NATIONAL HOUSING LAW PROJECT
advancing housing justice

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MEMORANDUM

TO:	Affordable Housing and Tenant Advocates, National Alliance of HUD Tenants
FROM:	Jim Grow, NHLP, Jack Cann, HPP, on behalf of the National Preservation Working Group
RE:	Tenant Protection Vouchers for Unassisted Tenants Facing Mortgage Maturity or Expiring Use Restrictions, HUD Notice PIH 2013-08 (April 12, 2013)
DATE:	April 30, 2013

At long last, HUD has issued a final version of its policy, HUD Notice PIH 2013-08, outlining the criteria for distributing funds for tenant protection vouchers for unassisted tenants residing in certain HUD properties that have experienced or face mortgage maturity or the expiration of use restrictions or assistance that does not require tenant protections. Notice PIH 2013-08 implements statutory language in the FY '12 Appropriations Act, Pub. L. No. 112-55, 125 Stat. 677 (Nov. 18, 2011), which was sought by the National Alliance of HUD Tenants, the Chicago Housing Initiative and other members of the National Preservation Working Group. This memo briefly explains the HUD policy and the accompanying list of potentially eligible properties. *As explained more fully in the "Next Steps" section on page 3 of this memo, we're asking that you scan the property list to determine whether further investigation of possible eligibility is warranted with owners, tenants and HUD, so that any request for protections can be filed by HUD's* ***June 14 deadline****.*

Summary of the HUD Policy
Note these important elements of the final policy:

1. Only up to $4 million of the authorized $10 million is being made available at this time. Depending on per unit cost and the term of HUD's funding increment for these vouchers, this funding may only cover as few as between 500 and 1500 vouchers. HUD will rank owner applications by maturity or expiration date, assisting those tenants who have been without assistance for the longest period of time.

2. Tenant protections are controlled by the **owner's application to HUD**, and **the deadline for the owner's application is June 14, 2013.** The many required tasks (identification, outreach to tenants and owners, project assessment, preliminary tenant eligibility determinations, and applications) are described in the Notice and must be completed quickly. An owner must provide notices to tenants **by May 15**.

3. In order for the unassisted tenants to be eligible, the property must:

- have experienced one of the following qualifying events **before or during FY '12 (i.e., before Sept. 30, 2012)**:
    - the maturity of a HUD-insured, HUD-held or Section 202 loan that required HUD approval prior to prepayment;
    - the expiration of a rental assistance contract for which tenants are not eligible for enhanced voucher or tenant protection assistance under other laws;
    - the expiration of affordability restrictions accompanying a HUD-administered mortgage or preservation program;
- be located in a low-vacancy area (as defined by HUD, within Counties listed on Attachment A of the Notice).

We identified only one Section 236 RAP project eligible under the expiring rental assistance criterion – Carmel Towers in Newark, but that property has been largely vacated.

4. The tenants must:
- have been in residence at the time of the maturity or expiration,
- be low-income, and
- suffer a rent burden after conversion of **40% of adjusted income (or possibly 35% or even 30%** if funds remain available after serving the 40%+ group).

5. The tenant protection assistance may be used as either Enhanced Vouchers (with a minimum rent equal to the rent burden prior to the event) or Project-Based Vouchers.

In this Notice, HUD does *not* address maturities or expirations during FYs ‘13 and '14, although funding for FY ‘13 was authorized for this purpose in the FY ‘13 full-year Continuing Resolution. We will circulate a separate list of properties potentially eligible in FYs 13 and 14 soon.

The Accompanying List of Potentially Affected Properties

We have prepared the attached list of properties whose unassisted tenants might be eligible for this assistance. It is drawn primarily from HUD’s terminated mortgages database, selected for mortgages that matured (i.e., excluding those that were prepaid or foreclosed). We also included data on Section 202 properties obtained from NLIHC and LISC. We included only those that matured since January 1, 2005, assuming that it is unlikely that tenants in properties with older maturities have remained in residence since then and would satisfy the other eligibility requirements (e.g., low vacancy area, rent burden). Because the policy protects only unassisted tenants, this list was further filtered to remove projects that HUD’s separate Section 8 database lists as having rental assistance for all of the units (except management units). Thus, it contains projects that are listed as having no project-based rental assistance, as well as those listed as having at least some unassisted units. *Like most government data, imperfections abound, so* ***this list is only a starting point for determining actual eligibility*** *of properties and tenants.*

Over-inclusiveness. Beyond the inaccuracy of the data, properties on the list may not prove to be eligible for many reasons, including:
- The property is outside of the HUD-designated low-vacancy area on Attachment A of the Notice;
- The tenants already received enhanced vouchers, tenant protection vouchers, or project-based vouchers due to an earlier:

  - Expiration of a Rent Supplement or Section 236 RAP contract;
  - Unilateral prepayment of the mortgage by the owner ("eligible low-income housing"); or
  - Preservation transaction of a property that had Flexible Subsidy.
- The property has a Use Agreement under LIHPRHA that is interpreted to preclude eligibility (this issue remains unclear, because each Use Agreement must be analyzed under a definitive HUD policy, which has not yet been issued);
- The property has a Rent Supplement or Section 236 RAP contract that covers all the units or will be interpreted to trigger tenant protections under existing law for all units upon expiration or termination (none appeared in this data).
- Remember that project eligibility and tenant eligibility will usually differ, and that many potentially eligible projects may not have eligible unassisted tenants because the post-conversion rents do not exceed 40% of tenant income (or lower amounts if funds are available).

Under-inclusiveness. Beyond the inaccuracy of the data, potentially eligible properties may not be on the list for many reasons, including that the project:

- Was a state-financed loan receiving Section 236 IRP (which would be eligible if the IRP or accompanying Use Agreement terminates);
- Had a HUD-held mortgage (assigned after default or put to HUD) that matured or was prepaid; or
- Was prepaid with HUD approval.

Next Steps

1. Scan the list of properties to see if you recognize any of them; compare to any information you might have to determine whether further investigation of possible eligibility is warranted; *make sure to determine whether the property' location is in one of the low-vacancy areas listed on Att. A to HUD's Notice*;
2. Contact any tenants at the property or community organizations in the area, the owner and the local HUD office to explore eligibility of a particular project; find out what the owner has done to increase the rents, or any near-term plans to do so;
3. Work with the owner to *file the request with HUD by June 14* (see the sample format of Att. B to HUD's Notice);
4. Share the list and this memo with others who might be able to perform these steps;
5. For further information, please contact: Jim Grow at jgrow@nhlp.org, (415) 546-7000, x3104.