RD Issues a 'HUD Light' Version of Residents' Post CARES Act Protections

Rural Development (RD) issued an email to its multi-family partners on July 20 informing them about three new or updated questions and answers on the impact of the CARES Act's resident protections that will expire after July 24. The release applies to all RD rental housing including the Section 515 and 538 rental programs, the Section 514 and 516 farmlabor programs, and the RD Voucher program. Unfortunately, as noted later, the protections extended to RD residents under this email are substantially weaker than the protections extended to residents of HUD multi-family housing.

Specifically, the RD questions and answers state that

- the moratorium on late fees and evictions, which expires after July 24, 2020, prohibits owners from seeking to recoup late fees that could have accrued during the moratorium and that such fees may only be assessed prospectively when August rent payments are not made on a timely basis;[1]
- the resident rent payment and eviction moratorium remains in place for as long as the owner has a 90-day moratorium on mortgage payments from RD or a private, Section 538, lender. Thus, if an owner has a payment moratorium for June, July and August, no late payments may accrue or evictions commenced for nonpayment of rent until September 1;[2]
- RD will continue to accept requests for 90-day mortgage payment moratoriums from owners that have previously not requested a moratorium as long as the National Emergency is in place or December 20, 2020.[3]
- state and local jurisdictions may have adopted their own moratoria on payments and evictions and that owners must follow those restrictions;
- owners should work with tenants and assist them in maintaining their housing by conducting interim recertifications[4] even if a resident's income has already been recertified before on an interim basis; further, it urges owners to be flexible in verifying income by accepting information by phone or email and to accommodate residents when income cannot be verified because business have closed;

[1] Under RD regulations late fees cannot be assessed until 10 days after the rent is due and the late fee may not exceed $10 or 5% of the tenant's rent contribution whichever is higher. 7 C.F.R. § 3560.209(b)(2).
[2] Note that residents' right to continue to receive a payment moratorium end when the owner begins to make full mortgage payments and not when the owner has paid off past arrearages.
[3] It is not clear whether the deadline applies to the earlier or later of the two dates. It states that RD has processed over 4,000 deferrals, which covers about 25% of all Section 515 and 514/516 developments.
[4] RD regulations require owners to recertify residents' incomes when the resident household has experienced a $100 reduction in income or when it has a $50 reduction in income and the resident requests recertification. *Id.* § 3560.152(e).

- RD has suspended additional income and expense verifications requirements, which are set out in Attachment 6-B to RD Handbook 2-3560, for residents that report zero income;
- persons who have lost income due to COVID-19 need not have their interim income annualized because such income is temporary; it, however, states that rent should be based on current income;
- owners should enter into payment plans with residents to deal with past due balances.

Unfortunately, the new notice does not protect RD residents to the same extent that HUD has protected residents living in HUD financed multi-family housing.[5] Specifically,

- it makes no distinction between the rights of deeply subsidized residents living in Section 515 or 514/516 housing and those living in RD Section 538 unsubsidized housing.
    - HUD has stated that residents living in non-assisted developments may continue to seek a moratorium on payments and late fees for as long as an owner who has secured a moratorium on mortgage payments has not repaid all arrearages that accrued under the HUD payment moratorium. RD does not extend the same rights to residents of Section 538 housing.
- it also makes no distinctions between residents in Section 515 and 514/516 housing who receive Rental Assistance and those that do not.
    - HUD has exempted residents living in assisted developments (i.e. Section 202, Section 811, and developments with Project-Based Section 8 Assistance) from continuing to receive payment moratoriums because all of these residents can have their incomes recertified and their rents adjusted so that they do not pay more than 30% of income for shelter. About 30 percent of residents living in Section 515 housing do not receive Rental Assistance and cannot have their rents adjusted if they go below the project's minimum rent. Thus, these residents will face eviction even if the owner has an outstanding debt to RD as a result of the agency's rent moratorium.
- it does not require owners to post or distribute any information to residents about their post CARES Act moratorium rights, making it practically impossible for them to exercise these rights or enforce owners' obligations.[6] This is particularly egregious because there is no way for residents to determine whether an owner has secured a moratorium on mortgage payments or paid off arrearages that accrued during the moratorium.
    - HUD has required all owners who are under a forbearance agreement, or who have not brought their accounts current, to notify residents of their right to

[5] On July 1, 2020, HUD published a detailed six page notice which sets out residents' rights and owners obligations after the expiration of the CARES Act payment and eviction moratorium. HUD, Notice H 2020-07 (July 1, 2020) (available at https://www.us-hc.com/wp-content/uploads/2020/07/HUD-Multi-Family-Notice-on-COVID-19.pdf)

[6] As of July 21, this information does not even appear on RD's COVID-19 website.

continue to secure a moratorium on rent payments and prohibiting the owner from assessing late rent payment penalties.

- it does not state how repayment plans should be structured or that they have to be reasonable.
    - HUD prohibits landlords from requiring residents to make lump sum payments of rent arrearages and urges that repayment plans be reasonable. The RD email does neither.
- it does not remind owners that the CARES Act requires that they issue a 30-day eviction notice before they can commence an eviction action for failure to pay rent arrearages that accrued during the payment moratorium.
    - HUD's notice advises owners of the 30-day eviction notice requirement in the CARES Act and extends its applicability to owners who receive a mortgage payment moratorium until they have repaid all arrearages on their mortgage payments.

The RD email also does not state whether RD will send letters to inform individual RD Voucher holders, who no longer live in RD financed housing and whose subsidy cannot be adjusted for loss of income, of their post CARES Act moratorium rights. RD previously sent a letter to its voucher holders about the CARES Act payment moratorium. It has not announced that it will do the same prior to the expiration of the CARES Act moratorium.

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