

July 31, 2023

Submitted via email: decoupling@usda.gov

Multifamily Housing
USDA Rural Development
Rural Housing Service

Re: Listening Sessions on Proposal to Improve and Maintain Rural Rental Housing and Keep Tenants in Their Homes

Dear USDA Rural Development Multifamily Housing Staff:

This letter is written on behalf of the National Housing Law Project (NHLP), the Housing Justice Network, and the undersigned organizations in response to USDA's Listening Sessions on Proposal to Improve and Maintain Rural Rental Housing and Keep Tenants in Their Homes.

The National Housing Law Project's mission is to advance housing justice for people living in poverty and their communities. NHLP achieves this by strengthening and enforcing the rights of tenants and increasing housing opportunities for underserved communities. NHLP also provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. NHLP hosts the national Housing Justice Network (HJN), a vast field network of over 2,000 community-level housing advocates and resident leaders. HJN member organizations are committed to protecting affordable housing and residents' rights for low-income families across the country, including in rural communities.

We write in support of USDA's request for authority to decouple Section 521 rental assistance (RA) from the Section 514 and 515 mortgages that are set to expire. For properties with maturing mortgages, decoupling is a critical tool for keeping housing affordable for the low-income and very low-income renters living in those homes. Below please find our written responses to selected questions posed by USDA in its virtual stakeholder listening sessions held on July 19, 2023 and July 25, 2023.

Question 1: *What do you think are the advantages of decoupling as it relates to: tenants, property owners/developers, communities, lenders/funders?*

Response to Question 1: Decoupling is an important tool for preserving affordable housing in rural communities, especially in light of unprecedented rent increases that have priced many people out of what were affordable rental markets. In addition, it allows mission-driven housing providers who are able to secure other private and/or public funding to continue to serve low-income residents without renewing their USDA loans. Decoupling also provides security of tenure for existing residents as well as new admissions by maintaining existing tenant protections, such as automatic lease renewals, late payment protections, the right to receive notice of lease violations and the right to cure those violations prior to the commencement of an

eviction action, good cause eviction requirements, and the right to a tenant grievance and appeals process.

Question 3: Are there program, operational or policy issues that could potentially keep you from participating in decoupling?

Response to Question 3:

- a. Decoupling should provide USDA the flexibility for extending RA to all eligible households within a property when there is funding to do so and allow unused assistance to remain with the property so it can be utilized when a household is next eligible in-property. USDA's current practice of removing unused RA from a property when there is not another qualifying unit in the property presents a challenge for tenants who experience unexpected fluctuations in their income. RA serves the lowest income households, who are also the least able to weather unexpected decreases in income. As such, USDA should use its current statutory authority¹ to ensure that RA for decoupled properties is truly project-based and remains at the property throughout the term of the Section 521 rental assistance contracts. This is necessary for RA to continue to be available for households that newly qualify for RA, such as newly admitted residents at the property or existing residents who have suffered a significant reduction in their income or increase in utility expenses.
- b. To maintain security of tenure for residents receiving RA, USDA should ensure that the tenant protections contained in the RA regulations are also reflected in the rental assistance contract. RD should have the owners sign a regulatory agreement or contract that can be enforced by the residents, and require it to be recorded by owners to ensure that any subsequent owners of the property and future residents are aware of these enforceable obligations.
- c. To maintain long-term affordability for residents receiving RA under the decoupled program, RD must offer owners long-term rental assistance contracts subject to annual appropriations. We recommend 20-year contracts subject to annual appropriations, as this model is utilized by HUD to maintain the long-term affordability of projects while allowing owners to secure private financing for maintenance and rehabilitation costs necessary to keep the properties in operation.
- d. Decoupling should not be used as an alternative to prepayment that allows owners to exit the portfolio early and avoid their obligations under the Emergency Low Income Housing Preservation Act. USDA should limit eligibility for decoupling to owners who are within 3 years of their mortgage expiration date and provide notice to the tenants that this is happening.

Question 4: If funding for decoupling is limited, how should the agency prioritize the use of resources?

Response to Question 4: USDA should prioritize deploying resources to properties that are currently owned or will be owned by mission driven, non-profits or public agencies, which are

¹ Under 42 U.S.C. § 1490a(d)(2), USDA is only required to remove unused Rental Assistance where it is "not needed because of a lack of eligible tenants **in the area**," which includes not only the contract property, but also the surrounding geographic area. (emphasis added).

likely to continue to provide long-term, safe, affordable housing to residents in rural communities.

Thank you for considering our comments. If you have any questions about these comments, please contact Natalie Maxwell (nmaxwell@nhlp.org).

Sincerely,

National Housing Law Project
National Low Income Housing Coalition
Public Justice Center
Florida Housing Umbrella Group
Three Rivers Legal Services, Inc.
Western Center on Law & Poverty
Housing Justice Center
Florida Legal Services, Inc.
Center for Elder Law & Justice