



March 27, 2020

Bruce W. Lammers
RHS Administrator
Department of Agriculture
1400 Independence Street
Washington, DC 20250

Delivered by email

Dear Mr. Lammers:

We write to ask that RHS take immediate action to mandate and streamline interim recertifications.

Most tenants face a rental due date of April 1, 2020. Congress has just adopted a broad package of COVID-19 relief that includes eviction protections for all RHS-assisted tenants. The USDA/RD March 25 notice, regarding opportunities for immediate relief, provides helpful reminders to assisted owners, but fails to reflect sufficient urgency through mandatory actions including, understandably, the new authorities and protections set forth in the COVID-19 Relief Act. RHS must, therefore, take a more proactive approach.

First, RHS' March 25 notice appears to apply only to Section 515 developments and residents. It, as well as any new directives, must be extended to cover Section 514/516 farm labor housing residents.

Second, current RHS regulations require a tenant request to trigger an interim recertification and allow owners to follow their own processing procedures. Since many tenants may be unaware of the "tenant request" requirement, and because of obvious limitations on owner capacity to send out an expeditious reminder notice and to process requests before April 1, RHS should issue an emergency guidance (relying on 7 C.F.R. § 3560.8 exception authority) waiving the tenant request requirement and establishing a clear emergency rent recertification policy, that includes the following:

- If rent is not paid when due for April and other months during the emergency (and a reasonable period thereafter), owners should presume that the cause is a reduction in income (a "constructive request") and begin the interim recertification process.
 - owners should be immediately required to send those tenants a *RHS-prepared form Notice in plain language* that contains information about the tenant's right to

a prompt rent recertification that accounts for any income reduction, effective the first of the month following the income loss. This can be accomplished by allowing owners to recertify resident incomes after the first of the next month as is permitted by the USDA's March 25, Notice, which extends all March, April and May certifications and recertifications to June 30.

- Additionally, the RHS-prepared form notice must be sent to all other tenants as soon as possible and posted prominently in common areas of any multifamily rental property. RHS should initially provide this notice in English and Spanish, and then as expeditiously as possible in other widely spoken languages.
- The notice should make clear that tenants should provide whatever information they have about the income reduction (reduced hours or job loss), including their own statement if that is all that is available, and that owners will take steps to request additional information or obtain third-party verification if necessary as soon as circumstances permit, following the termination of the emergency. To relieve unnecessary administrative burdens, owners should be able to simply document that third-party verification is unavailable. Moreover, owners should be directed to process temporary recertifications electronically and collect original documents from tenants at a later date.
- RHS should suspend any regulatory or Handbook guidance that imposes additional impediments to making recertifications effective April 1, such as “reasonable time” periods for owner action, ordinary verification requirements, or any other provisions that permit denial or delay of prompt interim recertifications. In particular, RHS should temporarily eliminate the additional income verification requirements for tenants reporting zero income as required by Handbook 2-3560, ¶ 6.9.
- RD should make mandatory the suggestion, contained in the March 25 notice, that owners should work with impacted residents to adjust their monthly payments by entering into forbearance agreements.
- As required by the COVID-19 relief statute, RHS must prohibit late fees, “convenience” payment fees, or evictions for nonpayment of rent during the 120-day period. RHS should use its waiver authority to extend such coverage for any longer period of the emergency and a reasonable period thereafter.
- When under public health guidelines the tenants are prohibited or discouraged from attending any meeting, such as the recertification interview, or appear in person to sign consent or other RHS forms, RHS should mandate that owners
 - delay the deadline for regular recertification by 90 days (or the duration of the emergency, if longer).
 - accept electronic signatures on consent forms, RHS forms, and any other forms necessary for regular and interim recertification.
 - conduct meetings with tenants over the phone or via teleconferencing.

- For any other rental arrearages accumulated during the emergency, RHS should instruct owners to first ensure proper application of the emergency rent recertification policy, and to execute reasonable repayment plans that recognize the need to keep total monthly rent burdens affordable. This is particularly true for residents who did not receive Rental Assistance prior to the current emergency.
- RHS should clarify that any funds provided directly to tenants as part of federal stimulus efforts are not income for the purposes of calculating a tenant's rent contribution.
- Although unrelated to recertifications, RHS should also encourage owners to exercise flexibility regarding occupancy policies or house rules such as extended absences and length of guest stays during the pandemic. After the emergency has terminated, RHS should encourage owners to give households a reasonable grace period in meeting any past-due programmatic requirements.
- To encourage compliance, RHS should inform owners, as it announced in the March 25 notice, that if any actions they take preclude them from making regular mortgage payments, RD will work with them by waiving late fees and entering into workout plans.

Thank you for your consideration of our recommendations.

Sincerely,



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