NATIONAL HOUSING CONFERENCE

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Office of Budget and Program Analysis
U.S. Department of Agriculture
Jamie L. Whitten Building, Room 101-A
1400 Independence Ave. SW.
Washington, DC 20250-0500

82 FR 32649 Public comment on Reducing Regulatory Burden: "Enforcing the Regulatory Reform Agenda Under Executive Order 13777"

The National Housing Conference (NHC) and the undersigned organizations are pleased that the U.S. Department of Agriculture is taking a comprehensive look at the regulatory environment for rural programs, including rural housing. Many stakeholders work to provide rural housing, and they benefit from clear and stable expectations in their work of creating and preserving homes, serving those in need, providing capital, encouraging community development or making housing markets work better. Our comments aim to assist USDA in creating the clear and stable expectations that are so essential to creating economic opportunity in rural America.

I. Approach changes with caution

When prioritizing which regulations to address under Executive Order 13777, USDA should evaluate both the cost to stakeholders and the mission impact of its policies. A cost-only approach to prioritizing could actually increase costs in the future by reducing community and economic development benefits created by rural housing policy in exchange for potentially minimal savings.

II. Areas for improvement in USDA regulations and guidance

We recommend USDA take actions in several areas to clarify or streamline existing regulations and guidance to enable more efficient provision of affordable housing and stronger investment in communities across America.

A. Allow Properties to Expand Broadband Access with Existing Resources

The undersigned encourages USDA to promote and facilitate broadband in affordable housing. NHC with our Connectivity Working Group has conducted research on the digital divide which highlights the importance of providing low-income renters with home broadband access. Having a home computer and internet access is increasingly important for individual and family well-being and self-sufficiency. The availability of internet access is associated with greater student achievement, improved health outcomes, less social isolation and more economic growth. However, low-income individuals, and especially very low-income renters, are much less likely to have internet access or a computer at home. This digital divide worsens economic inequality and risks leaving low-income families further behind.

In 2013, 74 percent of U.S. households had home access to the Internet but only 46 percent of extremely low-income renters had home access to the Internet. Only 54 percent of very low-income renters had home access to the Internet. The digital divide is even worse for older adults and disabled individuals. Only 26 percent of very low-income senior renters have home Internet access, and only about one-third of very low-income disabled renters have home Internet access. These data clearly illustrates the importance of addressing the digital divide, which we know is worse in rural America.[1]

[1] According to 2013 American Community Survey 1-year public use microdata

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NHC and the undersigned encourage USDA to partner with HUD in its ConnectHome initiative and explore ways to share best practices for broadband access in rural housing with the field. NHC also encourages USDA to consider how its broadband programs could serve its housing programs. Communities applying for Community Connect Grants or Telecommunications Infrastructure Loans & Loan Guarantees funding could be encouraged to include Section 515 properties and/or owners in their approach to getting residents connected. USDA staff could conduct outreach to nonprofit organizations participating in the Section 515 program and other rural housing programs to help them understand their eligibility for the Telecommunications Infrastructure Loan program.

Additionally, as pilot programs are demonstrating, basic broadband provided at the property level can serve residents effectively while containing costs. USDA should make sure existing program rules allow existing properties to use available funds to implement cost-effective connectivity for residents. USDA should explore treating cost-effective basic broadband as a standard operating cost for its affordable housing properties.

B. Allow Nonprofits to Receive Property Income Distributions like for-profits

The FY 2017 Appropriations Act required USDA to help nonprofits and public housing agencies (PHAs) preserve rural rental properties. Nonprofits and PHAs are allowed to receive returns on investment and asset management fees when purchasing rental properties to preserve them under the FY 2017 appropriations law. Similar language has been included in the House FY 2018 agriculture appropriations bill. This statutory change should be permanent. Nonprofit owners typically rely on return on investment and asset management fees to fund additional supportive services for residents; to support the operations of affordable properties; or to fund new affordable housing development ventures. This permanent statutory change would help nonprofit owners build their capacity to engage in housing development in rural areas.

C. Retain the Undersecretary of Rural Development position

The undersigned strongly support elevating rural development as a priority. USDA is the right agency to lead a renewed focus on strengthening and revitalizing rural communities. However, we are concerned that the proposed reorganization signals a lowering of the priority when it comes alongside the administration's FY 2018 budget request. The president's budget would defund all rural housing direct loan programs, farmworker housing grants, housing preservation grants, and the Multifamily Preservation and Revitalization program. Without sufficient funding for rural housing and community development needs, elevating Rural Development will be difficult to achieve. Safe, high-quality affordable housing is a persistent challenge for rural communities, in part because the issue has not received sufficient attention. Housing should be part of any strategy to address the needs of rural communities, which requires federal support and funding.

Based on the proposal, all of the other agencies within USDA would continue to have an Undersecretary to lead their work who could also advocate for their needs. Rural Development would not have that voice. The different areas of RD are all very important for rural communities, and an Undersecretary can help weave them together in a holistic strategy. Without a leader to advocate for rural development that can spend time fully understanding the needs of rural America, the programs that exist to meet those needs, and the ways to improve them, it would be challenging for the Secretary to pursue rural development strategies effectively. While the undersigned appreciate Secretary Perdue's interest in being more involved in rural development, he has many demands upon his time, and an Undersecretary of Rural Development would be a great resource to aid him in elevating rural development within the department.

D. Decouple rent assistance from mortgages

A legislative change would be to enact The Rural Housing Preservation Act of 2016 which would decouple Section 521 Rental Assistance from Section 515 or 514 mortgages. This change would enable tenants to continue receiving rent assistance after USDA mortgages mature.

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The Rural Housing Preservation Act of 2016 was introduced in the House and Senate on April 12, 2016. H.R. 4908 is sponsored by Rep. Ann Kuster (D-NH) and Rep. Rick Nolan (D-MN). S. 2783 is sponsored by Sen. Jeanne Shaheen (D-NH). The bills aim to address the problems that may arise when USDA-financed Section 515 mortgages reach the end of their terms. Without their USDA financing, these rural rental properties lose not only their low-interest mortgages but also their Section 521 Rental Assistance (RA), which keeps rents to a level tenants can afford while providing cash flow to property owners to cover ongoing expenses.

The bills would

- make USDA Section 542 vouchers available for tenants in properties whose Section 515 mortgages are prepaid or mature;
- "decouple" Section 521 RA from Section 515 mortgages that mature after the bill's enactment, giving owners the option of receiving RA for 20 years for all units (including those that did not previously have RA contracts), including both current and new tenants; an owner would then be required to operate the property for the 20-year RA contract term as if it still had a Section 515 mortgage;
- require USDA to establish "uniform requirements, terms, and conditions" for any entity seeking to acquire a Section 515 property using Low Income Housing Tax Credits and any funds authorized by this bill; and
- authorize the Multifamily Preservation and Revitalization program currently operated as a demonstration program by USDA, for preservation of properties financed under either Section 515 or Section 514/516

E. Develop a comprehensive strategy for preservation and address existing challenges

We encourage the administration to develop a comprehensive strategy for preserving safe and affordable multifamily rental housing in rural communities. When a owner or purchaser wishes to recapitalize and preserve a Section 515 property before it reaches maturity and leaves the program, they typically face a number of challenges. USDA should revise transfer and prepayment procedures in consultation with lenders, investors, owners, and tenants to promote preservation, including regulatory changes to make the preservation process simpler.

Addressing challenges:

- USDA should ask for statutory changes to allow issuing longer contracts for rent assistance on affordable housing preservation deals. Short term contracts mean that to structure a reamortization preservation transaction, lenders may require large transition reserves. And owners or purchasers may not be able to provide these reserves.
- ” USDA should consult with stakeholders on how to better determine property value in preservation transactions.
- USDA needs to adjust the appraisal standards. Currently, appraisers are instructed to discount the value of rental assistance, but are instructed to factor in affordability restrictions. Factoring in the affordability restrictions artificially depresses value of the property, and rent assistance would increase the property’s value.
- USDA needs better consistency in the field around comprehensive needs assessments of properties. (Some offices require sellers to complete repairs pre-sale which is not necessarily consistent with the handbooks). Field offices also seem unclear on what is a critical repair to be completed immediately versus noncritical. Ordering the completion of repairs prior to the sale can cause challenges in establishing the basis for a tax credit deal; furthermore, the ultimate owner may handle the repair more efficiently, with the long term maintenance in mind.
- When a developer wants to use Low Income Housing Tax Credit to help finance a rural rental preservation deal, they face challenges in getting the two programs to work together related to rent levels and income differences between USDA and the Low Income Housing Tax Credit program. Rural development should allow the funding program providing the greatest capital contribution to dictate the primary regulations. The agency could grant waivers to properties that are charging allowable LIHTC rents but that are not equal to required USDA rent levels.

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- Provide tenant-based vouchers for residents of Section 515 projects when the mortgages mature, not just on mortgage prepayment. Rent should cover up to the comparable market rents for a unit at the maturing project or rent should cover an established payment standard.
- Modify existing USDA energy-efficiency programs (including but not limited to the Rural Energy for America Program) to serve rural rental housing. Including multifamily housing in these programs could reduce energy consumption, cut costs for USDA RD assisted units, and help preserve rental housing.

F. Expand the Rural Home Repair program

Robust home repair funding targeted to persistently poor communities is needed to improve the quality of the housing stock and stimulate local economic development. We encourage the develop development of an enhanced home repair program administered through the Section 533 HPG program to address the needs of rural program homeowners. The program would:
• Fund up to $100 million in grants to regional nonprofits and intermediaries. Grantees would leverage the funds with other government, private, and philanthropic resources. Funds would be used to make loans and grants to homeowners for repairs.
• Target a portion of pilot repair funds to areas of persistent poverty and elderly homeowners. To facilitate this targeting, the program should permit assistance to households with incomes up to 100 percent of area median income in persistently poor counties.
• Make assistance available on the following terms:
o Blend of loans and grants based on income level of the homeowner
o Loan funds provided as secured long-term financing at a fixed rate and term of no less than 20 years
o Grant funds structured as a forgivable loan based on years of occupancy
• Permit grantees to recycle for further home repair program activities those grant funds that were used to make a loan and were repaid.

G. Streamline the definition of rural across federal programs and agencies

Many federal agencies have different definitions of rural and persistent poverty which makes it challenging for programs to work together. In consultation with the Interagency Task Force, NHC encourages USDA to facilitate a discussion around the definition of rural being used across federal programs and how to implement a simpler approach to defining rural, perhaps deferring to the USDA definitions.

H. Better support rural homeownership

In rural communities, finding well-trained appraisers is a challenge. Additionally, USDA requires appraisers to use a comparables approach to determine value, when in a rural market, comparable properties may not be available. Appraisers should be encouraged and allowed to use other methodologies for determining the market value of single family homes in rural communities.

I. Revisit recommendations from the Rental Policy Working Group

The Rental Policy Working Group, a collaboration of HUD, USDA, Treasury, NEC, OMB and the DPC, began the Alignment initiative in early 2011 as a way to seek out ways to streamline and align federal rental housing policy across agencies and reduce the burden on owners and operators of affordable housing. On December 31, 2011, the group released a final proposal for improving the delivery and operation of affordable housing: "Federal Rental Alignment: Administrative Proposals". The report puts forward 10 proposals for better aligning affordable rental housing programs across federal agencies. The Rental Policy Working Group made progress on a number of proposals and efforts around

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physical inspections continue to move forward. USDA should revisit these proposals to see how they can continue to be supportive and make progress in the identified areas.

III. Solicit more feedback as needed

Lastly, we recommend that USDA use this notice and comment period to surface opportunities for regulatory improvement and to solicit additional stakeholder input on specific areas the department hopes to improve. To avoid unintended negative consequences of regulatory change, we recommend that USDA use notice and comment for each regulation and major area of guidance it intends to change.

To discuss any of these comments in further detail, please contact Rebekah King, Policy Associate, National Housing Conference, (202) 466-2121 x248, rking@nhc.org.

Sincerely,

Council for Affordable and Rural Housing
Eden Housing
Habitat for Humanity International
National Housing Conference
National Low Income Housing Coalition
Rural Local Initiatives Support Corporation