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HEARING: RURAL HOUSING LEGISLATION

BEFORE THE SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS SUBCOMMITTEE ON HOUSING, TRANSPORTATION, AND COMMUNITY DEVELOPMENT

TUESDAY, MAY 2, 2023

Chair Smith, Ranking Member Lummis, and Members of the Subcommittee, thank you for this opportunity to testify on improvements to the Rural Housing Service (RHS) programs at the U.S. Department of Agriculture (USDA). My name is Natalie Maxwell and I am the Managing Attorney at the National Housing Law Project.

The National Housing Law Project's mission is to advance housing justice for people living in poverty and their communities. NHLP achieves this by strengthening and enforcing the rights of tenants and increasing homeownership and rental housing opportunities for underserved communities. We also provide technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. NHLP hosts the national Housing Justice Network (HJN), a vast field network of more than 2,000 community-level housing advocates and resident leaders. HJN member organizations are committed to protecting affordable housing and residents' rights for low-income families across the country, including in rural communities.

The rental housing provided by USDA's Rural Housing Service has historically been a critical source of safe, decent, affordable housing in rural America. However, it now faces its own unique challenges as the number of Section 515 properties that are at risk of exiting the RHS portfolio due to prepayments and mortgage maturities threatens to upend the lives of the more than 560,361 renters who call Section 515 apartments home.

<u>The Critical Role of the Section 515 and Section 521 Programs</u>

The quickly rising cost of housing has been particularly devastating to low-income individuals and families who are completely priced out of many housing markets. In rural communities, the Section 515 program has been a critical source of affordable housing, especially for low-income seniors and people with disabilities. With 35% of Section 515 households being elderly renters, Section 515 housing allows people to age in place. It also provides housing for people with disabilities, who account for nearly 30% of Section 515 households.

Through the Section 515 program, USDA makes mortgage loans to private owners to provide affordable rental housing for very low-, low-, and moderate-income families. The program provides for an Interest Credit subsidy, which reduces the interest rate on the loan to an effective rate of one percent. Through this Interest Credit subsidy, owners establish a basic rent for each unit, which is generally less than the market rate. Residents benefitting from the Interest Credit subsidy pay the higher of 30 percent of their income or the basic rent.

Even with the interest credit subsidy, the majority of Section 515 households would be rent overburdened, meaning that they pay more than 30% of their income toward housing costs. This is because the majority of Section 515 households are very low-income. To address this need, in 1974, Congress authorized the Section 521 program, which allows RD to make Rental Assistance subsidies available to residents in Section 515 properties. Residents do not receive the Rental Assistance directly. Instead, USDA pays the owner the difference between the tenant's contribution (30% of the household's adjusted income) and the full rent for the unit. Rental Assistance caps a household's rental payments at 30% of income, and, where tenants pay their own utilities, includes a utility allowance to address rising energy costs.

Rental Assistance is only available to very low- and low-income households, but there is not enough funding for all eligible households. Roughly 75% of Section 515 households (274,697 households) receive Rental Assistance. While the average household income for Section 515 residents is $15,502, for Rental Assistance households it is $12,989.[1] An additional 4,706 rural households are eligible for but not currently receiving Rental Assistance. As a result, they pay more than 30% of their income toward their housing costs. In fact, nearly ⅓ of rent-overburdened Section 515 households (1,467) are paying 51% of their income toward housing costs.

Despite the important role of these programs, they are at risk. RD and its predecessor agency, the Farmers Home Administration, have financed the development of over 533,000 units of Section 515 rental housing in rural America since the program was created. However, the Section 515 program has not been used to finance new housing in rural communities since 2012. With no new Section 515 homes being built, and because of prepayments, mortgage maturities, and foreclosures, there are less than 400,000 units remaining in the program. Congress can and must do more to preserve these properties for families living in poverty.

Congress Must Play a Key Role in Preserving Rural Rental Housing

At such a critical time in the program's history, it is essential that Congress authorize the Agency to act to prevent displacement of renters that rely on USDA's rental housing programs. According to a 2018 GAO report, between 2028 and 2050, "over 90% of [USDA's] assisted multifamily properties and units could exit the program via loan maturation or prepayment."[2] Similarly, a March 2022 study published by the Housing Assistance Council (HAC) found that "921 Section 515 properties left the portfolio

[1] USDA Rural Development, Results of the 2022 Multi-Family Housing Annual Fair Housing Occupancy Report (March 21, 2023), https://www.rd.usda.gov/sites/default/files/RDUL-MFH_Occupancy_Report.pdf.
[2] U.S. Gov't Accountability Off., GAO-18-285, Rural Housing Service: Better Data Controls, Planning, and Additional Options Could Help Preserve Affordable Rental Units (May 17, 2018), https://www.gao.gov/products/gao-18-285.

between 2016 and July 2021 – nearly three times the original USDA projection for maturing mortgages alone during the five-year period."[3] In addition, HAC also found that close to 40 percent of the properties in the 515 portfolio have prepayment rights that would allow them to exit the program early. This is not the first time that rural communities have faced the loss of this critical housing. Prior to 1979, property owners who developed rural low-income housing had a contractual right to prepay their loans and leave the program at any time, ending the owner's obligation to rent to qualified individuals.

Recognizing the importance of preserving this critical supply of affordable housing, Congress took steps to discourage owners from exiting the program through prepayments and to stop the displacement of rural residents living in USDA-financed developments, including (1) placing use and prepayment restrictions on all properties financed after December 14, 1989 and (2) enacting the Emergency Low Income Housing Preservation Act (ELIHPA) which imposes prepayment restrictions on Section 515 properties financed prior to December 14, 1989. Under ELIHPA's prepayment restrictions, owners are still permitted to prepay their loans. If RD determines that the prepayment does not have an adverse impact on minority housing opportunities, but there is no alternative affordable housing in the community, the owners may prepay the loan subject to use restrictions. The use restrictions are intended to protect the current residents of the property as of the date of prepayment for as long as they remain at the prepaid property. Without these use restrictions, following the prepayment of a Section 515 mortgage, owners often increase rents, terminate leases, and evict tenants without good cause.

Congress also intervened in 1992, when it authorized the Section 542 Rural Development (RD) Voucher program. The purpose of the RD Voucher is to protect Section 515 renters who may face financial hardship because of the prepayment or foreclosure of the property. The amount of the RD Voucher is established at the time of issuance and is set at the difference between the tenant's monthly rent contribution and the market rent charged at similar non-subsidized properties for that unit. Tenants may use the rural voucher to supplement their monthly rent payment at the former Section 515 property or any subsidized or non-subsidized property where the owner agrees to accept the voucher and that meets RD's housing quality standards. However, the voucher amount never changes. This means that RD Voucher holders will be responsible for paying any amount over the subsidy amount if the owner legally increases the rent, a household member moves out or dies, or if the head of household

[3] Housing Assistance Council, Rural America is Losing Affordable Rental Housing At An Alarming Rate, Rural Research Brief (March 2, 2022), https://ruralhome.org/wp-content/uploads/2022/03/rural_research_brief_usda_rural_rental_housing.pdf.

ports the voucher to a community where rents are higher than the property that the tenant moved from.

In 2006, Congress first appropriated funds to the RD Voucher program, authorizing USDA to provide RD Vouchers to residents living at Section 515 properties that exited the program due to prepayment or foreclosure of the property. There have been proposals to allow tenants at properties with maturing mortgages to receive rural vouchers – most recently the FY 2024 President's Budget. However, without Congressional action those tenants are not currently eligible for RD Vouchers.

Congress Should Pass The Rural Housing Service Reform Act of 2023

Congressional action is once again necessary to prevent rural communities from losing this important rental housing stock. Rental Assistance has been critical to keeping rural housing affordable for low-income residents. However, once the Section 515 mortgage loan matures, the Rental Assistance ends. To ensure that Section 515 households can afford to remain in their homes after the mortgage has matured, USDA needs authority from Congress to decouple the Section 521 Rental Assistance from the maturing Section 515 mortgage. Because renewal of the rental assistance contracts after the mortgage expires is voluntary and may not be possible for all properties, USDA also needs authority from Congress to extend eligibility for the current RD Voucher program to residents of properties with maturing mortgages.

The Rural Housing Service Reform Act of 2023 would address these and other preservation issues by:

- giving USDA authority to preserve housing by allowing the renewal of rental assistance contracts even after the Section 515 mortgage has matured, while maintaining renter protections and long-term affordability;
- providing renters notice prior to a Section 515 mortgage maturing;
- providing renters who currently receive Rental Assistance priority admission at other RD properties in the event of prepayment or maturity of a Section 515 mortgage;
- extending eligibility for the RD Voucher program to residents of properties with maturing mortgages;
- explicitly authorizing the RD Voucher subsidy amount to adjust when a household experiences a reduction in income or change in family composition; and
- increasing transparency of the RHS programs, including by requiring USDA to conduct a study on subsidy recaptures in the Section 521 program and requiring publication of an annual report on the RHS programs.

To strengthen the Act, we suggest the following improvements:

- Increase the notice period for renters to 3 years before the date the loan will mature. In many areas, the wait list for subsidized properties is closed or, if it is open, is years long. Where a number of residents from one property are displaced at one time, the time for processing applicants on the wait list is further exacerbated. Providing more notice time will allow residents enough time to identify other RD developments and move their Rental Assistance. In addition, the notices should be sent annually because new residents may move in to the property between when the first notice is issued and the mortgage matures.
- As part of the annual report on RHS programs, require USDA to provide publicly available data for properties that have prepaid subject to use restrictions, including the name and address of the property as well as the dates and terms of the use restrictions.
- As part of the annual report on RHS programs, USDA should provide performance data and reporting on its single-family housing programs in line with the information that the Federal Housing Administration (FHA) provides for its insured loans. FHA currently provides a monthly Single-Family Loan Performance Trends Report that provides information on delinquency rates, borrowers who are seriously delinquent, and borrowers in foreclosure, among other important data points.[4] The report should also include data on loss mitigation and collections activity during and after the loan term.
- Require USDA to determine the number of vouchers issued to residents remaining in properties that have prepaid subject to use restrictions as compared to residents remaining at properties that prepaid without use restrictions to determine the impact on voucher funding going forward.

We appreciate your commitment to serving renters in rural communities through USDA's housing programs and this opportunity to support improvements to these critical programs that are contained in the Rural Housing Service Reform Act of 2023.

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[4] FHA Single-Family Loan Performance Trends Report, available at https://www.hud.gov/program_offices/housing/hsgrroom/loanperformance.