued operation as if development continues to be a Section 515 development
- Resident leases extend beyond prepayment date and renew annually
- Residents don't need RD Vouchers and owners are not entitled to receive them

Incorrect:

- Loss of Rental Assistance after prepayment permits owners to increase rents to “basic rent” or “market rent”
- Prepayment allows termination of existing leases
- New leases required for residents to become eligible for RD Vouchers

Can RD approve prepayment without restrictions?

Yes, under limited circumstances:

1. When owner offered to sell development to nonprofit/public entity and no bona fide offer was received to purchase the property (42 U.S.C. §1472(c)(5)(a))
2. When no impact on minority housing opportunities and alternative affordable housing is available in the community as of the date of prepayment (42 U.S.C. §1472(c)(5)(G)(ii)(II))



RD Vouchers

(82 Fed. Reg. 21972 (May 11, 2017))

- Vouchers are intended to protect residents against hardship from prepayment
 - Amount= difference between resident's existing shelter cost and market value of their apartment
 - Determined as of prepayment date; value does not change over time
 - If resident moves to other private housing, subsidy does not change
 - Vouchers are portable anywhere in U.S.
 - But subsidy does not change in communities with higher market rents
 - Limited by annual federal appropriations
- Residents do not benefit from RD Voucher when they remain in development prepaid subject to use restrictions



Issues with RD Vouchers

- **Timing:**
 - Tenants cannot apply until *after* prepayment
 - RD Voucher retroactive payment limited to 60 days after HAP contract signed, but it typically takes more than 60 days to get RD Vouchers issued
 - RD must inspect and approve unit before issuing RD Vouchers
 - RD Rental Assistance is credited to borrower's account at the beginning of the month; rents can't increase until the following month
 - New leases may obligate resident to pay market rent after prepayment and before vouchers are issued
 - Must be used within 10 months of issuance
- **Federal funding:**
 - RD has overspent RD Voucher appropriations for past several years
 - RD has run out of RD Voucher funds once; likely to happen again
- **Household impacts:**
 - Only assigned to one household member
 - Cannot be transferred except on death of RD Voucher holder
- **Static:**
 - Does not increase or decrease to accommodate changes in rents, income decrease, or increase in household size



Challenging Rent Increases Before Voucher Issuance

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- Against owners:
 - Violation of state notice law for rent increases
 - Violation of existing RD leases
 - If new leases, challenge for lack of consideration
- Against RD:
 - Vouchers intended to alleviate hardship from prepayment
 - RD violates law (or is at least acting arbitrarily) by:
 - Not allowing residents to apply for RD Vouchers until after prepayment
 - Granting itself 90 days to reply to application but only allowing 60-day retroactive rent payments
 - Locking residents into leases at prepaying development



Transferring to Another RD Development

- Residents are entitled to Letters of Priority Entitlement (LOPE)
 - RD sample letter gives residents absolute priority admission to any other RD development
 - LOPE regulatory priority is only among same income group (7 C.F.R. §3560.154 (g)(2)).
- Residents receiving RA can transfer their RA to another RD development if the resident transfers within 4 months of prepayment
 - In most communities, there are not sufficient vacancies to accommodate residents from a prepaying development to another RD development



Rural Loan Maturities: Risks and Protections

Loan Maturities

- Loan maturity = promissory note mortgage payoff date
 - Any payment in full before mortgage payoff date = prepayment
 - Owners who received settlement payments under *Franconia v. U.S.* agreed to extend loan restrictions for 20 years
- RD [Unnumbered Letter \(Dec. 28, 2016\)](#) describes RD actions to help residents in developments nearing maturity



Responding to Loan Maturities

- ✓ Check to see if RD has sent **Borrower Notification Letter** to owners of properties whose mortgages with mature within 36 months;
- ✓ Check to see if the owner has **notified tenants** of the impending mortgage maturity, and assist tenants in understanding the notice and its consequences;
- ✓ Advocate with the owner to **re-amortize and extend their loan** for up to 20 years, **apply for debt deferral** under the Multi-Family Preservation and Restructuring program, or **apply to prepay** the mortgage prior to maturity;
- ✓ Identify any **local nonprofit or public agencies** who may be willing to **purchase** + preserve property;
- ✓ Identify if owner has complied with **state or local laws** re: subsidy termination;
- ✓ Identify and support **needs of relocating tenants**, including physical or financial assistance, and local service agencies who may be able to assist;
- ✓ **Identify other RD- and HUD-subsidized housing in the community**, and assist tenants in applying for any available housing;
- ✓ Advocate with RD to provide tenants with **Rental Assistance** at new RD property; and
- ✓ Advocate with RD to provide **Letters of Priority Entitlement** (LOPEs) to tenants.

Additional Resources

Assisting Residents

- Residents in rural rental housing need information and assistance!
 - ✓ Tenant education and outreach by legal services and community advocates are needed
 - ✓ Follow what developments in your service area have prepaid, are nearing loan maturity, or are being foreclosed upon
 - ✓ Help them understand what is happening and what options that are available to them
 - ✓ Identify family members and service agencies that may assist them



Questions?

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TA, Training, Litigation Support

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NHLP's Rural Preservation Handbook coming soon!



*Please contact Gideon Anders (ganders@nhlp.org)
and Jessica Cassella (jcassella@nhlp.org) for
additional assistance*