



March 21, 2020

Submitted via e-mail

The Honorable Sonny Perdue
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Re: Protecting Tenants and Homeowners in Response to COVID-19

Dear Secretary Perdue:

The National Housing Law Project (NHLP),¹ National Low Income Housing Coalition (NLIHC),² and LeadingAge³ write to urge the Department of Agriculture (USDA) to take immediate steps to protect tenants and homeowners during and after the COVID-19 public health crisis. The gravity of the rapidly evolving situation demands your immediate attention. Ensuring housing security for all Americans is crucial to the success of the social distancing measures medical experts have recommended. Furthermore, when the pandemic subsides, families must not be left vulnerable to homelessness because of the long-term economic impacts of this crisis. We applaud the fact that the Administration has temporarily suspended foreclosures and foreclosure related evictions in FHA, Fannie, and Freddie-backed mortgages and are very pleased to hear that RD has followed suit by suspending foreclosures and evictions in the single

¹NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income residents and homeowners; and increasing housing opportunities for underserved communities. Our organization 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 1,500 community-level housing advocates and resident leaders. HJN member organizations are committed to protecting affordable housing and residents' rights for low-income families.

²NLIHC is solely dedicated to ensuring that the lowest income seniors, people with disabilities, families with young children and others in our country have safe, accessible and affordable homes. Its members include non-profit housing providers, homeless services providers, fair housing organizations, state and local housing coalitions, public housing agencies, faith-based organizations, residents of public and assisted housing and their organizations, low-income people in need of affordable homes, and other concerned citizens.

³LeadingAge represents more than 5,000 aging-focused organizations that touch millions of lives every day. Alongside our members and 38 state partners, we address critical issues by blending applied research, advocacy, education, and community-building.

family direct loan program for 60 days. We are also pleased to hear that RD has announced that it will follow local laws with respect to evictions from RD multi-family loan programs. Notwithstanding, we urge that USDA Rural Development/Rural Housing Service (RD/RHS) take additional proactive steps to protect residents of single-family and multi-family housing programs during this uncertain time.

USDA should expeditiously issue guidance adopting the following actions necessary to ensure a timely response to the continuing and growing impacts of COVID-19. RD and RHS have broad authority to waive their regulations, subject to statutory limitations,⁴ and should therefore waive regulatory requirements as needed to protect tenants and homeowners.

RD/RHS Housing Programs

- **Institute a moratorium on all USDA program evictions and subsidy terminations for non-payment of rent until after the end of the national emergency declaration as a response to widespread economic disruption.** We are pleased that USDA has announced that it will follow local laws limiting owners' right to evict residents from rental housing. However, we believe that more needs to be done because the new local laws vary dramatically and have been most frequently adopted in urban and not rural areas served by RD. Residents of RD/RHS housing need to be protected regardless of where they live. National public health considerations require that individuals and families remain stably housed and the threat of eviction undermines public health orders to remain sheltered in place. USDA should issue guidance to RD/RHS subsidized owners instituting a nationwide moratorium on evictions and subsidy terminations for nonpayment of rent due. This should last until after the conclusion of the national emergency declaration to ease uncertainty among families who may be facing prolonged economic and social disruption.
- **Suspend all other eviction filings and subsidy termination hearings to avoid furthering community spread.** Administrative and Judicial termination and eviction hearings often involve in-person gatherings of residents, staff, and hearing officers and judges, which could jeopardize social distancing protocols. Furthermore, tenants are likely to experience greater difficulties in obtaining key documentation, tenant files, and legal representation to support any defenses due to concerns about transmission. While some jurisdictions across the country have begun enacting moratoria on the filing of evictions and subsidy terminations,⁵ All RD/RHS subsidized owners should similarly halt subsidy terminations and eviction filings for current tenants. Again, this should last until after the end of the national emergency declaration.
- **Streamline and promote interim recertifications.** Many workers, including hourly workers or those without paid sick leave, are seeing sudden and significant decreases in

⁴ See e.g. 7 C.F.R. §§ 3550.8 and 3560.8.

⁵ <https://nlihc.org/coronavirus-and-housing-homelessness>; see also <https://nychajournal.nyc/guidance-to-section-8-participants-on-rent-hardships/>.

their incomes or increases of medical expenses related to the COVID-19 epidemic. RD/RHS subsidized owners need to be prepared to conduct potentially large numbers of recertifications. RD/RHS should develop a template notice for residents and owners to take affirmative steps to inform residents of their ability to recertify their income due to loss or reduction of income or increased medical expenses. It is also critical that RD/RHS issue guidance that outlines how families can document income losses in an environment where their employers may be closed for long periods of time. One approach could be for owners to allow households to self-certify their decrease in income, presumptively approve the interim recertification and provide the household a reasonable period of time to produce documentation once the emergency has ended.

- **Suspend Acceptance of Loan Prepayments**
Prepayment of RD/RHS multifamily housing loans causes displacement of residents due to the loss of subsidies, increased rents, or the need to find other affordable housing, which, in rural areas, is often difficult to find. RD/RHS should, therefore, immediately suspend the acceptance of any prepayment offers until at least 90-days after the expiration of the current emergency.
- **Suspend acceptance of final multi-family loan payments.** Loan maturities invariably cause resident displacement due to the loss of RD/RHS subsidies and rent increases. Loan maturities affect mostly vulnerable senior households because most RD Section 515 loans that were made in the 1960s and 1970's were made to sponsors of elderly housing. Moreover, preference for senior housing loans has persisted in the program throughout its existence and is reflected by the fact that over 60 percent of Section 515 households are elderly or are headed by a person with a disability. Critically, RD is statutorily unable to issue vouchers to residents of development with maturing mortgages. Accordingly, RHS should suspend the acceptance of all payments that mature RD/RHS multi-family housing loans until at least 90-days after the expiration of the current COVID-19 emergency. Suspending loan maturities enables RD to extend Interest Credit and Rental Assistance to low and very-low income residents of those developments.
- **Automatically pause RD Voucher search periods.** Social distancing protocols will make it very difficult for families who have been issued RD/RHS housing vouchers, but have not yet leased up, to conduct a successful housing search. Voucher families, particularly those families in tight rental markets, already face difficulties in finding an affordable unit on the private rural rental market. Such difficulties will be compounded by the disruptions caused by the virus. RD should, therefore, automatically toll the search period for all vouchers, effective March 13, 2020.⁶ At the conclusion of the public health crisis, RD should restart the search period for voucher families.
- **Issue enhanced social distancing and hygienic protocols for site-based housing.** RD/RHS should issue FAQs on how owners can specifically minimize the virus' spread while still continuing essential operations such as recertification anniversaries, and

⁶This is the date of the national emergency proclamation by President Trump. *See* Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (March 13, 2020).

emergency transfers for survivor of domestic violence, dating violence, sexual assault, and stalking. Owners should ensure that they are adopting procedures to limit in-person interactions and to disinfect door handles, entry and elevator buttons, tabletops, and other surfaces in common areas. Owners should be holding phone conferences or using other means to engage in social distancing with tenants for recertifications. If necessary, all regular recertification should be postponed since incomes may not be easily verified when businesses have suspended or stopped operations. Properties with substantial elderly populations, people with disabilities, and others with high-susceptibility to the virus should take all possible steps to minimize the risk of infection. In order to accomplish this, owners need effective guidelines and protocols issued by RD/RHS.

- **Ensure language access and effective communications to persons with disabilities.** RD/RHS should remind owners that they have obligations under both Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 to ensure that any changes to procedures and protocols during the virus outbreak must be effectively communicated to persons with limited English proficiency and persons with disabilities, respectively.
- **Establish a moratorium on late fees and waive rent arrearages that arise during the health crisis.** RD/RHS should instruct owners to waive fees on late rental payments during the pandemic. This will ensure that families who have lost income or have experienced delays in getting paid will not continue to accrue late fees and charges such that they will face large arrearages after the crisis. Additionally, RD/RHS should prohibit owners from imposing new convenience fees (e.g., fees for online payments) during the emergency period. Rental arrearages accumulated by tenants during the pandemic should be waived. RD/RHS should also instruct owners that missed rent payments during the pandemic do not constitute good cause for eviction after the national emergency period has ended.
- **Clarify that funds provided as part of federal stimulus efforts are not income.** RD/RHS should issue guidance to owners that any funds received from any federal, state or local COVID-19-related stimulus efforts are not income for the purposes of calculating a tenant's rent contribution.
- **Encourage owners to exercise flexibility during and after the emergency.** RD/RHS should issue guidance encouraging owners to exercise flexibility regarding policies such as extended absences and length of guest stays during the pandemic. After the emergency has subsided, RD/RHS should encourage owners to give households a reasonable grace period in meeting any past-due programmatic requirements.
- **Extend the moratorium on all foreclosures of single family home loans under the Section 502 and 504 loan programs.** The just announced moratorium should extend past 60 days and should last for at least 180 days after the end of any applicable emergency declaration at the federal or state level, and it should explicitly cover all stages of the foreclosure process, including: a ban on initiating judicial or non-judicial foreclosures, moving for order of sale, continuing any already-pending foreclosure process, or executing foreclosure sales and post-foreclosure evictions.

- **Advise borrowers of payment certifications.** RD/RHS should advise all borrowers that they may have their income recertified and payments lowered if they are affected by the current emergency. They should also be advised that they may qualify for a moratorium on payments if they are affected by the current emergency.
- **Place a moratorium on single family loan payments for persons affected by the emergency.** Applications for moratoria should be accepted without regard to the current rules requiring a 20 percent loss of income during the past 12 months. Moreover, loss of income should be based on household income and not be restricted to the borrower's income. The term of a moratorium should be renewable for up to 3 years to allow affected households to recover from the effects of the COVID-19 virus. Moreover, RD should reduce the interest rate on all loans subject to moratoriums to 1 percent. At the end of all moratoria, the terms of the loan should be extended to enable borrowers to repay their loans without expending more than 20 percent of household income for shelter payments.
- **Automatically extend section 523 self-help housing grants and supplement existing loans and grants to accommodate TA sponsors and homeowner needs.** Self-help housing construction is dependent on multiple families working together to construct their homes. Given the social distancing requirements, few households are able to continue building their homes during the current COVID 19 emergency. RHS/RD should extend and supplement existing Self Help TA grants to cover periods during which homeowners are unable to construct their homes. RD should also increase loans for families participating in the program to accommodate delayed completion dates and, if necessary, allowing them to hire contractors to complete construction of their homes.

Additional Housing Needs

RD/RHS has a broad, national goal of providing affordable, decent, safe and sanitary housing to all Americans. To meet this goal, we urge the Secretary to call for the following:

- Emergency Solutions Grants to help address the urgent needs of people experiencing homelessness.
- A nationwide moratorium on all evictions and foreclosures while the COVID-19 crisis is ongoing.
- Market-rate owners to waive late fees and work with residents to set up repayment plans as an alternative to eviction for non-payment of rent.
- An emergency supplemental appropriation for housing assistance payments, eviction prevention tools, and housing operations, including funding to plan for and respond to COVID-19.

In conclusion, we urge RD/RHS to take immediate actions to ensure that tenants and homeowners can maintain their housing in these uncertain times, and so that they can avoid housing insecurity and homelessness after COVID-19 has subsided.

Thank you for your consideration of these recommendations.

Sincerely,



/s/ **Katie Smith Sloan**

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