

**RIGHTS OF FEDERALLY ASSISTED RESIDENTS DURING SHUTDOWN  
NATIONAL HOUSING LAW PROJECT MEMORANDUM**

Key Points Outlined by Ed Gramlich, National Low Income Housing Coalition  
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**Project-Based Section 8 Properties** – There are two categories

**Properties with Active (unexpired) HAP Contracts**

- The vast majority have long-term contracts that have not expired and have terms through part of 2019 and some lasting far beyond.
  - These properties are expected to receive HAP payments through February with funds obligated before the Continuing Resolution expired on December 21.
- Residents are protected from rent increases due to any non-payment of HAP funds.
  - This is because the owner and resident continue to be subject to the terms of the lease.
    - The lease remains in effect until the HAP contract is terminated.
  - Even if HAP payments are not paid by HUD (for example come March), the HAP contract does not have a termination provision, therefore the HAP remains in effect by its own terms – and therefore so does the lease.

[HUD's Model Lease has a provision (paragraph 30) which states that the lease is automatically terminated *if the HAP contract terminates* for any reason. But remember, most of these HAP contracts are good until well into 2019 and beyond.]

**Properties with HAP Contracts that Expired in December,  
or that Will Expire in January or February**

- As of January 22, 221 HAP contracts expired. More might expire before the end of January, and 550 more might expire in February.
  - Their legal status is less clear, but most owners will likely wait a while.
- Advocates can make the case that residents remain protected from rent increases.
  - If the HUD Model Lease has been used [see brackets above], the lease terminates when the HAP contract expires.
  - HUD's Model Lease has a provision (paragraph 30) stating that the lease is automatically terminated *if the HAP contract terminates* for any reason.
  - However, federal law for Project-Based Section 8 requires an owner to provide residents with a one-year notice before terminating a HAP, and prohibits eviction for non-payment of rent if notice is not given.
- For any termination, residents are entitled to Tenant Protection Vouchers (including Enhanced Vouchers) – subject to availability in the TPV account. But HUD has stated that it will not process requests for TPVs during the shutdown.

## Section 202 Elderly Properties and Section 811 Properties for People with Disabilities

- **Most properties have Project Rental Assistance Contract (PRAC) rental assistance.**

### Properties with Active (unexpired) PRAC Contracts

- Residents only have to pay their portion of the rent.
- Residents are protected from eviction due to HUD's failure to provide rental assistance.
- PRAC Model Leases (Section 202 and Section 811) do not have an automatic termination clause if the PRAC contract terminates for any reason (unlike the Project-Based Section 8 Model Lease).

### Properties with PRAC Contracts that Expired in December, or that Will Expire in January or February

- Residents may remain legally protected without rent increases.
- The PRAC Model Lease remains in effect because it does not have an automatic termination clause.

- **Some older Section 202 properties have Project-Based Section 8 HAP Contracts.**

### Section 202 Properties with Active (unexpired) HAP Contracts

- Resident will not be affected (until later in the year if the shutdown continues), just like Project-Based Section 8 HAP contract discussed above.

### Section 202 Properties with HAP Contracts that Expired in December, or that Will Expire in January or February

- Advocates can make the case that residents remain protected from rent increases.
  - The Section 202/Project-Based Section 8 Model Lease has language that terminates the lease if the HAP contract has been terminated for any reason.
  - However, federal law for Project-Based Section 8 requires an owner to provide residents with a one-year notice before terminating a HAP, and prohibits eviction for non-payment of rent if notice is not given.
  - For any termination, residents are entitled to Tenant Protection Vouchers (including Enhanced Vouchers) – subject to availability in the TPV account. But HUD has stated that it will not process requests for TPVs during the shutdown.
- Section 202 and Section 811 properties have a “Use Agreement” that requires the property to be operated under applicable statute and regulations. A property's Use Agreement might have additional protections.

## Housing Choice Vouchers

- Enough money was obligated before the expiration of the Continuing Resolution to provide HCV HAP payments through February.
  - Therefore residents should not receive rent increase, eviction, or voucher termination notices.
  - HUD told PHAs to use reserves to make rent payments to landlords if the shutdown lasts into March.
  - PHAs have varying levels of reserves.
- Even if a PHA does not have sufficient reserves in March, the lease agreement remains in effect and landlords can't increase residents' rent.
- A PHA can terminate a HAP contract due to insufficient funding, which automatically extinguishes a lease.
- Non-payment of a HAP by a PHA is not grounds for terminating tenancy during the term of a lease.
- A landlord can terminate a lease, but only with proper notice.
  - During the *initial term* of a lease a household can only be evicted for good cause.
  - *After* the initial term a landlord can evict a household "for business reasons".
- As long as a lease is in effect, the household is not responsible for the PHA's portion of the rent.
- State and local law may also bar a landlord from charging a voucher household for the PHA's portion of the rent (the HAP).

## Public Housing

- PHAs received Operating Funds for January, and HUD told them to expect payments through February.
  - Starting in March, PHAs will receive no Operating Funds if the shutdown continues.
  - In March PHAs are likely to be advised to use any reserves they might have (amounts vary by PHA).
- If the shutdown continues and PHAs run out of Operating Funds, residents "apparently" remain protected against rent increases and resulting evictions by the federal public housing law and by residents' leases.
- PHAs did not receive Capital Funds for January, and will not see any Capital Funds until 60 days after a final appropriations bill is enacted.

## Rural Development (RD) Rental Assistance (RA) [Section 521]

- USDA's RD Rental Assistance (RA) is paid retroactively; for example a property's RA subsidy payment for August would be received in September.
  - Properties' RA subsidy payments for December 2018 were paid in January 2019, and January 2019 payments are expected to be covered in February.
- About 700 properties with RA contracts will not be renewed in February because their contracts have expired, affecting 17,000 households.
  - If the shutdown continues past February, that number will increase.
- RA agreements between RD and owners are 12-month contracts, with beginning and ending dates spread throughout the federal fiscal year.
  - Some RA agreements are expected to expire during the shutdown.
  - These owners will have to turn to reserve accounts.
    - RD reserve accounts are under an owner's control.
    - But RD approval is needed to spend the reserve.
    - Given the shutdown, it seems unlikely that RD would punish an owner for using their reserve without permission.
- Owners whose RA contracts expire during the shutdown might try to increase residents' rents up to "the basic rent".
  - Basic rent is the rent residents pay in Section 515 or Section 514/515 Farm Worker housing who do not receive RA.
  - Basic rent is based on the cost of operating the property and paying an amortized RD loan at 1%.
- RD does not have a standard lease; instead RD requires certain provisions that must either be included or excluded from a lease.
  - To protect a resident, an advocate will have to study each lease to determine whether a rent increase violates the lease, whether the owner met all of a resident's due process rights, and whether a notice about a rent increase or eviction meets RD regulations and state and local law.
  - The law limits a rent increase to 10% in any 12-month period (unless the increase is due to a resident's increased income).

The entire 14-page National Housing Law Project Memorandum is at: <https://bit.ly/2TilrvL>

A one-page flyer for residents is at: <https://bit.ly/2HxQumS>