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Branch Chief
Regulations and Paperwork Management Branch
U.S. Department of Agriculture
STOP 0742
1400 Independence Ave. SW
Washington DC 20250-0742.

Re: RHS Proposed Rules: Rural Development Voucher Program
78 Fed. Reg. 49374 (Aug. 14, 2013).

The National Housing Law Project (NHLP) and the other organizations that are listed below are pleased to submit these comments to the RHS proposed rules on the operation of the Rural Development Voucher program. While we are extremely pleased by the fact that RHS has decided to adopt formal rules for the program, we are disappointed by the fact that the proposed regulations fail to specify timelines under which the program will operate and to enumerate major tenant rights and landlord obligations. These omissions are critical and violate the agency's legal obligations to publish rules for notice and comment under the Administrative Procedure Act (APA).

The proposed rules also clearly violate Section 214 of the Housing Act of 1980, 42 U.S.C. § 1436a, which governs the eligibility of undocumented persons to live in RHS housing and to receive RHS voucher assistance. RHS must conform the rules to Section 214 or remove the citizenship eligibility requirements altogether until the agency adopts program-wide regulations that properly implement Section 214.

We are also troubled by RHS' failure to extend various fundamental tenants' rights, such as the right not to be evicted except for good cause and the right to appeal RHS voucher termination decisions, to the voucher program and by the omission of other safeguards intended to protect residents against rent increases, involuntary displacement and other landlord abuses.

We beseech RHS to carefully review these comments, modify its proposed regulations and provide residents and advocates with another opportunity to review and comment upon revised regulations.

Our comments first address provisions of the proposed regulations that are in conflict with applicable law and are significant in their impact on the proper operation of the program.

APA Violations

We are alarmed by the proposed regulation's failure to specify the timelines that are applicable to the voucher program. Among other deadlines, the regulations do not state when RD will notify residents of the availability of vouchers, what the deadlines are for applying, when RD will issue a voucher, the time that residents have to locate a housing unit, and the time that RD has to inspect the unit and enter into a Rural Development Assistance Payment (RDAP) contract with the landlord. They also do not state what extensions, if any, there are with respect to any deadlines or when RD will notify residents of the renewal of vouchers. We understand that RHS plans to publish these timelines in a handbook so that the deadlines may be altered without going through the rulemaking process. We find this totally unacceptable. The proposed rules are legislative rules that impact voucher holders rights. They are not interpretive rules that the agency can simply change at will without public notice and an opportunity to comment. Handbooks, which are designed to direct and inform agency staff, are not legal or adequate substitutes for properly promulgated regulations.

For the same reasons, we are also concerned by the fact that major resident rights and landlord obligations, which we assume will be specified in the Tenant Addendum to the lease and in the RDAP contract, are not specified and enumerated in the proposed regulations. These are fundamental matters that simply cannot be recited in agreements that can be changed at will without public comment. Residents are unable to enforce the RDAP contract provisions and are not on notice and have no opportunity to comment when RHS unilaterally changes provisions in either the Tenant Addendum or RDAP contract. Therefore, we exhort RHS to republish the proposed regulations and specify all the timelines that apply to the voucher program as well as the full rights and obligations of residents and landlords. Simply proceeding without prior publication is a violation of the APA, RHS' authorizing legislation, and the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices.

Citizenship Eligibility Requirement (§ 3560.803(e)).

The citizenship requirements set out in the proposed regulations violate Section 214 of the Housing Act of 1980, 42 U.S.C. § 1436a, and must either be made to conform to that section or must be removed until such time as RHS adopts conforming regulations for the Section 515 program, which is also governed by Section 214.

First, Section 214 makes any family eligible to receive a voucher provided a member of that family is a citizen or is present in the United States in accordance with the seven statutory categories set out in Section 214(a). Section 214 is absolutely clear

on this issue. It states that that a family is eligible to receive voucher assistance if the eligibility of “one member of [the] family has been affirmatively established....” The Department of Housing and Urban Development (HUD) has appropriately concluded that a minor can make a household eligible for assistance and there is no basis for RHS to conclude otherwise. Thus, the provisions in the proposed regulations, which disqualify a household from receiving a voucher if any member of the household is not a citizen or qualified alien, is contrary to law and must be revised.

Second, Section 214 does not require every household member to establish his or her legal status to reside in the United States. Indeed, household members can decline to establish their status and cannot be required to do so provided a single member of the household meets the residency status requirement. The consequence of this decision, or in any case where household members are found to have ineligible status, is a proration of the amount of assistance provided to the household based upon the number of eligible and ineligible persons receiving assistance under the voucher program. Thus, the provision that requires every household member to complete a form and establish her legal status, as well as the omission of a proration system, are clear violations of Section 214 that must be corrected.

Third, Section 214 requires that verification of an individual’s status be made through ICE in a manner that protects the individual’s privacy to the maximum degree possible. 42 U.S.C. § 1436a (d)(3). Moreover, in the event that ICE does not confirm the individual’s status, the resident must be given an opportunity to appeal the ICE determination within 30 days. None of these requirements are set out in the proposed regulations and must be included if RHS is going to insist on having any household member establish her residency status.

Fourth, the regulations fail to make any mention of the fact that Section 214 allows persons who are 62 years of age or older to self-certify as to their status. This provision must be included in the regulation and cannot be included in some other RHS directive.

When revising the citizenship provisions of the regulations, we urge RHS to require that a complete and plain English listing of all the categories of persons eligible for assistance under Section 214 be included in any material that is sent to residents about the voucher program. Residents of Section 515 housing are simply not familiar with and are unlikely to have easy access to, or understanding of, Section 214 to determine if they are eligible for assistance. RHS must affirmatively advise them of the eligibility criteria so that eligible households are not denied assistance.

Appeal Rights (§ 3560.803).

The proposed regulations provide voucher holders the right to administratively appeal adverse decisions with respect to their eligibility for a voucher. They do not

provide them with an administrative appeal when the agency terminates the voucher holders' assistance (§§ 356.804 and 3560.814) or when voucher holders disagree with other agency decisions, such as the value of the voucher (§ 3560.810). Since, in this and other instances, the agency is making decisions with respect to voucher assistance, including its termination, voucher holders are entitled to an administrative hearing of the agency's decision by both the Constitution and by 42 U.S.C. § 1480(g). Accordingly, RHS should modify the regulations to include a separate section on appeal rights that covers both voucher eligibility and termination decisions.

Good Cause and Lease Termination by Landlord (§ 3560.814).

We are disturbed and perplexed by the fact that the proposed regulations do not require landlords to have 'Good Cause' to terminate leases both during and at the end of a lease term. There simply is no federal housing program that does not require landlords to have good cause to terminate a lease during its term. Moreover, only the HUD voucher program allows landlords to terminate vouchers at the end of the lease term without good cause and that was implemented by virtue of explicit legislation that eliminated the good cause requirement for HUD vouchers at the end of the lease term. There is no similar legislation applicable to the RHS voucher program and there is no reason to exempt voucher landlords from the good cause termination requirement at any time. Good cause is one of the most important rights for tenants facing eviction, it is well defined by other RHS and HUD regulations and by thousands of court cases that have been litigated over the past 50 years. The elimination of the good cause requirement, by allowing landlords to evict residents for any cause specified in the lease (§3560.814(b)(3)), is an unacceptable deprivation of voucher tenants' fundamental rights. The regulations must be amended to state clearly that voucher holders are not to be evicted except for good cause at any time.

Notice of Intent to Renew Lease and to Increase Rent (§ 3560.807).

RHS must amend the lease provisions of the proposed regulations to include a requirement that landlords inform voucher holders in writing, at least 90-days before the expiration of the current lease, of the rent they intend to charge for the unit during the next lease term. This notice is necessary to enable voucher holders an adequate opportunity to relocate to other housing in the event that new rent is beyond the household's rent paying capacity. While HUD only requires a 60-day notice for rent increases, we believe that 90-days is justified for the RD voucher program because, unlike the HUD program, RD has no authority to increase the subsidy level to reflect reasonable rents in the community. As a result, households, who will have to fully bear any increased rent costs, will have a harder time in locating other reasonably priced rental housing. Moreover, given that rental housing, particularly decent and affordable rental housing, is generally sparse in rural areas, rural voucher holders will need more time to locate alternative housing. To ensure that voucher holders are provided timely notice, the provisions dealing with lease requirement should state that in the event that

the landlord fails to provide the resident with 90-day notice of the rent increase, the current lease extends automatically until 90-days after the landlord has given the resident a notice of the proposed rent increase, if any.

Right to Remain In the Formerly Subsidized Unit.

The current appropriations language for the RHS voucher program requires RHS to administer the program consistently with current regulations and administrative guidance applicable for section 8 housing vouchers administered by the Secretary of the Department of Housing and Urban Development (HUD). Yet, in one major respect, the proposed regulations fail to do so. Namely, HUD requires prepaying and foreclosed owners to honor its Enhanced Vouchers for as long as the voucher recipient chooses to remain in the development, provided the owner does not have good cause to terminate the lease. In accordance with the appropriations act, RHS must amend the proposed regulations to provide residents of prepaid and foreclosed properties the right to remain in the development. Failure to do so violates RHS' statutory obligation to operate the voucher program consistently with the HUD Section 8 program.

Priority Right of Voucher Holders to Move to RHS Financed Housing.

The RHS voucher program is a poor substitute for the housing assistance that the residents have been receiving under the Section 515 program, particularly if they were receiving Rental Assistance. This is primarily due to the fact that the voucher subsidy is not based on household income and is not subject to adjustments if household income or composition changes. Accordingly, we strongly urge that RHS provide voucher holders a perpetual right to priority admission to other RHS financed housing so that they can secure the same assistance which was terminated due to prepayment or foreclosure. As an example, such a right is particularly critical for elderly households when one of the household members dies or is relocated to institutional housing. Under the Rental Assistance program, that household's rent would be adjusted to remain at 30% of household income. Under the voucher program, however, there is no adjustment for such changes and a household that was paying 30% of income before prepayment or foreclosure may be paying as much as 60% of income when a spouse leaves the household. Such a burden is simply unbearable and RHS must give voucher holders priority admission to RHS financed housing to deal with these types of situations.

Failure to Enumerate Voucher Holders' Rights.

We understand that RHS intends to publish a Tenancy Addendum that will be incorporated into the RDAP contract and that the addendum will have to be signed by both the landlord and the voucher holder. We presume that the addendum will be similar to that used by HUD in its voucher program. We are, nonetheless, disturbed by the fact that RHS has not published the Tenancy Addendum for residents and advocates to review and comment about the rights that may be extended to residents through that

addendum. We are particularly disappointed by the fact that few if any of the rights of voucher holders that are extended to HUD voucher holders in the HUD Tenancy Addendum are incorporated in the proposed regulations while practically every resident obligation in the tenancy addendum is included in the proposed regulations. We, therefore, urge RHS to modify the proposed regulations by:

- limiting the unit rent during the term of the lease and prohibiting rent increases during that term;
- prohibiting the landlord from charging or collecting other payments for rent from the tenant or any other source and requiring any excess payments to be returned to the tenant;
- specifying that the landlord may not require residents to pay extra for furniture, meals, supportive services, or other services customarily included in rent in the locality or for other unassisted residents on the premises;
- requiring notice to residents and RHS of any proposed rent increase at least 90 days prior to the expiration of the lease term;
- requiring written notice between the landlord and resident for actions under the lease and that agreed changes to the lease must be in writing;
- requiring good cause for termination of the lease at any time and requiring that residents be provided written notice of the proposed eviction that can only be executed by court action. In other words, eviction through self-help or other non-judicial action must be precluded;
- requiring itemized lists of charges against security deposits and prompt refunds of the balance;
- prohibiting landlords from discriminating on the basis of race, color religion, sex, sexual orientation, national origin, age, familial status , or disability in connection with the lease;
- specifying that an incident of domestic violence will not be construed as serious or repeated violation of the lease or other good cause;
- specifying that the landlord may bifurcate a lease to evict, remove, and terminate assistance to any individual who engages in criminal acts of physical violence without penalizing the survivors of the violence.

Denial of Voucher Due to Previous Eviction (§ 3560.803(o)).

We are strenuously opposed to the provision that precludes a displaced resident from obtaining a voucher if the resident has been evicted from federally subsidized housing in the past five years. First, the restriction is not authorized by either Section 542 or the appropriations acts authorizing the demonstration voucher program. Second, it does not make sense in the RHS voucher program and contradicts the basic purpose of the program--to prevent displacement of, and rent overburdens for, Section 515 tenants. We realize that RHS has copied this provision from the HUD voucher program,

however, unlike a HUD voucher holder the RD voucher applicant has been admitted and is living in federally assisted housing and has been meeting his or her obligations under the Section 515 program. There simply is no reason to deny that person a voucher simply because she has previously been evicted from subsidized housing in the past five years. The prior eviction is irrelevant. Indeed, it would be ironic if a resident were denied a voucher in those instances where the resident stays in the development that was previously financed by RHS. That resident has been previously admitted to the development and there is no reason for RHS to suddenly deny her a voucher. If a voucher assisted resident violates the lease the landlord has adequate remedies to remove the resident from the housing. There is no need to have RHS deny the voucher to the resident in the first place. Accordingly, we urge RHS to totally eliminate this provision. If RHS maintains any part of this provision, we further urge that it limit disqualifying evictions to court ordered evictions.

Violence Against Women Act (VAWA).

When Congress recently extended VAWA to the RHS program, it did not specifically list the voucher program among the programs that is subject to VAWA. We believe this was an oversight and not an intentional omission, we, therefore, ask RHS to continue to voluntarily extend VAWA to the RD Voucher program as it is currently doing through the use of the HUD HAP contracts. We think this is critical to protect voucher holders against domestic and other violence and ensure that they are not deemed ineligible for assistance and do not lose their voucher assistance when they are survivors of such violence. Accordingly, we urge RHS to modify its regulations to ensure that survivors of domestic violence, and their immediate family members, are not deemed ineligible or evicted from housing and do not have their vouchers terminated because of acts of other household members or other persons who do not occupy the assisted unit. To avoid a lengthy recitation of VAWA's protections, we urge RHS to review and conform its regulations to the HUD VAWA regulations that are codified at 24 C.F.R. Part 5. We also urge that RHS authorize the transfer of vouchers to survivors of domestic violence when the perpetrator of the violence is evicted and that exceptions be made to survivors for breach of their lease when it is done to protect the survivor from continued violence. *See* 42 U.S.C. 1437f(r)(5) and HUD, Housing Choice Voucher Family Moves with Continued Assistance, Notice PIH 2011-3, at 12 (Jan. 19, 2011).

Reasonable Accommodation

The proposed regulations fail to mention any reasonable accommodation that RHS or landlords must, consistent with the Fair Housing Act, make to accommodate persons with disabilities. This includes determinations of voucher eligibility, terminations of tenancy and the modification of living units. Thus, for example, in determining a household's eligibility for a voucher, any adverse resident behavior that was caused by the person's disability must be considered in determining the resident's eligibility for a voucher. Similarly, a landlord must make reasonable accommodations to household

members in need of such accommodation. This includes making simple modification to the unit or allowing the resident to make more significant changes provided the resident pays for the change and agrees to return to unit to its original condition upon lease termination.

Limited English Proficiency

The proposed regulations should make clear that in administering the voucher program, RHS and RD will comply with Title VI of the Civil Rights Act by making information about the voucher program, including the Tenant Addendum and the RDHA contract, available in languages other than English to persons who have limited English proficiency. This is critical in many areas where significant number of non-English speaking residents may be occupying Section 515 developments that are being prepaid or foreclosed upon.

Agency Termination Decisions (§ 3560.814(e)).

We are very pleased that RHS has included this paragraph dealing with mitigating factors when terminating voucher assistance. We are, however, opposed to the provisions in the last sentence that only allows voucher holders to continue to receive voucher assistance if another household member, who engaged in wrongful activity, will not reside with the voucher holder. We believe that this provision should be broadened to enable RD to transfer vouchers to other innocent household members when the voucher holder has engaged in the wrongful activity. Members of the voucher holder's household are eligible for vouchers by virtue of the fact that they resided in an RHS assisted unit as of the day of prepayment or foreclosure. They should not be denied assistance and be displaced merely because the voucher holder signed the voucher agreement and then committed a wrongful act that is a basis for terminating the voucher assistance. RHS should be assisting household members who would be displaced by the wrongful acts of the voucher holder provided they agree to exclude the former voucher holder from the household.

Time Frames, Deadlines and Extensions.

As noted earlier, we are surprised and disturbed by the fact that RHS has not included any timelines in the proposed regulations with respect to when RHS will notify residents of their potential eligibility for vouchers, how much time residents have to apply for a voucher, the time that the agency has for issuing a voucher, the time that the resident has to find and lease a unit, the time that the agency has to enter into a RDAP contract with the landlord and the time that RHS will advise the voucher holder of the information needed to renew the voucher at the end of each lease term. Many of these deadlines are set out in the RHS Notice under which it is currently operating the voucher program and we are perplexed by the fact that the agency has not included any timelines in this notice of proposed regulations. We strongly urge that the agency publish all proposed deadlines, as well as opportunities for extensions, before it finalizes these

regulations and that it provide the public another opportunity to comment on them. Because commentators are unable to submit intelligent reactions to provisions that have not been set out in the regulations, we believe that publishing deadlines in the final regulations without first setting them out in proposed regulations will be a violation of the Administrative Procedure Act (APA). We also believe that setting out deadlines in other documents, without inviting prior public comment is also a violation of the APA. Notwithstanding, the comments that follow address the adequacy of deadlines currently set out in the proposed regulations and RHS June 18, 2013 Voucher Notice that was published in the Federal Register.

We are concerned about the 60-day time limit the agency has proposed in the regulations for making retroactive assistance payments once the borrower and landlord have executed a lease. (§ 3560.807(c)(2)). Our concern stems from the fact that the household has no control over when the new unit is inspected or when the RDHA contract is entered into yet it is penalized if it is not entered on a timely basis. Once the resident notifies RHS of her having entered into a lease, it is RHS' obligation to have the unit inspected and to issue the RDHA contract. It then becomes the new landlord's obligation to execute and return the contract to the agency. The resident has no means to expedite the conduct of the inspection or the issuance and execution of the contract. Why then should the resident be penalized if the contract is not executed within 60 days? This time limit is very likely to be exceeded in most situations when the resident moves from the development that RD previously financed. In these situations, the new landlords, who do not want to have a unit sit vacant until the RDHA contract is signed, will want the resident to enter into a lease as soon as possible. Moreover, once the prepaying owner learns of the fact that the resident does not plan to sign a new lease, it will not allow the resident to stay in the formerly subsidized unit until the RDHA contract is signed with a new owner. Thus, the resident is forced to move and faces a penalty of having to pay full rent at the newly leased unit if RD does not have the unit inspected in a timely manner or RD or the landlord delay in issuing or signing the contract. The consequences of an untimely execution should be borne by RHS or the new owner not the voucher holder.

We are also concerned about the fact that under the current program operation, RHS does not notify residents of the availability of vouchers until after a prepayment or foreclosure. We see no reason why residents should not receive a notice of voucher eligibility before the prepayment or foreclosure and why RHS does not allow these residents to apply for a voucher before prepayment or foreclosure and simply hold off advising the resident of eligibility within 5 days of the prepayment or foreclosure, or 30 days after the resident has applied for a voucher, whichever is longer.

Our concern about this time frame is raised by the fact that households that want to, or are forced to, move from the prepaid or foreclosed development may be required

to sign a new lease at that development and may not have adequate time to locate other decent and affordable housing. Under the current process, RD has 90 days after the prepayment or foreclosure to notify residents of the availability of vouchers and 30 days after the submission of a voucher request to actually issue a voucher. Under these circumstances, it may take more than 4 month for a voucher applicant to simply learn of her eligibility and potentially up to another 4 months to actually locate a unit. In most situations, the prepaying, or new, owner is not likely to allow the resident to stay in the development for four or more months without signing a lease. Thus, the process of issuing a voucher must be expedited.

We understand that RHS has experienced some problems with advising residents of the availability of vouchers before the prepayment or foreclosure and that this has resulted in residents leaving developments before the prepayment or foreclosure date, making them ineligible for the vouchers. We believe that this can be resolved in two ways. First, by providing residents with clear and plain English notices, or notices in other prevailing languages, that makes it clear that the resident must stay in the unit until the date of prepayment or foreclosure. That information should be printed in oversized and highlighted fonts that make the consequences of moving clear to the residents. Moreover, the initial information provided residents should be a short and concise cover letter with attachments that describe each step of the voucher issuance process clearly and separately. Residents of rural rental housing frequently have limited English proficiency and they should not be overwhelmed with long and confusing letters about vouchers when they are first notified of their availability.

Second, by providing residents with early notice of the availability of vouchers and determining residents' eligibility, RHS will increase the time that residents have to find an appropriate unit. It will also limit the sudden competition that is created when significant numbers of residents are looking for limited affordable decent rental housing in a rural community. We assume that residents in smaller communities, where rental housing is typically scarce, are anxious to rent an alternative unit as quickly as possible before other displaced residents locate and compete for the same unit. Expanding the time and offering residents longer retroactive assistance should lessen residents' moves before prepayment or foreclosure.

Issuance and transfer of vouchers (§3560.811).

We are extremely concerned by the fact that vouchers are issued to the “primarily tenant” without notice to the household of the consequences of that decision and by the limitations placed on the transfer of the voucher from one household member to another.

The decision as to whom a voucher is issued is extremely significant in light of the fact that RHS allows the “primary tenant” to retain control of the voucher and limits the transfer of vouchers to a very limited set of circumstances. Accordingly, unless RHS

changes the regulations, it should advise all adult members of a household, at the time that it informs them of the availability of vouchers, that the “primary tenant” will have control of the voucher once it is issued and that the capacity to transfer vouchers between household members is limited.

In addition, we urge RHS to expand the circumstances under which vouchers can be transferred. First, if household members get a divorce and a court awards the voucher to one household member, RHS should be bound by that decision regardless of who the original voucher was issued to. Second, in the case of domestic violence, the survivor should be allowed to retain the voucher regardless of who the primary tenant is. Third, we see no reason why a voucher cannot be voluntarily transferred between household members if adult members of the household come to an agreement as to the person under whose name the voucher will be continued. As long as RHS is not required to make additional assistance available, we see no reason why there is a limitation on the transfer of a voucher when household members voluntarily agree to a transfer. Fourth, under certain limited circumstances, RHS should adopt a policy that transfers vouchers to the household members who remain in the unit, household members who resides with minor children, and to persons who are ill, elderly or disabled. *See* 24 C.F.R. § 982.315. We realize that these are difficult decisions, however, they must be made in light of the fact that vouchers are issued in the name of the primary tenant and the interests of other household members, who had no role in determining who the primary tenant is, may be paramount at the time that a household separates.

Termination of Voucher Assistance (§ 3560.804).

Two provisions in this section authorize RHS to terminate voucher assistance when the voucher holder fails to report changes in household size and when an unauthorized occupant joins the household. Neither of these requirements makes sense in the unique context of the RD voucher program since RHS does not recertify households during the term of a voucher. In other words, changes in household size or the addition of an unauthorized occupant do not impact the continued eligibility of the voucher holder until the voucher is renewed at the end of its term when the voucher holder must certify that the household continues to be low income. *See* § 3560.812. Since RHS does not require voucher holders to report other significant changes in household income, which can occur without the addition of a household member, we do not see the purpose of requiring voucher assisted households to report to RHS changes in household size or the addition of an unauthorized occupant during the any lease term. Accordingly, we recommend that RHS either drop these requirements or adopt a requirement to report interim household income changes regardless of how they occur. Matters involving the size of the household and guests should be left to the voucher resident and landlord to resolve without RHS’ interference.

Use of Vouchers throughout the United States (§ 3560.806).

RHS' decision to continue to allow vouchers to be used in any United States community is to be commented. The decision is appropriate in light of the fact that a majority of Section 515 residents are elderly and/or disabled and they may want to use a prepayment or foreclosure as an opportunity to relocate closer to other family members who may reside away from the development that is being prepaid or foreclosed.

Adjusting Voucher with Inflation (3560.810(a)).

We applaud RHS' decision to consider adjusting voucher values at the end of each voucher term. The program's subsidy level is substantially lower than the subsidy provided under HUD's Enhanced voucher program designed to protect residents of HUD multifamily housing against displacement. As a consequence, RHS residents who move to other housing are likely to pay more than 30% of income for shelter. We, therefore, appreciate RHS' proposal to consider adjusting vouchers by the value of inflation and urge that the provision be modified to actually require such an adjustment. As an alternative, we suggest that RHS consider adjusting the voucher subsidy annually to reflect changes in the rent charges for the unit that the voucher holder formerly occupied.

Other Provisions that Need Clarification or Modification:

- The term foreclosure and prepayment need to be defined. It should be clear that an owner who prepays a Section 515 loan in response to a notice of acceleration is prepaying the loan and that residents of the development are eligible for vouchers as of the day that the owner paid off the loan. Moreover, if RHS forecloses on a development and the development is purchased at the foreclosure sale by a person or entity that will not operate the development as a Section 515 development, residents should be eligible for a voucher as of the date of the sale of the property. Similarly, residents of developments that RHS operates as a trustee or receiver must be eligible for vouchers as of the date that the agency forecloses on the loan or otherwise disposes the property outside the Section 515 program. This should extend to instances where RHS becomes the owner of the property through a voluntary conveyance, deed in lieu of foreclosure, or actual foreclosure, and subsequently decides to sell the development outside the Section 515 program. Regardless of whether and when the agency decides to dispose the property, the residents should be eligible for vouchers as of the date that the development is transferred to RHS.
- The first sentence of Section 3560.804 is repetitive and meaningless. It should be removed.
- Section 3560.804(a) states that the voucher holder must return all documentation within the timeframes specified by the agency. This provision needs to be clarified to provide exemptions when the voucher holder is unable to do so for reasons beyond her control, such as illness, hospitalizations or vacations.

- Section 3560.804(d) places an obligation on the voucher holder to provide RHS with a copy of the signed lease. That obligation should be placed on the landlord as part of the process of entering into the RDAP contract and its renewal. It is much simpler for landlords to copy and mail leases than it is for voucher holders to do so.
- Similarly, the obligation to provide RHS with a copy of a termination notice should be placed on the landlord and not the voucher holder. When a voucher holder receives a termination notice, the voucher holder is likely to be concerned with the validity of the notice and the opportunity to locate other housing. The voucher holder is not likely to think of the fact that some regulation or agreement obligates her to provide a copy of the notice to RHS. Since the landlord has entered into a RDAP contract with RHS that will expire if and when the voucher holder moves from the development, the landlord should be required to send a copy of the letter to RHS and not the voucher holder.
- Section 3560.804(n) places an obligation on the resident to provide appliances that the landlord is not required to provide and the consequences of the voucher holder's failure to provide such appliances. If RHS means to reference appliances the tenant agrees to provide in the lease, the regulation should be made specific. Residents should not simply be required to provide any appliances that the landlord does not provide.
- Section 3560.804(g) states that the voucher holder must occupy the unit and may not be absent from the unit for more than 90 days. This provision is overbroad and must be clarified to specify, as HUD has done, that the obligation to occupy extends to the entire household and not merely the voucher holder. *See* 24 C.F.R. §982.312(c) (2013). Moreover, exceptions to the rule should be specified when the absence is due to reasons beyond the household's control, e.g. hospitalization, incarceration, or extended vacations. Moreover, this paragraph should be combined with subparagraph (j) dealing with information needed for verification of the fact that the household is living in the assisted unit.
- RHS should eliminate use of the term "primary tenant" in relation to the resident who signs the voucher application and agreement. Like HUD, the voucher application and voucher should be signed and issued to a "household representative". The term primary tenant places undeserving significance on the person who signs the voucher. As our comments, above, indicate, we believe that voucher households need to be advised of the significance of the voucher being issued to a family representative and the capacity to transfer vouchers should be expanded.
- Section 3560.814(a)(1). This provision requires a voucher holder to secure the landlord's consent when and if the voucher holder terminates the tenancy during the term of the lease. This provision, nor any other provision in the proposed

regulations, deals with instances where the landlord violates the lease or state law obligations to the resident. It also does not deal with the landlord's obligations under the Fair Housing Act or the residents' need for reasonable accommodation. Clearly, under these circumstances, the voucher holder should be able to terminate the lease and not be required to secure the landlord's consent. Moreover, RHS should step in on behalf of voucher holders in cases where landlords violate their obligations to the residents by reducing the payment that it is making to the landlord or terminating the RDAP contract. Voucher holders should be given opportunities to file complaints with RHS with respect to landlord violations and should be notified of that option when first entering into a voucher agreement with RHS. In addition, RHS should explicitly make voucher holders third-party beneficiaries of the RDAP contract and the RD Tenancy Addendum, giving voucher holders the right to enforce the requirements set out in those agreements against their landlords.

We appreciate the opportunity to comment on these proposed regulations. Should you have any questions with respect to any of our comments, please feel free to contact me.

Sincerely yours,

/s/ Gideon Anders

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