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Tony Hernandez, Administrator  
Rural Housing Service  
Department of Agriculture  
14<sup>th</sup> and Independence Streets  
Washington DC 20005

Dear Tony,

Thank you for taking the time to meet with me, Moises, Leslie and Ellen on August 6 to discuss a variety of issues that were of concern to us. We truly appreciate the opportunity to share our views and to hear your and RD's staff responses and concerns.

On several matters you asked that we follow up with a letter that details our concerns and provides you more background information about the items that we discussed. I am in the process of drafting that letter and expect to send it to you next week.

I have, however, completed by research on whether owners who have exhausted their Rental Assistance funding this year, or next, can increase rent charges to residents. It is my conclusion that they cannot do so unless it is explicitly authorized by their leases and, even if it is so authorized, any resident's rent contribution cannot be increased by more than 10 percent in any 12 month period.

Based on this conclusion and based on the fact that your staff has acknowledged that RD is advising owners that they may increase residents' rents to developments' basic rent when Rental Assistance contracts are exhausted, I ask that RD take immediate steps to advise all state offices and all owners whose rental assistance contracts have either been exhausted or are about to be exhausted that they cannot increase residents' rents to the development's basic rent to compensate for the loss of Rental Assistance funding.

42 U.S.C. § 1490a(a)(3)(C) states that

No rent for a unit financed under Section 1484 or 1485 of this title shall be increased as a result of this subsection or other provisions of Federal law or Federal regulations by more than 10 percent in any twelve-month period,

unless the increase above 10 percentum is attributable to increases in income which are unrelated to this subsection or other law, or regulations.

Clearly, this provision precludes owners of Section 515 developments from increasing residents' rents due to the exhaustion of Rental Assistance funding by more than 10 percent during any 12 month term.

Moreover, no rent increases are authorized under RD regulations to residents assisted by the Rental Assistance program during the term of any lease unless the resident's lease explicitly authorizes such a rent increase when the funding of a Rental Assistance contract is exhausted. If there is no lease provision that clearly allows landlords to increase rents during the term of the lease, for reasons other than changes in household income or the approval of an increase in the development's basic rent, landlords cannot increase the rent charged residents until the end of the lease term and then only to the extent permitted by 42 U.S.C. § 1490a(a)(3)(C). This position is consistent with RD regulations, which require landlords to include provisions in the lease that prescribe the "circumstances under which the tenant's contribution may change." 7 C.F.R. § 3560.156 (c)(11). Thus, if the lease does not state that the tenant contribution may change as a result of the exhaustion of the Rental Assistance contract, the landlord simply cannot change the rent during the lease term.

We also do not believe that the authority to raise rents lies in 7 C.F.R. § 3560.255(b)(2). That regulation states that

If a rental assistance request to renew expiring rental assistance agreements is denied because funding is not available, the Agency will notify the borrower and the borrower must notify the tenants of rent increases in accordance with their lease and state and local law.

First, the regulation is not applicable since Rental Assistance funding is not available. It is being cut off because of the prohibition on renewal of Rental Assistance contracts during their 12 month term and RD's arbitrary methodology for allocating Rental Assistance funds using the state's average cost of funding a rental assistance unit over the past 3 years. Had RHS properly accounted for the cost of operating a Rental Assistance unit, funding shortfalls would have been avoided altogether or, at worst, been minimal.

Second, all that this regulation authorizes is for landlords to notify residents of rent increases in accordance with their lease, state and local law. It does not, and cannot, override contrary lease provisions or state law.

For these reasons we ask that RD immediately (1) cease to advise owners who have exhausted their Rental Assistance contract funding that they can raise their rents to offset the loss of Rental Assistance; and, (2) publish an unnumbered letter to state offices and owners advising them that rents cannot be raised to offset loss of Rental Assistance and that they can only be raised consistent with 42 U.S.C. § 1490a(a)(3)(C) and the residents' leases.

I take this opportunity to repeat the suggestion that several of us made during our meeting with respect to the exhaustion of Rental Assistance funding before the expiration of the 12-month term of the contract. We urged that RD amend exhausted contracts by an amount that allows the owners to operate their developments for the remainder of their 12 months contract term. We think that this does not violate the statutory prohibition on renewal of contracts since RD is not renewing contracts and the funding shortfall is not due to the owner's actions but rather it is due to RD's method of allocating assistance based on statewide average costs. We think that methodology was arbitrary and that under these conditions you can provide owners with additional funding to complete the Rental Assistance contract term.

I look forward to hearing that RD has taken the requested actions or the reasons that it has not done so.

With best regards,

A handwritten signature in black ink, appearing to read "Gideon Anders", with a long, sweeping horizontal stroke at the end.

Gideon Anders  
Senior Attorney

- c. Moises Loza
- Ellen Lurie Hoffman
- Leslie Strauss
- David Lipsetz