September 19, 2022

The Honorable Sherrod Brown
Chair
Committee on Banking, Housing and
Community Affairs
United States Senate

The Honorable Patrick Toomey
Ranking Member
Committee on Banking, Housing and
Community Affairs
United States Senate

The Honorable Tina Smith
Chair
Subcommittee on Housing, Transportation, and
Community Development
United States Senate

The Honorable Mike Rounds
Ranking Member
Subcommittee on Housing, Transportation, and
Community Development
United States Senate

**Examining the U.S. Department of Agriculture's Rural Housing Service: Stakeholder Perspectives**
**September 20, 2022**

Chair Brown, Ranking Member Toomey, Chair Smith, and Ranking Member Rounds,

Thank you for this opportunity to submit testimony for the record regarding the hearing titled Examining the U.S. Department of Agriculture's Rural Housing Service: Stakeholder Perspectives on September 20, 2022.

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 housing opportunities for underserved communities. Our organization also provides 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 over 1,900 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 quickly rising cost of housing has been particularly devastating to low-income individuals and families who are completely priced out of many housing markets. While the rental housing provided by USDA's Rural Housing Service has historically been a critical source of safe, decent, affordable housing, it faces its own unique challenges. According to a 2018 GAO report, between 2028 and 2050, "over 90% of RHS's assisted multifamily properties and units could exit the program via loan maturation or prepayment."[1] Similarly, a March 2022 study published by the Housing Assistance Council (HAC) found that "921 Section 515 properties left the portfolio between 2016 and July 2021 – nearly three

[1] 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.

times the original USDA projection for maturing mortgages alone during the five-year period." In the last year, 108 Section 515 properties left the portfolio. 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. 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 628,000 renters who call Section 515 units home.

USDA's housing programs also play a critical role in creating and sustaining affordable homeownership in rural areas. The Agency serves as a lender under its Section 502 direct loan program and also acts as a guarantor of loans made by private lenders under its Section 502 guaranteed loan program. Almost one million households have USDA guaranteed loans and over 200,000 households currently have direct loans.
However, when homeowners in the direct loan program face financial hardships, they are excluded from securing a moratorium based on arbitrary rules incorporated into the current regulations. This is particularly troubling given that the direct loan program serves a much higher percentage of people of color than the guaranteed loan program. For example, in 2016, of the borrowers served by the direct loan program, 21% were African American and 16% were Hispanic whereas of the borrowers served by the guaranteed loan program, only 5% were African American and 9% Hispanic.[2]

At such a critical time in the program's history, it is essential that the Agency act to protect the rights and interests of borrowers and tenants, who are the primary beneficiaries of Rural Development's housing programs. To protect renters in its Multifamily Housing (MFH) program, we recommend that the Agency take action to: (1) improve tenant protections; (2) extend rental assistance to all eligible tenants, even after the Section 515 mortgage has matured, and (3) improve administration of the RD Voucher program so that it provides the long-term housing stability for which it was intended. To ensure homeowners avoid unnecessary foreclosures, we recommend that the Agency take action to: (1) make alternatives to foreclosure available for direct borrowers throughout the foreclosure process, and (2) provide meaningful access to moratorium (forbearance) relief that addresses the individual borrower's post-moratorium income and financial situation. These recommendations are discussed in more detail below.

**<u>Improve Tenant Protections</u>**

To improve protection for tenants, the Agency should adopt a standard lease or lease addendum. Having a standard lease or lease addendum in RHS rental housing not only protects the public investment in affordable, rental housing, but also allows the families, seniors and people with disabilities who live there to enforce their rights when the landlord fails to comply with their obligations. For example, a Section 515 resident in Ohio faced eviction for nonpayment of rent, in part, because the

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[2] Corianne Payton Scally and David Lipsetz, *New Public Data Available on USDA Rural Housing Service's Single-Family and Multifamily Programs*, Vol. 19, Cityscape: A Journal of Policy Development and Research, 295, 301-302 (2017).

landlord failed to timely conduct a rent recertification due to the tenant's reported loss of income and charged late fees during the grace period. Because the landlord used the model lease created by the RD Ohio office that reflected the landlord's obligations with regard to recertifications and providing a grace period, the tenant was able to successfully assert these defenses in court. The case ultimately settled and the tenant retained their housing.

Even though the current RD regulations enumerate the minimum rights for tenants participating in the Section 515, 514/516 and 521 programs, we have reviewed leases from across the country and repeatedly observed examples that fail to comply with the minimum program requirements. For example, a Maine lease allowed the tenancy to be non-renewed or converted to a month-to-month lease if the tenant did not complete recertification within 75 days, which is contrary to the regulations and Agency guidance on processing recertifications. The lease also contained provisions in violation of the Violence Against Women Act which prohibits evicting tenants or terminating their housing assistance because they are the victims of gender-based violence. Specifically, the lease permitted termination of the entire household where criminal activity occurs without providing exceptions for survivors of dating violence, sexual assault, or stalking. As such, there is a need for the Agency to adopt a standard lease or lease addendum for MFH programs that enumerates minimum tenants' rights in the program as provided by 7 C.F.R. § 3560.156.

In addition, the Agency should extend the same tenant protections to the 538 program that exist for the 514 and 515 programs as required by 42 U.S.C. § 1490p-2(n). When Congress approved the Section 538 program, it directed the Agency to extend the same tenant protections to residents of the program as are extended to residents of the Section 514 and 515 programs. 42 U.S.C. § 1490p-2(n). RD regulations, however, only extend the tenant grievance and appeals process to residents in Section 538 housing. 7 C.F.R. § 3565.351(c). Critically, it omits the good cause for eviction standard that is extended to RD Section 514 and 515 residents, 7 C.F.R. § 3560.159(a)(2). RD should take immediate steps to advise Section 538 owners that good cause to evict is a federal requirement that is also applicable to the program. Moreover, RD should also extend the following Section 515 protections to Section 538 residents: automatic lease renewals, late payment protections, the right to receive notice of lease violations and the right to cure those violations prior to the commencement of an eviction action.

**Extend Rental Assistance to all Eligible Tenants**

Currently, 76% of Section 515 households (290,991 households) receive RA. While the average household income for Section 515 households is $14,665, the average income of RA households is $12,501.[3] RA 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. In addition, 3,041 households are eligible for but not currently receiving RA. As a result, they pay more than 30% of their income toward

[3] USDA Rural Development, Results of the 2021 Multi-Family Housing Annual Fair Housing Occupancy Report (May 12, 2022), https://www.rd.usda.gov/sites/default/files/RDUL-MFHreport_0.pdf.

their housing costs. In fact, more than ⅓ of rent-overburdened households (1,069) are paying 51% of their income toward housing costs.

Rental Assistance is critical to keeping rural housing affordable for low-income residents, but is currently only available to residents at properties with Section 515 loans. To ensure that these households can afford to remain in their homes after the mortgage has matured, we recommend that Congress give the Agency the authority to decouple the Section 521 Rental Assistance from the maturing Section 515 mortgages. To provide housing stability and security for tenants, a decoupling proposal must (1) maintain existing tenant protections provided to renters in Section 515 properties and (2) offer owners long-term rental assistance contracts subject to annual appropriations. We recommend 20 year contracts subject to annual appropriations as this is the model utilized by HUD (42 U.S.C. §1437f(o)(13)(F); 82 Fed. Reg. 5458 (2017)), to maintain the long term affordability of projects while allowing owners to secure additional funding for maintenance and rehabilitation costs necessary to keep the properties in operation. Importantly, RA would need to be offered not only to those residents currently receiving RA, but also to any tenants residing in the property to ensure that all low-income and very low-income households who are eligible for the assistance receive it.

## Improve Administration of the RD Voucher Program

Congress authorized the Section 542 Rural Development Voucher program to provide rental assistance vouchers to eligible tenants living at Section 515 properties that have exited the program due to prepayment or foreclosure of the property. The Senate and House drafts of the 2022 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations bill would also make RD Vouchers available to eligible tenants at properties with maturing mortgages. Currently, the RD Voucher program operates as a demonstration program. USDA should amend Section 542 to make the operation of the voucher demonstration program permanent. In doing so, the Agency should also ensure that the subsidy extended to voucher holders is adjusted in the same manner that the HUD housing choice vouchers are adjusted as rents increase or household income increases or decreases. Also, it is imperative that the voucher covers the cost of utilities by including a utility allowance in cases where the tenants are paying part of all of their utilities. Currently, the utility costs are not covered by the subsidy.

Another issue with the current administration of the RD Voucher program results from the Agency's practice of issuing vouchers to residents remaining in prepaid properties. Congress enacted the Emergency Low Income Housing Preservation Act (ELIHPA) to stop the displacement of rural residents living in USDA-financed developments that were exiting the program through prepayments. As amended, ELIHPA imposes prepayment restrictions on 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. These use restrictions are intended to protect the residents of the property as of the date of prepayment.

The intent of imposing the use restrictions was to discourage prepayments. By allowing the owner to exit the portfolio early subject to use restrictions, the owner is expected to subsidize the rent of the remaining tenants as a condition of being allowed to exit the program early. By providing vouchers, the Agency is ensuring that there's no financial risk to the owner, and therefore no incentive to stay in the program. This creates an incentive for owners to prepay, and has resulted in three times as many properties as USDA projected exiting the portfolio through prepayments over the past 5 years.[4] Therefore, RD should stop issuing vouchers to residents remaining in prepaid properties.

**Make alternatives to foreclosure available for direct borrowers**

RD offers a number of foreclosure avoidance options, generally referred to as "loss mitigation options," for borrowers in both the direct and guaranteed loan programs who run into trouble making their mortgage payments. For borrowers in the guaranteed loan program, these options are available throughout the foreclosure process. However, RD has adopted a policy barring borrowers in the direct loan program from accessing foreclosure avoidance options, which the Agency labels as "special servicing," once it accelerates a loan. 7 C.F.R. 3550.211(h). This policy shortens the time for resolving delinquencies and leads to unnecessary losses – to the Agency, the homeowner, and the homeowner's community.

Loan acceleration is an early step in the foreclosure process, which can take months or even years. After a loan is accelerated but before the foreclosure sale, a borrower may experience a positive change in financial circumstances or qualify for a plan to bring the loan current. However, current RD policy bars homeowners in the direct loan program from accessing these options even when significant time remains before a foreclosure judgment or sale.

RD's policy barring homeowners in foreclosure from accessing options to prevent foreclosure is out of step with the rest of the mortgage market. FHA-insured borrowers, for example, may access loss mitigation until shortly before a foreclosure sale. The same is true for borrowers whose loans are held by Fannie Mae and Freddie Mac. RD guaranteed loan borrowers also have access to loss mitigation after acceleration.

**Provide direct loan borrowers meaningful access to moratorium relief consistent with the moratorium**

[4] 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.

RD is statutorily authorized to grant moratoriums of up to two years on mortgage payments to borrowers who suffer financial hardships for reasons outside of their control. 42 U.S.C. § 1475. By postponing the borrower's monthly mortgage payments, a moratorium provides significant relief to a borrower who is working through hardship. A moratorium does not, however, relieve a borrower of the obligation to repay the amounts that are deferred during the moratorium period.

Once a moratorium ends, it is almost always impossible for a borrower who is recovering from a financial hardship to pay all the deferred payments in a lump sum. This is particularly true for the low- and very low-income borrowers that the direct loan program serves. RD deals with this issue by offering only two options for non-emergency defaults, both of which are inadequate. The first is forgiveness of the interest that has accrued during the moratorium, and the second is re-amortization of the loan balance over the remaining term of the loan. The primary inadequacy of both of these options is that if either or even both are applied, the borrower's monthly post- moratorium mortgage payments will still always be greater than the pre-moratorium mortgage payments, creating a payment shock that financially vulnerable borrowers coming off a hardship can hardly afford.

To prevent borrowers from failing after a moratorium, RD must finally permit loan term extensions and interest rate reductions after a moratorium. 7 C.F.R. § 3550.208. Fannie Mae, Freddie Mac, FHA, and even the RD-guaranteed programs use loan term extensions and interest rate reductions as part of the loan modification process. As a result, the borrower's payment often decreases rather than increases. Because homeowners who have faced a hardship generally continue to experience pronounced decreases in income, extending the loan term so that the homeowner's monthly payment can be reduced after a moratorium improves loan performance and home retention (and for homeowners who can resume previous payments the extension allows the payments to revert to pre-forbearance levels). RD should adopt a loan term extension and interest rate reduction policy for direct loan borrowers. Such a change will help borrowers retain their homes and will improve the financial stability of the RD direct loan program.

In addition, changes need to be made to the moratorium program regulations because they include arbitrary rules that exclude many direct loan borrowers who face financial hardships and qualify for this relief under the statute. The moratorium statute requires the Agency to make moratorium decisions based on an individual borrowers' showing that he or she is unable to continue to make mortgage payments for reasons outside the borrower's control without unduly impairing the borrower's standard of living. 42 U.S.C. § 1475(a). Under the current moratorium regulation, however, RD denies moratorium relief to direct loan borrowers unless they can demonstrate either a reduction of at least 20% in the borrower's own income in the past 12 months or that the borrower has incurred certain specified unexpected and unreimbursed expenses. 7 C.F.R. § 3550.207(a). These regulatory rules bar relief if a borrower's income loss is less than 20%, occurred more than 12 months ago or when a household member other than the borrower, such as a non-borrowing spouse, experiences a reduction in income.

These limits on eligibility for a moratorium are arbitrary and inconsistent with the moratorium statute. RD should update the moratorium regulation to ensure that direct loan borrowers who qualify for moratorium relief under the statute are not denied assistance.

We appreciate your commitment to serving rural renters and homeowners through USDA's housing programs and this opportunity to offer recommendations to improve these critical programs.

Sincerely,

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