

The notice providing information regarding the application process, funding criteria and eligibility requirements can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at <http://www.grants.gov/search/agency.do>. A link to Grants.gov is also available on the HUD Web site at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>. The Catalogue of Federal Domestic Assistance (CFDA) number for the HCV-FSS Program is 14.871. Applications must be submitted electronically through Grants.gov.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding specific program requirements should be directed to the agency contact identified in the program NOFA. Program staff will not be available to provide guidance on how to prepare the application. Questions regarding the 2010 General Section should be directed to the Office of Grants Management and Oversight at (202) 708-0667 or the NOFA Information Center at 800-HUD-8929 (toll free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800-877-8339.

Dated: October 22, 2010.

**Barbara S. Dorf,**

*Director, Office of Departmental Grants Management and Oversight, Office of the Chief of the Human Capital Officer.*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5415-N-31]

### Notice of Availability: Notice of Funding Availability (NOFA) for Fiscal Year 2010; Special Needs Assistance Programs (SNAPS) Technical Assistance; Request for Qualifications

**AGENCY:** Office of the Chief of the Human Capital Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD announces the availability of the applicant information, deadline information, and other requirements for the Fiscal Year (FY) 2010 Special Needs Assistance Programs Technical Assistance (SNAPS-TA) Program NOFA. The SNAPS-TA NOFA makes available up to \$11.1 million for technical assistance; approximately \$9.9 million under HUD McKinney-Vento Technical Assistance for homeless assistance programs,

Homeless Management Information System (HMIS) data collection, reporting and research, including the Annual Homeless Assessment Report (AHAR) TA activities; and approximately \$1.2 million under the American Recovery and Reinvestment Act for Homelessness Prevention and Rapid Re-Housing Program (HPRP) TA activities. Carried over or recaptured funds from previous fiscal years, if available, may be added to this amount.

The SNAPS-TA NOFA providing information regarding the application process, funding criteria and eligibility requirements can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at <http://www.grants.gov/search/agency.do>. A link to Grants.gov is also available on the HUD Web site at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>. The Catalogue of Federal Domestic Assistance (CFDA) numbers for the SNAPS-TA are: 14.261 McKinney-Vento Homeless Technical Assistance and 14.262 HPRP Technical Assistance. Applications must be submitted electronically through Grants.gov.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding specific program requirements should be directed to the agency contact identified in the program NOFA. Questions regarding the 2010 General Section should be directed to the Office of Departmental Grants Management and Oversight at 202-708-0667 (this is not a toll-free number) or the NOFA Information Center at 1-800-HUD-8929 (toll-free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

Dated: October 22, 2010.

**Barbara S. Dorf,**

*Director, Office of Departmental Grants Management and Oversight, Office of the Chief of the Human Capital Officer.*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Number FR-5427-N-01]

### Protecting Tenants at Foreclosure Act: Guidance on Notification Responsibilities Under the Act With Respect to Occupied Conveyance

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice provides additional guidance on the notice, entitled “Protecting Tenants at Foreclosure: Notice of Responsibilities Placed on Immediate Successors in Interest Pursuant to Foreclosure of Residential Property,” published in the **Federal Register** on June 24, 2009. Specifically, today’s notice advises on the relationship between the Federal Housing Administration’s (FHA’s) current regulations on occupied conveyance and the protections for existing tenants under the Protecting Tenants at Foreclosure Act of 2009 (PTFA). FHA’s existing regulations provide that in cases where the Secretary will be accepting conveyance of an occupied property because of foreclosure of an FHA mortgage, the occupant is entitled to a 60-to-90 day notice prior to the date the mortgagee expects to acquire title to the property with an ability to obtain permission for continued occupancy from HUD only upon request and meeting specified conditions. The PTFA, on the other hand, provides that after foreclosure on an occupied property secured by a federally-related mortgage loan, any immediate successor in interest to the foreclosure must provide a tenant occupying the property under a bona fide lease with a minimum of at least 90 days advance notice before requiring the tenant to vacate the property. Additionally, the successor in interest to the foreclosure takes subject to any remaining term on the bona fide lease. Because there may be some confusion about the interplay between these two different notices, HUD issues this interpretive notice.

**FOR FURTHER INFORMATION CONTACT:** Vance Morris, Director, Office of Single Family Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9172, Washington, DC 20410-8000; telephone number 202-708-1672 (this is not a toll-free number). Persons with hearing or speech challenges may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background of PTFA

The Protecting Tenants at Foreclosure Act of 2009, Title VII of the Helping Families Save Their Homes Act of 2009 (Pub. L. 111-22, approved May 20, 2009) (codified at 12 U.S.C. 5220 note), requires that any immediate successor in interest take a foreclosed residential property subject to the existing lease

and provide tenants residing in the property with notice to vacate at least 90 days in advance of the date by which the successor, generally, the purchaser, seeks to have the tenants vacate the property. Except where the purchaser will occupy the property as the primary residence, the term of any bona fide lease entered into before the notice of foreclosure and extending beyond 90 days also remains in effect. The PTFA was enacted during a period when unprecedented numbers of foreclosures were occurring across the country. Often, tenants residing as leaseholders in residential properties become collateral victims in addition to homeowners when foreclosures occur, and are forced to vacate their leaseholds, often with minimal notice. The PTFA ensures that tenants receive appropriate notice of foreclosure and are not abruptly displaced.

Sections 702 and 703 of PTFA define the scope of PTFA's coverage over residential properties. The Section 702 requirements provide tenants with at least 90 days' advance notice to vacate and to preserve the term of any bona fide lease apply to foreclosures on all Federally related mortgage loans or on any dwelling or residential real property. Section 703 makes conforming changes consistent with the Section 702 requirements to the Section 8 rental voucher assistance provisions of the United States Housing Act of 1937 (1937 Act). The protections provided by PTFA sunset on December 31, 2014.

Section 1484 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, approved July 21, 2010) amended PTFA, and extended the PTFA protections to December 31, 2014. Section 1484 of the Dodd-Frank Wall Street Reform and Consumer Protection Act also defined when "date of notice of foreclosure" occurs. Section 1484 provides in relevant part as follows: "the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.

To fall under the Act, a bona fide lease must be entered into prior to the date of the notice of foreclosure, which is defined as "the date on which complete title to a property has been transferred to a successor entity or person as a result of an order of a court or pursuant to the provisions in a mortgage, deed of trust, or security deed." A bona fide lease is one in which: (1) The mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant; (2) the

lease or tenancy was the result of an arms-length transaction; and (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy. The requirements of the PTFA apply with respect to properties secured by FHA-insured mortgages as well as those in the Section 8 program.

The notice that HUD published on June 24, 2009, addressed the general applicability of PTFA protections to HUD programs. This notice addresses the interplay of the PTFA notice requirements with the notice requirements of FHA's occupied conveyance regulations.

## II. FHA's Occupied Conveyance and Claims Regulations

Upon default of an FHA-insured mortgage, the mortgagee must engage in loss mitigation for the purpose of providing an alternative to foreclosure. Should such loss mitigation efforts be unsuccessful, the mortgagee will generally foreclose and convey the property to HUD in exchange for an FHA mortgage insurance claim. HUD generally requires the mortgagee to convey the property unoccupied, but in certain circumstances, as described in HUD's occupied conveyance regulations at 24 CFR 203.670-203.681, HUD will accept the property occupied. In cases where the regulations would not permit the occupied conveyance of the property, the mortgagee must evict the occupant before conveying the property to HUD. Various laws, usually state or local, but now also PTFA, affect eviction procedures and the length of time it takes to evict. HUD's claims regulations at 24 CFR 203.356(b) provide that the mortgagee must exercise "reasonable diligence" in prosecuting the foreclosure proceedings to completing and in acquiring title to and possession of the property. (Failure to foreclose and evict in accordance with this reasonable diligence time frame could lead to curtailment of debenture interest on the mortgagee's FHA insurance claim as described in section 203.402(k) of the regulations.) HUD publishes state-by-state reasonable diligence time frames by Mortgagee Letter. Most recently, Mortgagee Letter 2005-30 provided that an automatic extension of the reasonable diligence time frame will be allowed for the actual time necessary to complete the possessory action provided that the mortgagee begins such action promptly. Therefore, HUD regulations and Mortgagee Letters already provide mortgagees the additional time they may need to evict

under the PTFA, i.e., in many cases at least an additional 90 days. As mortgagees may have been confused about the interaction between the PTFA and the occupied conveyance regulations, this Notice serves to confirm that: (1) HUD expects mortgagees to comply with the PTFA; and (2) the additional time needed to evict an occupant pursuant to the PTFA is automatically included in the reasonable diligence time frame.

Mortgagees should follow the procedures below:

1. The mortgagee should follow HUD's standard occupied conveyance procedures by sending out the standard occupied conveyance letters to the occupant 60-90 days before the mortgagee expects to acquire title.
2. If HUD (through its contractors) grants occupied conveyance, the mortgagee shall convey the property occupied under HUD's normal occupied conveyance procedures.
3. If HUD denies occupied conveyance, the mortgagee should determine whether the PTFA is applicable (e.g., whether there is a bona fide lease or tenancy, etc.).
4. In cases where the mortgagee determines that the PTFA is applicable, the mortgagee must follow the PTFA before evicting the occupant. The additional time needed under the PTFA to evict the occupant is automatically added to the reasonable diligence time frame. The mortgagee must retain documentation in the claim file to evidence the applicability of the PTFA and the additional time needed to comply with the PTFA.
5. In cases where the occupant would have the right under the PTFA to remain in the property for more than 12 months after the foreclosure (e.g., under the terms of a bona fide lease under section 702(a)(2)(A) of the PTFA), the mortgagee may contact the Mortgagee Compliance Manager for additional instructions.

In addition to this notice, FHA will issue additional guidance to FHA-approved mortgages.

Dated: October 22, 2010.

**David H. Stevens,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

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