December 22, 2023

VIA E-MAIL: (michael.resnik@usda.gov)

Michael Resnik
Director of Multi-Family Housing, Asset Management Division
Rural Development, Rural Housing Service
United States Department of Agriculture
1400 Independence Avenue, SW
Room 5014, STOP 0701
Washington, DC 20250-0701

Re: Response to Proposed Rule on Insurance Requirements in Multifamily Housing

Dear Mr. Resnik:

The undersigned organizations representing participants in the affordable and conventional multifamily housing industry, including owners, developers, managers, and lenders are pleased to submit comments on the proposed rule entitled "Insurance Requirements in Multi-Family Housing Direct Loan and Grant Programs" issued by the Rural Housing Service ("RHS") on October 25, 2023 (the "Proposed Rule"). Members of the undersigned organizations work closely with RHS to ensure that the residents of affordable rural housing live in safe and sanitary housing that is adequately protected by insurance policies that make sense and offer good value to allow the owners to operate the properties.

In previous correspondence with RHS, the Council for Affordable and Rural Housing ("CARH") communicated the need for an update to RHS insurance requirements to allow for higher deductibles in order to counter or mitigate the increases in rates seen across the insurance industry. CARH suggested a waiver of certain insurance deductible limits until the Federal Rate drops below 2.5%, subject to the owner maintaining documentation that it inquired of at least three insurance companies. We were happy to see RHS confirm that owners can raise their deductible limits about the maximum amount required by regulation, as long as the deductible amount above the maximum is deposited and maintained in the project reserve account.

We appreciate the opportunity to now offer comments to the Proposed Rule. Please see below for our comments. Our members would be happy to discuss any of these comments if further clarification is needed.

Proposed Rule: 7 CFR 3560.105(f)(1)(i) – The Proposed Rule updates the list of required hazard insurance to include windstorm coverage.

Comment: Windstorm coverage is cost prohibitive in many areas of the country. In many cases, owners are opting to self-insure with funds set aside in reserve rather than buy this type of coverage. The costs have risen dramatically over the past three years, particularly for coastal properties. For example, one portfolio of seven coastal Rural Development properties in Alabama and Florida purchased wind coverage for all seven properties for $70,000 in 2021 and $77,000 in 2022. The quotes received in 2023 included one quote for $250,000 for the seven properties and $48,000 for just two of the properties.

Additionally, owners are not receiving approval for rent increases to offset these dramatic increases. While some RHS offices are considering and approving at least some increase to account for insurance costs, other offices are not. For example, at one Alabama property, the cost of insurance with wind coverage increased from $9,751 in 2021 to $10,876 in 2022 to $63,464 in 2023. That is an 11% increase from 2021 to 2022 and a 583% increase from 2022 to 2023. The property did receive a rent increase of $354/unit in 2023, however, even that was insufficient to offset the dramatic increase in insurance.

We request that RHS consider alternative language that will allow owners to opt out of windstorm coverage where the cost is prohibitive and rents are unable to meet costs.

Proposed Rule: 7 CFR 3560.105(f)(9)(i)(A) – The Proposed Rule sets "not to exceed" deductible limits for hazard, property, and other coverage types to a $10,000 limit for projects with less than $1M of coverage, a $25,000 limit for projects with $1M-$2M of coverage, and a $50,000 limit for projects with $2M+ of coverage.

Comment: We appreciate the attempt to streamline the deductible requirements across coverage types, however, we are concerned about the inclusion of windstorm in the same category as hazard coverage. In particular, with coverage like windstorm that varies widely based on geographical location, the coverage is often based on a percentage of the building and may conflict with these blanket requirements.

Overall Comments:

Waiver during times of high interest rates: We again suggest that RHS consider implementing a waiver of certain insurance deductible limits during times of increased rates by the Federal Reserve, to allow owners relief until rates stabilize and fall. As you know, we are experiencing historically high interest rates. This coupled with inflation has caused dramatic price increases across the real estate market. In an effort to acknowledge and combat the impacts of these conditions, we encourage RHS to consider allowing a waiver of certain deductible limits while the Federal Reserve rate remains above 2.5%.

Consideration for alternative approach that moves with the market: We are pleased to see RHS raising deductible limits. The dollar requirements historically have not kept pace with market costs, and we expect that will occur once more in the years to come. We encourage RHS to explore alternative limit structures that do not require a firm dollar amount and offer flexibility to owners as costs change annually.

Use of reserve accounts as escrow for insurance costs: Many owners are exploring alternative strategies to mitigate insurance costs, including the use of project reserve accounts to hold funds that could be used to offset or prevent claims. Allowing for a set aside in the reserves for insurance costs will allow owners to work with their insurers to mitigate costs. This approach, however, is currently being partially negated by a new requirement that purchasers are seeing from RHS that compels new owners to pay a full year of insurance premiums at the time of purchase. We encourage RHS to work with owners to understand how the use of reserves may be allowable under RHS rules to help mitigate insurance costs and at the same time purchasers can work with RHS to ensure that new requirements in Letters of Condition do not counter the progress of using reserves to mitigate insurance costs.

These policies should apply to all RHS programs: The guaranteed loan programs of the Rural Housing Service also provide significant benefit in providing safe and decent housing in rural communities. We would urge RHS to include both direct and guaranteed loan programs in these updated requirements.

Thank you for considering our comments to the Proposed Rule. We understand the Agency has had a very busy year, and we greatly appreciate the work of you and your staff. Please contact Colleen M. Fisher, Executive Director of CARH (cfisher@carh.org) with any questions related to these comments.

Sincerely,

Council for Affordable and Rural Housing
Institute of Real Estate Management
Mortgage Bankers Association
National Apartment Association
National Association of Home Builders
National Affordable Housing Management Association
National Leased Housing Association
National Multifamily Housing Council

cc:
Angilla Denton, Deputy Administrator, Multifamily Housing, Rural Development
Karissa Stiers, Assistant Administrator, Multifamily Housing, Rural Development
Colleen M. Fisher, Executive Director of CARH
Rebecca B. Simon, Esq., Nixon Peabody LLP