



Leaving the RD MFH Program the Get R Done Right way – A new narrative

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Key STAY/GO Issues to consider:

How close to maturity
is the loan?

Is the owner market or
mission based?

Is the property in a
poor, good or great
market?

Is the property in poor,
good or great
condition?

How much RA
available – do rents
relate to the market?

What are the
restrictions on the
property?

How long will it take to
process a transfer?

What is the availability
of State funding?

What is the availability
of RD funding?

Do you need and will
RD use available
servicing options?

Do tenant protections
encourage or
discourage leaving the
program?

Does RA encourage or
discourage leaving the
program?



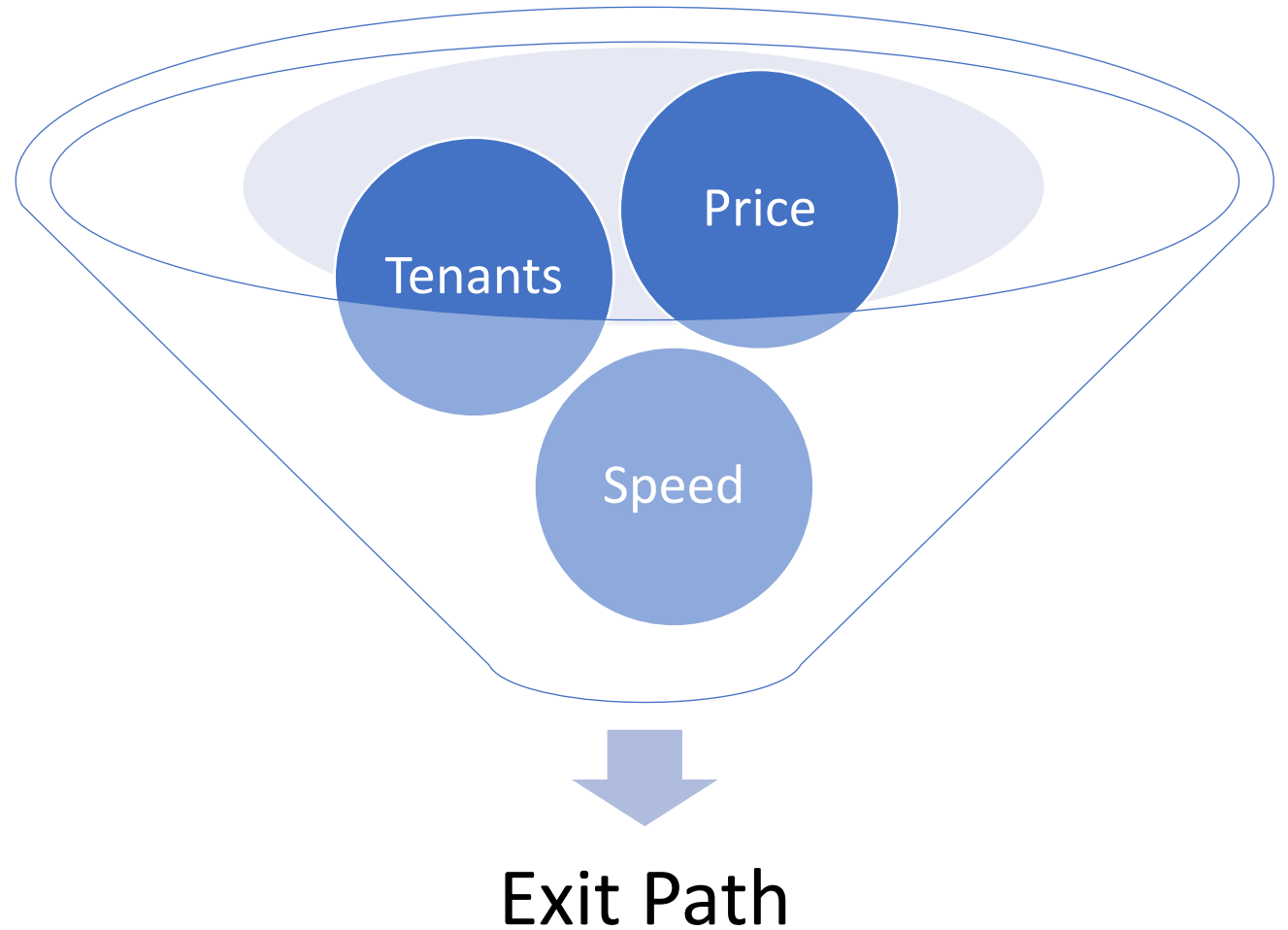
Bottom Line:

I want a fair price

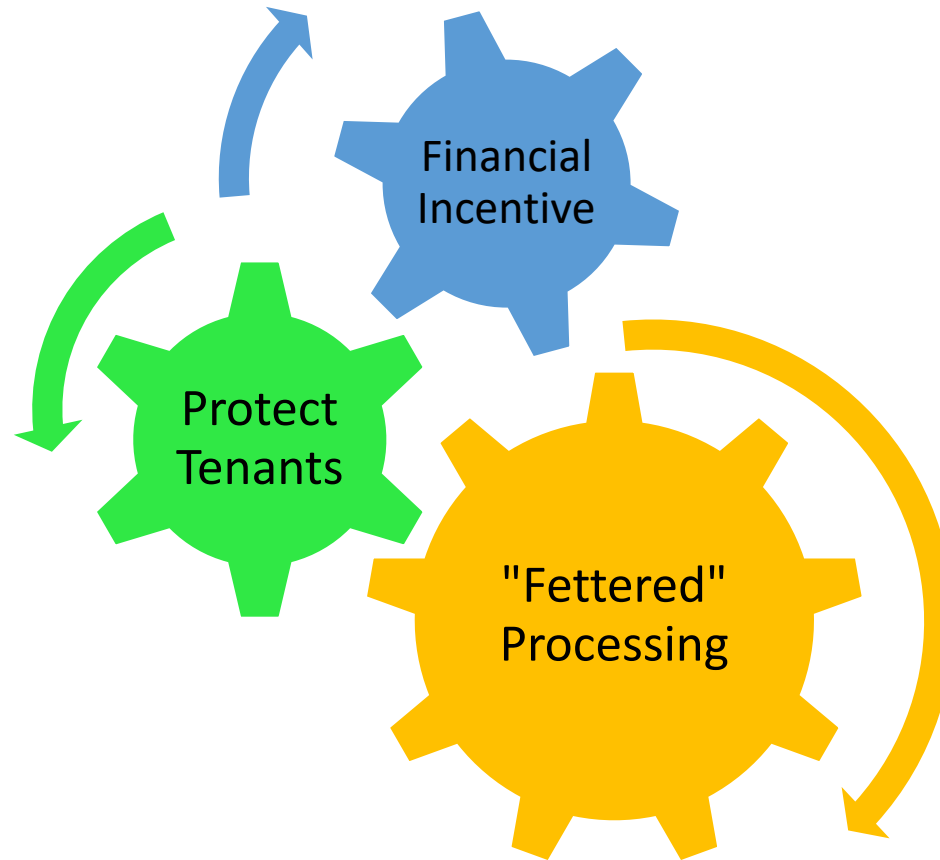
I care about what happens to my tenants

I don't want it to take forever

Time to consider options and make a plan!



Working through the Prepayment Prevention Process – The Law Created Roadblocks, Obligations, and Opportunities!



A large school of salmon swimming in clear water. The fish are silvery with some iridescent colors, and their movement creates ripples in the water. The background is a mix of blue and brown tones, suggesting a natural aquatic environment.

OLD NARRATIVE: PREPAYMENT = BAD

NEW NARRATIVE: PREPAYMENT = FULL
VALUE PRESERVATION

OLD NARRATIVE: PREPAYMENT is a BUMMER

- **Law change took away unfettered right to prepay - thousands sued and thousands now stuck**
 - Thousands of eligible owners were paid for damages by DOJ.
 - Taking damages locked prepayment prohibition in for full 50 years loan term.
- **Enter prepayment process to leave the program – lingering restrictions and difficult to manage**
 - RD says they doesn't have any preservation funds or RA, drag their feet, add requirements.
 - After long process, you can pay off, but you most likely will need to accept restrictions, tenants get scared and tenants don't have to accept vouchers.
- **If you sell within the program -**
 - RD transfer rules favor full payment of a fair sales price as the last priority. Rehab comes first.
 - RD processing delays discourage all but the brave, deep pocketed and experienced. Strong buyers, funders and others are few and far between. Their expenses come first.
 - RD has very limited funding.
- **If you wait out your loan term**
 - If you don't make it - your heirs get to deal with it. Exit taxes solved, but good luck kids.
 - Pay your last payment and leave without restrictions. RA goes away and tenants not covered by vouchers. Tenants come last.

NEW NARRATIVE: ENTERING PREPAYMENT PROCESS OK

- **Enter Prepayment, but forget about Incentives:**
 - RD rather use 515 money, RTO increases and RA elsewhere.
- **Use RD's Sale to Nonprofit" (S2NP) process to:**
 - Seller gets full market value for MFH Project
 - NP or PB buyer gets 50 year 1% RD Section 515 funding for purchase
 - NP or PB buyer gets 100% RA
- **Statute requires RD to provide Section 515 (up to 9% of annual) and RA**
- **No NP or PB shows up within 180 advertising period**
 - Seller can pay off with no restrictions (bummer for tenants – will RD protect them?)
- **NP or PB can't get funding within 2 years of PSA**
 - Seller can pay off with no restrictions (bummer for tenants – will RD protect them?)
- **Reality Check**
 - RD now geared up to get you out of the program ASAP.
 - You may need to work hard and be patient to get this done.

Steps to enter S2NP process and sell to NP

- File prepayment request with Portfolio Management Branch (PMB), Asset Management Division
- PMB approves request and notifies tenants - Prepare to meet with tenants
- Reject Incentives. Tell RD you choose S2NP, RD will start meaningless reviews as regulation and law allow you to elect to directly enter S2NP
- Get your appraisal, RD gets theirs (maybe) and establishes a sales price
- Start advertising for 180 days and select offer at sales price
- Select offer and get a purchase and sales agreement (PSA) signed
- Purchaser asks RD for funding
- Purchaser acquires through transfer and rehab – 1 or 2 step

Could RD make this a less convoluted process? YES!

- Permanently set up an easy to work two step process for NP purchase
 - No requirement to apply for prepayment and scare tenants
 - No rehab docs at time of step 1 transfer
 - Market rate appraisal to set sales price – one is enough
- Ask for more Section 515 funding
- Request to set-a-side more 515 funding for NP purchases
- Get a waiting list going
- Promote this as a program – not a secret
- Prioritize MPR and RA to fund "sales to non-profits"
- Modest handbook, maybe regulatory changes (hint - focus on rehab needs determination)
- Request statutory change for larger NP set-a side or clarification on rehab needs if required

2 step transfer process – from a Get RD Done perspective

BASIC CONCEPT:

Step 1 - Get the seller out and a NP buyer in as soon as possible

Step 2 - Complete any needed rehab later. NP owner commits to long term community service

WHAT DOES RD MUST NEED TO CONFIRM AT EACH STEP:

Step 1 - The purchaser is an eligible NP entity and they will be capable of long term operations and management (Similar to change of GP eligibility requirements).

Step 2 - The purchaser is committed to address capital needs as a responsible owner. This means they will commit to determining what those needs are (perhaps with a CNA) and seek funding with RD approval to address those needs over time.

CPOMPLICATIONS THAT CAN BE ADDRESSED:

Step 1 - if the buyer wants to make the purchase with debt that has a claim on project income, then RD needs a market rate appraisal.

Step 2 - if the buyer wants to pay for rehab work by seeking RD funding (515, MPR, or 538) or third party funding with debt that has a claim of project income, or LIHTC equity, then RD will need a CNA, post rehab appraisal and depending on the scope - architectural plans, agreements and cost estimates (as currently required for any other stay-in owner during normal operations).

Get your Information together

Request from the Field Operation Division (FOD) servicer:

- Copy of the initial and any subsequent loan agreements and notes.
- AMAS M1FI Screen(s) for the current remaining unpaid balance.
- Any restrictive use agreement or covenant.

Other data as needed including:

- LIHTC rents and HUD Fair Market rents
- most recent budget actuals, project worksheet, tenant quick check
- 3 spread sheets for the PAT: MFIS FIN 1700 (budget history), FIN 1200 (Balance Sheet), FIN 2000 (reserves)

Talk to your CPA and attorney. Understand your partnership issues and exit tax related obligations



SUBMITTING A REQUEST TO PREPAY

RD will ask for several items from the borrower - to save time and effort try to have a one letter that addresses all statements and declarations

Processing a Prepayment Request with RD

- When you figure out submitting a prepayment request is in your best interest. Develop a Prepayment request.
- A request must include:
 - Identify your project and loan(s)
 - Document that you can pay off your loan(s)
 - Sign to say you will comply with all laws
 - Attach new lease clause for new tenants
 - Sign that RD may release your necessary project info
 - Sign to say notice made to other providers
 - Maybe explain what you want – incentive, leave ASAP, sell to NP or PB
- Send it to the Portfolio Management Branch (PMB) and start the basic 12 steps highlighted below:



Processing a Prepayment Request with RD

1. Schedule a concept call with your PMB specialist, and the applicable Processing and Report Review Branch (PRR) specialist and discuss what you want, loan eligibility, processing steps, and timelines.
2. PMB will review the request to ensure it is complete, including the execution of the Release of Information. If the request is incomplete, it will be returned to you identifying the deficiencies and allowing 15 days to return a complete application. If you do not respond within the 15-day timeframe, the application will be considered withdrawn.
3. Once the application has been determined complete, PMB will update RD tracking systems and send notices to the tenants before handing it over to the Processing Report and Review (PRR) branch.

Processing a Prepayment Request with RD

4. PMB will determine the eligibility of the property for prepayment and notify you it is acceptable by asking if you want a general incentive. NOTE: RD's statute and regulation requires RD to offer an incentive.
5. To get a specific offer you must say no to a general incentive and tell RD in writing that you want a specific incentive. RD typically directs you to then get an appraisal and CNA, both subject to RD review and approval.
6. When a specific incentive is offered after an appraisal and CNA have been approved by RD, the transaction will be passed on to the PRR Underwriting (UW) branch who will develop the incentive and correspond with the borrower.
7. If you accept the incentive or if a qualified NP makes a "bona fide" offer under the "sale to NP or PB " process, then you work with RD to get the incentive funded and closed, or the NP or PB purchaser works with RD to get the equity loan funded and closed.



Processing a Prepayment Request with RD

8. If you reject all incentives, Per 7 CFR 3560, Section 3560.658 (b), RD must determine if the prepayment has a negative impact on housing in the community and minorities.

9. If there is an impact on minorities you will be required to market the property to a NP or PB. (transaction remains in UW). NOTE: You may elect to sell to a NP or PB.

10. If there is no impact on minorities but the project is still needed in the community, you may prepay, but with restrictions to protect current tenants.

11. If there is no need in the community and no impact on minorities, or no qualified NP makes an offer within 6 months, you may prepay without further restrictions. NOTE: RD may still provide vouchers.

12. If you reject all incentives or no NP steps up and you are willing to accept any required restrictions to prepay, the file will be handed back to FOD to process the final payment. NOTE: You can pull out of prepayment process at any time.

In addition to standard eligibility processing. RD has 6 additional criteria for NP purchaser's in a sale to nonprofit process. They are found in 7 CFR 3560 at 3560.659 (e)

(e) Requirements for nonprofit organizations and public bodies. To purchase and operate a housing project, a nonprofit organization or public body must meet the following requirements:

(1) The purchaser must agree to maintain the housing project for very low- and low- income families or persons for the remaining useful life of the housing and related facilities. However, currently eligible moderate-income tenants will not be required to move.

(2) The purchaser must agree that no subsequent transfer of the housing project will be permitted for the remaining useful life of the housing project unless the Agency determines that the transfer will further the provision of housing for low-income households, or there is no longer a need for the housing project. Language to be included in the deed, conveyance instrument, loan resolution, and assumption agreement (as applicable) is provided in §3560.662.

More NP eligibility requirements per 3560.659 (e)

- (3) The purchaser must demonstrate financial feasibility of the housing project including anticipated funding.
- (4) The purchaser must certify to the Agency that no identity-of-interest relationships in accordance with §3560.102(g). The purchaser must not have any identity of interest with the seller or any borrower that has previously prepaid or requested prepayment of an Agency MFH loan.
- (5) The purchaser must complete an Agency-approved application and obtain Agency approval in accordance with subpart B of this part.
- (6) The purchaser must make a good faith offer taking into consideration the value of the housing project as determined in accordance with paragraph (a) of this section.

S2NP Advertising requirements of 3560.659 (b)(1)

(1) The borrower must advertise and offer to sell the project for a minimum of 180 days. The borrower may choose to suspend advertising and other sales efforts while eligibility of an interested purchaser is determined. If the purchaser is determined to be ineligible, the borrower must resume advertising for the balance of the required 180 days.

S2NP selection priorities laid out in 4560.659 (f)

(f) Selection priorities. If more than one qualified nonprofit organization or public body submits an offer to purchase the project at the same time, priority will be given to local nonprofit organizations and public bodies over regional and national nonprofit organizations or public bodies. When selecting between offers equally meeting all other criteria, the borrower will first consider the success of the nonprofit organization's or public body's previous experience in developing and maintaining subsidized housing, with preference given to the most successful. If the offers continue to be equal, the borrower will then consider the number of years experience that the nonprofit organization or public body has had in developing and maintaining subsidized housing, with preference given to the greater number of years.

S2NP RD funding Resources per 3560.659

Sale or transfer to nonprofit organizations and public bodies.

(g) Loans made by the Agency or other sources to nonprofit organizations and public bodies.

Agency loans to nonprofit organizations or public bodies may be made for the purposes described in this paragraph. Agency loans will be processed in accordance with subpart B of this part. **Loans from other sources will be approved by the Agency in accordance with subpart I of this part.**

(1) Agency loans to nonprofit organizations or public bodies for the purchase of a housing project will be based on the appraised value determined in accordance with paragraph (a) of this section.

(2) With proper justification, an Agency loan may be made to help the nonprofit organization or public body meet the housing project's first year operating expenses if there are insufficient funds in the housing project's general operating and expense account to meet such expenses. **An Agency loan, for the purpose of covering first year operating expenses, may not exceed 2 percent** of the housing project's appraised value determined in accordance with paragraph (c) of this section.

(h) **Advances for nonprofit organizations and public bodies.** The Agency may make advances, in accordance with Section 502(c)(5)(c)(i), not in excess of limits established by Congress to nonprofit organizations or public bodies that are purchasing housing under this subpart. Grant funds may be used to cover any direct costs other than the purchase price, incurred by nonprofit organizations or public bodies in purchasing and assuming responsibility for the housing project.

More guidance from 3560.659

(i) Waiting list. If funds for sales to nonprofit organizations and public bodies are limited, the Agency will add the funding requests to the waiting list for incentives and follow the process established in §3560.657(b) and (c).

(5) The purchaser must complete an Agency-approved application and obtain Agency approval in accordance with subpart B of this part.

(6) The purchaser must make a good faith offer taking into consideration the value of the housing project as determined in accordance with paragraph (a) of this section.

PROCESS ESCAPE guidance from 3560.659

(j) Withdrawal from sales process. **A borrower may withdraw the prepayment request at any time prior to the sale of the property.** The borrower will be responsible for any damages associated with breaking a sales contract established with a nonprofit organization or public body.

(k) When no offer to purchase is received. Prepayment with no further restriction may be accepted by the Agency when the borrower agrees to offer the housing project for sale to a nonprofit organization or public body in accordance with §3560.659 and no good faith offer is received within **180 days** from the date that the housing project was advertised for sale to a nonprofit organization or public body, or a good faith offer was received within 180 days from the advertisement date but the offeror was unable to fulfill the terms of the offer within **24 months** of the offer date, provided the owner cooperated with the potential purchaser.

Guidance from 3560.657 (INCENTIVES) that duplicates guidance from 3560.659

§3560.657 Processing and closing incentive offers.

(b) Waiting lists. If funds for components of incentive offers are limited, the Agency will establish a waiting list of accepted incentive offers for funding in the date order that the complete prepayment request was received.

(c)(4) The borrower may elect to obtain a third-party equity loan provided rents will not exceed comparable rents in the market area.

What to tell tenants

1. We filed a request to prepay our USDA loan to enter USDA's Preservation Process. The request is required by USDA's "Housing Preservation" Regulation (7 CFR 3560 Part N) which is based on USDA's Preservation Law (Section 502(c) of the Housing Act of 1949).
2. USDA's Preservation Law was passed over 30 years ago because Congress was concerned about USDA funded rural rental properties leaving the program early and displacing tenants. Prior to that law, owners could prepay at any time, most without notice.

What to tell tenants

3. The Law offers owners of USDA funded rental properties like us - a way to keep our rental property affordable and protect our tenants, even when we as owners want to leave the program.
4. The Law also requires USDA to provide all tenants notice of what is happening to this property, inform you of your rights to appeal or provide comments to USDA, and what steps you can take to protect yourself from the effects of any prepayment that may occur.

What to tell tenants

5. We want to share with you that we have decided to leave this program by entering USDA's preservation process because: _____.

6. If USDA decides they want to keep this property in the program, they can provide financial resources that will allow it to continue to operate and hopefully make improvements to our apartments. If it stays in the program under current or new ownership there will be no change to the formula used to calculate the rents that you pay.

What to tell tenants

7. Unfortunately, entering USDA's Preservation Process is the only way to access USDA funding for incentives to stay in the program, funding for a nonprofit to purchase this property, and rental assistance and USDA voucher protections for you.

8. USDA's Preservation Process allows us to:

- Receive a fair incentive from USDA to be sure this property can stay in the program, or

- Sell to a Nonprofit or Public Body owner and keep it in USDA's program, or

- Prepay and leave the USDA program.

What to tell tenants

9. We advised USDA of our intent which is: _____.

(If 8 a. above) We also want to be sure this property has the financial resources it needs to provide you with decent, safe, and sanitary rental housing. Our property is aging, and we want it to be able to serve the housing needs of our community for decades into the future.

(If 8 b. above) We feel strongly that Nonprofit ownership will offer you and our community the best opportunity to continue to be served with affordable rental housing.

(If 8 c. above). We no longer choose to participate in the USDA program.

What to tell tenants

10. By issuing the notice, USDA has just taken the first step in their Preservation Process. We can't provide you with a specific time frame for anything just yet as all actions are dependent on the pace of USDA processing, decision making, and the availability of USDA funding.

11. If we eventually go through the Preservation Process and then decide to do nothing and stay in the program, nothing changes. There will be no change to the formula used to calculate the rent you pay.

12. If USDA allows us to pay off the loan and the property leave the program, USDA has vouchers that will allow you to stay in the property or move to another with no change to the rent you pay at the time the property leaves the program.

What to tell tenants

13. USDA's voucher and rental assistance programs have many complicated rules that will be explained in detail by USDA as their processing of this request proceeds. We will be there to help you through that process, but you must be prepared to apply for that assistance when it becomes available.

14. The most likely outcome of this process is that you will continue to pay the same rent and that you will continue to enjoy your apartment with no disruption.

15. USDA has asked you for comments. It is important that you tell USDA how you feel about your need for continued occupancy in this property, if you would like for it to stay within USDA's Program, and if you want USDA to fund its preservation and continued use as your home.

Looking at a sale to NP (S2NP) as a good thing

- Owner can elect or if RD determines an adverse impact on minorities, the owner is required to enter the S2NP Process.
 - It offers the most direct path to receive a fair price since RD is obligated to provide a 515 loan to make it possible.
 - The process sets the sales price based on a market rate value after two appraisals. The sales price is final.
 - If no NP shows up after 6 months the project can be prepaid and sold the next day at full value as an unrestricted property.
 - If a NP offer is accepted, at worst, the NP has 2 years to get their funding together, or the project can be sold. There is an end date.
 - It's not a solution that everybody wants to pursue, especially if a post prepayment buyer is in the wings.
 - However, the statute provides for it as an alternative the owner can choose if they feel RD made a “bad faith” incentive offer.
 - Upside for a seller - If you run the “6-month S2NP gauntlet” you can prepay without assuming any of the burden of possible post prepayment RUPs.
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