



Letter Recommending Operating Procedures for Rural Tenant Protection Voucher Program

December 21, 2005

Russell Davis
Housing Programs Administrator
USDA Rural Development, Room 5014
1400 Independence Avenue SW
Washington, DC 20250

RE : Rural Housing Service voucher program for prepayments

Dear Mr. Davis :

As you know, the undersigned organizations have a keen interest in retaining section 515 properties in the program where possible, and in protecting tenants from the adverse consequences of converting these buildings to market rate rents. We know that your agency is currently at work designing the voucher program recently established by the Appropriations bill. We write this letter to offer some suggestions with respect to how the voucher program should be implemented. Many of us have had considerable experience over the years with HUD's Section 8 voucher program, and we believe we have a useful perspective to offer .

We understand that RHS is currently contemplating implementing the voucher program on a demonstration basis through a memorandum of understanding (MOU) or another form of agreement with HUD. Since that will mean no public rulemaking process, it will be even more essential that the agency obtain timely input from stakeholders. The agency should meet with both tenant and owner groups to discuss the voucher program, or in the alternative, provide these groups with a document indicating RHS's plans for the voucher program so we can respond in more detail in writing. We will contact your office after the holidays to follow up on this suggestion.

Set out below are the concerns we've identified. •

1. The involvement of HUD in a RHS program will present challenges that need to be anticipated.

We understand that RHS plans to contract with HUD to administer the new voucher program and that HUD will in turn will contract with local PHAs to administer the vouchers. Our concern is that this inter-departmental process not become cumbersome and lead to delays in resolving the many issues that will arise in implementing a new program. When PHAs seek guidance, do they go to HUD who in turn goes back to RHS? If problems develop with PHA administration, will HUD be monitoring PHAs to identify these issues? Will the RHS voucher program be a priority for HUD given its focus on its own programs?

RHS should address all these questions in its agreement with HUD, should reserve the right to address future issues as they arise, and should designate one official within the agency to resolve such questions.

We also understand that RHS may be considering awarding voucher contracts through a NOFA process. RHS should reconsider that decision for two reasons. First, there is a disconnect between the timing of a NOFA and the timing of prepayments. A PHA may reasonably choose not to respond to a NOFA because the community has no pending prepayments; that would obviously be a problem later, however, if prepayments arise. Second, the NOFA process will delay implementation. Given that Section 515 prepayments for which these vouchers are needed are continuing to occur on a regular basis, there is some urgency in beginning this program. Rather than using the NOFA process with its months of delay, we suggest using something akin to the HUD enhanced voucher process, where HUD simply issues the appropriate number of vouchers to the appropriate PHA when HUD learns of a pending prepayment.

The commitment of local PHAs to this program is obviously critical. We trust that a reasonable administrative fee will be set to cover PHAs' costs to administer the program.

2. Vouchers should be targeted to those prepayments where tenants are currently left unprotected.

From what we understand, RHS has not yet made a final determination on whether vouchers will be issued in those prepayment cases where owners must enter into restrictive covenants to treat current tenants as if the project was still in the Section 515 program. We would urge the agency not to issue vouchers in that situation because it would fundamentally alter the ELIHPA prepayment process. Tenants are already protected in these cases, so issuing vouchers adds little, other than shifting the cost of rent restrictions from owners to RHS. That seems to make little sense, given the scarcity of these public resources. Second, issuing vouchers in this situation will simply encourage more prepayments, as owners discover their prepayment will now be subsidized.

Vouchers should be limited to those situations where they are really needed. There are at least three such situations that we see. One situation is where owners have offered projects for sale to nonprofits and public agencies under the mandatory sale provisions, and no buyers have submitted purchase offers, leaving the owner free to prepay without any restrictions protecting current tenants. A second situation is where RHS has determined the owner is free to prepay without restriction because the property is no longer needed in the Section 515 program but some tenants remain at risk.

A third situation is where RHS declares an owner in default on the mortgage, accelerates the loan, and the owner responds by submitting full payment, thus exiting the program with no restrictions and no protections for tenants. This situation is admittedly different in that previously RHS has been reluctant to classify this outcome as a "prepayment," though functionally it is the same. In our previous conversations with RHS staff about this problem, we think there has been agreement that this has been a long standing hole in the safety net, without a good solution.

The new voucher program now provides a solution. Indeed, the Senate Committee report indicates that it is providing this voucher funding "as a safety net preventing the displacement...of tenants that currently reside in Section 515 projects that are subject to

prepayment or foreclosure of their existing loans.” Senate Report 109-092, “Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2006.” In addition to payments in response to acceleration, if transfers of properties at foreclosure sales result in removal of properties from the Section 515 program, issuance of vouchers to protect tenants would be necessary in that situation as well.

3. The initial voucher subsidy must be set in a way that protects tenants.

As you know, the Appropriations Act states that the amount of the voucher shall be the difference between comparable market rent for the unit and the tenant paid rent. We understand that RHS intends to set comparable market rents at a level that will encourage prepaying owners to accept those rents. This is obviously central to ensuring that tenants will not be displaced. By and large, this aspect of HUD’s enhanced voucher program has worked well and can serve as a model for RHS; generally speaking, prepaying owners have increased rents, but not at levels that PHAs have considered unreasonable. PHAs have considerable experience in establishing comparable market rents. RHS should draw upon that experience here. While it might make sense for RHS to draw broad parameters for determining market rents in each jurisdiction, PHAs should make the determination based on local market conditions.

4. Owners must agree to accept vouchers in order to prepay.

It is also critical to avoid the possibility that a prepaying owner will refuse to accept vouchers, either because the owner considers the market rent determination to be too low, or simply because the owner wants to avoid continued participation in a government program. To set the rules otherwise is simply to open the door to displacement. As you well know, RHS tenants will often have to look to far flung locations to find another place to use their voucher, creating a particular burden for elderly and disabled tenants, who are highly dependent on their current neighborhoods.

We believe the way to avoid this problem is to require owners to accept vouchers as a condition of the prepayment. This should not be viewed as an onerous burden on owners and should not give rise to owner litigation over ELIHPA restrictions; having to accept rent subsidies is hardly akin to the kind of restrictions owners have challenged in court. This “right to remain” in HUD’s enhanced voucher program has worked well, with little resistance from owners, and should be incorporated into the RHS program as well. Moreover, for this right to stay to remain meaningful, owner should not be allowed to evict voucher holders except for good cause. Indeed, this duty of the owner to accept /right of the tenant to stay should be incorporated into a restrictive covenant filed against the property and that explicitly provides that tenants may enforce this right judicially, just as now happens with other prepayment restrictions.

5. To remain a meaningful protection, the voucher subsidy must be adjusted over time.

We understand that the current Appropriations Act only provides voucher funding for one year. Nonetheless, we assume, and believe that RHS should operate the program as if it is an ongoing program subject to future appropriations. Accordingly, we recommend that RHS incorporate mechanisms, comparable to those that HUD uses, to allow for rent and voucher subsidy increases in future years. Comparable market rents will, in most cases, increase over time. If the voucher subsidy failed to cover increases that remained within comparable

market rents, the program would no longer be in compliance with the language of the Appropriations Act.

Increases in subsidy that track increasing market rents will not only be necessary to comply with the Act, but, of course, will also be necessary to avoid increasing the rent burden on tenants and possible displacement or other hardship.

A related issue is how the voucher subsidy is determined when the tenant moves to other housing. To remain a meaningful protection for tenants, the subsidy should be based upon the cost of housing at the new location, not the rent level at the prepaying property, subject to reasonable limits. We suggest those reasonable limits are the published Fair Market Rents for the location where the tenant moves.

6. Tenants should be permitted to move freely with their vouchers.

Tenants should be free to move anywhere within the United States with their vouchers, as long as there is an entity to administer the vouchers. This will of course require something akin to HUD's Section 8 portability features, with a system for transferring vouchers and their costs between PHAs. This should be established in a way that doesn't inhibit portability, as some of the current Section 8 provisions do. An issue that may need particular attention is an equitable distribution of costs between PHAs when a tenant moves from a lower cost rural area to a higher cost urban area.

Also, tenants should be free to take their voucher to any housing that has rents within the local Fair Market Rents and is decent, safe, and sanitary. HUD's housing quality standards would be an appropriate standard for determining the quality of the housing. We also support and encourage RHS to allow voucher holders to use vouchers to purchase homes as is allowed under the HUD voucher program.

Vouchers should also be explicitly subject to federal and state anti-discrimination laws. Moreover, the voucher rules should provide that they do not preempt state or local laws that are more favorable to voucher-holders.

7. Screening by PHAs should be limited to basic program eligibility.

We understand that RHS is considering making PHAs responsible for tenant certifications, but that PHAs will be required to accept current RHS income certification for initial voucher issuance. This makes sense. As far as we know, there would be no statutory or regulatory authority to screen out tenants for any other reason. There should be an explicit statement of RHS policy that all low income households in prepaying buildings are automatically eligible for vouchers if they meet income requirements.

Since tenants move in and out of buildings during the prepayment process, it is important to clarify that all households residing in the property at the time tenants first receive a notice of prepayment will be eligible to receive vouchers as of the date the prepayment occurs regardless of whether they are still residing in the development on the actual date of prepayment. To do otherwise would unreasonably restrict residents from finding other suitable housing should they choose to relocate before the prepayment actually occurs. Indeed, the failure to make residents eligible for vouchers as of the date of a prepayment notice may have severe adverse consequences if, for some reason, vouchers were not actually available on the prepayment date. Vouchers should also be available to tenants who

move into the building at any time prior to the actual prepayment.

8. When vouchers are turned back in by tenants, they should remain in the community.

When federal preservation policy with respect to the Section 8 program evolved from restricting prepayment to protecting tenants with enhanced vouchers, there was a recognition that vouchers were needed not only to protect tenants, but also to partially replace the lost affordability resources in the community. As a result, HUD has provided that when tenants no longer need or qualify for enhanced vouchers, those vouchers do not go back to a national pool but remain with the local PHA to assist other families.

This approach is no less compelling in the rural context, and RHS should take the same approach here. It would also be consistent with the Appropriations Act language that requires that RHS “ shall, to the maximum extent practicable, administer such vouchers with current regulations and administrative guidance applicable for section 8 housing vouchers administered by the Secretary of the Department of Housing and Urban Development...”

Thank you for your consideration of these comments. We look forward to speaking with you soon.

Sincerely,

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