

July 8, 2014

Administrator Tony Hernandez  
Rural Housing Service  
United States Department of Agriculture  
Room 5014, Mailstop 0701  
1400 Independence Avenue, S.W.  
Washington, DC 20250

Dear Administrator Hernandez:

We appreciate your efforts to work with stakeholders on important matters affecting multi-family housing. Perhaps no matter is more important to multi-family housing providers and residents than the preservation of the Section 521 Rental Assistance (“RA”) program. The RA program is the essential lynchpin as it provides vital rent subsidy to the very lowest income residents and is a stable source of cash flow to the businesses, nonprofit and public owners, large and small, that rely on the RA to provide housing, meet their mortgage and reserve payments, pay third party lenders, equity investors, make payroll and provide local jobs across the country.

The undersigned stakeholders are writing to you because Congressional appropriators have included two provisions in the pending Fiscal Year 2015 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations bills that together have great potential to cause severe disruption in the RA program: (i) that RD fund all RA contracts for one year and (ii) that RD not renew RA contracts within the same 12-month period (“re-renewal”).

As RD knows, a central feature of the RA contract process since inception has been RD’s flexibility in reviewing individual project annual budgets, which each project must submit as a matter of law, and setting the RA contract for RA payments. RA contracts have changed over the years from multi-year to single year contracts to save the federal government budget authority. We understand that RD has internal procedures for assessing rents against state-wide averages, leaving about three percent of contracts short annually. Rents fall short because: a property’s rents fall outside statewide averages; RD-approved rents or utility allowances increased during a contract period; higher-needs residents moved in during the year; or a project used a higher percentage of RA units than in the past. This has not been a problem because RD could re-renew contracts.

We believe that USDA should ask Congress to remove the re-renewal prohibition from the FY 2015 appropriations bills. If it is not removed, then RD must fundamentally change its renewal process and provide higher RA amounts at many properties. With the re-renewal prohibition in place, RD would have to abandon its some-time practice of state averaging and recalculate the 97 percent of RA contracts that have more than 12 months RA so that the three percent are no longer underfunded. Moreover, RD will have to restructure all contracts and

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provide a cushion rather than allow projects to run short of RA because owners are following the regulations and admitting the very lowest income residents first, thereby increasing project RA needs.

It is our opinion that the practice of setting rents based on state-wide average, to the extent that occurs, actually violates RD's current regulations and now may result in real harm.<sup>1</sup> RA contracts must be based on the actual budgets of the specific property at issue. Indeed, to do otherwise would render the budget process meaningless. Also, this re-renewal provision serves no practical purpose in light of the fact that RD has already established an upper governor on rents in the comparable rent process. We believe that juxtaposing the re-renew prohibition, along with the requirement to renew all RA contracts for one-year, will require RD to increase rents for all RA contracts that need re-renewal. Further, for RD to be in compliance with both provisions simultaneously, RD will need to establish an operating cushion for every other RA contract. This will require RD to go back to Congress to increase the RA appropriation or be in violation of the one-year renewal statutory requirement.

Indeed, RD will have to increase rents and RA levels at many properties in order to prevent a large number of properties from having insufficient RA for the full term of the contract. Many properties, particularly large numbers of those recently preserved with funding from other public and private sources, will default on their obligations to other parties, jeopardizing Section 515 properties and inviting foreclosure actions. We do not believe that the new authority included in the bills will meet the Department's goal of setting the RA program onto a sustainable course.

We believe that unless the appropriations language is removed, the methodology for assigning and using rent subsidies must be revamped in its entirety. We are requesting a meeting with you at your earliest convenience, to discuss how we can best support RD in either changing the RA renewal process or requesting additional RA. Please contact Colleen Fisher, Executive Director for the Council for Affordable and Rural Housing at (703) 837-9001 or [cfisher@carh.org](mailto:cfisher@carh.org) to arrange any meeting or additional discussion.

Sincerely,

Avesta Housing, Maine  
CEI (Coastal Enterprises, Inc.)  
California Coalition for Rural Housing  
Community Housing Partners  
Council for Affordable and Rural Housing  
Housing Action NH  
Housing Assistance Council  
Institute for Real Estate Management

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<sup>1</sup> "RHS will continue to require that rents be based on the project's operating costs. Interim Final Regulations, 69 Fed Reg 69036-7 (11/26/2004)(emphasis added).

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Institute for Responsible Housing Preservation

Mercy Housing

Motivational Education & Training, Inc.

National Affordable Housing Management Association

National Affordable Housing Preservation Associates, Inc.

National Apartment Association

National Association of Home Builders

National Housing Law Project

National Housing Trust

National Leased Housing Association

National Low Income Housing Coalition

National Multifamily Housing Council

Network for Oregon Affordable Housing

Rural Housing Preservation Associates, LLC

VT Affordable Housing Coalition