How to Preserve and Recapitalize a Section 236 Property, 4/30/15

Background

Below is the transcript of a webinar hosted by the Department of Housing and Urban Development's (HUD) Office of Recapitalization. This webinar presented important information on how to preserve the affordability and physical condition of Section 236 buildings, including both HUD-insured and HFA-issued mortgages. The webinar recording and presentation slides can also be found on the course page.

Participants

Leslie Leitch: Webinar Moderator, Cloudburst
Vince O'Donnell: Webinar Presenter, Cloudburst
Julia Pierson: Q&A Moderator, Cloudburst
Stan Houle, HUD Office of Asset Management and Portfolio Oversight (OAMPO)
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Webinar Transcript

[Presentation Slide 1]
Leslie Leitch: Welcome to "How to Preserve and Recapitalize a Section 236 Property." My name is Leslie Leitch and I will be your host for today's webinar.

[Presentation Slide 2]
But before we begin with the content, we have several logistical announcements to make. Today's presentation will be about 60 minutes long and there will be additional time at the end for answering your questions. This webinar is being recorded. The PowerPoint presentation and the accompanying materials are now posted on the HUD Exchange Training and Events page. You will be on mute during this webinar. There may also be a slight delay in the advancement of the slides due to the audience size.

You may submit questions at any time using the Q&A pod on the right side of your screen. Your questions are important to us. We will try to respond to each question at the end of this presentation. We will not be able to answer detailed questions about your specific project.

If you experience any technical difficulty with visual or audio portion of the webinar, you can get assistance quickly by using the Q&A pod also on the screen. An e-mail will be sent to you following this presentation requesting that you complete a feedback survey. We need your feedback and ideas for future training topics.

Be ready for audience participation. We have some interactive questions for you to respond to during this presentation. And I want to start by introducing our panelists.

[Presentation Slide 3]

Our presenter is Vince O'Donnell. He's an affordable housing consultant.

We have with us from the Office of Recapitalization, Claude Dickson, Sabra Loewus, Doug Lynott, Minnie Monroe-Baldwin, and John Ardovini.

And we have from the Office of Asset Management and Portfolio Oversight, OAMPO, Stan Houle.

First, I'd like to turn this over to Minnie Monroe-Baldwin.

[Presentation Slide 4]
Minnie Monroe-Baldwin: Thank you, Leslie. Hello, everyone. My name is Minnie Monroe-Baldwin. I work in the Office of Recapitalization here in Multifamily Housing. I welcome you on behalf of Secretary Castro and Deputy Assistant Secretary Metcalf to the second webinar on preserving Section 236 property.

We thank you for joining us today and we want you to know we have been and continue to be appreciative of your participation in providing Section 236 properties in your communities.

[Presentation Slide 5]
Launched more than 40 years ago, the Section 236 successfully produced over a half million affordable housing units and roughly 4,500 properties. About 550 of them now are maturing over the next five years and they are in need of preservation. If they do not preserve before the mortgages mature, the options here at HUD essentially go away. That means that 103,000 families potentially are at risk of their rents being increased and continuing to live in units that suffer from deferred maintenance. This is what motivates us, your HUD team, to continue working with you towards preserving these properties.

[Presentation Slide 6]
Today's presentation is a deeper dive into the various HUD preservation tools. A lot of material is going to be covered, but we want you to know that the Section 236 recap team, your account executives, and your local field offices are here to help you and further guide you through the process. At the end of the presentation, you will hear about other resources being developed that will help you in your preservation planning. Stay tuned as these resources are coming your way very soon.

Again, thank you for your commitment to preserving your Section 236 property.

Leslie Leitch: Thank you, Minnie. So let's get started. Let me introduce Vince, affordable housing consultant serving as a senior advisor to Preservation of Affordable Housing, Incorporated, with deep experience helping owners preserve and recapitalize their HUD finance buildings. Vince, take it away.

[Presentation Slide 7]
Vince O'Donnell: Thanks, Leslie and thanks, Minnie, and welcome, everyone. We'll be organizing the preservation discussion today into five steps, shown on this slide here as being

sequential to simplify the presentation. In fact, they interact in an iterative process. First, knowing your property and gathering information about it. Second, setting your preservation goals. Choosing which options and actions you're going to take. Applying for financing and HUD approvals. And finally, implementing the plan for long term stability of the property.

After we present these steps, we'll go on to explain the resources available and then we'll have a question and answer period at the end of the session.

[Presentation Slide 8]
So the objective of today's webinar is for you to be able to determine how to begin to plan for the preservation of your property, including identifying the best available resources to implement your goals. HUD has made a number of information resources available in concert with this webinar.

[Presentation Slide 9]
I recommend that you go to the HUD Exchange training and events page for this webinar and you'll see the resources that are listed here; both today's slides and in the near future also a posting of the webinar recording. Also, available today are a checklist that will help you gather information about your property and a resources and tools list that includes hyperlinks for indepth information and source documents on many of the topics that we will touch on today.

Also, a 236 Preservation guide will be available soon. It will provide additional detail on all the topics discussed in this webinar.

HUD also has a suite of resources in the HUD Exchange to help board members and owners get started on their strategy; a webinar, a fact sheet, and a glossary.

[Presentation Slide 10]
So let's go to step one, knowing your property. We're going to talk about the ABCs of your property, financing, rental assistance, and capital needs and reserves. And remember that one of the handouts that I just mentioned that goes with this webinar is a checklist that will go into more detail on what information you should be gathering about your property to support the preservation process.

[Presentation Slide 11]
So to get started, we should review how the Section 236 program works so we have common language here for the rest of the webinar. HUD provided interest subsidies, known as Interest Reduction Payments or IRP subsidies, when the Section 236 properties were first developed. These reduced the net payments on loans that were made to private developers of low- and moderate-income multifamily housing.

And in return for the lower overall debt service, HUD required the assisted property owners to lease their units to low and moderate income families and seniors at HUD-approved cost-based rents to the term of the 40-year mortgage. These terms are memorialized in the Section 236 regulatory agreement that is coterminous with the first mortgage loan. Some of the 236 loans typically for limited dividend owners could be prepaid after 20 years. That's important as you'll see later because of the connection between continuing the 236 loan and continued affordability.

The affordability of some properties was lost when owners exercised their right to prepay loans after 20 years, which terminated the regulatory agreement. However, others took ELIHPA or LIHPRHA incentives to preserve instead of deregulating. Still others have not prepaid largely because of a prepayment lockout. All 236 properties were financed with either private lenders with FHA insurance loans or with state housing finance agency loans, the owners are nonprofits, for-profits, or co-ops, and they serve both families and seniors.

[Presentation Slide 12]
So let's get on to the information gathering. The first step is financing. And this slide shows the kind of information you're going to want to have about your financing documents. I want to highlight a couple of things here that we haven't talked about. You see here Flexible Subsidy Loan documents. Some properties took advantage of a program called Flexible Subsidy, which consists of subordinate debt held by HUD. We'll talk more about that later.

Also, I mentioned properties that were preserved earlier under ELIHPA or LIHPRHA, those properties may still be in need of additional preservation actions in order to make them sustainable for the long haul. And in particular, ELIHPA properties are truly at risk because all HUD regulation will go away at the end of the original 40 years, which is coming soon, if it has not already come for those.

So it's important here just to highlight a couple of information things. You need to know when your Section 236 loan matures and how many months are left on your IRP subsidy.

[Presentation Slide 13]
The second information category is rental assistance and you're going to want to gather all the documents that are related to whatever form of rental assistance that you have. Some 236 properties can have units both with or without project-based rental assistance. When the mortgage subsidy programs were first developed, originally they did not include rental assistance. That was added later in order to enable the properties to better serve extremely and very low income families.

And so the kind of information you're going to need that you're going to get from your rental assistance documents would include the expiration date, the mix of subsidized and unsubsidized rents, as in subsidized with rental assistance or not -- what the rent structure is, what the rent roll is, and what the tenant share is, and the portion of the rent that's paid by the subsidy. And your document should not only include your most recent renewal documents, but the original contract documents from the very beginning of the rental assistance.

[Presentation Slide 14]
Finally, moving on to capital needs and reserves. The first thing you need to do is to really understand your current REAC score. HUD's Real Estate Assessment Center, as you know, will give a score to the property and for the capital status and indicate whether the property needs immediate repairs. You're also going to want to know if your property's current replacement

reserve account balance and the schedule of future deposits together are adequate to address upcoming capital needs.

In order to do that, you will need to obtain a capital needs assessment, which is a third party study of the property's upcoming capital replacement needs. It will tell you what upfront repairs you need as well as capital improvements over time that are needed to ensure your property's long term viability. And be aware that, of course, a REAC inspection is not a substitute for a capital needs assessment.

[Presentation Slide 15]
From time to time in this presentation, we're going to stop and review what you've learned using, as a review instrument, a hypothetical property we're calling Main Street Apartments. And so here's the case that we've built here just to allow us to refer to some of the learning points in the webinar. And you'll see we've chosen a property with a particular form of facts about financing and current rental assistance, and capital needs. The loan will mature in 2017, which means it only has about 30 months left in its IRP subsidy.

This property has a first mortgage that can be prepaid without HUD permission and has a Flexible Subsidy Loan. More about that later. It has some units with Section 8, some with non-Section 8 rental assistance, Rent Supplement, and 20 units with no rental assistance. And it has significant capital needs, including some efficiency units that don't really work in today's market and it has not had any accessibility changes implemented since the beginning of the property.

This property is owned by a for-profit limited dividend entity, which also will matter in a number of decisions the owner will have to make.

[Presentation Slide 16]
So that's it for knowing your property. Now, let's talk about setting your goals.

You're the owner of the property. That may be a team of people. If it's a corporate owner, it would be a board of directors. The ownership entity and team need to make decisions about long term goals for the property. They're going to be unique to the property, but they will genuinely fall into three broad categories: maintaining affordability for low income families, the need for capital improvements, and achieving stable operating income over time.

Leslie Leitch: All right. So now, we have some audience participation for you. We're going to ask you to think about a property, either about your property, one that you're working on, one that you might even be considering purchasing, or one that you're familiar with.

[Presentation Slide 17]
So what are your capital improvement goals? Are they major repairs? Are they modernizing older units in common areas? Do you want to convert efficiencies to one-bedroom apartments? Energy efficient upgrades that will save operating costs? Accessibility improvements? Pick all of those now on your computer. Go ahead and select all of those that apply. You can do one; you can do all five. Let me give you about 15 seconds and we will close the poll. And let's see what your answers are.

So Vince, what do you think about this?

Vince O'Donnell: Well, I think it's really important to note that we have some consensus here about the need for major repairs for properties that are close to 40 years old and have served the community well. This is a very normal thing. And also, modernizing common areas and older units, it fits into the same bucket.

All those properties were built without regard to energy efficiency. And so that's a great opportunity in terms of preservation today. And I see the people are also concerned about accessibility. And we do have a number of people who are concerned about efficiencies and their workability. So this is a very representative audience, I would say.

Leslie Leitch: Great. Thanks, Vince.

[Presentation Slide 18]
Vince O'Donnell: So when you have your goals set and you need to know what actions are you going to take and what actions can you take. So this next section, this next step will talk about understanding what those possible actions are to help your property and make it workable -- more workable for your residents and have them move forward with the best options.

[Presentation Slide 19]
So we're dividing the options available into two categories; financing and rental assistance. And within each, there is a set of actions to take. So that will be within financing, raising new capital, prepayment of the existing loan, IRP decoupling, Flexible Subsidy Loan deferral. We'll explain all of these in greater detail. And also on the rental assistance side, we'll talk about project-based rental assistance contracts -- Section 8 contracts, Section 8 vouchers, and the RAD 2 program.

[Presentation Slide 20]
So first, why would you raise new capital funds for your property? Well, in order to address the property's capital needs and also, in some cases, to get access to accumulated equity. But it's important to point out that if it's a nonprofit owner, in order to be able to take out equity to support its total charitable purpose, which may include putting that equity back into this property or other affordable housing properties, HUD will first require that all of the subject properties capital needs are being fully met.

[Presentation Slide 21]
This shows the typical stack of possible capital sources. And as you can see, there are many, many options available on the debt side, on the equity side, on subordinate debt and grants. Important to say here is that when you refinance the Section 236 loan, which is typically the first step that you will take, it will then trigger three other potential preservation steps. For refinancing, you will need to prepay the existing loan; also, prepayment will trigger the option of decoupling the IRP subsidy. And if it's applicable, it will trigger the option of considering deferral of the repayment of any Flexible Subsidy Loan that the property may have.

[Presentation Slide 22]

So then let's talk about prepayment. Why would you prepay the Section 236 loan? Well, as I said, to enable the property being refinanced, but it also triggers the issuance of tenant protection vouchers. Tenant protection vouchers, TPVs, can benefit both the residents and the property as we'll see as this discussion goes on.

[Presentation Slide 23]
So, a little more detail about prepayment and an important distinction to make here is between HUD's procedural approval that your process is correct and HUD -- when HUD permission is required for the prepayment or not. So some properties will need HUD permission to prepay. All properties need to follow a proper procedure, but only some need HUD permission. HUD permission is usually required for nonprofits, properties that have Flex Sub Loans, certain FHA insured loans that have Rent Supplement contracts.

In any event, you need to check your mortgage note and other property documents to know for sure if HUD permission is required. If HUD permission is required for a prepayment, this is governed by Section 250(a) of the National Housing Act. So this is often referred to as a 250(a) prepayment.

[Presentation Slide 24]
There are three categories of requirements in order for HUD to be able to give permission for 250(a) prepayments. They have to do with tenant notice, rehab requirements, and continued affordability. On the tenant notification requirements, the owner must notify tenants of the prepayment at least 150 days before it may occur.

And tenant comments are taken and submitted with the request for prepayment. That documentation goes to the HUD Field Office along with a certification that all procedures have been followed.

[Presentation Slide 25]
On rehab, HUD will not be able to give permission for a prepayment unless the property meets certain minimum rehab requirements. And finally, the whole point of requiring HUD permission is to ensure that affordability of the property is continued through the original term of the original Section 236 mortgage note.

And in order to ensure that, the owner must execute a new use agreement because of what I said earlier: When you prepay, the original Section 236 regulatory agreement dissolves. So this new use agreement will replace that to require the continued affordability of the property.

I'm going to stop here for a second. If you recall, I said earlier that we provided you with a list of information resources about where to find indepth guidance on how to preserve and recapitalize a property. The resources and tools guide is where that information will be listed and this is an example of what we do in that guide.

[Presentation Slide 26]
On the topic of prepayment permission, we refer to two HUD documents. One is a HUD Notice, H 2006-11. And the other one is clarification that -- the main topic in that clarification, more

detail about the rehab requirements for these properties. And that document has live links to all the underlying HUD source documents. So that's an example of something that's there for pretty much all the topics in this webinar.

[Presentation Slide 27]
So now, let's talk about prepayment when HUD permission is not required. There still are procedures that must be followed. There is a different form of tenant notification requirement known as a Wellstone notice. This notice must be sent to the tenants at least 150 days before the prepayment may occur, but it can't be issued -- the prepayment must occur within 270 days of the notice.

HUD does have the ability to waive the notice, but only to facilitate a preservation transaction. When this kind of prepayment occurs, rent increases may not happen for 60 days after the prepayment. And there are no specific HUD rehab requirements for this kind of prepayment. This is often referred to as the Section 219 prepayment because it is governed by Section 219 of the Fiscal '99 appropriations.

A little bit of other detail. The list of required notice recipients (over and above the tenants) differs as between the 250(a) and 219 prepayments. Also, if you're going to prepay, you're going to need a source of funds to prepay it. And that source of funds, which may be a bank or a CDFI, may have their own underwriting requirements to ensure that physical issues be resolved before they will put their money into the property.

[Presentation Slide 28]
So the next financing tool is decoupling the IRP subsidy. Why would you decouple the IRP subsidy from the Section 236 loan? Well, that would be in order to apply that same stream of subsidy payments to a new loan. And that new loan, in addition to the IRP funds, will help leverage additional debt capital.

[Presentation Slide 29]
So here's a little graphic that shows the basic structure of decoupling. On the left, you see the original 40-year loan, which is assisted by the stream of IRP subsidy payments. If you refinance, you have a similar structure. You have a new loan and whatever's remaining in the IRP subsidy stream continues to be available to flow to the lender to support additional debt. So decoupling simply means detaching it from one loan and attaching it to another.

The decoupled IRP can be paid using the same schedule as for the original loan or it can be paid at a lesser amount per month over a longer period of time as long as the total amount of the remaining dollars in the IRP account is not exceeded. It may not be paid in a lump sum.

[Presentation Slide 30]
There will be a new use agreement required, providing affordability equivalent to the original 236 regulatory agreement, which also will be -- again, will be dissolved because of the prepayment that's taken place. That new decoupling use agreement will continue for five years beyond the current original maturity date.

How does decoupling affect your rent structure? Well, the whole point of decoupling is that while the IRP flows and for the five years after that, the additional use agreement period, it is essentially still a 236 project. And therefore, the same principles apply for rents, that is -- you will have budget-based rents based on operating costs and debt service, except the new debt service will be counted in the stack of costs that is used to determine your budget-based rent.

Your rents will be capped at comparable market rent less the IRP subsidy, but HUD can waive that IRP offset for feasibility reasons and certain circumstances. If the property has -- also has Project-Based Section 8 units, those unit rents will be set following the rules that apply for the kind of Section 8 that you've got and your most recent Section 8 renewal, and all those rules are specified in the Section 8 Renewal Guide.

When you decouple, HUD will require that you terminate any existing project based Section 8 contract, immediately renew it for 20 years, and additionally, sign what's called a preservation agreement that will extend that 20 years for the unused term of the contract that is currently being terminated.

If you have FHA financing for your new loan, you're going to need to coordinate the rent setting requirements of Section 236 and Section 8 and make sure that they meet the underwriting needs of the FHA process.

[Presentation Slide 31]
What does that IRP decoupling use agreement say? Well, first of all, you must maintain Section 236 occupancy and income restrictions, which means new incoming tenants have to be under 80 percent of the Area Median Income. And the basic and market rent structure that you have now under Section 236 has to be maintained for the additional five years beyond the current maturity.

The transaction can't displace anybody and, as I said earlier, the Section 8 contract must be renewed for 20 years plus the preservation exhibit.

[Presentation Slide 32]
IRP decoupling also affects distributions. Normally, in the current regime, if you're a limited dividend or for-profit owner, your distributions can be 6 percent of equity that's stated in your original loan documents. Nonprofits can never have distributions. So this discussion only applies to limited dividend owners.

HUD permits the distribution to be increased to 6 percent of the adjusted new equity. What do we mean by new equity? Well, if the preservation transaction and decoupling are part of a larger transaction involving, for example, Low Income Housing Tax Credits or if there's a long-term deferred developer fee or owner cash coming into the transaction, that all will be counted as new equity against the 6 percent distribution that will be calculated. The distribution will not reflect grants and soft loans as a basis for new equity.

If there is no new equity, the distribution is restated as 10 percent of 10% of the new mortgage amount. As the rule is currently, distributions can only be taken from Surplus Cash, although the potential to receive the distribution is accumulated from year to year if you don't actually take it out.

The distribution will not be built into your budget-based rent stack. However, in a decoupling transaction, the budget-based rents does include commercially reasonable debt service coverage and that provides room in your budget to receive a distribution if you earn it through your actual project performance.

If you have an HFA-financed Section 236 property, your distributions will be governed by state or local law.

[Presentation Slide 33]
Leslie Leitch: Hi. We're going to use the poll feature to ask you question about the IRP requirements. Let's head back to Main Street Apartments. Main Street Apartments will decouple its IRP and apply it to its new financing.

There are four statements here and you're to check all of them that are true. The new lender will receive the remaining IRP payments from HUD. The use agreement continues five years beyond its original Section 236 term. The decoupling allows the owner to end their Section 8 contraction; and/or must follow the Section 236 budget-based rent setting requirements. So check none, one, or all of them based on what you think you remember.

We'll give you a few more seconds to think about it and to check. And we'll now close the poll. All right. Let's see what you had to say.

[Presentation Slide 34]
Vince O'Donnell: Well, I think the majority rules. In fact, as most people said yes, the new lender will receive the remaining IRP payments from HUD, and a majority said that the use agreement will continue for five years beyond the Section 236 loan term. It is not the case that decoupling allows termination of the Section 8 contract. In fact, it requires a minimum 20-year extension. And most people also did agree that after the decoupling, budget-based rent setting, rent caps, and rent increase procedures will continue to be required.

Leslie Leitch: Good job.

[Presentation Slide 35]
Vince O'Donnell: Okay. So the final tool in the financing bucket here is deferral of Flex Sub Loans. Why would I defer my Flex Sub Loan? Well, in order to support the transaction, you would like not to have to make a balloon payment at the prepayment, maturity, or sale of the property. So let's explain what that's all about.

[Presentation Slide 36]
Going back to what is a Flex Sub Loan. In the late 1970s, HUD provided loans for operating assistance or for capital improvements. The general terms there were that these loans did require a full repayment at the first to occur of maturity of the 236 loan, or prepayment of that loan, if

earlier, or if the property were sold. There are two categories, capital loans had an amortization schedule and typically, by now, have low balances because they've been amortizing a long time.

What we're talking about here is the operating assistance loans that were structured as balloon payments with accruing interest. And it's those that can cause difficulty because by now, that's a pretty large balance and it will be one more cost when you're trying to apply efficiently your new capital resources to the properties' capital needs.

[Presentation Slide 37]
HUD does allow the owner to request deferral of repayment of an Operating Assistance Flexible Subsidy Loan balance to re-amortize for the term of new financing. Capital improvement loans can only be deferred with a waiver from the HUD Secretary and typically this is not granted.

One thing it's important to note, you cannot get forgiveness of Flexible Subsidy Loan. It's federal debt and there is no Congressional authority for any such forgiveness.

So in order for HUD to approve deferral of an Operating Assistance Flex Sub Loan, there are certain requirements. First is the project has to be in regulatory compliance. What we mean by that is it needs to be current in its mortgage payments. It has to have a passing REAC score and a management and occupancy review. It has to be in compliance with fair housing compliance and fair housing issues with no outstanding complaints. And it has to be up to date in financial reporting.

The owner also has to make the case that this is a "but for" event. There are no other funding sources available to repay the loan and still be able to preserve the property to meet its needs. The maximum deferral and re-amortization is the greater of 20 years or term of the new first mortgage. Again, it needs to also not only have to show that it needs deferral, but that the deferral is feasible within the new Flex Sub Loan term. That is this is not putting off forgiveness just for another day. This has to get repaid and you have to show the debt's feasible.

And again, there will be a use agreement, a Flex Sub use agreement that will continue to restrict rents and incomes and that will go for the new extended term of the Flex Sub Loan.

[Presentation Slide 38]
Leslie Leitch: We're going to go back to Main Street Apartments and talk about or ask about the Flex Sub Loan. Main Street Apartments has an Operating Assistance Flex Sub Loan that will be due when they prepay the Section 236 loan. We're going to get that.

So they have an Operating Assistance Flex Sub due when they prepay the Section 236. Which of these is true? The Flex Sub Loan can possibly be deferred and re-amortized for 20 or more years, or the Flex Sub Loan cannot be deferred? You can only select one this time. And since there aren't that many, we won't give you a long time to think about it. It's one or the other. And we'll go ahead and close this poll and we'll see how you did.

Looks like 87 percent felt that it was possible to defer and re-amortize. Vince?

[Presentation Slide 39]
Vince O'Donnell: Yes. That's right. And just to clarify, again, this -- the reason that it can possibly be deferred is that it's an Operating Assistance Flex Sub Loan, not a Capital Improvement Flex Sub Loan. Of course, that doesn't mean it will be deferred unless you meet all the different criteria.

[Presentation Slide 40]
So that completes the financing tools. Now, we want to go to rental assistance actions. And we'll start with Project-Based Section 8. And we're going to focus on renewal of the Section 8 contract for additional 20 years. Why would you want to extend and renew your Section 8 contract for 20 years?

Primarily, because as you're raising other capital for the transaction, lenders and tax credit investors expect a new 20-year commitment from you and from HUD for the continuation of the rent stream that the new financing is going to depend on. It's also possible under this new renewal process to increase the rent to market level. And as you all know, if you own 236 properties, an originally financed 236 property is typically well below market rent at the present time.

[Presentation Slide 41]
So let's go into that in a little more detail. But the one main point that I want to make here is that the Section 8 renewal options are governed by the Section 8 Renewal Guide. And that will determine what your available choices are. And the main factors -- we're not going to discuss the options in detail, but the main factors that affect the options that you're eligible for are the following things.

So whether your rents are over market or not at the time of renewal, it matters whether you have FHA-insured debt. It matters whether you went previously through an ELIHPA or LIHPRHA transaction or if you have other regulatory agreements that cannot be unilaterally terminated by the owner, and it also is affected by your status as a nonprofit or not.

The important thing here also to emphasize is that if you have a Project-Based Section 8 contract that is a renewable resource. Other forms of existing project rental assistance, such as Rent Supplement and Section 236 RAP are not renewable. And they're also extinguished if you prepay the loan or if the loan matures. We'll talk about them more when we get to RAD.

[Presentation Slide 42]
So the second category of rental assistance is vouchers. And in particular, we want to talk about a particular kind of voucher: Tenant Protection Vouchers. And within that, Enhanced Vouchers. So Tenant Protection Vouchers can assist your residents. How? It basically can provide Section 8 assistance after the loss of some other form of rental assistance or if the Section 236 mortgage is being prepaid and therefore, the tenant no longer benefit from the Section 236 rent structure.

[Presentation Slide 43]
TPV, Tenant Protection Vouchers, also enable tenants to avoid displacement through the resulting rent increases from a deregulation. So how do they get triggered? The ways that they

get triggered are basically: if a Rent Supp or a RAP contract is expiring, if the Project-Based Section 8 contract is expiring and not renewed, or if certain 236 loans are prepaid, the ones that do not require HUD permission for prepayment, and in properties with Flex Sub -- those two kinds of prepayments. Prepayments that don't require HUD permission and prepayment in Flex Sub properties will trigger Tenant Protection Vouchers.

What are some basic characteristics? All TPVs are issued through a Public Housing Authority. That could be your local Public Housing Authority. It also could be a state agency with PHA authority. It could be a regional PHA that has a voucher program. It could be a local Moving-to-Work PHA that is authorized to use its regulatory flexibilities in other jurisdictions.

TPVs, like all vouchers, are portable, but in preservation transactions, they may be project-based in certain circumstances. Whether -- when a project becomes eligible for Tenant Protection Vouchers, their actual availability is subject to annual appropriations. Each year, congress puts a certain number of dollars into this bucket and HUD will make that available to eligible properties as funds are available.

The individual tenants and the individual units must qualify for the vouchers. And there are two kinds of Tenant Protection Vouchers: Enhanced Vouchers or regular Housing Choice Vouchers, and we'll talk about the difference in a moment.

Importantly, once a tenant protection voucher is issued, it is always -- it's renewed as long as there are appropriations from year to year.

[Presentation Slide 44]
So I mentioned Enhanced Vouchers as a subtype of Tenant Protection Vouchers. They provide additional protections for residents. That is, they will provide market contract rents instead of rents based on a Public Housing Authority's payment standard. They also provide somewhat more protection to the residents than a regular Tenant Protection Voucher because the resident has that right to remain.

Also, if it's an Enhanced Voucher, another difference is there's a concept called a floor rent. Many tenants who don't have Section 8 today in Section 236 properties are currently paying more than 30 percent of income for their flat Section 236 rent. If they receive an Enhanced Voucher, their rent will not go down to 30 percent of income. The minimum rent is the current rent. So that will continue. However, if their income goes down in the future, then they have the opportunity for adjustment downward for a hardship.

And if the tenant moves, the Enhanced Voucher rent at market levels is no longer enhanced, then it will follow normal Housing Choice Voucher rules.

There's another way for a property to receive Tenant Protection Vouchers if it doesn't meet any of the other triggers that we talked about before. Remember, the triggers that we've mentioned so far are the prepayment of a 236 loan that's subject to Section 219 or a prepayment in a property that has received Flexible Subsidy, or a non-renewal of a Section 8 contract. If your property doesn't meet any of those criteria, HUD has limited competitive funds to provide access to Enhanced Vouchers or Project-Based Vouchers.

[Presentation Slide 45]
The property must be in an area that HUD deems to be low vacancy area, the tenants have to be at risk because of a loss of affordability. They're not otherwise eligible for these special TPVs. And the most current notice came out this week and it's shown here, HUD 2015-07 and the resource guide will have a link to that notice as it does to all the other important documents here.

This discretionary availability of TPVs for these special categories is a year-to-year event depending on congressional appropriations.

[Presentation Slide 46]
The final rental assistance category we're going to talk about is the Rental Assistance Demonstration, second component or we'll refer to it as RAD 2 here. RAD 2 basically is applicable to those non-renewable, expiring Rent Supp and RAP contracts that provides a way to continue project-based rental assistance after those contracts expire on a long term basis.

So this -- the fact that those contracts expire and are not renewable was long regarded as an impending problem. They were referred to as orphan rental assistance subsidies and the RAD legislation enables this problem to be solved. It's no longer a loss of continuity of project-based rental assistance.

[Presentation Slide 47]
So when the event happens that terminates the Rent Supp or RAP contract, the tenants will be issued Tenant Protection Vouchers. That has been happening for some time. What RAD 2 does is it allows those Tenant Protection Vouchers to be converted to a project-based format. Either Project-Based Vouchers, which would be administered by local housing authority or a traditional Project-Based Rental Assistance or PBRA contract similar to your existing project-based rental assistance administered by HUD.

The program has been extended by recent legislation to eliminate its previous sunset and applications for RAD are submitted on a rolling basis. And the RAD notice is also contained in your resource document.

RAD makes this possible by providing exceptions to certain normal Project-Based Voucher rules. Currently for a normal Project-Based Voucher transaction by a housing authority, the housing authority can only project-base 20 percent of its voucher authority and only apply Project-Based Vouchers to 25 percent of the units in the property with certain exceptions. And can only do so through a competitive selection process. RAD basically eliminates those obstacles in continuation of project-based rental assistance at the property.

The new legislation also introduced the PBRA option and also extended RAD to McKinney-Vento Mod Rehab properties. And new RAD guidance is forthcoming, but in the meantime, the notice in the link here is the appropriate notice and we will update the document when the new RAD notice comes out.

Leslie Leitch: Well, good, Vince. There's lots of choices for rental assistance.

[Presentation Slide 48]
All right. Let's go back to Main Street. And Main Street Apartments is going to refinance. What are some of the rental assistance options? And this time, you can check all that you think apply. The Section 8 units may be renewed with a 20-year contract, some tenants may be eligible for Enhanced Vouchers, or they may apply for RAD 2 to convert the Tenant Protection Vouchers to project-based assistance if they want the units to be affordable long term. So you can check one, two, three, or none.

Great. Thinking about it? All right. We will now close the poll and see what you said. Well, look at that. What do you think, Vince?

[Presentation Slide 49]
Vince O'Donnell: Yeah. I think the majority rules again. Just to comment. The Section 8 long term renewal is available and will be important to leverage new financing to support the rehab. The reason that the tenants may be eligible for Enhanced Vouchers is that this is a 236 being prepaid without requiring HUD’s permission. And also because it has a Flex Sub Loan, which triggers the eligibility. If it had not been a 236, imagine that it is not a 236, but with some Section 8 and some Rent Supp. That's possible if it was HFA-financed. Then the prepayment would trigger regular Tenant Protection Vouchers for the Rent Supp units, but no Tenant Protection Vouchers of any kind for the 20 unassisted units.

Now, also, the owner can now use RAD 2 to convert to project-based assistance and leverage additional financing for future stabilization of the property.

[Presentation Slide 50]
So that's it for the discussion of financing and rental assistance options. And now, we'll move on to step four, how to apply for the various set of approvals that are necessary.

[Presentation Slide 51]
So this slide shows the application process for preservation of the Section 236 property. The processing is now centralized through HUD's Office of Recapitalization and there's a general memorandum on the process that's in your resource guide. That is going to be updated shortly, but the current guidance stands at the moment.

And in order to begin the process, basically you go to the hudmfpreservation.net website and you'll see a link to submit an application. And when you click on that, you'll download an Excel application tool that HUD requires for all requests. And you'll use that essentially as your application form. And you'll see that the documentation that we recommended that you assemble about your property in step one will be relevant to filling out this application form.

You can also submit a preservation question and you'll find on there also a link to a webinar that explains the request process.

[Presentation Slide 52]
So these are the kinds of approvals that you can apply for through the central Section 236 resource desk at the Office of Recapitalization. The Office of Recap will complete the application process. I'll note a couple of things. There are special rules for nonprofits regarding developer fees and retention of sales proceeds. I alluded to some of that earlier. And some owners may be -- and we saw that on our polls. It's true for this audience. Some owners will be interested in converting efficiencies to one bedrooms. And the resource list provided with this webinar also includes the notice that explains how to request unit conversions. And those requests will actually be processed in the field office.

[Presentation Slide 53]
If the property is a Section 236 with a state Housing Finance Agency loan, then all the HUD rules about Section 236 preservation and all the HUD incentives apply to these properties as well. The HFA, however, will make the primary call about prepayment approval. But you still apply for approval through HUD as with all other Section 236 properties.

[Presentation Slide 54]
Well, when you've done all that, you're in a position to determine what your financing is going to be and get better financing, get that financing approved, and close on your new financing, secure your new rental assistance documents, then your construction can begin, and the property will be renovated. It will be stabilized physically and financially for the future and that's the whole point of this webinar.

[Presentation Slide 55]
So, I'm going to close with a couple of other things. We often get a question. What if the loan is maturing soon or has already matured. It's just important to contact your HUD representative because you still may be able to obtain tenant protections by prepaying if the loan has not matured yet. And you may qualify for that discretionary Tenant Protection Voucher set aside that I mentioned, which is available for properties that have matured.

And you still can always renew your Section 8 Project-Based contract if you have an existing contract whether or not you prepay – your right to renew that contract is not affected by maturity of your mortgage. And that will still enable you to discuss and leverage some financing for your capital needs.

[Presentation Slide 56]
Also, at the beginning of your process, no matter where you are in terms of when your loan is maturing, you want to contact your HUD account executive or project manager, basically what your HUD representative or you can e-mail the Office of Recap at this link shown here, 236preservation@hud.gov with any questions you have. They'll help you get started. They may be able to direct you to sources of predevelopment costs -- sources to support your predevelopment costs as well.

[Presentation Slide 57]
So talk to HUD early and often. And I will now go to the some of the resources provided by HUD on the HUD Exchange. You see here a number of things I want to emphasize that if you

subscribe to the multifamily preservation mailing list, you'll receive e-mails about anything new and relevant to preservation, new tools, new training opportunities, and more information about that is available on the resource list as well.

[Presentation Slide 58]
Also, coming soon from HUD, a number of things. On the technical assistance side, there's some new documents including the Section 236 guidebook that I mentioned several times that is a more detailed description of all the tools and processes that we described in this webinar today. And later in this year, HUD's going to have a series of preservation clinics or workshops. They're in the planning stages now and will take in various places around the country. Again, if you're on the HUD Exchange list, you will be notified about those things.

Also, new guidance is coming out on the 236 preservation process, new guidance on RAD 2 and new revisions to the Section 8 Renewal Guide.

[Presentation Slide 59]
Leslie Leitch: Wow. Vince, thank you. This is really helpful. I now know what I don't know. But at least I know where to go to find out what I don't know. This really completes the formal presentation about 236, but now we move into your questions. And this is the Q&A portion of the presentation.

Julia Pierson is going to be leading us through the Q&A. Do a little moving around for a second and turn it over to Julia.

[Presentation Slide 60]
Julia Pierson: Hi, everybody. We're going to do questions. A number of people have submitted questions during the presentation. If you have a question, you can go to the Q&A pod on the right side of your screen and write it in and we will answer as many as we can today. If we run out of time, you can submit them to the 236preservation@hud.gov.

So I have several people here who are going to be answering questions. So my first question is going to go to John. John, could you -- our listener asked -- let me find it. "What occurs if an IRP ends before the mortgage ends?"

John Ardovini: Thank you for that question, Julia. We do sometimes see this mismatch and it can result from timing issues when a permanent mortgage begins amortization after construction. What happens is that when the IRP runs out, there is no more IRP that will be applied to the principle and interest payments, which will result in full principal and interest payments to the mortgage.

Julia Pierson: Okay. Thank you. We're going to mark that as done. Well, let me mark it done. Minnie, you can figure out a way to do that.

The next one I'm going to ask -- this is again another one for John. "If you can't increase the rent for the first five years, how can you use the increased market rent to pay for the debt service?"

John Ardovini: So I think -- that's another great question. I think what this question is about is can I increase my rents after I decouple. And the quick answer to that is yes, you can. What you can do is per the 4350.1 chapter 7, that is going to --

Julia Pierson: Say that again.

John Ardovini: The Handbook 4350.1 chapter 7, that's a HUD handbook, page -- no. Just kidding. What you can do is direct yourself to that HUD manual and that will show you how to request a budget-based rent adjustment. And Basic and Market rent in the 236 world is adjusted by a bunch of factors. So yes. You can request and adjust your 236 rent structure.

Julia Pierson: Okay. My next question is for Minnie. Minnie, someone asked, how does -- now, we're talking about the discretionary PBV or EV. "Does HUD have discretion in determining how low vacancy areas are determined under HUD notice 2015-7?"

Minnie Monroe-Baldwin: Thank you, Julia. Yes. That's a good question as well. Notice 2015-7 is what we refer to as the tenants PBV set aside notice and it includes an appendix listing all low vacancy areas which qualify under the notice. So you can go through that notice, look to see where your property is located, and assure that it has already been identified by HUD as a low vacancy area.

If you have further questions about that and maybe specific issues developing around low vacancy determination, we would recommend that you contact your account executives in your local office.

Julia Pierson: Thanks, Minnie. Okay. I have another question. This one will go for John. Is that okay?

John Ardovini: Yeah.

Julia Pierson: Okay. If you can't increase the rent for the first five years, how can you increase the Market rent to pay for debt service? I just did that one. I didn't mark it. Sorry everybody. Let's see. I'll just mark that off.

All right. I'm going to read -- this one, I believe, is going to be for Stan. "My mortgage ended last year. We have a current Section 8 contract layered over the 236 and we received our state's tax credit for preservation, which we're working on now. That's great. Our contract term -- that was my comment. Our contract term is only for 10 years now that need -- and we need to extend the terms. He needs the TC terms, the tax credit terms. I am told that you cannot extend contracts any more. So you must cancel and do a new contract." Is that true, Stan?

Stan Houle: It is true that we no longer allow contract extensions for this purpose. However, we do allow in many instances -- and again, this would be something you need to talk to your account executive about -- about terminating the existing contract, renewing the contract for 20 years.

There will, in all likelihood, also be a requirement that the owner will have to agree to the terms of what's called the preservation exhibit, which means that the owner agrees, at the end of the 20-year contract, to renew the contract again for whatever balance there was on the contracts being terminated. But yes. The answer is that the contract can be terminated and renewed for the period of time that's necessary for the tax credits.

Julia Pierson: Okay. Thank you. I have another question. What -- this, I believe, is for Sheba. "What would the rent levels be for Tenant Protection Vouchers?"

Sheba Cousins: Hi, everyone. The rent levels for Tenant Protection Vouchers would be determined by the Public Housing Authority that has been assigned to administer the TPVs for that project. And the -- it's 110 percent of FMR or the lesser of -- John?

John Ardovini: Rent Reasonableness.

Sheba Cousins: Of Rent Reasonableness. So the PHA, the local jurisdiction, will determine the TPV rents.

Julia Pierson: Okay. Sure, Vince.

Vince O'Donnell: I just want to add. If the Tenant Protection Vouchers are Enhanced Vouchers, then the rent will be a comparable market rent, but only if they're Enhanced Vouchers .

Julia Pierson: Okay. Okay. I don't know who will answer this question, but I will put it out to you all. "Can you go into more detail on the allowable rent increase after you prepay?" Stan, you want to give that a try? Detail about the allowable rent increase after you prepay. That might be a 236 rent increase or it might be a Section 8. Do you want to start with the 236 answer?

John Ardovini: Yeah. Sure. Basically, again, your 236 rent increase is going to be guided by a budget-based rental adjustment. That budget-based rental adjustment, you're going to apply to your HUD account executive or someone in your headquarters who would review that. And your increased amount will be based on different operating expenses and the debt service requirements.

Stan Houle: It's a good, very good question because when it challenges us around the room, that means it's a very good question. The answer related to the Section 8 program is, of course, it depends and it depends because -- it depends on which option the project is operating under. It could be an Operating Cost Adjustment Factor (OCAF) adjustment that would adjust rents. If it's a renewal, it depends on the option it's being renewed under. It could -- the rents could go to market. Or if it's a different option such as option two, it could be market driven, but still adjusted by a budget. Or if it's a different option, then it might be a lesser of test. So really, the answer for Section 8, unfortunately, is it depends.

Julia Pierson: Okay. We have a totally different one. This is a 236 question. "If the nonprofit and the 236 expired without a loan, are there any additional affordability restrictions?"

Minnie Monroe-Baldwin: If you could repeat that for us.

Julia Pierson: If it's a nonprofit and the 236 expired without a loan, are there any additional affordability restrictions?

Vince O'Donnell: It sounds to me like that property is no longer regulated unless there was some other regulatory document that survived the HUD regulations. Once the mature -- once Section 236 loan matures, whether it's a nonprofit or a for-profit, the HUD regulatory agreement dissolves. So unless there was some additional regulation, perhaps, by a state or local loan or zoning variance or property tax agreement of some sort, the HUD regulations would be dissolved.

Julia Pierson: Okay. Now, I have one -- I'm not sure what this question is. I'm going to read it out loud. We'll see if we can comment on it. "236 project that is prepaying an HFA mortgage and terminating the HUD IRP, the project does not have Section 8 Rent Supp or RAP, can the owner apply for RAD 2? The owner is not looking to decouple.” That sounds like it has multiple layers to it.

Minnie Monroe-Baldwin: So I'll take a stab at this. But what I didn't hear was that the project had a contract that is not renewable upon that mortgage prepayment. So RAD conversions are all about offering the option of getting a long term subsidy at the point of a prepayment or expiration of a Rent Supplement or RAP contract. So it sounds like without that, RAD 2 is not available in that scenario that you described.

Julia Pierson: Okay. I have someone -- you'll have to excuse me because I'm trying to follow it. And actually, it may be too complicated to answer because I see a part one. I haven't found a part two in my list yet. So this person says, "Part one, we're looking at a Section 236 that has Section 8 in 20 percent of the units. The remaining units are non-assisted. If this project goes through an IRP decoupling, are the non-assisted units eligible for TPV?"

Minnie Monroe-Baldwin: Well, again, that would -- it is sort of complicated, -- whether or not the non-assisted units would be eligible for the TPV. It's not so much related to the IRP decoupling as it is whether or not permission is required for prepayment of that mortgage. Again, I'm sure we went through that on one of the slides. I'm not sure the number, but there specifically was an attempt to address the fact that once you prepay and it is a preservation eligible project, which means that HUD permission is not required and on the HFA, the HUD approval is not required, the project would then be eligible for TPV.

Vince O'Donnell: That's right. And if the property had -- that's right. If it's an HFA loan, it doesn't matter whether it's nonprofit or for-profit. And those TPVs would be Enhanced Vouchers because it's a 236.

Julia Pierson: Okay. I found part two. "If a project has already gone through an IRP decoupling and it's still within the five-year 236 restricted use period, would any TPVs be eligible for conversion to project-based assistance under RAD 2?"

Minnie Monroe-Baldwin: So again, the RAD 2 is associated with an existing Rent Supplement or RAP contract that would be either expiring as we say here at HUD naturally or expiring as a result of the mortgage prepayment. However, there could be a slight scenario where if you already had vouchers -- you already decoupled and your vouchers were already issued, and you do have a Rent Supp -- an active Rent Supp or RAP contract, then you could do possibly a retroactive RAD conversion.

Again, with those types of questions, we recommend that you send those to us directly and we'd like to have more conversation with you. The platform we're working from today does not permit us to have all of the details about how to contact you. I believe we have your name, but not your contact information.

So e-mail us at 236preservation@hud.gov and then we could have more conversation and hopefully address more accurately your question.

Vince O'Donnell: Oh. Just to add. As Minnie said, if those TPVs derived from an expiration of a Rent Supp or RAP contract, then potentially you could be eligible for a retroactive RAD. The procedures for retroactive RAD transactions are a little more stringent because you need to get the consent of each tenant whose portable TPV is going to be project-based.

Julia Pierson: Okay. I have a completely different type of question now. "We currently have a full-time service coordinator grant from HUD. How can we continue with grant funding after refinancing? So does anyone here know about the service coordinator grants and how they apply to 236? Would they refinance?"

Minnie Monroe-Baldwin: No. That actually would be a question for the OAMPO office, formally Asset Management. So the recommendation here today would be for you to contact your account executive at your local office and they can assist you with that question.

Julia Pierson: Okay. Here's another question. This has to do with 236 rent. "My 236 mortgage is done. Will our rents be decreased because we don't have any debt service at this time? I am going to have a Tax Credit rehab soon. In that time period, will my rents be reduced?"

John Ardovini: I'll take that question. So the answer to that question again is maybe. Without the specifics, I can't honestly tell you whether your rent will be reduced, but there is always a possibility -- based on what your budget tells us, there's a possibility they can be reduced.

Julia Pierson: Okay. So they should contact their --

John Ardovini: Contact their account executive.

Julia Pierson: Okay. Okay. This is about financing. So Vince, this might be a question for you. "Our area has no Housing Authority. The sources listed in the source material do not have any funds available. Is HUD actually offering financing for new loans?" Actually, that's not a Vince question. I thought it was going to ask are there other places to get funding. So at this time, is HUD offering any other new financing options?

Vince O'Donnell: Sure. Well, I mean, HUD is not directly lending money. But the FHA program insures multifamily loans, which are available through a network of multifamily lenders, called Multifamily Accelerated Processing or MAP Lenders. So HUD-insured financing is available anywhere in the country through these private MAP Lenders. I'm not sure why you don't have a Housing Financing Agency in your area. I thought that all states and territories did have HFAs. So you might want to check into that a little bit more.

You can also go to lenders that originate loans that are backed by Fannie Mae and Freddie Mac.

Julia Pierson: Also you have the Housing Trust Fund, which will come through states next year, maybe.

Vince O'Donnell: I've got my fingers crossed, too.

Julia Pierson: Okay. This is a RAD 2 question. You mentioned the need for a physical condition assessment if the property is entering RAD 2 prospective, it's just moot. Here we go. If it’s prospective, must that be the RAD PCA like those that PHA developments do? So I guess they're asking about what it actually has to look like, the physical condition assessment or the format of that.

Sheba Cousins: So for RAD 2, the only projects that are required to have PCAs are projects that have a -- that are Mod Rehab or Mod Rehab Single Room Occupancy. And you would have to submit a financing plan in their PCA. It's not a requirement for Rent Supp or RAP projects that typically have a 236 mortgage.

Julia Pierson: Thank you. That was Sheba Cousins.

Minnie Monroe-Baldwin: So I would just add to that that if you are recapitalizing the project, however, there may be some other -- your lender may be -- Tax Credit, for example, would be requiring a PCA. But as Sheba mentioned, to convert your Rent Supplemental RAP contract, under RAD 2, a PCA is not required. However, as Vince mentioned in the delivery today, in terms of determining what preservation strategy you will adopt, it would be good to engage a PCA so that you know what your requirements would be to really preserve the project.

Julia Pierson: Okay. This is an HFA -- Housing Finance Agency -- question. "Does the HFA have the authority to permit a prepayment of the HFA-financed loan if the property also has a Flex Sub Loan?"

Vince O'Donnell: I think that's going to depend on your actual project documents. If the project was originally developed with HFA financing, it has its own -- those loan documents will say whether or not it's prepayable. Even ifthe property later received Flexible Subsidy. It would have to -- the owner would have to have agreed to waive the prepayment privilege, otherwise that privilege would still exist. So you need to check your loan documents to see if that was actually waived.

Julia Pierson: Okay. We have a question -- this might be for Sheba. "The ability to convert under RAD 2 doesn't apply to projects that have already decoupled?"

Sheba Cousins: So under the current guidance, projects that have already decoupled, we have allowed some to request a waiver request. So projects that under the current guidance, you can submit a waiver request, even if you've already decoupled to apply for RAD 2.

Julia Pierson: All right. I have a complicated one. "If a mortgage matured, but a Flex Sub Loan has not repaid in full, taking a broad inclusive view with tenants that live on the property at the time the mortgage matured -- who do not live on the property the time the mortgage matured, but at the time the Flex Sub Loan was repaid be eligible for a TPV?"

Minnie Monroe-Baldwin: Read that again.

Julia Pierson: "If a mortgage matured but a Flex Sub Loan was not repaid in full, taking a broad inclusive view, would tenants that did not live on the property at the time the mortgage matured but do live at the time the flex loan was repaid be eligible for TPVs?"

Stan Houle: So tenants moved in after the maturity?

Julia Pierson: That sounds like it.

Stan Houle: But before the Flex Loan was repaid?

Julia Pierson: Yes.

Minnie Monroe-Baldwin: I think that question is a little -- it's not very clear to us here at the table. So if you would, please contact the 236preservation mailbox and we would further discuss and try to clarify the question so that we can get you a correct answer.

Vince O'Donnell: I would say, though, that the link between Flex Sub and the eligibility for an Enhanced Voucher is that there must be a prepayment in order to trigger that Enhanced Voucher due to the Flex Sub. So if there is -- it's a loan that's matured, there is no prepayment. I doubt that that will trigger a TPV.

Sheba Cousins: And if the loan has matured, they could possibly apply for the set aside TPV under the newly released PIH notice 2015-7.

Julia Pierson: Okay. And that's on one of the slides today. All right. I have another RAD question. "Does the RAD 2 have a separate allocation for 236 projects as opposed to the current 185,000 unit cap for RAD 1?"

Sheba Cousins: So RAD 2 does not have a cap. We are accepting applications on a rolling basis for Rent Supp, RAP, and Mod Rehab projects.

Julia Pierson: All right. I'm going to try another one. This might -- this is about limited equity co-ops. So Vince, we're hoping you know the answers about limited co-op -- limited equity co-op. If you don't, we might not have the answer in the room. So just letting you know.

"If the 236 project is a limited equity co-op, will HUD allow shareholders to have their share values repaid to them in return for converting project to rental apartments and extending the use agreements?"

Vince O'Donnell: Well, I'm not sure what converting to rental -- oh. I see. Converting to rental apartments as in no longer being a co-op. I'm going to assume that that's what's meant.

I think the answer is if the mortgage matures, the answer is yes because HUD no longer regulates it. So all 236 co-ops are limited equity, which means that the share value is restricted by a formula. Also, 236 co-ops do not have the right to prepay without HUD permission. So let's assume that this is not being prepaid, but just maturing as a result of that requirement.

After maturity, the regulatory agreement dissolves and HUD does not regulate anything. And the co-ops -- the co-op is free to distribute equity any way that it sees fit and to revalue the equity any way that it sees fit. And that is, by the way, what happened in New York. Thousands of units of co-ops in New York have done just that.

Julia Pierson: Thank you. I have a question. This might be for John. If I have a -- or maybe Vince. "If I have a 236 LIHPRHA with no Project-Based Section 8 and I do not receive TPVs or EVs, will my rent decrease because I no longer have a mortgage payment after I prepay my 236 loan? It will be two to three years before we can pull together Tax Credit financing."

Vince O'Donnell: Well, I'm not sure of all the facts, but I may go back to Julia for some of the components of the question.

Julia Pierson: That's fine. Let me just say it again.

Vince O'Donnell: Yeah.

Julia Pierson: Okay? And other people can weigh in. If -- the person says if they have it, but let's assume they do. "If I have a 236 LIHPRHA with no Project-Based Section 8 and I do not receive TPVs or EVs, will my rent decrease because I no longer have a mortgage payment after I prepay my 236 loan?"

John Ardovini: Well, it seems to me there's no more 236 mortgage at the property and it is going to turn into a market unit.

Stan Houle: No. It's LIHPRHA.

John Ardovini: So it's still going to be --

Stan Houle: It has an essentially permanent use agreement.

John Ardovini: Right.

Minnie Monroe-Baldwin: Remaining life.

John Ardovini: So will their rent decrease? So they will still be guided by their plan of action, which we'll say that's going to be a Project-Based Rent Adjustment. And I would say the person to give you the best answer is your account executive.

Vince O'Donnell: Because the rents will very likely decrease because the budget-based stack won't have debt service in it. I'm not sure why you wouldn't get EVs and if you're not going to get it, why you would prepay. But usually LIHPRHA owners prepay the 236 in order to generate EVs to relieve the rent burden for existing tenants. By the way, this gives me a chance to say in a situation like that, there are often -- even in a project that was preserved under LIHPRHA or ELIHPA, there are rent burden tenants. And if those tenants received Enhanced Vouchers, remember I said earlier the rent burden doesn't go away. The EV “rent floor” applies.

However, if the owner is doing a preservation transaction that includes project basing those Enhanced Vouchers, they change from Enhanced Vouchers to Project-Based Vouchers and the rent floor goes away and those tenants will not be rent burdened.

Julia Pierson: Okay. So now, I have some comments and also I'll ask the panelists also if you want to make a last comment about something you want to emphasize, you can do that. But let me -- I had a comment from somebody who said that “related to the prepayment notice, perhaps it is important to note that in many places, state and local law may also require notice, so the owners should check for any requirements and comply, to ensure a smooth path forward.” That's good advice. Good advice.

So I'm going to ask the panelists, are there anything in particular someone else wants to clarify anything before I read the last final question? Okay. Okay.

I'm going to do one of my favorite questions. This one is for Minnie. This is a question that someone put in. They asked why HUD can't just forgive their outstanding Flex Sub Loans. And if they prepaid their – “if I prepaid my mortgage, are my only available options to either pay it off or defer it?”

Minnie Monroe-Baldwin: So I think Vince did cover this in one of the slides. And unfortunately, HUD does not have congressional authority to forgive federal debt. I think that is that. It sounded like it was two parts to the question, but that's pretty much --

Julia Pierson: That was the main answer.

Minnie Monroe-Baldwin: Right.

Julia Pierson: Okay. Okay. I want to ask this question of John. Someone asked if -- they said that – "rehab requirements apply to receive permission to prepay. Could you explain those requirements? And can they be waived?"

John Ardovini: So I believe Vince did touch on this before as well. This is a question related to Section 250 mortgage prepayment where HUD permission is required for the prepayment. And so one of those conditions for approval is that the project be rehabilitated and there are three administrative requirements.

The first administrative requirement is the hard cost, not including your contingencies, at least $15,000 per unit. Or a second requirement would be there is replacement for modernization of one or more mechanical systems or major building components. And the third one is that the total rehab cost is at least 25 percent of the total development cost. So you'd have to meet one of three of those administrative requirements.

Now, as they are administrative requirements, you can waive or submit a waiver for these requirements, but is unlikely that HUD will waive it.

Julia Pierson: Okay. And that's all the questions that we could get to today. If we didn't get to your question, would you e-mail 236preservation@hud.gov and someone will get back with you?

[Presentation Slide 61]
Leslie Leitch: Thank you. That was terrific. At the conclusion of this webinar, you'll be sent a feedback survey. It is critical that you complete that so that we continue to meet your needs on future webinars or other activities.

Please also sign up for the multifamily preservation mailing list on the HUD Exchange. Once you do that, you will start getting notices on information, training notices, and about the upcoming clinics/workshops that will be held mid to end of this year where your one-on-one questions will be able to be answered.

Always use HUD as a valuable resource in specific questions. And to all of you, good luck. Thank you.