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Overview

RD-Subsidized Programs

Key Components

● **Number of Units:**

- Rural Development/Rural Housing Service (RD/RHS), part of the U.S. Department of Agriculture (RD, formerly Farmers Home Administration (FmHA))
- Subsidized Section 515 (Rental Housing Direct) 42 U.S.C § 1485
 - Approximately 350,000 Section 515 units remain.
 - Section 515 units are being lost because of prepayment, maturing loans and foreclosures in communities suffering loss of population.
 - Congress continues to fund Section 515 program for additional units (\$65 million FY 2012 (funds allocated by Notice of Funding Availability (NOFA))
 - Congress continues to fund Section 521 Rental Assistance program used in conjunction with Section 515 (\$905 million FY 2012) (to support existing rent assistance contracts) 42 USC 1490a(a)(2)..
 - RD has a Section 538 guaranteed rental housing program (42 U.S.C. § 1490p-2) with less than 30,000 units. Probably being used with LIHTC, no rental subsidies from RD but could have Section 8; Good Cause required for eviction and tenants have right to a Grievance and Appeal Process, *see infra*.
 - Section 514/516 (Farm Labor Housing): Approximately 15,000-17,000? units remaining.

● **How Program Works: Subsidy Mechanism:**

- RD Section 515: always *direct* RD loan at market interest rate in exchange for RD-regulated “budget-based” rents and occupancy restrictions; practically all development have a shallow subsidy of an 1% interest rate loan that effectively reduces rents (as with old HUD Section 236 program) may be combined with Project-based Section 8, RD Rental Assistance, voucher or other deep subsidy.

● **Ownership:** Mostly private, profit-motivated or limited-dividend; some nonprofits and public agencies.

● **Use Restrictions:**

- RD Section 515: Regulatory Agreement accompanying mortgage, with varying use and prepayment restrictions; post 1979 developments have 20-year use restrictions; all developments have prepayment restrictions imposed by Emergency Low-Income Housing Preservation Act (ELIHPA) (42 U.S.C. §1472(c)).

● **Who’s Involved?**

- RD Section 515: RD is regulatory party to Regulatory Agreement with owner and also the lender (newer loans Section 538 may be RD-insured with a private lender); private owner; management either owner or separate company. RD state and local offices do direct supervision of owner. Periodic visits and review of all reports. Find an RD office at <http://offices.sc.egov.usda.gov/locator/app?state=us&agency=rd>

● **Key Regulatory Features:** (Program Contract(s), Regulations, Handbooks and Notices, Lease)

- RD Section 515: RD Regulatory Agreement; 7 CFR Part 3560; Asset Management Handbook

HB-2-3560 on RD website, <http://www.rurdev.usda.gov/Handbooks.html> see also <http://www.rurdev.usda.gov/RegulationsAndGuidance.html> (for a listing of many other regulatory guidances, including Spanish language forms).

● **Finding Out Where this Housing Is Located in Your Community (national, state, local info); Knowing Its Characteristics (occupancy and bedroom sizes):**

- RD Section 515 units are built in towns with no more 20,000 in population or if within a Standard Metropolitan Area (SMA), 10,000 in population and rural in character. Some RD units are now located outside of such areas because of population shifts.
- Find RD Section 515 in your state, city or county: lists often available from RD state office; also properties by state, county, town or zip code available at: http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp?home=NO and National Housing Trust's web site (Excel or PDF) lists Section 515 properties at http://www.nhtinc.org/housing_data.php.

● **Tips for Determining What Kind of Housing Is Involved:** Lease; Rent Level; Owner type (PHA involved?); Age of Housing; Ask Manager. Check the RD/RHS website above; it will tell you size of project, RD subsidy, type of housing (family/senior) and management company.

- **Getting Information:** Statutes, Regulations, Handbooks, Notices, and other resources:
- RD Section 515: 42 U.S.C. §1485; regulations and Handbooks *supra*; Administrative Notices at < http://www.rurdev.usda.gov/rd-an_list.html>.

● **Related Subprograms or Set-Asides for Special Uses:**

- RD Section 515: can be used with Section 8 Project -based and vouchers, RD Rental Assistance or other deep subsidies; also may have Low Income Housing Tax Credits (LIHTC).

Major Applicant and Tenant Issues:

● **Admissions:**

- **Application fee:** RD Asset Management Handbook, HB-2-3560, ¶ 6.18B (discouraged, but not prohibited).
- **Waiting list:** how compiled and maintained: 7 C.F.R. § 3560.154(f) and RD Asset Management Handbook, HB-2-3560, ¶ 6.18 (RD).
- **Eligibility:**
 - Income: 7 C.F.R. §§ 3560.152 and 3560.11 (less than 80% of AMI + \$5500); RD Asset Mgmt Hbk, HB-2-3560, ¶6.3.
 - U.S. citizen or qualified alien 7 C.F.R. § 3560.152, *but see* 70 Fed. Reg 8503 (Feb. 22, 2005) in § 3560.152(a)(1), implementation of the words “Be a United States citizen or qualified alien, and” was delayed indefinitely
- **Preferences:** some properties have elderly preference or designated occupancy; RD Asset Mgmt Hbk, HB-2-3560, ¶ 6.5 (elderly family may include a person younger than 62 years old); 7 C.F.R. § 3560.154(g) (ranking priorities for very low-, low- and then moderate-income applicants); RD Asset Mgmt Hbk, HB-2-3560, ¶ 6.23; *Id.* ¶ 6.6 (owner may give priority to tenants who agree to participate in services provided)
- **Screening:** 7 C.F.R. § 3560.154 and RD Asset Mgmt Hbk, HB-2-3560, Ch. 6, Section 4 (owner has discretion not to reject for certain criminal history but may consider criminal activity or alcohol abuse, poor tenant history, poor rent paying history or bad credit)
- **Procedural Protections:** RD projects: Applicants are entitled to grievance process; 7 CFR. 3560.160; *see also* 7 C.F.R. §§ 3560.102(b), 3560.154(h) & RD Asset Mgmt Hbk, HB-2-3560, Section 8 (applicant entitled to grievance procedures if denied ; *Id.* Attachment 3-A and ¶ 6.19. (If development located in area with a high concentration of non-English speakers, notice of rejection must be in English and the language prevalent in the area.)

● **Rents:**

- **Flat rents:**

- RD projects: “Market Rent” (promissory note rent) and “Basic Rent” (1% rent): resident pays the higher of basic rent or 30% of income up to market rent ; some developments only have market rent; a very small number of senior projects have flat rent based on 3% loan; unless RD Rental Assistance or Section 8, where rents set like Section 8. 7 C.F.R. § 3560.203
 - **Income-based rents?**
 - 7 C.F.R. § 3560 Part F (rental assistance rules). Tenant rent: the greater of 30% of adjusted income, 10% of gross or the applicable welfare rent. 7 C.F.R § 3560.203. Most tenants pay 30% of adjusted income.
 - Higher income tenants with no rental assistance pay the higher of “Basic Rent” or 30% of income, *supra*.
 - **Annual Income and Exclusions:** (for those paying income-based rents), 24 C.F.R. §5.609 (HUD projects; incorp. for RD projects by 7 C.F.R. § 3560.153; RD Asset Mgmt Hbk, HB-2-3560, Attachment 6-A), for example:
 - No earned income disregard
 - Exclude foster care payments
 - Exclude lump sums additions from certain sources
 - Exclude earned income of minors
 - **Adjusted Income after Deductions:** 24 C.F.R. §5.611 (HUD project rules; incorp. for RD projects by 7 C.F.R. § 3560.153; RD Asset Mgmt Hbk, HB-2-3560, ¶ 6.9C) (but note ¶ 6.9B if tenant says that amount not being received for child support, owner must document that request to state for enforcement has been made) *compare Johnson v. U.S. Dept. Agric.*, 734 F.2d 774 (11th Cir. 1984) (owner precluded from including support payments that were not being made).
 - Typical Deductions: \$480 per dependent; \$400 for elderly or disabled family; minors’ earned income; unreimbursed medical expenses for elderly or disabled family; unreimbursed attendant care or apparatus expenses to enable disabled family member to be employed; child care expenses necessary for employment or education; But 1990 deductions for child or spousal support (42 U.S.C. §1437a(a)(5)(A)) never backed by appropriations
 - **Recertification:** RD projects: Annual recertification and for changes in income of \$100 or more per month; family must report changes in family size and income. 7 C.F.R. §§ 3560.152 and 3560.158)
 - **Utility Allowance:** (If income-based rent i.e., tenant receives rental subsidy) for certain tenant-paid utilities, owner sets “reasonable” amount, credit against 30% of income tenant share; owner must review and adjust allowance annually when necessary. (If tenant has no rental subsidy but pays more than basic rent) the same rules as with rental subsidy apply—utility allowance is deducted from tenant payment but tenant must pay at least basic rent. 7 U.S.C. §3560.202
 - **Ability to challenge rent level for individual:** (request meeting with owner-manager and a grievance hearing, *see infra*.)
 - **Project wide rent increases:** Notice and comment when owner proposes to institute rent change for all units. 7 C.F.R. § 3560.205(d).
- **Grievance Procedures:** RD Tenant Grievance and Appeals Procedure, 7 C.F.R. § 3560.160 and RD Asset Mgmt Hbk, HB-2-3560, Ch. 6, Section 8, and ¶¶ 6.33-6.39. (tenant or applicant may file a grievance for owner action or failure to act in accordance with lease, or RD regulations that results in a denial, significant reduction or termination of benefits, etc.); *Id.* ¶ 6.34 (informal meeting required prior to grievance hearing).
 - **Lease:** Rules for what must be in lease. 7 C.F.R. § 3560.156; Owner must use lease approved by agency. 7 C.F.R. § 3560.156(a) *see also* RD Asset Mgmt Hbk, HB-2-3560 Attachment 6-E (Lease states that DV will not be tolerated and that such action is a material violation of the lease, all perpetrators will be evicted while the other eligible household occupants may remain); in areas of concentration of non-English speaking population lease must be available in English and pertinent non-English language.

- **Evictions and Terminations:**
 - Good cause required *anytime, including at end of lease term*: 7 C.F.R. § 3560.159 and 3560.156(c)(18)(xvii) (also incorporates criminal activity provisions of 24 C.F.R. § [5.858](#), [5.859](#), [5.860](#), and [5.861](#)); *Id.* and RD Asset Mgmt Hbk, HB-2-3560, ¶ 6.32 (terminate lease for material noncompliance with lease or rules or for other good cause);
 - Case law regarding material violation and specific facts, HUD HOUSING PROGRAMS: TENANTS' RIGHTS, Ch. 11 (4th ed. 2012).
 - *Majors v. Green Meadows Apartments, Ltd.*, 546 F.Supp. 895 (S.D. Ga 1980) (to evict there must be material non-compliance with lease or other good cause and tenant must be given prior notice of conduct that will be a basis for termination of tenancy.)
 - *Alvera v. The C.B.M. Group, Inc.*, Civil No. 01-857-PA (D. Or., October 2001) (property management company agreed based upon a claim of a violation of the Fair Housing Act to stop applying its “zero-tolerance” policy and evicting victims of domestic violence in the five western states where it owns or operates housing facilities (Arizona, California, Hawaii, Nevada, and Oregon).
 - **Notice:** 7 C.F.R. § 3560.159 (RD projects, content must set forth good cause, no specific period, therefore state law and lease control); *Id.* and RD Asset Mgmt Hbk, HB-2-3560, ¶ 6.23 (owner must give tenant written notice of violation and an opportunity to cure; limited English proficiency protections)
 - **Required proof by landlord:** Burden of proof is not clear. 7 C.F.R. § 3560.160(h)(3)
 - **Pre-judicial administrative review prior to eviction?** RD Tenant Grievance and Appeals Process, 7 C.F.R. § 3560.160 RD Asset Mgmt Hbk, HB-2-3560, ¶ 6.35 and Exhibit 6-7 (excludes evictions from the grievance hearing process).
 - **Right to Cure:** Absolute right to cure any violation.
- **State law procedural protections not pre-empted:** 7 C.F.R. § 3506.5
- **Section 8 or RD rental assistance terminations by landlord prior to any eviction:** Tenant entitled Tenant Grievance and Appeal Procedure (tenants requests a meeting with the owner and if that fails a grievance hearing, *see supra*).
- **Other Current Important Issues:**
 - Contracts on about 800,000 HUD-Assisted project-based Section 8 units are for one year terms and expire annually; any inadequate renewal funding under 2011 Budget Control Act and annual Appropriations threatens losses of these units or, if statutes revised, tenant rent increases originally there were only 40,000-50000 RD/Section 8 units. There are probably less than 20,000 now.
 - Mortgage maturity (developments have different mortgage terms; most recently 30 years with 10 year optional renewals; previously 40 and 50 year terms) on & RD properties poses rent increases and displacement threat to thousands of unassisted tenants
 - 112th Congress unlikely to develop new policy legislation on RD preservation
 - There are about 70,000 residents in RD housing that are in need of rental assistance—they are paying more than 30% of income towards shelter.
 - Growing risk of deterioration in some RD properties due to diminishing and shifting regulatory responsibilities (?) and subsidy reductions (?). Aging properties, inadequate reserves and insufficient funding for rehabilitation and preservation.
 - Congress has been considering legislation which would change the determination of adjusted income for tenants in the public housing and Section 8 programs. Formerly known as the Section 8 Voucher Reform Act (SEVRA), a draft bill now known as the Section 8 Savings Act (SESA) contains these changes and has received a hearing in the House in mid-2011. Enactment would bring significant changes for some tenants' rent calculations.