Council for Affordable and Rural Housing
Serving the Affordable Housing Needs of Rural America

November 23, 2020

Via E-Mail (www.regulations.gov)

Ms. Jennifer Larson
Multi-Family Housing Portfolio Management Division
Rural Housing Service
Stop 0782
1400 Independence Avenue SW
Washington, DC 20250-0782

RE: Rental Assistance and Asset Management for the Multi-Family Housing Direct Loan Programs
Docket No. RHS-20-MFH-0017

Dear Ms. Larson:

The Council for Affordable and Rural Housing ("CARH") provides these comments to the Rural Housing Service, USDA, Docket No, RHS-20-MFH-0017 proposed rule to the Rental Assistance and Asset Management for the Multi-Family Housing Direct Loan Programs which is proposing to amend its regulation to implement changes related to the development of a sustainable plan for the Rental Assistance program (the "Proposed Rule").

CARH represents for-profit and non-profit companies providing affordable rural rental housing throughout America. For 40 years, CARH has served as the nation's premier association for participants in the affordable rural housing profession, including builders, owners, developers, managers, non-profits, housing authorities, syndicators, accountants, architects, attorneys, bankers, and companies that supply goods and services to the industry. CARH is the only association that solely represents the needs of the entire rural rental affordable housing industry.

CARH appreciates and supports the efforts of the Rural Housing Service (the "Agency") to provide greater flexibility, economic utilization, and efficiency with respect to the distribution of Rental Assistance and the management of assets in the Direct Loan portfolio. To that end, we respectfully request the Agency's review and consideration of the following:

1. For the sake of consistency with certain other provisions of the Proposed Rule (*e.g.* Section 3560.72(b)), we suggest replacing "State Director" with "MFH Leadership Designee," rather than "Leadership Designee," in the last sentence of Section 3560.8.

2. We suggest more detail should be addressed under the proposed revision to 3560.11 regarding domestic farm laborers. The provision expands the definition to include other persons "legally admitted to the United States and authorized to work in Agriculture." We support this expansion as it expands eligibility consistent with the actual population seeking farm labor housing support under RHS' Section 514/516 farm labor housing

program. We believe the Agency should clarify that this would include persons legally admitted on a temporary or permanent basis, including H2A farm laborers. Such laborers might have a U.S. Employment Authorization Document (EAD) or card, or temporary state-issued driver's licenses or photo ID cards. The EAD also reflects a printed alien code or category on its face and the Agency should clarify the included assigned alien codes. As currently provided, 7 CFR 3560.568 allows for the use of rental assistance and short-term lease provision for seasonal off-farm labor housing but is unclear if this also applies to non-seasonal off-farm labor housing. We encourage the Agency to further address the temporary nature of such EAD or H2A documents.

Section 3560.11 should also clarify that off-farm labor housing may be used to serve migrant farmworkers.

3. In some cases, workers have less than a year left before the expiration of their EAD or H2A documents but 3560 requires an initial one-year lease term. Section 3560.11 and 3560.156, lease requirements, should be amended to provide for an exception to the required initial lease one-year period for such legally admitted immigrants whose EADs may expire prior to the lease's one-year ending date. Similar lease term exceptions should be considered for seasonal off-farm labor housing as reflected in 3560.559(a), and/or be cross-referenced in section 3560.156, lease requirements.

4. We appreciate the proposed clarification to Section 3560.65(d), and consistent with the change, request that providing any costs of escrow accounts should be a project expense and basis for any corresponding rent increase. Further, we suggest clarifying that any such accounts be established consistently with the current Agency guidance for Deposit Agreements and Supervised Bank Accounts.

5. We agree that Agency approved management fees are and should remain an allowable project expense as noted in Section 3560.102. We recommend that the Agency also add that such fees may be paid from excess reserve funds, if available and necessary, as is current policy. Further, we appreciate the Agency clarifying the process for annual factor-based adjustment to fees. We raise concern that the language seems to be eliminated or edited concerning performing energy audits or working with other agencies. These sorts of tasks should be a project expense or an add-on fee to the management fee if required of the management agent. Furthermore, we continue to believe that outside payroll companies used to pay on-site staff, should be an allowable expense to the property.

6. We appreciate the Agency seeking to ensure that borrowers submit timely tenant certifications as described in proposed Section 3560.152(e)(2)(iv). But we note that under the proposed amendments to Section 3560.102(i), management agents would actually be responsible for submitting annual or updated tenant certification forms. Requiring the owner to pay overage, *i.e.*, to pay for a paperwork delay, would be draconian. We request that there would first be notice and opportunity to cure, so that the owner and manager can resolve the matter amongst themselves.

7. Section 3560.254(c) includes in the definition of eligible households, tenants not delinquent on any Federal debt. We suggest further explanation of how the management agent or owner would be able to assess (a) delinquency and (b) Federal debt. It is not clear private companies can assess such delinquency and Federal debt takes many forms. For example, a local grant or loan could be Federally funded or insured and so be Federal debt and the tenant/applicant let alone the management company would not be in a position to know that information. We suggest revising this section, specifically the preamble explanation that indicates that this change is limited to exclude tenants if they are delinquent on their Unauthorized Assistance Repayment Agreement.

8. Current statutory law, that is the Appropriations Act for USDA, includes statutory language that rental assistance agreements will have or can have a term of twenty (20) years, subject to annual appropriations. We suggest Section 3560.258(a) provide that rental assistance contracts be the later of 12 months or when funds are exhausted or such other periods provided in statutory law. This is important to create stability in operations, preserve affordability long term, and provide more cost-effective access to capital markets (debt and equity). A long-term subsidy contract, even subject to annual appropriations, can have access to more favorable private loan interest rates and more favorable equity investment terms under the low-income housing tax credit program.

9. With respect to the language proposed to amend Section 3560.259(a)(4), we would suggest that the reference to “any rental assistance units” be revised to “any single rental assistance unit.” Projects can lose rental assistance even though no one unit is unused for a significant period of time if, cumulatively, different rental assistance units have been vacant consecutively over a period of 6 months.

10. We believe that Section 3560.259 should not be revised to allow the Agency to use obligation balances instead of transferring rental assistance. Currently, RD carries RA for a project on AMAS in “units" per obligation balance. The new subsection (d) creates the authority to ignore the original “units” amount and create a new obligation “unit” amount to be transferred. This will result in fewer units. For example, if a property that was prepaid has an RA obligation with a $5,000 remaining balance for 5 RA units, rather than transferring 5 RA units, each with a $1,000 balance (as RD does now), this new paragraph allows RD to transfer 1 unit with a $5,000 obligation balance. The reg reduces the number of RA units in the portfolio by 4 units.

    The second critical issue is that any units created by this paragraph are then limited to be used only “for renewal purposes.” This means any units formed or transferred under this authority are prohibited from being used for servicing or preservation purposes. The need exists at this time for rental assistance and we should not authorize steps to reduce availability of rental assistance. CARH is opposed to reducing the rental assistance budget or the number of units assisted with rental assistance since more than 70,000

families now qualify for rental assistance but are not able to receive it due to federal budget limitations.

11. We support the Agency's intention to eliminate or minimize the requirement for a collateral pledge relative to withdrawing reserve account funds. And we recognize that project and reserve account funds are Federally controlled, subject to Agency approvals. However, we suggest the regulations confirm the long-standing administrative recognition that the funds in a project's reserve account are assets of the project's owner. Section 3560.302(5)(ii).

12. We would ask the Agency to review the language in proposed Section 3560.303(b)(1)(vii), and in particular subsections (B) through (D). Prorating costs and the cost of the errors and omissions policies among properties makes sense where there are multiple properties. But the language mixing "policy" is unclear and can be read to pro-rate only the policy cost.

13. We ask the Agency to revisit prohibiting the costs of tenant services under Proposed Section 3560.303(b)(2)(xi). We submit there is no statutory prohibition on allowing for tenant service costs. We recognize the Agency may want to restrict such costs to conserve resources. But there are facilities that may have residents in a special needs population, or where the project qualifies for tenant services programs from other agencies. In such cases the Agency should retain regulatory flexibility to allow tenant services where there is good cause and it is a reasonable expense.

14. We recognize and support the Agency's goal of ensuring that excessive costs do not lead to inflation of project rental rates. But we are concerned about the proposed language of 3560.303(d). We would ask for a greater explanation about how the Agency determined that administrative expenses exceeding 23 percent of typical expenses was the right threshold for further review, as well as what that review might consist of and how an owner can address concerns.

15. We recognize the Agency's efforts to adjust costs on a forward-looking basis. The proposed change to Section 3560.306(j)(2), allowing operating cost adjustment factors ("OCAFs") to adjust reserve account requirements objectively has an attraction to it. This change appears to be permissive, not mandatory. We recognize that CARH members have struggled to get approval of anticipated capital replacement costs as well as, at times, approval of anticipated replacement need as part of the annual budgeting process. Of course, any such factor increase would have to have a corresponding rent increase and/or Agency assistance.

16. The Agency has, at least since the 2004 enactment on an interim basis of Part 3560, provided project loans convert from DIAS to PASS upon a servicing event. We would respectfully object to Section 3560.402(b) as an across-the-board conversion. We note that many owners are anticipating their loan maturity, which seems to pass more quickly

under DIAS. Those owners will be materially harmed if they *de facto* have their loan terms extended by a slower pay-down or recasting of principal and interest payments. DIAS provides more principal payments sooner than PASS. PASS is interest focused and prioritizes earlier interest payments over the life of the loan. This concern is ameliorated for many if the owner is seeking an approval or request from the Agency and the conversion is part of the processing. Some owners with DIAS loans may well want to extend their loan terms to preserve affordability under the Emergency Low Income Housing Preservation Act of 1987 ("ELIHPA") statute or to maintain affordability or to continue receiving rental assistance. But other owners are interested, as is their right, to seek conclusion of their loans when they have fully performed under the loans.

17. Section 3560.576, provides for a required concurrence by the national RD office and a current market analysis determining diminished need for farm labor housing before the units can be leased to non-farm workers or those eligible for occupancy under 3560.152. Currently, the practice has been to issue either one year, or two-year farm worker occupancy waivers, but the studies can be expensive and these rural markets typically do not change that quickly.

18. Section 3560.577 provides three priorities for occupancy. We request the Agency clarify whether domestic farm laborers legally admitted to the U.S. fall within the first priority, which is eligible active farm laborer households, or would this form another priority?

19. We support the proposed change to Section 3560.656(a) by removing the word "will" and replacing it with "may". Section 3560.656(a) contains the requirement that the Agency must make an incentive offer to owners who apply to prepay the Agency mortgage loan and qualify for an offer of incentives in lieu of prepayment. The Agency has failed to provide incentives in any meaningful way since approximately 2014. Then Administrator Hernandez issued Unnumbered Letter dated July 11, 2014. This Unnumbered Letter followed earlier guidance and specified that the Agency was suspending incentives and then reinstating limited incentives, typically financed by proceeds raised by Owners from third parties. While we do believe that RD must make an offer of incentives when requested by the qualifying owner, RD has not necessarily done so and, therefore, this change just conforms with current policy.

We appreciate the opportunity to submit these comments. Should you require any additional information, please contact me, Colleen Fisher, at (703) 837-9001.

Sincerely,

Colleen M. Fisher
Executive Director