

Understanding HAP Contract Renewals, Opt Outs, and Terminations

Jessie Cassella National Housing Law Project April 19, 2018

Types of HUD "Multifamily" Housing Programs

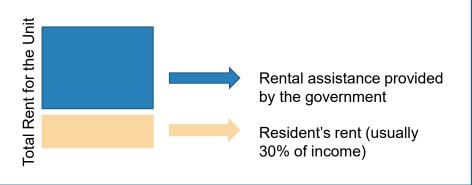
Mortgage Programs

- Loans and mortgage insurance (with low interest rates) from HUD to private owners to build and manage affordable housing
 - Loans include rent and use restrictions for a certain number of years (~40-50 years)
 - Ex: Section 236 program, Section 202 program



Rental Assistance Contracts

- Contract between HUD/public housing authority and private owner to provide rental assistance for low-income residents
 - Rental assistance supplements what the resident pays for rent
 - Ex: Project-based rental assistance, projectbased vouchers, Moderate Rehabilitation program, Rent Supplement program, Rental Assistance Payment program



HAP Contract Renewals

Why is HAP contract renewal important?

- HAP contracts = usually 20-year term
 - Most owners are not required to renew HAP contract at the end of its term
 - Owner decision to renew or "opt out" of the HAP contract depends on variety of economic (rent levels) and non-economic (administrative burdens) factors
- HAP contract is critical to maintain resident rents and preserve affordable homes



Contract Renewal Options

NATIONAL HOUSING LAW PROJECT

- Renew HAP contract for 1-20 years (at current rent)
- HUD "Mark Up to Market" program (5-20 years)
- HUD "Mark to Market" program
- Rental Assistance Demonstration (RAD) Component 2 (for Mod Rehab, Rent Supp, RAP, Section 202 PRAC properties

only)

Refinancing Options

- Many properties have growing repair needs, but few federal programs address them
- Options (capital and rental assistance) include:
 - Low Income Housing Tax Credits
 - Mark Up to Market
 - Rental Assistance Demonstration (RAD)
 - Project-Based Vouchers
 - Section 223(f) and Section 221(d)(4) mortgage insurance programs
 - State/local funds

HAP Contract Opt Outs

HAP Contract "Opt Out"

Contract "opt out" is when the owner decides *not to renew* the rental assistance contract when it *expires*



Potential Contract Opt Outs Within Next 5 Years

NATIONAL HOUSING LAW PROJECT



National Housing Preservation Database

Challenging HAP Contract Opt Outs

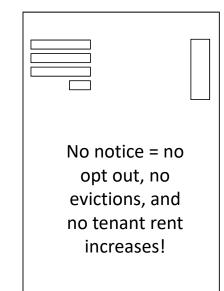
NATIONAL HOUSING LAW PROJECT

- 1. Is the property in a **gentrifying area** or "hot market"?
- 2. Who is the owner and do they receive other funding? Is the owner interested in renewing the contract?
- 3. What do the tenants want?
- 4. Are there **immediate** issues that need to be addressed?
- 5. Has the **owner** provided the proper 12-month and 4-month **notices**?
- 6. Is the owner willing to renew the contract if they receive additional funding from HUD? Does the property need funding to be repaired?
- 7. If the property is a Mod Rehab, Rent Supp, RAP, or Section 202 PRAC property, is the owner interested in **RAD**?
- 8. Is there another owner that is willing to purchase the property?
- 9. Will the owner agree to a **Section 8(bb) transfer?**



Notice Requirements

- Federal law requires that owners give a 1-year written notice to tenants and HUD that the HAP contract is expiring
 - This notice must (see <u>HUD Section 8 Renewal Policy Guide</u>):
 - Clearly state the owner's intentions (to renew or not renew)
 - Be served directly to each unit in the property or mailed to each head of household
 - Be translated
- Owner must confirm with HUD their final decision 4
 months before the HAP Contract expires (renew or opt
 out)



Opt Out = Enhanced Vouchers for Tenants



- If the contract is not renewed, federal law requires Enhanced Vouchers to be provided to tenants
- Enhanced Vouchers = Housing Choice Vouchers + additional tenant protections:
 - Tenant right to remain
 - EV tenant has the *right to remain* in their home, and the owner *must* accept the EV, as long as the property remains rental housing and has a reasonable rent
 - Higher payment standard
 - EV pays the difference between the tenant's rent and the *market* rent charged by the owner, even if that new rent is greater than the PHA's voucher payment standard
- If tenant moves, Enhanced Voucher becomes regular Housing Choice Voucher

HAP Contract Terminations

HAP Contract Termination

Contract termination is when HUD *terminates* the rental assistance contract with the owner because the *owner has* violated the contract



Responding to HAP Contract Termination

NATIONAL HOUSING LAW PROJECT

- **1. Why** is HUD proposing to terminate the HAP Contract?
- 2. Has HUD tried **other methods** to resolve the issues besides terminating the contract?
- 3. Will the owner sell the property to a responsible owner for preservation?
- 4. Will the owner agree to a **Section 8(bb) transfer?**



Contract Termination = Housing Choice Vouchers



- If the contract is terminated, the residents are entitled to receive tenant-based Housing Choice Vouchers
 - No EV right to remain
 - No EV higher payment standard
 - Use depends on landlord's willingness to accept the voucher



HAP Contract Renewals, Opt Outs, and Terminations in Practice

Emily Coffey, Sargent Shriver National Center on Poverty Law Natalie Minev, Legal Aid Foundation of Los Angeles

Additional Resources and Legal Authorities

Important HAP Contract Resources

- Section 8 Renewal Policy Guidebook
- HUD Handbook 4350.3:
 Occupancy Requirements of Subsidized Multifamily Housing Programs
- National Housing Preservation
 Database

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT



ASSISTANT SECRETARY FOR HOUSING-FEDERAL HOUSING COMMISSIONER

SPECIAL ATTENTION OF: Regional Center and Satellite Office Directors, Account Executives; PBCAs; Owners; and Management Agents TRANSMITTAL Section 8 Renewal Policy Guidebook Issued: 06/30/2017 Effective: 07/28/2017

A. Purpos

This transmittal updates the Section 8 Renewal Policy guidebook. The revisions are being published on June 30, 2017. This guidance will apply to renewal and amend rent packages received by the Department (or post-marked) on or after July 28, 2017.

B. Explanation of Changes.

Changes to the text of the Guide are in *italics*, except for Chapter 9 that was completely reorganized and updated. The changes:

- Clarify that Account Executives can round up or down the amount of time on the Preservation Agreement, depending on the amount of time remaining on the contract being terminated. (See Note after <u>Section 2-4</u>, A.2.a)
- Clarify that an owner who wishes to renew under Option Three can renew for the lesser of 20 years or the remaining term of the use agreement.
 (See Section 2-4, B.3.e.)
- Clarify that an owner who wishes to terminate an existing Option Four contract and renew the contract under Option Four, can do so. (See Section 2-4, B.4)
- Clarify that if an owner of a project with an existing Preservation Exhibit wishes to terminate the contract and renew early, the new Preservation Exhibit will replace the existing Preservation Exhibit and include only the number of years remaining on the contract being terminated. (See Section 2-4. D)
- Clarify that an RCS is not required at any subsequent MTM "Full" renewal during the life of the use agreement. (See Note after 2-5. E.3.)

Questions?



Jessie Cassella, <u>icassella@nhlp.org</u>, (202) 347-4703