Now & Next

Affordable Housing Alert

March 19, 2024

Congress authorizes decoupling for 1,000 units of Rural Development subsidy

By **Rebecca B. Simon, Chaundi Randolph, and David Hornstein**

The decoupling pilot program will allow Rural Development to save existing rental assistance from termination.

What's the impact?

- Any Section 521 rental assistance currently assisting tenants at properties with Rural Development loans will terminate upon maturity of the associated Rural Development debt.
- Congress has authorized Rural Development to extend rental assistance for up to 1,000 units after maturity of the Rural Development loan.
- Rural Development is required to have strong stakeholder engagement and monthly reporting to Congress as it implements this program.

On March 10, 2024, President Biden signed into law an Appropriations Bill (Appropriations Bill) for the United States Department of Agriculture (USDA) and several other federal agencies. Included in that Appropriations Bill is $1,608 billion for Section 521 rental assistance to assist residents living at properties with USDA Rural Development (RD or Rural Development) loans. However, many of the RD Section 515 loans are nearing maturity. Typically, upon maturity of a Section 515 loan, any existing Section 521 rental assistance that also assists the property automatically terminates.

The Appropriations Bill authorizes a pilot program (the Pilot) that will enable Rural Development to preserve Section 521 rental assistance at properties past the maturity of their RD loans. This decoupling of the Section 515 loans from the Section 521 rental assistance, will allow Rural Development to create standalone Section 521 project-based rental assistance contracts.

Currently Section 515 loan maturity impacts more than 1,500 units annually, and by 2030 that number will increase significantly to more than 10,000 units annually. The Pilot will facilitate continued rental assistance for up to 1,000 existing units leaving the USDA loan program.

Eligible Units for Decoupling

Congress authorized RD to renew rental assistance agreements where it determines it cannot reasonably restructure or modify the USDA loan affiliated with the property. The loan must be maturing for the property to qualify for the Pilot.

Decoupled Renewal Contracts

Assistance contracts renewed under this pilot will be extended for at least ten (10) years but not more than twenty (20) years. The owner of the property with the rental assistance will be required to continue to operate the property in decent, safe, and sanitary condition. Rents will be set based on Fair Market Rents (FMR) determined by the US Department of Housing and Urban Development (HUD) and adjusted annually by the Operating Cost Adjustment Factor (OCAF). RD may also authorize budget-based rents on an as-needed basis.

Stakeholder Input

Congress released Congressional Directives along with the Appropriations Bill that comment on the intent of the legislative language. In those notes, Congress specifies that Rural Development must gather strong stakeholder input to the Pilot. Rural Development must also report back to Congress monthly on its progress on the Pilot.

Next steps for Decoupling

The decoupling Pilot program is an exciting start to preserving Section 521 rental assistance. The Affordable Housing Team at Nixon Peabody will be working with stakeholders in the industry, including the Council for Affordable and Rural Housing, to provide support and feedback to RD as the Pilot is developed and implemented.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

Rebecca B. Simon
202.227.7244
rbsimon@nixonpeabody.com

Chaundi S. Randolph
202.585.8830
crandolph@nixonpeabody.com

David M. Hornstein
202.585.8316
dhornstein@nixonpeabody.com

NIXON PEABODY