

## Appendix A

### Notice Requirements

#### ***Federal notice requirements for termination of project-based Section 8 contracts<sup>2</sup>***

- Owner must provide written notice to the HUD Secretary *and* each tenant (by delivery or mailing).<sup>3</sup>
- Owner must serve notice at least one year before termination *and* one year before decision to opt out (i.e., if owner originally gave a notice of renewal, tenants must be served with a one-year notice of owner's new decision to opt out).
- Notice must include a statement of possible renewal and a statement of the residents' right, if termination occurs, to remain and continually renew leases as long as the property is offered as rental housing, the PHA continues to find the rent reasonable, and there is no cause for eviction under Federal, State or local law.
- Notice must contain a clear statement of the owner's decision to opt out.<sup>4</sup>
- Did the owner give HUD an additional four-month notice prior to opt-out?<sup>5</sup>

#### ***Federal notice requirements for prepayment of a mortgage or termination of an insurance contract<sup>6</sup> (requirements are applicable only if property is "eligible low-income housing")<sup>7</sup>***

- Owner must provide written notice of intent to the HUD Secretary, each tenant, *and* the chief executive officer of the appropriate state or local government.
  - Owner must provide notice at least 150, but not more than 270, days before the prepayment or termination.

#### ***State or Local Notice Requirements***

Check state and local laws for notice requirements that differ from federal requirements.

### Consequences of Noncompliance with Notice Requirements

#### ***Federal notice requirements for terminations of project-based Section 8 contracts***

The federal statute provides that until the proper notice has been given and one year has elapsed, the owner cannot evict the tenants or increase their rent payments.<sup>8</sup>

#### ***Federal notice requirements for prepayment of mortgage***

The relevant statute does not specify a remedy. If violations occur, advocates should pursue injunctive relief and damages.

#### ***State notice requirements for terminations and prepayments***

Check the relevant statute for specific remedies or pursue injunctive relief and damages.

<sup>1</sup>For background, authorities, and further details see the accompanying memo, entitled "Summary of Notice Requirements for Termination or Prepayment of Federal Housing Assistance." Contact Jim Grow at NHLP's Oakland Office, jgrow@nhlp.org, or call (510) 251-9400 x104.

<sup>2</sup>42 U.S.C. §1437f(c)(8).

<sup>3</sup>HUD, *Section 8 Renewal Policy: Guidance for the Renewal of Project-Based Section 8 Contracts*, Sec. 11-4 B (Jan. 19, 2001), available from hud.gov/fha/mfh/exp/s8renew.pdf.

<sup>4</sup>This particular requirement is not expressly imposed by the statute, but has been interpreted to be required by the only court to address the issue. See *215 Alliance v. Cuomo*, 61 F. Supp.2d 879, 886 (D. Minn., 1999). As of January 19, 2001, HUD guidelines also require a clear notice. See HUD, *Section 8 Renewal Policy: Guidance for the Renewal of Project-*

Based Section 8 Contracts, Sec. 11-4 (Jan. 19, 2001) (owners intending to opt-out must use notices that contain the language of HUD's format App. 11-1, and must state that they will honor the tenants' right to remain), available from [hud.gov/fha/mfh/exp/s8renew.pdf](http://hud.gov/fha/mfh/exp/s8renew.pdf).

<sup>5</sup>See HUD, *Section 8 Renewal Policy*, *supra*, Sec. 11-4 F.

<sup>6</sup>See §219(b) of QHWRA, Pub. L. No. 105-276, 112 Stat. 2461, 2487 (Oct. 21, 1998). QHWRA is codified at various parts of 42 U.S.C §1437-§13664, although §219(b) is not codified. Requirement is not applicable where there is priority purchaser under LIHPRHA, or post-prepayment terms would be at least as good for tenants. HUD issued a sample prepayment notice in HUD Notice 99-36, App. 3E (Dec. 29, 1999).

<sup>7</sup>As defined by the Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA), Pub. L. No. 101-625, *codified at* 12 U.S.C. §4101. Generally, "eligible low-income housing" includes properties with HUD-subsidized mortgages that are eligible for *unrestricted* prepayment (without HUD approval) within two years.

<sup>10</sup>See 42 U.S.C. §1437(f)(c)(8)(b).