

NATIONAL RURAL HOUSING COALITION

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Executive Secretary

National Rural Housing Coalition

Regulatory Comment On USDA Rural Housing Service Proposed Rule

Civil Monetary Penalties 7 CFR Part 3560

RIN 0575AC93 (FR Vol. 78, No. 3, Friday, January 4, 2013)

January 31, 2013

On behalf of the National Rural Housing Coalition (NRHC), I would like to thank you for the opportunity to submit regulatory comment on the U.S. Department of Agriculture (USDA) Rural Housing Service Proposed Rule on Civil Monetary Penalties, as published in Federal Register Volume 78, Number 3, on Friday, January 4, 2013.

NRHC is a national membership organization consisting of housing developers, non-profit housing organizations, state and local officials, and housing advocates. Since 1969, NRHC has promoted and defended the principle that rural people have the right, regardless of income, to a decent, affordable place to live, clean water, and basic community services.

While NRHC fully supports USDA's ability to impose civil monetary penalties against individuals and entities that make or submit false, fictitious, or fraudulent claims or statements, we remain concerned about some provisions that are (1) may have an undue negative impact on nonprofit affordable housing organizations and (2) too vague to provide sufficient notice to participants. We ask the agency to amend the proposed rule to ensure that nonprofit organizations are not unfairly impacted by this proposed rule and to include clearer standards.

Impact on Nonprofit Housing Organizations

NRHC is concerned that the proposed rule (1) does not expressly exempt nonprofit successor owners from being held liable for a predecessor owner's violations, and (2) does not expressly provide a grace period for nonprofit organizations to allow them to bring the properties up to the proper condition.

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Nonprofit housing organizations play an important role in expanding access to safe, decent, affordable housing for low-income families in rural America. In addition to planning, developing, financing, and building affordable housing, many nonprofit housing organizations, including NRHC members, work to preserve affordable housing stock. Preservation is an important strategy for continuing access to affordable housing.

An increasing number of nonprofits are working with owners of Section 515 properties to transfer ownership to the organization. At the time of transfer, owners may, in fact, be liable for civil penalties under the proposed rule. For example, an owner may be liable for violating Section 3560.464(a)(4) for “failing to maintain the property...in good repair and condition...”ⁱ or “failing to provide management” for the property, as required under Section 3560.464(a)(5).

To ensure that nonprofit housing organizations are not discouraged from preserving affordable housing properties, NRHC strongly recommends that USDA amend its proposed rule to expressly hold that nonprofit housing organizations may not held liable for the violations of previous owners and to provide a minimum grace period of at least 24 months to allow them to bring the properties up to the proper condition. Nonprofit housing organization work to preserve affordable housing units precisely because they want to ensure that the property is maintained in good condition and is made available to low-income residents. As it is currently written, however, the proposed rule may have a chilling effect on affordable housing preservation efforts.

Vagueness

Section 3560.464(a) of the Proposed Rule sets forth some, but not all, actions that may result in the imposition of civil monetary penalties. However, the actions listed in Subsection (3) and (4) are far too vague to provide participants with sufficient understanding of what specific conduct on their part will render them liable.ⁱⁱ

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For example, Section 3560.464(a)(3) allows USDA to seek civil monetary penalties for “failing to submit information requested by the Agency in a timely manner.”ⁱⁱⁱ However, the proposed rule provides no guidance on what is considered to be “a timely manner.” It is unclear whether this provision would apply only to the failure to meet a deadline agreed upon in a contract or grant, or whether it would apply to all requests for information, regardless of whether any deadlines were agreed to in any contact. In addition, the provision is unclear as to whether it applies to deadlines that were missed by only a few hours, or deadlines that have been missed by a week, month, or several months.

Likewise, Section 3560.464(a)(4) allows USDA to seek civil monetary penalties for “failing to maintain the property...in good repair and condition, as determined by the Agency.”^{iv} However, it is unclear as to what standard will be used to determine whether property is in “good condition.”

Because the provisions are unclear, many participants will have a very different understanding of what is required of them. In addition, unclear language may lead to arbitrary enforcement. As such, NRHC recommends that the agency add clearer guidance on this proposed provisions.

ⁱ Federal Register Volume 78, Number 3, Friday, January 4, 2013, page 673.

ⁱⁱ Federal Register Volume 78, Number 3, Friday, January 4, 2013, page 673.

ⁱⁱⁱ Federal Register Volume 78, Number 3, Friday, January 4, 2013, page 673.

^{iv} Federal Register Volume 78, Number 3, Friday, January 4, 2013, page 673.