Western
Manufactured Housing Communities
Association

August 8, 2022

Sandra L. Thompson
Commissioner
Federal Housing Finance Agency
Constitution Center
400 7th St. SW
Washington, D.C. 20219

Jeffrey Hayward
Senior Vice President and Chief Administrative Officer
Fannie Mae
Midtown Center
1100 15th St. NW
Washington, DC 20005

Deborah Jenkins
Executive Vice President and Head of Multifamily Business
Freddie Mac
8200 Jones Branch Drive
McLean, VA 22102-3110

Re: Manufactured Housing Community Tenant Lease Protections ("TLPs") in California

Dear Ms. Thompson, Mr. Hayward, and Ms. Jenkins:

Western Manufactured Housing Communities Association ("WMA") is a non-profit trade association that represents the interests of owners and operators of manufactured housing community ("MHCs) in California. Our members own or operate approximately 1,599 communities in the State containing over 184,607 sites. We focus our efforts on legislative and legal issues related to MHCs and we provide regular written, electronic, and in-person communications with our members to advise about, and respond to, current issues.

We understand that your Agency, Fannie Mae, and Freddie Mac recently held a listening session on this topic and heard from a number of industry participants. In particular, we call your attention to the comments made by Cabrillo Management at this listening session (copy attached). We join in and support these comments. It should be clear from the comments made by Manufactured Housing Communities of Arizona (MHCA), Cabrillo Management and other owners and operators of manufactured housing communities, that imposing a mandatory "one size fits all" set of TLPs is extremely problematic, especially in highly regulated states such as California.

455 Capitol Mall, Suite 800, Sacramento, CA 95814
phone 916.448.7002 | **fax** 916.448.7085 | **web** www.wma.org

We are not opposed to tenant protections; but we believe the TLPs are difficult to reconcile with California law. California has adopted a comprehensive state law that regulates the landlord tenant relationship in MHCs (see Section 798 et seq of the California Civil Code which is referred to as the Mobilehome Residency Law or "MRL"). A copy of the MRL is enclosed for your reference. The MRL is comprehensive, complex, lengthy and provides extensive tenant protections unique to California law. The MRL regulates lease terms, assignability of leases, notice of rent increases, notice of default and cure rights, eviction rights (and limits eviction unless cause is shown), right to sell the home in place, right to place "for sale" signs, required notices upon sale of a community or conversion to another use and many other areas of the landlord-tenant relationship. As you can see, the MRL is 26 pages long, when printed single space.

The TLPs do not take into account conflicts, contradictions, and overlaps with the MRL. We understand that you intend the TLPs to be "additive" and not duplicative of state law, but not all of the TLPs are objective in nature, thus leading to legal risk for borrowers. As one example only, how would your Agency, Fannie Mae and Freddie Mac reconcile the TLP requirement of a one-year renewing lease with MRL Section 798.18(a) and (c)?

Providing an addendum with provisions that differ from California law leaves borrowers exposed to tenant lawsuits and damages under the MRL. Section 798.19 expressly provides that no rights under the MRL may be waived by tenants and Sections 798.85 and 798.86 exposes operators to attorneys' fees and costs, statutory penalties, and even punitive damages.

We respectfully suggest that you adopt several alternatives that do not sacrifice tenant protections: (a) rely on a borrower covenant to "comply with state laws" in states like California that have adopted comprehensive regulations; (b) work with local counsel knowledgeable in representing borrowers in California to draft a state specific TLP addendum that does not conflict with state law and takes state law into account; or (c) revert to the earlier requirement where TLPs were optional which would allow park owners access to financing without the legal risk of the conflicting TLPs.

Thank you for your consideration.

Sincerely,

Doug Johnson
Executive Director

cc: Lesli Gooch, CEO, MHI

Thank you for the opportunity to speak today. My name is Steven Martini and I am a Principal of Cabrillo Management. We own and operate MH communities in 5 states, primarily in California.

We call your attention to and incorporate by reference previous comments dated July 15, 2021, which we submitted to FHFA in connection with a prior request for comments on the tenant protections.

Today my comments will focus on why the required tenant protections are a disincentive to seeking enterprise financing particularly in California. California has adopted its own comprehensive regulation of manufactured home communities - the Mobilehome Residency Law or MRL and is found at Civil Code Section 798 et seq.

The MRL contains more than 25 pages of tenant protections and disclosures and creates a regulatory tightrope for operators. Creating a federal overlay not only contradicts California law, creates confusion for tenants, but also elevates the risk to operators. This increased legal risk is a disincentive to taking GSE financing at any price because the fines and penalties created by the MRL for any violation are severe. We believe the GSE function is to support affordable housing and encourage capital for our communities. The TLPs do the opposite.

My comments focus on the protections found in the MRL in California and I will provide you a citation to each provision of California law that conflicts with or overlaps with each Tenant Protection. To meet time constraints, I will not elaborate on each protection, but would be available to provide further detail upon request.

1. The GSE's require a one-year renewable lease unless there is good cause for non-renewal. This conflicts with MRL Section 798.18(a) which requires us to offer both 12-month leases and leases of a lesser period, including month to month. The MRL also disfavors leases that automatically renew– see Section 798.18(c). The MRL also prohibits tenants from waiving any of their rights under the MRL. See Section 798.19.
2. MRL Section 798.30 requires 90 days' notice of rent increase. The GSEs require 30. Merely providing California homeowners with a document that does not reference their right to 90 days' notice puts the borrower at risk for a class action lawsuit based on a violation of the MRL.

3. The TLPs require 5 days grace period and right to cure defaults. MRL section 798.56(e)(1) provides that a tenancy may not be terminated unless rent is past due for 5 days and the tenant has been given a 3-day notice to pay or quit. As with most states, grace periods, cure rights and notices are a function of state law.
4. MRL section 798.73 prohibits management from requiring a home to be removed from the property upon sale except that management may require removal where the home does not meet certain age and quality standards.
5. Similarly, the MRL regulates subleasing by specifying certain cases in which management must allow subleasing (such as medical emergency) and otherwise DOES NOT limit landlord's right to restrict subleasing. Homeowners in California have no need to assume remaining periods of a lease because management is required to offer them a new lease. See MRL Sections 798.23 with respect to subleasing and 798.18 with respect to required leases.
6. Civil Code Section 798.70 governs the right to post for sale signs.
7. Civil Code Sections 798.55 and 56 provide extensive explanation of the rights of tenants in the eviction process including the right to sell the home or remove it from the property during a period 60 days BEFORE eviction. Following eviction, possession of the site has been returned to the landlord.
8. Finally, section 798.80 and 798.56(g) provide extensive rights to the tenant in the event of sale of the park or planned closure or conversion to another use.

Section 798.86 governs penalties available to homeowners in the event of landlord's default under the MRL. For example, in addition to damages provided by law, a tenant may be awarded either punitive damages or $2000 for each willful violation.

As I have demonstrated, California law covers 100% of the identified protections. We respectfully suggest that the contradictory and duplicative TLPs should be specifically tailored or even eliminated in California and other highly regulated states since tenants are more than adequately protected by state law and unlike the TLPs, state law addresses landlord rights when necessary to protect our interests. The one-size fits all approach does not work.

It is not enough to provide that state law governs if it is more protective because this can be a matter of judgment (for example, which is more protective or favorable – a one year renewing lease or a month to month that may only be terminated with cause? Who decides?).

Thank you for your time.