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/2TiIrvL

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