

March 24, 2023

Submitted via email: MFHPortfolioManagement@usda.gov

Multifamily Housing
USDA Rural Development
Rural Housing Service

Re: Prepayment/Voucher Letter Listening Session

Dear Multifamily Housing:

This letter is written on behalf of the National Housing Law Project (NHLP) and the undersigned organizations. NHLP's mission is to advance housing justice for people living in poverty and their communities. The undersigned organizations advocate on behalf of and provide legal assistance and representation to tenants living in USDA's Multifamily housing properties.

Thank you for holding the March 9, 2023, Prepayment/Voucher Letter Listening Session and for your efforts to improve the notice letters to tenants with regard to the Section 515 mortgage prepayment process and RD Voucher Program. While the letters that RD has developed are an improvement over the ones currently used by the Agency, additional modifications are needed to the letters and attachments so that they clearly and correctly communicate to tenants the RD prepayment process, the tenants' rights and options when the prepayment is being considered, and the forms of assistance that is available to them once a prepayment decision is made. As highlighted below, we have several overarching recommendations that apply to all three of the draft letters as well as specific recommendations with regard to each of the draft letters.

I. General Recommendations

First, the letters must be written in plain language¹ and at no more than an 8th grade reading level. The current letters contain too many technical terms, refer to the same people in different and confusing ways, and provide many alternative options that are difficult for most people to understand. While we appreciate RD's efforts to improve tenants' capacity to understand the letters by adding a page of definitions, we do not believe that the definitions adequately explain the letters to which they are attached or the options that are available to the tenants. For example, the term 'loan maturity' which is used in the initial letter is not defined. The term Section 515, which is defined in the attachment, is not used in the letter. Moreover, the definition merely states that it is a direct loan program administered by RD. Neither the letter or the definition state that the development in which the tenants live was financed under the Section 515 program. The term 'covenant', which is used in the definitions, is not explained and should probably not be used at all.

¹ Pursuant to the Plain Writing Act of 2010 (P.L. 111-274), federal agencies are required to use plain language in any document that is necessary to obtain federal benefits, provides information about federal benefits or explains how to comply with a requirement administered or enforced by the federal government.

The final letter to the tenants has similar issues. For example, it states that the owner has agreed to prepay the loan subject to use restrictions. It then states that “[t]hose tenants’ rents will continue to be calculated as if the property were still in the Rural Development program in accordance with 7 CFR 3560.” While this may be true, it does not alert tenants who are not receiving Rental Assistance that their rents will go up over time. Moreover, the term CFR is never explained and the specific section of the CFR which sets out how rents are calculated is not referenced. Significantly, the reference to “those tenants” can and should be clarified and the sentence simplified by stating that “your rents will continue to be calculated the same way they are now.” The definitions attached to the letter states that the resident has the legal right to enforce the use restrictions without explaining that the resident will need a lawyer to enforce the restrictions and does not advise the tenants that they should contact a local legal services program to obtain assistance in enforcing the restrictions.

We have made an effort to simplify the tenant notice letters and are including those drafts as exhibits. We think that even our letters can be simplified further and made easier to understand by tenants. Accordingly, we urge that RD engage and work with the designated staff and/or Plain Language Action and Information Network to ensure that the final letters meet the plain language requirements under the law.

Second, the letters must advise tenants of their right to appeal RD’s decision to approve any prepayment and to participate in an owner’s appeal of prepayment denial. RD’s decision to approve the prepayment of any loan is a decision made by an agency employee that is adverse to the tenants. It impacts their right to stay in their homes in a community of very low-, low- and moderate-income tenants and to pay no more than 30% of income for shelter. Thus, it falls within the USDA’s appeals process set out at 7 U.S.C. § 6991 et seq., 42 U.S.C. § 1480(g), and 7 C.F.R. Part 11. Accordingly, the prepayment letters sent to tenants must provide tenants with the reason(s) that RD has approved or denied the prepayment, include a statement that they have a right to appeal the prepayment decision, that they have 30 days to file a request to appeal the decision, state the place to which the request to appeal must be sent and state that appeals are conducted in accordance with the procedure set out at 7 C.F.R. Part 11. Moreover, tenants should be informed that the owner of the development will have a right to participate in the appeal. See 7 C.F.R. 11.15.

Third, the letters must be issued in compliance with RD’s civil rights obligations. To ensure compliance with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, the letters must inform tenants about the availability of reasonable accommodations for people with disabilities and how to request one from RD. The current draft letters do not provide any such information.

Of additional concern is that the letters are only being provided to tenants in English, even at properties where the composition of the tenants and community would trigger Title VI Language Access obligations. With regard to language access issues, Title VI of the Civil Rights Act, 42 U.S.C. § 2000d et seq., prohibits national origin discrimination based upon failure to provide Limited English Proficiency (“LEP”) assistance. Pursuant to Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. Reg.

50121-22 (Aug. 16, 2000), RD issued LEP guidance in 2016.² RD and its notices must comply with Title VI and Executive Order 13166. At the listening session, RD staff expressed an intent to rely on the report of the landlord with regard to whether or not there are LEP tenants at the property and to provide letters in languages other than English based on those reports. However, such a process is not consistent with RD's LEP obligations, especially in light of the short time frames under which tenants have to provide comments to RD, appeal RD's prepayment decisions or apply for an RD voucher.

II. Recommendations concerning each draft letter

A. Letter notifying tenants of the owner's intent to prepay

If RD knows the reason that the owner has submitted a request to prepay, they should notify tenants of the owner's intention at the time that the letter of the owner's intent to prepay is provided to the tenants. This letter requests that tenants submit their opinions on the request to prepay, but does not provide any explanation of the relevant criteria or information that would be helpful and relevant for tenants to provide to RD. The letter should explain in plain language the relevant criteria under the Emergency Low Income Housing Preservation Act that RD must use to determine whether a prepayment request will be approved – the impact on minority housing opportunities and whether there are alternative housing opportunities for existing tenants in the area. The letter should offer tenants user-friendly examples of concerns that a tenant could raise to explain that there is no other affordable housing in the area.

This draft letter improves upon the current letter and process by providing a meeting between RD and the tenants regarding the prepayment process. It is imperative that in noticing the meeting and in holding the meeting that RD comply with its civil rights obligations and ensure that the meeting is accessible to people with disabilities as well as tenants who are limited English proficient. Given the amount of time that it takes for RD to process a prepayment request, we would encourage RD to hold more than one meeting with tenants, and to provide tenants the option of joining the meeting virtually and by phone. RD should not rely solely on a virtual format for its meeting given the lack of broadband in rural communities. RD should also provide more than 30 days for tenants to offer their comments to RD.

B. Letter notifying tenants that the owner's request to prepay has been approved

After a Section 515 mortgage is prepaid subject to use restrictions, owners often increase rents, terminate utility allowances, terminate leases without good cause, and evict tenants without good cause. They take these actions even though they are in violation of the use restrictions and leases executed prior to prepayment and the use restrictions. In some instances,

² U.S.D.A. Rural Development Limited English Proficiency Strategy for Federally Assisted Programs (2016), available at <https://www.rd.usda.gov/files/RDLEPImplementationStrategyforFederallyAssistedPrograms.pdf>; see also, Responsibilities Under Executive Order 13166, "Improving Access to Services by Persons with Limited English Proficiency," (March 10, 2023), available at <https://www.rd.usda.gov/sites/default/files/RDUL-EO13166.pdf>.

landlords have forced tenants to sign new leases that omit these rights. As detailed further below and indicated in the attached Exhibits, the letter must inform tenants of their rights, including that their RD approved lease remains in effect for the balance of the term and that owners cannot require them to sign new leases until their current lease comes to an end. When a prepayment is made subject to use restrictions, the letter must also advise tenants that the landlord cannot insist that they secure RD vouchers and that they are better protected by the use restrictions. These changes must be made to the letter because we have experienced that owners very frequently advise tenants that they must secure an RD voucher, execute a new lease, and, most often, that they must pay a higher rent. The letter should also provide options for what tenants can do if they think their rights have been violated, including the name and number of local legal aid programs since RD is no longer charged with monitoring an owner's compliance once a property has prepaid.³

The Fact Sheet accompanying the draft letter to tenants only discusses three types of assistance that are available from RD for tenants: the letter of Priority Entitlement (LOPE), the transfer of rental assistance to another RD property, or the RD voucher. For properties that are prepaid subject to use restrictions, the letter needs to include the use restrictions as one of the options available for tenants.

Critically, the letter and/or Fact Sheets accompanying the letter approving the prepayment must give the tenants an understanding and comparison of the forms of assistance that are being made available. For example, if the development is prepaid subject to use restrictions, the use restrictions fully protect tenants who were receiving Rental Assistance against rent increases except when the household's income changes. Tenants who were not receiving Rental Assistance prior to the prepayment are only protected against rent increases when owners seek to "to change the use of the housing or . . . increase . . . rental or other charges as a result of the prepayment or refinancing." 42 U.S.C. § 1472(c)(5)(G)(ii)(I). In other words, owners cannot increase tenants' rents to cover the cost of financing a new loan that was used to prepay the RD loan. Similarly, such owners cannot increase the rents of protected tenants to rehabilitate or upgrade other units in the prepaid development. Such owners are also precluded from increasing late payment charges or assessing them earlier than 10 days after the rent payment is due. Accordingly, because RD does not monitor or enforce use restrictions, the letter (or Accompanying Fact Sheet) advising the tenants of the prepayment approval must set out exactly how the rent restrictions fully protect tenants with Rental Assistance and how they do not fully protect tenants without Rental Assistance. The letter must also advise the tenants precisely of the process by which an owner can increase rents for tenants not paying 30% of their income. For example, when RD approves rent increases, it requires owners to send an explanation to the tenants showing and justifying each line item in the budget.

Further, RD should use different Fact Sheets to accompany the prepayment approval letter that advise tenants separately if an owner is allowed to prepay a loan with or without use restrictions, and, if the prepayment is subject to use restrictions, how tenants will be impacted if they were receiving Rental Assistance prior to the prepayment or were only receiving Interest Credit assistance. This is necessary because the impacts of a prepayment on tenants are different if the prepayment is with or without use restrictions and if the resident was, or was not, receiving

³ Because RD can also enforce the use restrictions it is important that they continue to be listed in the letter as well.

Rental Assistance. All these impacts should not be set out in one letter or one attachment that distinguishes what the resident should expect to happen. This fosters confusion and should be avoided. Instead, separate attachments should explain what will happen when a prepayment is approved without restrictions, with restrictions and how the impacts will be different if the resident is or is not receiving Rental Assistance.

C. RD voucher information letter

The letter should not be called an RD voucher letter since it includes information about also transferring rental assistance or seeking a Letter of Priority Entitlement. Additionally, we recommend that RD issue three separate letters to reduce the confusion with regard to the tenants' rights and options following prepayment: a letter to tenants with Rental Assistance in properties prepaid subject to use restrictions, a letter to tenants without Rental Assistance in properties prepaid subject to use restrictions, and a letter to tenants in properties prepaid without use restrictions. Otherwise, this letter is extremely confusing and not meeting RD's accessibility requirements.

Understanding the difference between the use restrictions and the RD voucher is critical so that tenants can make an informed decision about which option is best for them. The letter should advise tenants that the decision to take an RD voucher is completely voluntary and that they cannot be required to apply for or accept an RD voucher or Section 8 voucher by RD or the project owner. The letter should clarify that there are no qualifying citizenship or immigration status requirements to benefit from the use restrictions, in comparison to the RD Voucher program, which imposes such eligibility requirements. The letter must also advise tenants that the use restrictions protect those tenants who were receiving Rental Assistance against future rent increases even if the resident receives an RD voucher. This is necessary because the voucher subsidy does not increase when the owner increases the rent at the end of the first year after the prepayment or any period thereafter. The use restrictions protect voucher holders the same way that tenants who remain in the development subject to use restrictions without RD vouchers are protected. In other words, tenants who were receiving Rental Assistance before the prepayment cannot have their rent increased beyond the market rent that RD set at the time of the prepayment. Tenants who were not receiving Rental Assistance prior to the prepayment are not protected to the same extent as those who were receiving Rental Assistance. However, even then, their rent increases are limited by the provisions of 42 U.S.C. § 1472(c)(5)(G)(ii)(II). Thus, RD must advise tenants and owners under these different scenarios of this limitation and make clear how it works under each scenario.

For tenants in properties prepaid subject to use restrictions, the letter should make it clear that they do not need an RD voucher to keep their rent affordable unless they plan to move. Even then, the LOPE remains an option that will likely result in deeper affordability for the tenants. The letter should also advise tenants that the length of the wait list will impact their ability to use the LOPE and should include a list of current vacancies at RD properties in the area. While the letter makes clear that the voucher is issued per household and not per household member, it needs to also make clear with regard to eligibility that only the head of household will have to meet qualifying citizenship or immigration status for RD voucher.

The letter should make clear that the RD voucher's subsidy amount is permanently set when the resident first secures the voucher so that assistance offered to a tenant remains the same, even when an owner increases the rent or the resident's income decreases. 82 Fed. Reg. 21972, 21974 (May 11, 2017).

The letter should make it clear to tenants that under certain scenarios their housing costs, which include both rent and utility costs, have the potential to greatly increase and become unaffordable. For example, the letter should include an example of tenant rent payment scenarios with use restrictions as compared with RD voucher that illustrate several scenarios that tenants may face that would impact their rent, including when there is a change in household members, loss of income or increase in utility costs. For tenants at properties that are not prepaid subject to use restrictions, the letter should also advise them that the owner is not required to renew their lease after the first year since this is a significant change in their rights as a result of a prepayment without use restrictions.

III. Recommendations concerning the overall process

Finally, we offer the following recommendations to improve the process to better serve tenants in the event of a prepayment.

Tenants' right to admission priority must be extended beyond four months and their admission priority must not be restricted by income group. RD must extend the right of any resident of a prepaid development to secure admission to any other RD Section 515 development beyond four months because waiting lists in most situations are so long that many tenants are not likely to be admitted within four months. This is particularly true if a large number of tenants from one development are seeking admission to another nearby development. These tenants are not likely to be accepted within the four months period particularly if they do not fall within the income group that has the highest priority. The four-month period appears totally arbitrary. Displaced tenants should have priority admission to other RD developments as long as they are not living in a development that is affordable to them and is decent, safe and sanitary.

Moreover, displaced tenants should have the highest admission priority and should not be placed on a waiting list by the income category. Tenants who are displaced by a prepayment should be accorded the highest admission category because they come from a development where they most likely only paid 30 percent of income for some time. The consequences of displacement and all the associated costs place these tenants in hardship situations and they should be accorded the highest admission priority to any RD development. To do otherwise is likely to cause them severe hardship and may bring on health and other issues because they are most likely to be elderly or a single head of household.

The Right to secure a LOPE should also be extended beyond the current 11 months. There is no reason to limit a resident's right to secure a LOPE to 11 months. In many instances tenants in a prepaid development will not face displacement until one year after their lease has been extended. For example, any resident who remains in an RD development that was prepaid without use restrictions is likely to be able to remain in the prepaid development for one year after the expiration of her rent with an RD Voucher thus keeping the rent at its pre-prepayment

level. However, after one year the resident's rent payment is likely to increase if and when the landlord raises the rent while the RD Voucher does not increase the resident's subsidy. Thus, the rent increase may cause the resident to seriously consider moving from the prepaid development and use a LOPE letter to gain admission to another RD development. Since there is no reason for limiting the issuance of a LOPE letter to 11 months and RD can always determine if the resident is a remaining resident, the 11 months restriction should be lifted.

RD should develop its own HAP contract for use with RD voucher landlords. The Section 8 HAP Contract and lease tenancy addendum of the RD voucher further confuse and compound the harm caused to tenants in properties undergoing a prepayment subject to use restrictions. For example, the HAP contract and lease tenancy addendum end the good cause to evict requirements after one year and expand the basis to evict to include business or economic reasons, such as the desire to increase the rents. These documents must be revised along with the prepayment letters so that tenants in properties prepaid subject to use restrictions are protected. We understand that these revisions will be forthcoming as a part of proposed rulemaking on the Rural Developer Voucher program in compliance with the Acosta v. Vilsack settlement.

Thank you for considering our comments. Please contact Natalie Maxwell, nmaxwell@nhlp.org, if you have any questions about these comments.

Sincerely,

National Housing Law Project

National Low Income Housing Coalition

Housing Assistance Council

Exhibit 1 – Letter notifying tenants that the owner has submitted a prepayment application

Dear resident:

This letter is about your tenancy at _____. Your apartment building was built using a loan from Rural Development, a part of the United States Department of Agriculture (USDA). By getting a loan from Rural Development, the owner of your apartment has to follow certain rules that include keeping your rent affordable and renewing your lease every year unless they have a good reason to evict you.

The owner of the building has asked Rural Development to allow it to pay the Rural Development loan before the final payment is due. This is known as “prepayment.” Several things can happen as a result of the owner’s prepayment request:

- The owner may decide not to pay the loan early, in which case there will be no change in your rent or how the place is run.
- The owner may sell the building to a new owner who will keep the Rural Development loan. In that case, there will also be no change in your rent or how the place is run.
- Rural Development may allow the owner to prepay the loan but put restrictions on the way the owner can operate the building after the prepayment. These are known as “use restrictions.” Use restrictions will require the owner to keep rents affordable and to maintain all of the tenant protections that you currently enjoy, like the requirement that the owner can’t evict you or refuse to renew your lease without a good reason.
 - Use restrictions require the owner to continue to rent the apartment to you at your current rent during the remaining term of your lease. The current tenant protections also continue to protect you during the remaining term of the lease if Rural Development approves the owner’s prepayment request with use restrictions.
 - After your current lease comes to an end:
 - Your rent will be calculated the same way it is now if you are receiving the Rural Development Rental Assistance subsidy. You will be allowed to stay in your apartment for as long as you want to stay.
 - If you are not receiving Rental Assistance, your rent is likely to go up after your current lease expires. In that case you should consider accepting a voucher, which is described below. You may also want to apply to other RD housing.
- Rural Development may also allow the owner to prepay without use restrictions. In that case, the owner would be allowed to increase rents **after your lease ends** and tenant protections would no longer apply.

You can apply to move to another Rural Development building if the owner prepays the loan and you do not want to continue to live here. You will be considered for admission at that development before other families that want to move into that housing.

If Rural Development approves the owner’s prepayment application, Rural Development will offer a voucher to you and other eligible tenants who are living at the apartment building. Under this voucher, Rural Development will pay the difference between market rent and the amount of

Exhibit 1 – Letter notifying tenants that the owner has submitted a prepayment application

rent you are paying at the time prepayment is approved. You can use the voucher to stay in your apartment if the owner is willing to accept vouchers. This means that for at least the first year you rent will not increase and some of the tenant protections will remain in place. If the owner is not willing to accept vouchers or if you want to move from your apartment you will have to find other housing where the owner is willing to accept a voucher.

Please be aware, that **Rural Development has not made any decision about the owner's prepayment application so you don't need to do anything now.** Rural Development will provide more information about all of these issues and options when it decides whether to approve the owner's request to prepay the loan.

In deciding, whether to approve the owner's request, the first step is to determine what impact prepayment will have on "minority housing opportunities." This simply means that Rural Development will look at if prepayment of your apartment complex will make it harder or more expensive for minorities living at the complex and in the surrounding area to find an affordable, safe, and sanitary place to live. RD will require the owner to offer the housing for sale to a nonprofit or public agency if it determines that the prepayment will have an adverse impact on minority housing opportunities. Second, if RD determines that minority housing opportunities will not be adversely affected, it must decide whether to allow the owner to prepay with or without use restrictions. This depends on whether there is other affordable housing in the community to which you can move if the prepayment is allowed.

To make these decisions we ask you to tell us what you think about minority housing opportunities and whether there is adequate, affordable housing in the nearby area. For example:

- Do you know if the prepayment will reduce the number of affordable apartment complexes in the city and/or in the surrounding area?
- Do you know if there are long waiting lists at other affordable housing apartments in the area? If you added your name to a wait list, how long have you been on the list?
- Do you know if there is a long waiting list for HUD Housing Choice Vouchers (often called Section 8 vouchers) at the local public housing authorities?
- Do you know if minorities that are living in your apartment building will have to move to areas with a lot of other minorities or areas with a lot of housing that is not affordable and decent and sanitary?
- In order to afford a new place to live, will you have to move into a complex that is affordable but that is not properly maintained. For example, a complex that is run down, unsafe, or poorly managed?
- Will you have to move far away from where you currently work, shop, or go to a doctor in order to afford a new place to live?

We would also like to know the effect of prepayment on other tenants, to the extent that you have that information.

We ask that you send us your comments and concerns by xx/xx/xxxx [30 days from the date of the letter]. Please send you comments to:

Exhibit 1 – Letter notifying tenants that the owner has submitted a prepayment application

XXXXXX

Tenant meeting(s) will be held via conference call. A meeting will be held on _____ at _____ . Call _____ and enter _____. A meeting in XXX will be held on _____ at _____. Call _____ and enter _____. Someone from Rural Development will be on these calls. That person will be able to describe the prepayment procedure in greater detail and answer any questions that you may have.

This Agency provides reasonable accommodations to people with disabilities. If you need a reasonable accommodation to participate in the activities described in this letter, please contact: [contact name and information].

You will have a right to appeal the RD decision if it makes a decision that the owner is allowed to prepay the loan with or without restrictions. We will advise you how you can appeal the decision once we make a decision about the prepayment.

For help with understanding this letter, call [local legal aid program(s)] _____ at _____. _____ provides free legal services to qualified low-income individuals in your area.

Exhibit 2 – Letter notifying tenants that RD has approved the owner’s application for prepayment

Dear Tenant:

This letter is a follow up on the letter you should have received on or about _____ or when you moved into the property after this date. Your apartment building was built using a loan from Rural Development, a part of the United States Department of Agriculture (USDA). The owner of the building has asked Rural Development to allow it to pay the Rural Development loan before the final payment is due. This is known as “prepayment.”

Rural Development has reviewed the information concerning the owner’s prepayment request for _____ Apts. and will be accepting the final loan payment on sometime between (xx/xx/xxxx [60 days from today’s date] and xx/xx/xxxx [6 months from today’s date]).

Rural Development has approved the owner’s request to prepay the loan based on the following:

[Choose option – delete the one(s) that do/does not apply. The Portfolio Management Branch staff will select the appropriate paragraph(s) and provide this letter to the FOD staff, with their handoff letter for mailing and delivery to tenants. The inapplicable bulleted paragraphs will be removed from the letter.]

- Rural Development has determined there are not enough available, affordable units in the market area. The owner has agreed to use restrictions and to sign a “restrictive use covenant” protecting the tenants living at the property on the day the Rural Development loan is paid in full. Those tenants’ rents will remain affordable and continue to be calculated as if the property were still in the Rural Development program in accordance with 7 C.F.R. 3560, for as long as the tenant lives at the property. The owner has also agreed to keep the apartment as a safe, suitable place for you to live. The owner cannot evict you or refuse to renew your lease without a good reason. See the attached Fact Sheets for your options.
- The property is subsidized by HUD through the project-based Section 8 program. Part of your rent will continue to be paid by a project-based HUD Section 8 Contract. However, even if the project-based HUD Section 8 Contract stops, the owner will have to continue to calculate your rent in the same way it is calculated now. See the attached Fact Sheets for your options.
- Rural Development has determined there are enough available, vacant units similar to yours in quality, size, location and rent in _____ and in the surrounding market area to allow acceptance of the loan prepayment without any restrictions placed on the future operation of the property. See the attached Fact Sheets for your options.
- The Owner (landlord) advertised the sale of the property for 180 days to non-profit organizations and public bodies. However, no good faith offer was received to buy the property so the Owner (landlord) is allowed to prepay the Rural Development loan without any restrictions placed on the future operation of the property. See the attached Fact Sheets for your options.
- The property already has a use restriction in place that requires the Owner (landlord) to continue to rent to very low-, low-, and moderate-income tenants. Any tenant or Rural Development can enforce the owner’s agreement to do this. Tenants’ rents will remain affordable and continue to be calculated as if the property were still in the Rural

Exhibit 2 – Letter notifying tenants that RD has approved the owner’s application for prepayment

Development program in accordance with 7 C.F.R. 3560 until xx/xx/xxxx (date restrictions expire). The owner must verify your income every year. The owner has also agreed to keep the apartment as a safe, suitable place for you to live. The owner cannot evict you or refuse to renew your lease without a good reason. See the attached Fact Sheets for your options.

If you have any questions concerning the decision or the facts used in making our decision and desire further explanation you may call or write to our office at the above address and telephone number within 15 calendar days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also have the right to appeal this decision to a hearing officer in lieu of, or in addition to, a meeting with this office.

If you do not wish a meeting, and as outlined above wish to appeal, a request for a hearing must be sent to the National Appeals Division, USDA, [*Include appropriate NAD address*], postmarked no later than 30 days from the date of this letter. Appeals are conducted according to the procedure described in 7 C.F.R. Part 11. The owner also has right to participate in the appeal.

A tenant meeting to discuss your options after the final loan payment is accepted will be scheduled once the final loan payoff date has been determined. You may be eligible for additional housing assistance from Rural Development. The types of assistance that you are eligible for will depend on a number of factors, including whether you stay in your apartment or decide to move to a new property. If you decide to stay in your apartment, your current lease will remain in effect for the term stated in the lease and may not be modified or terminated except as stated in the lease. Your landlord cannot require you to sign a new lease that starts before your current lease ends.

If you have any questions, please contact FIRST LAST, Loan Specialist at the following: [*loan specialist contact info*]

Questions will also be answered at the tenant meeting.

For help with understanding this letter, call [local legal aid program(s)] _____ at _____. _____ provides free legal services to qualified low-income individuals in your area.

This Agency provides reasonable accommodations to people with disabilities. If you need a reasonable accommodation to participate in any of the activities described in this letter, please contact: [contact name and information].

Exhibit 3A – Letter to tenants with Rental Assistance in properties prepaid subject to use restrictions

[There must be three separate letters: a letter to tenants with Rental Assistance in properties prepaid subject to use restrictions; a letter to tenants without Rental Assistance in properties prepaid subject to use restrictions; and a letter to tenants in properties prepaid without use restrictions. Otherwise, this letter is extremely confusing and not meeting RD’s accessibility requirements. The following edits are for the letter to tenants with Rental Assistance in properties prepaid subject to use restrictions.]

Proposed Redraft of the RD letter:

[The letter should not be called a Rural Development Voucher Information letter, since it is including information about also transferring rental assistance or seeking a Letter of Priority Entitlement]

Purpose of the letter: This letter is used to notify you, a tenant at _____ (address of the property) of your eligibility for additional housing assistance because your property owner paid off the Rural Development loan at your property.

[The letter must meet the language access requirements under Title VI and be translated into Spanish or any other language where the tenants are eligible for information in their native language. The owner should have to inform RD what languages are spoken within the building. Eligibility for a RD voucher is a vital document as that term is defined under Title VI of the Civil Rights Act. It is not sufficient for RD to say in Spanish that the tenant should ask for a copy of the letter in Spanish.]

TENANT CONTACT INFORMATION & ADDRESS

Dear _____ (insert tenant name),

The purpose of this letter is to notify you that you may be eligible for additional housing assistance, as a result of your property owner paying off the Rural Development loan, through a process called prepayment. This prepayment occurred on xx/xx/xxxx.

In your case however, the owner agreed to what is called “use restrictions” at the property. This means that the owner must continue for X years to keep your rent (and utilities, if you pay for them directly) affordable, making sure that you pay no more than 30% of your income towards rent (and utilities if you pay for them directly). You can remain at your property and continue to pay no more than 30% of your income towards rent. You have a right to enforce these “use restrictions” in court if your owner does not comply with them.

If you would like to remain at your property and continue to have affordable housing, you do not need to do anything else.

If you would like the option of moving to another property now or in the future, you have the following options:

1. **A Letter of Priority Entitlement** will place you at the top of a waiting list at another Rural Development property.

Exhibit 3A – Letter to tenants with Rental Assistance in properties prepaid subject to use restrictions

2. **Move Your Rental Assistance** to another Rural Development property. This will keep the rent at your new property to 30% of your adjusted income.
3. **RD Voucher** is a voucher you can use at other rental properties anywhere in the United States. If you stay at your current property with the RD Voucher, you will continue to pay no more than 30% of your income towards rent and utilities. The RD Voucher would primarily benefit you if you would like to move now or in the future. However, if you move with the RD Voucher, your rent may increase. For example, if you move to a community where rents are higher, your rent will increase. Also, at the end of your new lease term your rent will go up if your landlord raises the rent. This is because the voucher amount cannot be changed.

We will help you in getting any one of these forms of assistance. For example, we will give you a list of RD properties in the area to which you want to move. We will also tell you whether you can move your Rental Assistance to that property or if the property already has Rental Assistance. You also need to contact us if you want an RD voucher. Information on how to contact us is provided below.

This Agency provides reasonable accommodations to people with disabilities. If you need a reasonable accommodation to participate in any of the activities described in this letter, please contact: [contact name and information].

For help with understanding this letter, call [local legal aid program(s)] _____ at _____. _____ provides free legal services to qualified low-income individuals in your area.

MORE INFORMATION ON EACH TYPE OF RURAL DEVELOPMENT ASSISTANCE:

The Letter of Priority Entitlement to Another Rural Development Financed Unit – A Letter of Priority Entitlement places you at the top of the waitlist in your income category at other Rural Development financed properties if you meet the eligibility requirements. You have up to one year from the date of your receipt of the prepayment acceptance notice letter to request a Letter of Priority Entitlement (which is also called a “LOPE”).

RD’s new content on LOPE starting with “NEW TO LETTER” until the end of the new section on “Transfers of Rental Assistance” is fine.

AVAILABILITY OF THE RURAL DEVELOPMENT VOUCHER

As noted above, unless you are planning to move now or in the future, a Rural Development Voucher is not necessary for you and your family. That is because you are living in a property where the owner is legally required to keep your rent (plus any utilities you pay) affordable, which means 30% of your adjusted income. However, if you apply for and get a Rural Development Voucher (to potentially move in the future), your rent for your current apartment will continue to be affordable and no more than 30% of your income.

Para at the bottom of page 3 is fine.

Para top of page 4 is fine.

Exhibit 3A – Letter to tenants with Rental Assistance in properties prepaid subject to use restrictions

Delete new para suggested by RD in red under title “NEW TO LETTER.” This is not needed if there are two separate letters, one for tenants in properties prepaid subject to use restrictions and one for tenants in properties without use restrictions.

Under “Other Important Information” please clarify the first bullet with the following edit:

- **You “or the head of household” – this edit ensures compliance with RD’s current iteration of the mixed status rule that requires only the head of household to have eligible status.**

Please add a second bullet to follow:

- **Only the head of household must be a US citizen, US non-citizen national, or qualified alien in order to apply for the RD voucher. No other household member will be asked about their eligibility or immigration status.**

Remaining bullets are fine.

“NEW TO LETTER” This new paragraph is extremely confusing and inaccurate if the tenant remains at the property subject to use restrictions for the term of the use restrictions. Please simplify the language and clarify when it will be applied. Here is a suggested edit:

IF YOU CHOOSE TO REMAIN AT YOUR PROPERTY WITH A RD VOUCHER, your rent (plus any utilities you pay) will continue to be no more than 30% of your adjusted income. IF YOU CHOOSE TO LEAVE WITH YOUR RD VOUCHER, your voucher amount will be set at the time you receive the RD voucher. However, if your income decreases or your household size changes, the voucher amount will stay the same.

Please delete the next paragraph

FINAL VOUCHER AMOUNT DETERMINATION (page 5) – please add after the title – IF YOU MOVE WITH YOUR RD VOUCHER

Then add at the beginning of that sentence, “If you elect to move with your RD voucher,”

NEXT STEPS to the bottom of page 5 is fine. Please edit the first sentence at the top of page 6 to say “citizenship or eligible immigration status document” so immigrant households are not confused and think they have to be US citizens. Remainder of page 6 is fine.

FINAL RURAL DEVELOPMENT VOUCHER ELIGIBILITY DETERMINATION section (page 7) is fine.

FINAL RURAL DEVELOPMENT VOUCHER AMOUNT DETERMINATION (page 7) – the paragraph should be edited to clarify rent setting at the property with use restrictions versus if the voucher is used at a new property. Here is a suggested edit: Replace “Remember:” with “IF YOU MOVE FROM YOUR PROPERTY:”

Exhibit 3A – Letter to tenants with Rental Assistance in properties prepaid subject to use restrictions

Delete “NEW TO THE LETTER” on page 7 and 8.

No edits on page 9 or 10.

Page 11 – delete “Tenant Instructions” and insert in its place “Head of Household Instructions”

DHS Form I-94 is no longer in use. Please delete the reference.

Page 12, please confer with USCIS regarding the current forms of documentation. I-94 is no longer in use, nor is I-688B. I-766 EAD should be included among the list of appropriate documentation.

Exhibit 3B – Letter to tenants who were not receiving Rental Assistance at time of prepayment in properties prepaid subject to use restrictions

[There must be three separate letters: a letter to tenants with Rental Assistance in properties prepaid subject to use restrictions; a letter to tenants without Rental Assistance in properties prepaid subject to use restrictions; and a letter to tenants in properties prepaid without use restrictions. Otherwise, this letter is extremely confusing and not meeting RD’s accessibility requirements. The following edits are for the letter to tenants without Rental Assistance in properties prepaid subject to use restrictions.]

Proposed Redraft of the RD letter:

[The letter should not be called a Rural Development Voucher Information letter, since it is including information about also transferring rental assistance or seeking a Letter of Priority Entitlement]

Purpose of the letter: This letter is used to notify you, a tenant at _____ (address of the property) of your eligibility for housing assistance because your property owner paid off the Rural Development loan at your property.

[The letter must meet the language access requirements under Title VI and be translated into Spanish or any other language where the tenants are eligible for information in their native language. The owner should have to inform RD what languages are spoken within the building. Eligibility for a RD voucher is a vital document as that term is defined under Title VI of the Civil Rights Act. It is not sufficient for RD to say in Spanish that the tenant should ask for a copy of the letter in Spanish.]

TENANT CONTACT INFORMATION & ADDRESS

Dear _____ (insert tenant name),

The purpose of this letter is to notify you that you may eligible for housing assistance, as a result of your property owner paying off the Rural Development loan, through a process called prepayment. This prepayment occurred on xx/xx/xxxx.

The owner signed a Restrictive Use Covenant and agreed to what is called “use restrictions” at the property when the loan on the property was prepaid. This means that as long as your household income does not change, your rent will not change for one year from xx/xx/xxxx. After that date, the owner may be able to raise your rent. The amount by which the owner can raise your rent will vary depending on a number of things, all of which the owner must explain to you in writing:

First, the owner can only increase your rent if the cost of managing the property increases. In deciding that the cost of managing the property increased during the last year the owner cannot include cost increases: (1) for making payments on a new loan on the property that was used to pay off the RD loan; (2) for making changes or upgrades to apartments that will be rented to residents that did not live here when the loan was prepaid; (3) that are being made to other spaces, such as community rooms or the exterior

Exhibit 3B – Letter to tenants who were not receiving Rental Assistance at time of prepayment in properties prepaid subject to use restrictions

of the property, which are made to improve the property for new higher income tenants; and (4) increasing the number of staff persons that manage the property.

Second, the owner's rent increase may be limited if before the prepayment you were paying more for rent than was the "basic rent" on the RD loan. The basic rent at the property prior to the prepayment was \$ _____. If your rent payment before the prepayment was higher than this amount, the owner must reduce the rent charges to you by the difference between what you were paying and the basic rent at the time of prepayment. (See Fact Sheet for detailed example).

Also, if at any time during the first year after the prepayment your household income decreases, the owner must decrease your rent payment if you were paying more than the basic rent at the building at the time of prepayment. The amount that the owner must decrease your rent by cannot be more than the difference between what you were paying and the basic rent. (See Fact Sheet for detailed example).

If you believe that the owner is not following these rules, you can call [local legal aid program(s)] _____ at _____. _____ provides free legal services to qualified low-income individuals in your area. Alternatively, you can contact the RD office at [insert contact information].

Because your rent may go up after the first year, you may also consider moving to another RD property or getting an RD voucher. Both of these choices are discussed below.

If you would like the option of moving to another property now or in the future, you have the following options:

1. **Get a Letter of Priority Entitlement** that will place you at the top of a waiting list at another Rural Development property.
2. **Get an RD Voucher** is a voucher you can use at other rental properties anywhere in the United States. If you stay at your current property with the RD Voucher, your rent will continue to be calculated as described above. The RD Voucher would allow you to move to other housing now or in the future. However, if you move with the RD Voucher, your rent may increase. For example, if you move to a community where rents are higher, your rent will increase. Also, if you move with the RD Voucher, at the end of your new lease term your rent will go up if your landlord raises the rent; this is because the voucher subsidy cannot be adjusted.

We will help you in getting any one of these forms of assistance. For example, we will give you a list of RD properties in the area to which you want to move. You also need to contact us if you want an RD voucher. Information on how to contact us is provided below.

This Agency provides reasonable accommodations to people with disabilities. If you need a reasonable accommodation to participate in any of the activities described in this letter, please contact: [contact name and information].

Exhibit 3B – Letter to tenants who were not receiving Rental Assistance at time of prepayment in properties prepaid subject to use restrictions

For help with understanding this letter, call [local legal aid program(s)] _____ at _____ . _____ provides free legal services to qualified low-income individuals in your area.

MORE INFORMATION ON EACH TYPE OF RURAL DEVELOPMENT ASSISTANCE:

The Letter of Priority Entitlement to Another Rural Development Financed Unit – A Letter of Priority Entitlement places you at the top of the waitlist in your income category at other Rural Development financed properties if you meet the eligibility requirements. You have up to one year from the date of your receipt of the prepayment acceptance notice letter to request a Letter of Priority Entitlement (which is also called a “LOPE”).

RD’s new content on LOPE starting with “NEW TO LETTER” until the end of page 2 is fine. Delete the section entitled “TRANSFER OF RENTAL ASSISTANCE TO ANOTHER RURAL DEVELOPMENT” since this letter would only go to individuals who were not receiving Rental Assistance at the time of prepayment.

AVAILABILITY OF THE RURAL DEVELOPMENT VOUCHER

As noted above, unless you are planning to move now or in the future, a Rural Development Voucher is not necessary for you and your family. That is because you are living in a property where the owner has agreed to use restrictions that require your rent to remain affordable and continue to be calculated as if the property were still in the Rural Development program. However, the owner may be able to raise your rent. The amount by which the owner can raise your rent will vary depending on a number of things, all of which the owner must explain to you in writing.

Para at the bottom of page 3 is fine.

Para top of page 4 is fine.

Delete new para suggested by RD in red under title “NEW TO LETTER.” This is not needed if there are two separate letters, one for tenants in properties prepaid subject to use restrictions and one for tenants in properties without use restrictions.

Under “Other Important Information” please clarify the first bullet with the following edit:

- **You “or the head of household” – this edit ensures compliance with RD’s current iteration of the mixed status rule that requires only the head of household to have eligible status.**

Please add a second bullet to follow:

- **Only the head of household must be a US citizen, US non-citizen national, or qualified alien in order to apply for the RD voucher. No other household member will be asked about their eligibility or immigration status.**

Exhibit 3B – Letter to tenants who were not receiving Rental Assistance at time of prepayment in properties prepaid subject to use restrictions

Remaining bullets are fine.

“NEW TO LETTER” This new paragraph is extremely confusing and inaccurate if the tenant remains at the property subject to use restrictions for the term of the use restrictions. Please simplify the language, clarify when it will be applied and provide examples that illustrate the tenant’s rent obligation.

NEXT STEPS to the bottom of page 5 is fine. Please edit the first sentence at the top of page 6 to say “citizenship or eligible immigration status document” so immigrant households are not confused and think they have to be US citizens. Remainder of page 6 is fine.

FINAL RURAL DEVELOPMENT VOUCHER ELIGIBILITY DETERMINATION section (page 7) is fine.

Delete “NEW TO THE LETTER” on page 7 and 8.

No edits on page 9 or 10.

Page 11 – delete “Tenant Instructions” and insert in its place “Head of Household Instructions”

DHS Form I-94 is no longer in use. Please delete the reference.

Page 12, please confer with USCIS regarding the current forms of documentation. I-94 is no longer in use, nor is I-688B. I-766 EAD should be included among the list of appropriate documentation.

Exhibit 3C – Letter to tenants in properties prepaid without use restrictions

[There must be three separate letters: a letter to tenants with Rental Assistance in properties prepaid subject to use restrictions; a letter to tenants without Rental Assistance in properties prepaid subject to use restrictions; and a letter to tenants in properties prepaid without use restrictions. Otherwise, this letter is extremely confusing and not meeting RD's accessibility requirements. The following edits are for the letter to tenants with Rental Assistance in properties without use restrictions.]

Proposed Redraft of the RD letter:

[The letter should not be called a Rural Development Voucher Information letter, since it is including information about also transferring rental assistance or seeking a Letter of Priority Entitlement]

Purpose of the letter: This letter is used to notify you, a tenant at _____ (address of the property) of your eligibility for additional housing assistance because your property owner paid off the Rural Development loan at your property.

[The letter must meet the language access requirements under Title VI and be translated into Spanish or any other language where the tenants are eligible for information in their native language. The owner should have to inform RD what languages are spoken within the building. Eligibility for a RD voucher is a vital document as that term is defined under Title VI of the Civil Rights Act and its implementing regulations. It is not sufficient for RD to say in Spanish that the tenant should ask for a copy of the letter in Spanish.]

TENANT CONTACT INFORMATION & ADDRESS

Dear _____ (insert tenant name),

The purpose of this letter is to notify you that you may be eligible for additional housing assistance, as a result of your property owner paying off the Rural Development loan, through a process called prepayment. This prepayment occurred on xx/xx/xxxx.

As a result of this prepayment of your property, your rent is likely to increase. Your rent will no longer be calculated based on your income. The owner will decide what your new rent payment will be. It is likely to be what other apartments' owners in the area are charging. If you were receiving help with utilities you paid directly, such as with a utility allowance, you will no longer receive that help. The changes to your rent and utility allowance will go into effect when your current lease expires. Your landlord cannot require you to sign a new lease that starts before your current lease ends.

In order to keep your housing affordable, you have the following options:

1. A Letter of Priority Entitlement will place you at the top of a waiting list at another Rural Development property.

2. **Move your Rental Assistance.** You can move your Rental Assistance subsidy to another Rural Development Property. This will keep your rent at the new property at 30% of your adjusted income.
3. **RD Voucher. You can use this voucher at your current property if the owner will accept vouchers or at any other rental property in the United States where the owner is accepting vouchers.** At your current property, your rent payment will be set at what you currently pay, but if your income decreases, your rent payment will stay the same. Your rent payment may also stay the same if you rent an apartment in your community. However, if you move to a community where rents are higher, your rent will increase. Also, at the end of your new lease term your rent will go up if your landlord raises the rent. This is because the voucher amount cannot be changed.

We will help you in getting any one of these forms of assistance. For example, we will give you a list of RD properties in the area to which you want to move. We will also tell you whether you can move your Rental Assistance to that property or if the property already has Rental Assistance. You also need to contact us if you want an RD voucher.

If you choose not to take any of the three forms of Rural Development assistance listed above, your rent will go up to market rent at the expiration of your current lease.

This Agency provides reasonable accommodations to people with disabilities. If you need a reasonable accommodation to participate in any of the activities described in this letter, please contact: [contact name and information].

For help with understanding this letter, call [local legal aid program(s)] _____ at _____. _____ provides free legal services to qualified low-income individuals in your area.

MORE INFORMATION ON EACH TYPE OF RURAL DEVELOPMENT ASSISTANCE:

The Letter of Priority Entitlement to Another Rural Development Financed Unit – A Letter of Priority Entitlement places you at the top of the waitlist in your income category at other Rural Development financed properties if you meet the eligibility requirements. You have up to one year from the date of your receipt of the prepayment acceptance notice letter to request a Letter of Priority Entitlement (which is also called a “LOPE”).

RD’s new content on LOPE starting with “NEW TO LETTER” until the end of the new section on “Transfers of Rental Assistance” is fine.

AVAILABILITY OF THE RURAL DEVELOPMENT VOUCHER – First paragraph is fine, but please delete “NEW TO LETTER” (second to last para on page 3). This is not needed if there are two separate letters.

Please delete new para suggested by RD in red under title “NEW TO LETTER” at the top of page 4. This is not needed if there are two separate letters, one for tenants in properties prepaid subject to use restrictions and one for tenants in properties without use restrictions.

Under “Other Important Information” please clarify the first bullet with the following edit:

- You “or the head of household” – this edit ensures compliance with RD’s current iteration of the mixed status rule that requires only the head of household to have eligible status.

Please add a second bullet to follow:

- Only the head of household must be a US citizen, US non-citizen national, or qualified alien in order to apply for the RD voucher. No other household member will be asked about their eligibility or immigration status.

Remaining bullets are fine.

“NEW TO LETTER” This new paragraph is extremely confusing. Please simplify the language.

Remaining content on page 5 is fine.

Please edit the first sentence at the top of page 6 to say “citizenship or eligible immigration status document” so immigrant households are not confused and think they have to be US citizens. Remainder of page 6 is fine.

FINAL RURAL DEVELOPMENT VOUCHER ELIGIBILITY DETERMINATION section (page 7) is fine.

FINAL RURAL DEVELOPMENT VOUCHER AMOUNT DETERMINATION (page 7) is fine.

Delete “NEW TO THE LETTER” on page 7 and 8.

No edits on page 9 or 10.

Page 11 – delete “Tenant Instructions” and insert in its place “Head of Household Instructions”

DHS Form I-94 is no longer in use. Please delete the reference.

Page 12, please confer with USCIS regarding the current forms of documentation. I-94 is no longer in use, nor is I-688B. I-766 EAD should be included among the list of appropriate documentation.