

Tenants' Rights in the Federal Rural Housing Programs

Natalie Maxwell, National Housing Law Project

Marcos Segura, National Housing Law Project

August 13, 2024

Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About NHLP

National Housing Law Project (NHLP) is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income residents and homeowners; and increasing housing opportunities for underserved communities. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide.

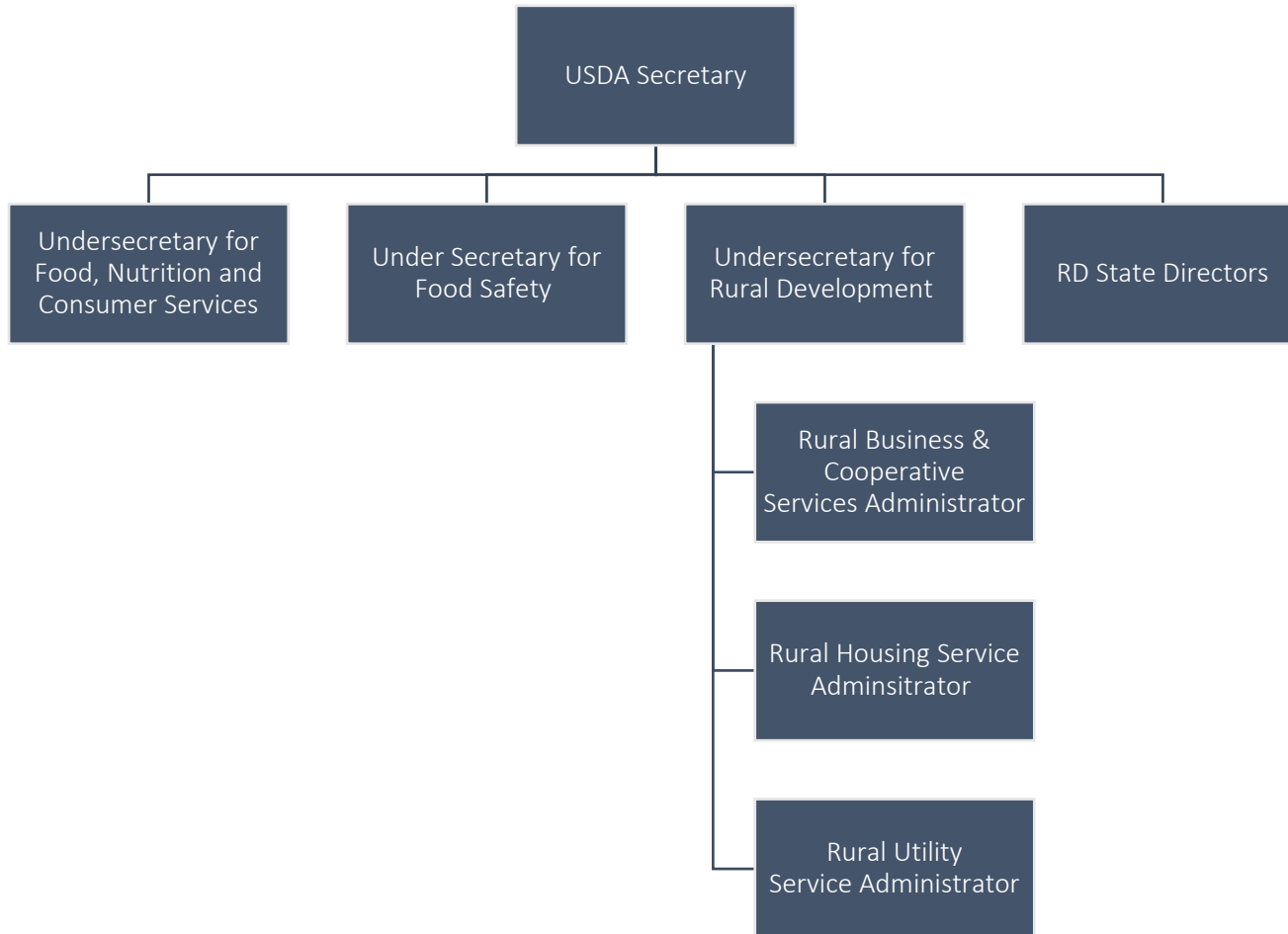
Presentation Overview

- Overview of Rural Development
- Overview of United States Department of Agriculture's (USDA's) Housing Programs
- Overview of USDA's Section 515 Program
- Section 515 Eligibility
- Section 515 Rents
- Rent Recertification in Section 515
- Leases & Lease Terminations

Overview of Rural Development (RD)

USDA Organizational Structure

- Rural Development Leadership



About Rural Development

- Makes loans, grants, and loan guarantees to support economic development in rural communities
- Rural Development (RD) is responsible for the administration of all USDA housing programs
 - **Single-Family Housing Program**
 - Administered by [State Offices](#) under direction of RD State Director
 - **Multi-Family Housing Program**
 - Organized by [Divisions and Regions](#)
 - **[Contact Persons by project:](#)**
 - Office of financial services and loan servicing in St. Louis, MO

Rural Development Service Areas

- Generally, cities and towns of less than 20,000 persons that are outside of Metropolitan Statistical Areas (MSA) or less than 10,000 persons if within an MSA and the town is rural in character.
- Exception: Towns of less than 35,000 persons that were eligible for RD housing programs on the basis of the 2010 census are eligible until the release of the 2030 census.

Overview of USDA's Housing Programs

RD's Housing Programs (1 of 2)

- Section 502 - Single Family Direct loans (§ 502(a)) & Guaranteed Market Rate Loans (§502(h)) (42 U.S.C. 1472(h))
- Section 504 – Limited Home Repair Loans and Grants (42 U.S.C. §1474) (grants limited to persons over 62 years)
- Section 515 – Direct Rental Housing Loan Program (42 U.S.C. §1485)
- Section 514/516 – Farm Labor Rental Housing Loan and grant program (42 U.S.C. § 1484 and 1486)

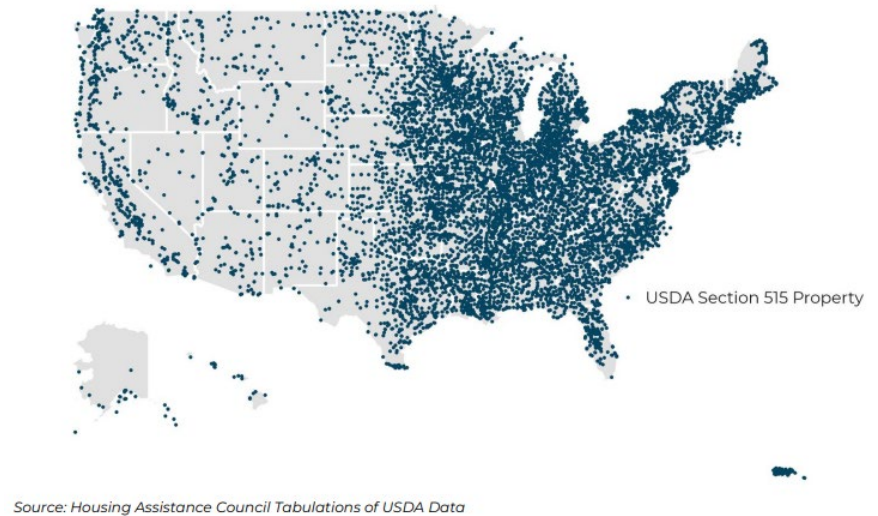
RD's Housing Programs (2 of 2)

- Section 523 — Self Help Housing Grants (42 U.S.C. § 1490c)
- Section 524 – Site Development Loans (42 U.S.C. § 1490d)
- Section 533 – Housing Preservation Grants (42 U.S.C. § 1490m)
- Section 538 – Guaranteed Rental Housing Loans (42 U.S.C. § 1490p-2)
- Section 542 – RD Voucher Program (42 U.S.C. § 1490r)

Overview of USDA's Section 515 Program

RD Section 515 Properties

- 87% of all US counties have at least one USDA Section 515 property
 - Housing Assistance Council, [Rural America is Losing Affordable Rental Housing At An Alarming Rate](#), Rural Research Brief (March 2, 2022)



Section 515 (42 U.S.C. §1485)

- 30-50 year direct loans to private, public, and nonprofit entities
- The housing is subsidized in one of two ways:
 - Interest Credit—shallow rent subsidy (rent based on a 1% loan)
 - Rental Assistance—households pay 30% of income for shelter. 42 U.S.C. § 1490a(a)(2)(A).
 - Includes a utility allowance where Tenant pays utility costs directly. 7 C.F.R. § 3560.256(b).
- [Locate housing](#) by state, county, town, zip code, project name or management agent

Section 515 Residents (1 of 2)

- Housing serves very low-, low-, and moderate-income households
- >533,000 total units constructed
 - ~ 406,290 units (12,438 developments) currently remain in the program
- Demographics:
 - 67% of residents are older adults or persons with a disability
 - 36% of occupants are people of color
 - 67% of households are headed by a female
 - 76% of households receiving rental assistance (RD's deep subsidy, allowing residents to pay 30% of their income for shelter)

Section 515 Residents (2 of 2)

- Average income of Sec. 515 household: \$16,047
- RA Sec. 515 household average income: \$13,696
- Subsidized Households
 - RD Rental Assistance – 283,782
 - HUD Project-based Section 8 – 21,216 units
 - HUD HC Vouchers – 19,205
- No subsidy
 - Households without subsidy: 44,584
 - 5,065 households rent overburdened rent >30% of income

Section 515 Eligibility

Section 515 Admissions

- Tenant Selection
 - Landlord must keep tenant application files for at least 3 years
- No citizenship requirements
- Landlord must keep wait list for properties
- Landlord must provide written notice of rejection/ineligibility for admission and notice must include that tenant has 10 day right to respond and to request a hearing

Eligibility for Rental Assistance

- To be eligible for Rental Assistance:
 - Tenant must be very low or low-income;
 - Tenant contribution to rent is less than the basic rent;
 - Tenant meets occupancy rules/policies established by the owner;
 - Tenant has a signed, unexpired tenant certification form on file with the owner; and
 - Tenant is not delinquent on any agency unauthorized assistance repayment agreement.
- An owner must assign rental assistance to the most cost burdened tenants.

Rental Assistance and Citizenship Requirement

- RD published regulations that require the head of household be a Citizen or legal alien for a household to receive any rental assistance.
 - 7 C.F.R. § 3560.254(c)(3).
- RD has delayed implementation of the regulation until further notice to allow time for RD to harmonize its procedures with those of HUD.
- No change yet, but RD working on it.

Waiting Lists, Generally

- All applications, whether complete, eligible, or ineligible, will be placed on the applicant waiting list.
- For incomplete applications, applicant must be notified in writing within 10 days:
 - of the items that are needed for the application to be considered complete, and
 - that priority will not be established until the additional items are received.
- For ineligible applications, applicant must be notified of specific reasons for ineligibility and given the right to respond within 10 calendar days of getting the notice and the right to a hearing upon request.

Waiting Lists: Selection

- Within 10 days of receipt of a completed application, the Borrower must notify the applicant in writing that they have been selected for immediate occupancy, placed on a waiting list, or rejected.
- Selections from the overall waiting list & within priority groups are made in the following order:
 - Very low-income applicants;
 - Low-income applicants; and
 - Moderate-income applicants.

Waiting Lists: Priorities and Admission Preferences

- Applicants in need of accessible units with special design features must be given priority for those units.
- The following applicants must be given priority over other applicants in their same income category:
 - Applicant with a Letter or Priority Entitlement (LOPE)
 - Applicant displaced from USDA-financed housing who was not issued a LOPE
 - Applicant displaced in a Federally declared disaster area
- Properties with HUD Section 8 project-based assistance may establish preferences in accordance with HUD regulations; AND must document them in the project's management plan.

Section 515 Rents

Rents

- Baseline rents for a property are set by the owner but are subject to RD approval.
- Rent must be either:
 - Note rent
 - Basic Rent (This is commonly known as the Interest Credit Subsidy.)
 - Rent required by a HUD project-based subsidy contract
 - e.g., Project-Based Rental Assistance, Project-Based Vouchers
 - Low-Income Housing Tax Credit (LIHTC) rent if credits were used to rehab or construct the project.
- There are two types of RD tenant subsidies:
 - Interest Credit Subsidy (shallow subsidy)
 - Rental Assistance (deep subsidy)

Interest Credit Subsidy (1 of 2)

- Interest Credit (IC) subsidy flows from the interest credit agreement in the subsidized RD mortgage
- Some projects do not receive Interest Credit, in which case, tenants pay note rent (assuming no other subsidy applies).
 - Rent can never exceed the note rent.

Interest Credit Subsidy (2 of 2)

- Under the Interest Credit subsidy, a tenant pays the highest of:
 - 30% of the tenant's adjusted income;
 - 10% of the tenant's gross monthly income; or
 - The Basic Rent.
- Most tenants pay the Basic Rent.
- Generally, basic rent is below market, but whether it is significantly below or not varies project to project.

Examples of Deductions Allowed

- \$480 for each household member (other than the tenant, cotenant, member, or co-member or spouse of either, or foster children) who is under 18 years of age, or who is 18 years of age or older and is disabled, or a full-time student.
- \$400 for any elderly family.
- In the case of an elderly family, the total of actual medical and/or disability assistance expenses paid in excess of 3 percent of annual income must first be deducted from disability assistance and any remainder then deducted from medical expenses.

Tenant Contribution Example (IC only)

- Assume the tenant's annual gross income is \$12,000 and they receive a \$400 deduction for elderly status. Their annual adjusted income is \$11,600.
- Baseline rent calculations are as follows:
 - 30% of the adjusted income = \$3,480/year or \$290/mo.
 - 10% of gross income = \$1,200/year or \$100/mo.
 - Basic Rent (i.e., rent sufficient to cover debt and operating expenses) = \$350/mo.
- Since the highest of the baseline rent amounts is the Basic Rent, the tenant rent in this example is \$350 per month.
- Since there is no utility allowance under the interest credit subsidy, the tenant is solely responsible for utilities, which further increases shelter costs.

Rental Assistance (RA)

- Rental Assistance is a direct subsidy paid by RD to Section 515 property owners on behalf of low and very low-income residents, requiring them to pay no more than 30% of their income for shelter.
- It includes a utility allowance to offset any tenant paid utilities.
- Owners apply to RD for rental assistance on behalf of eligible units.
- If the request is approved, RD issues assistance under a 1-year contract with the owner which automatically renews after 12 months, provided rental assistance funds are available.
- If tenant rent is set to increase due to the unavailability of rental assistance funds, tenants can terminate their lease.

Tenant Contribution Example (RA)

- As in the previous example, here the tenant's annual gross income is \$12,000 and their annual adjusted income is \$11,600.
- Under Rental Assistance rules, the tenant's contribution toward shelter costs is limited to 30% of the tenant's adjusted income, which is \$3,480/year or \$290/mo.
- If the tenant is not responsible for paying utilities, then the tenant's rent is \$290/month
- If the tenant is responsible for paying utilities, then the tenant's rent is further reduced by the utility allowance
 - Example: if the utility allowance is set at \$60, then the tenant's rent would be \$230/mo.

Rent Recertification in Section 515

Rent Recertification (1 of 2)

- Generally, recertification occurs annually. If the tenant fails to timely recertify, rent will increase to the note rent (i.e. no interest credit or rental assistance subsidy)
- Interim Recertification
 - Interim recertification: Owner must recertify for changes in household income of \$100 or more per month or if the tenant has a \$50 change and asks for recertification
 - Owner must recertify for changes in household and household income of \$100 or more per month
 - Owner must recertify if tenant has a \$50 income change and asks for recertification
 - Tenants must report changes in family size and income; may result in increase in tenant's rent prior to end of lease
 - Should be completed by owner within 30 days of receipt of info from tenant

Rent Recertification (2 of 2)

- Annual recertification is effective on the 1st day of the month following expiration of the current certification
- Agency maintains the right to independently verify tenant eligibility info

Changes in Tenant Eligibility

- Tenants no longer eligible must vacate the property within 30 days of being notified that they are ineligible or at the expiration of their lease, whichever is greater
- Temporary continuation of tenancy: Owners may permit tenants who are no longer eligible for occupancy to continue to reside at the housing project with prior approval of the Agency if:
 - The waiting list for the specific rental unit type has no eligible applicants; or
 - The required time period for vacating the rental unit would create a hardship on the tenant household.

Effect of Failure to Recertify (1 of 2)

- If failure to timely recertify is due to Tenant:
 - Tenant will be considered ineligible for occupancy
 - Tenant may be subject to unauthorized assistance claims
 - Owner must notify Tenant and Agency in writing within 10 days of recertification date:
 - Of Tenant's failure to recertify within 10 days of recertification date
 - Termination proceedings are being initiated per 3560.159, and
 - That rent will increase to the note rent until the Tenant's lease is terminated (i.e. no interest credit or rental assistance subsidy)
- If failure to timely recertify is due to Tenant's disability (i.e. hospitalization, processing disorder, etc.), need to request reasonable accommodation

Requesting a Reasonable Accommodation

- Person (or representative) seeking the accommodation must make the request to the housing provider
 - No “magic words,” particular manner or time to make a request
 - Orally or in writing
 - May be requested at any time
- Explain what accommodation is being requested and, if the need for the accommodation is not readily apparent or known to the provider, explain the relationship between the accommodation and the disability
- Examples of Reasonable Accommodations
 - Additional time to complete the recertification
 - Delaying termination proceedings
 - Provide 3rd party notice

Effect of Failure to Recertify (2 of 2)

- If failure to timely recertify is due to owner:
 - Owner will be charged for overage and lost rental assistance
 - Tenant will continue to make tenant contributions to rent based on most recent tenant certification
 - Owner may be subject to unauthorized assistance claims

Eviction Due to Failure to Recertify?

- Borrower **may** terminate or refuse to renew lease for material noncompliance with the lease or occupancy rules or for other good cause,
 - Applies both during and at end of lease term, which is 1 year
 - If Tenant was receiving rental assistance and completes recertification within 30 days of expiration of prior certification, the owner can simply report the rent at the certified income level
- Tenants must be given notice of violation and an opportunity to cure
 - *CBM v. Llamas*, 12 Cal. App. 5th Supp. 34 (Cal. App. Dept. Super. Ct. (Apr. 5, 2017))
 - Can the tenant file a grievance?
- Tenant can still complete recertification prior to eviction

Leases and Lease Terminations

Leases

- Owner must use lease that meets RD requirements
 - 7 C.F.R. § 3560.156
- Renew annually for 12 months
- In area of concentration of non-English speaking populations, lease must be available in English and pertinent non-English language

Evictions and Terminations

- Good Cause required. Applies both during and at end of lease term, which is 1 year.
- Tenants must be given notice of violation and an opportunity to cure.
 - *CBM v. Llamas*, 12 Cal. App. 5th Supp. 34 (Cal. App. Dept. Super. Ct. (Apr. 5, 2017)).

Grievance and Appeals Process

- To challenge any adverse owner action or inaction
- Informal meeting with owner followed by formal hearing
- Available to applicants and residents (7 C.F.R. §3560.160) BUT not available for lease violations that will result in an eviction.
 - *Catahoula Apts. Partnership v. Jones*, 590 So 2nd 627 (La. 3rd Cir. Ct. of App. Nov. 13, 1991)

Informal Meeting (1 of 2)

- Why?
 - To avoid, delay or prevent eviction
 - To get Agency intervention in a dispute
- How?
 - Tenant (or applicant) must communicate any grievance to the owner within 10 days after the adverse action has occurred or within 10 days of receiving the notice of proposed adverse action.
 - Within 10 days of receiving the tenant's grievance, the owner must offer to meet with the tenant with the goal of resolving the issue informally.

Informal Meeting (2 of 2)

- If the grievance is not resolved during the informal meeting, the owner has 10 days to prepare a summary of the problem (identifying each party's position) and submit it to the tenant and the Agency.
- The tenant can also submit their own summary of the problem to the Agency.
- If the tenant (or applicant) wants a formal grievance hearing, he or she must request it within 10 days of receiving the owner's summary of the problem.

Questions?

Visit Our Website: ncler.acl.gov

NATIONAL
CENTER ON
**LAW &
ELDER
RIGHTS**

Search for resources

Read practice tips

Sign up for the email list

Request a case consultation

Learn about upcoming trainings

ncler.acl.gov



Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.