

August 10, 2015

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

Dear Administrator Hernandez:

We are writing to you on behalf of residents and owners of Rural Development (RD) financed and subsidized rural multifamily housing. Recently, some property owners whose Rental Assistance contracts will be exhausted prematurely have received letters from your office stating that their Rental Assistance ("RA") agreements are not eligible for renewal during the current fiscal year. A redacted copy of such a letter is enclosed. We are aware that Congress, in response to the Administration's Budget request, included language in the Consolidated and Further Continuing Appropriations Act, 2015 ("FY 2015 Act"), that prohibits the renewal of Rental Assistance contracts entered after December 16, 2014 during the contract's 12-month term. We, however, do not believe that the Rental Assistance shortages faced by these developments are caused by the prohibition on renewals during the contract term. Instead, they are caused by RD's failure to adequately fund Rental Assistance contracts during this fiscal year.

The Fiscal 2015 Appropriations Act does more than simply preclude RD from renewing Rental Assistance contracts. It also obligates the agency to fund RA contracts for one full year. This is clear from the act's language, which provides in relevant part:

**Provided, That rental assistance agreements entered into or renewed during the current fiscal year shall be funded for a 1-year period:** Provided further, That rental assistance contracts will not be renewed within the 12-month contract period: Provided further, That any unexpended balances remaining at the end of such 1-year agreements may be transferred and used for the purposes of any debt reduction; maintenance, repair, or rehabilitation of any existing projects; preservation; and rental assistance activities authorized under title V of the Act.[**emphasis added**].

The emphasized text makes clear that RD must fund all RA contracts during FY2015 for one full year. Any significant shortfalls are due to the agency's reliance on a faulty method of calculating the amount of RA needed by developments and constitutes a failure to adhere to its statutory obligation to fund contracts for one year. We understand that RD estimates that about 50 properties will be adversely impacted during the next 90 days and estimates range from another 20,000 to another 125,000 units will be shorted rental assistance in FY2016. The lack of transparency from RD makes the exact extent of this problem difficult to pinpoint, but what is clear is that it is a major problem. This will have a devastating impact on households and developments, particularly those that have non-RD funding sources. Ironically, these disastrous

events will occur notwithstanding the fact that RD will have ample RA funds to assist all currently assisted developments.

The form letters that owners are currently receiving state that the re-renewal ban has created problems that are outside of RD's control. We disagree. RD asked for the renewal restrictions in both the FY 2015 and 2016 budgets. Moreover, these problems have not arisen because of the prohibition on re-renewals but rather by RD's arbitrary determination that RA contracts should be funded based on the average state-wide cost of operating a RA unit over the past three years and not on the actual cost of operating individual developments. In your August 8, 2014 letter, also attached, you stated that there are no state-wide averaging limits. Yet RD offices are reporting to owners that rents are being limited by arbitrary applications of state-wide averages.

The RA funding problem is not only within RD's control but also its obligation to address. The half measures included in RD's form letter, such as deferring mortgage payments, suspending reserve deposits, and using reserve funds for operations do not address the issue. At best, these will materially compromise the financial stability of many apartment complexes and at worst, cause massive resident displacement, borrower defaults, and foreclosures. We suggest that RD correct the crisis that it has created by amending or modifying contracts to reflect the actual needs of each development.

We look forward to working with you to resolve this issue as quickly as possible so that there is minimal disruption to the properties and the residents who live in these properties. Should you or your staff have any questions or wish to discuss the concerns raised by the undersigned organizations, please feel free to contact Colleen M. Fisher, Executive Director at the Council for Affordable and Rural Housing. Ms. Fisher can be reached at (703) 837-9001 or at [cfisher@carh.org](mailto:cfisher@carh.org).

Sincerely,

Avesta Housing  
California Housing Partnership  
Cascade Management, Inc.  
Coalition on Homelessness and Housing in Ohio (COHHIO)  
Community and Shelter Assistance Corporation  
Community Housing Partners  
Council for Affordable and Rural Housing (CARH)  
Housing Action Illinois  
Housing Advisory Group  
Housing Assistance Council (HAC)  
Institute for Responsible Housing  
Institute of Real Estate Management

Klamath Housing Authority  
Mercy Housing  
Minnesota Housing Finance Agency  
National Affordable Housing Management Association (NAHMA)  
National Apartment Association  
National Association of Home Builders  
National Council of State Housing Agencies (NCSHA)  
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  
Ohio Capital Corporation for Housing  
Rental Housing Information Network in Ohio





United States Department of Agriculture  
Rural Development  
Committed to the Future of Rural Communities

JUN 29 2015

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Dear Borrower:

We are writing to advise you concerning the status of the Rental Assistance (RA) Agreement for [REDACTED] located at [REDACTED]. On December 16, 2014, "The Consolidated and Further Continuing Appropriations Act, 2015" went into effect. The 2015 budget appropriations for the RA program included the following language:

"For Rental Assistance Agreements entered into or renewed pursuant to the authority under section 521(a)(2)...Provided further, That Rental Assistance contracts will not be renewed within the 12-month contract period..."

Your RA Agreement was last renewed after the effective date of the 2015 budget and therefore, is not eligible for a second renewal until 12 months after the date of the last renewal. However, your RA Agreement is expected to exhaust funding prior to that time.

Rural Development has several options to offer you to assist in managing the operations of your multifamily property during the time that RA will not be available. We urge you to discuss your options with the loan specialist assigned to your property or the Multi-Family Housing Program Director in the Rural Development State Office.

Options that may be available to you consist of:

- Deferral of the Rural Development mortgage payment
- Suspension of deposits to the replacement reserve account
- Use of the replacement reserve account funds for operating expenses

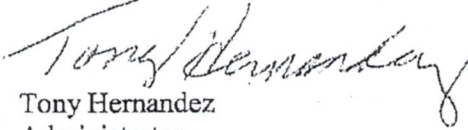
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Page Two

We appreciate the position in which this places our Rural Development-financed Multi-Family Housing and Farm-Labor Housing properties. Rural Development intends to work closely with you during this time to comply with Congressional directives and maintain affordable housing for rural residents.

Sincerely,

A handwritten signature in cursive script that reads "Tony Hernandez". The signature is written in dark ink and is positioned above the printed name.

Tony Hernandez  
Administrator  
Housing and Community Facilities Programs





Received  
8/22/14

United States Department of Agriculture  
Rural Development  
Committed to the Future of Rural Communities

Ms. Colleen Fisher  
Council for Affordable and Rural Housing  
1112 King Street  
Alexandria, Virginia 22314

AUG - 8 2014

Dear Ms. Fisher:

Thank you for your letter concerning the legislative proposal regarding the 12-month agreement provisions for the Rental Assistance (RA) program. You and other signers have expressed your concern that implementation of the proposal will cause a change in the rent structure at Rural Development-financed multi-family properties.


The methodology currently in use to estimate RA need at a property does not involve rents, as stated in the letter. However, we do review the historical use of RA in order to predict the potential need as accurately as possible. The amount of RA used at each individual property is averaged over the prior three years, including any second renewals within a 12-month period. Those averages are rolled up on a State level to create a State per-unit average. It is that figure that has been used to estimate the amount of RA a property will need for an upcoming renewal. Historically, about 97 percent of all properties have operated within that 12-month average. The properties that exceed that average and need a second renewal have created uncertainty in RA budgeting, by possibly as much as \$35 million.

In an effort to improve this forecasting ability, Rural Development is undertaking a substantive information technology effort that will identify the RA usage for each property over the prior 12 months, apply an inflation factor, and use that figure to determine the amount of RA to provide in the renewal agreement. The State-level per-unit average will no longer be used. We believe this methodology will enable us to provide specific budget figures and eliminate any uncertainty about use of appropriation funds.

We do want to correct a misconception in your letter about "...setting rents based on a State-wide average." Rents are established by the borrower, based on the cash-flow needs of the property. Rural Development reviews budgets annually to ensure that any proposed rent increase is justified; however, Rural Development does not establish property rents.

RA plays a vital role in maintaining the health of our portfolio across the country. We appreciate the interest of your many organizations in working with us to ensure RA is available to as many residents as possible in rural America.

Sincerely,

Acting for   
Tony Hernandez  
Administrator  
Housing and Community Facilities Programs

USDA is an equal opportunity provider and employer.

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202)690-7442 or email at [program.intake@usda.gov](mailto:program.intake@usda.gov).