The Real Estate Roundtable

July 28, 2023

Ms. Sandra L. Thompson
Director
The Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20219

Dear Director Thompson:

The Real Estate Roundtable[1] (www.rer.org) is pleased to provide comments to you in response to the Federal Housing Finance Agency's 30 May 2023 *Request for Input* (RFI) regarding "issues faced by tenants in multifamily properties, and on any opportunities and potential impacts associated with requiring or encouraging specific tenant protections at multifamily properties backed by Fannie Mae and Freddie Mac."

The Federal Housing Finance Agency (FHFA) plays a pivotal role in America's housing finance market by maintaining Enterprise[2] support of the multifamily affordable housing market, particularly for low-income households. As described herein, it is vital that FHFA remain focused on the Enterprises stated mission which is, "to serve as a reliable source of liquidity and funding for housing finance and community investment." This focus is crucial in providing financial support and liquidity to housing providers so that existing units may be maintained and new units constructed.

The United States faces a severe housing shortfall, exacerbating a scarcity of affordable housing and impeding economic vitality across the economic spectrum. Further complicating this chronic housing shortage, rising interest rates have stalled new construction. To help remedy this, we are pleased to offer policy recommendations of regulatory and legislative measures to help address this problem. We concur with the President's statement that "the best thing we can do to ease the burden of housing costs is to boost the supply of quality housing."[3]

A well-functioning housing sector is critical to the overall health of the economy. So, expanding the supply of housing – across the geographic and economic spectrum – is essential for the economic vitality of the nation.

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[1] The Real Estate Roundtable and its members lead an industry that generates more than 20 percent of America's gross national product, employs more than 9 million people, and produces nearly two-thirds of the taxes raised by local governments for essential public services. Our members are senior real estate industry executives from the U.S.'s leading income-producing real property owners, managers and investors; the elected heads of America's leading real estate trade organizations; as well as the key executives of the major financial services companies involved in financing, securitizing, or investing in income-producing properties.
[2] Fannie Mae and Freddie Mac (the Enterprises) were created by Congress to provide stability and liquidity in the secondary housing finance market.
[3] The President's Plan on Affordable Housing.

To this end, we are pleased to offer our assistance to make such plan most impactful for the nation. With appropriate regulatory relief and incentives, the real estate industry can not only help to expand the supply of housing broadly but also enhance the scale of affordable housing for Americans who need it most.

The Roundtable has long recognized that safe, decent, and affordable housing is essential to the well-being of America's families, communities, and businesses. While there is no single, best solution to promote housing affordability and increase housing supply, our advocacy has traditionally endorsed federal policies aimed at increasing affordable housing supplies, such as enhancing the Low-Income Housing Tax Credit; preserving the mortgage interest deduction; stabilizing the Enterprises to ensure appropriate liquidity in mortgage markets; and expanding HUD section 8 housing choice vouchers (both in terms of funding and who qualifies).

The COVID-19 pandemic intensified the nation's persistent housing crisis, prompting The Roundtable to mobilize with our national real estate organization partners and jointly advocate for policies that increase housing supplies to serve the causes of equity, resiliency, job growth, and modernizing our nation's critical infrastructure.

Expanding the supply and availability of affordable housing deserves a coordinated local, state, and national policy action plan. Local zoning restrictions, permitting issues, and the oversized influence of NIMBYs—coupled with high and now significantly rising labor and material costs—are the true factors limiting housing supply, and in turn, increasing housing costs.

Institutional investors are an important source of capital for housing, and, as such, they are uniquely positioned to work with the government to help meet the needs of their tenants. Importantly, institutional rental housing owners are typically long term investors; they will not only undertake the development of new units but ensure that the asset is maintained as affordable housing for the long term.

Also, institutional owners have capital to invest to improve maintenance, add amenities; improve services (improve resident quality of life, encourage social engagement and promote healthy and active living). They also bring professional management, experience in compliance and best practices.

Finally, institutional owners of rental housing have demonstrated a commitment to assist residents on their path to homeownership by offering a range of credit-building services, including: reporting on-time rent payments, providing access to financial literacy programs, and, in some cases, offering down payment assistance. So, it is critical that the government not impose disincentives for this important source of capital for housing.

Critical to Expand the Supply of Housing

We fundamentally agree with the President's Affordable Housing Plan's assertion that the primary impediment to solving the affordable housing crisis is a lack of supply, and we support all initiatives that will increase that supply over the long term. We reiterate that appropriate regulatory relief and incentives are necessary to improve current housing conditions and that additional regulatory burden will have the opposite effect. As such, here are the areas that we support:

- <u>Reduce Exclusionary Zoning</u>. Federal incentives to local jurisdictions that reform their zoning and entitlement process to allow more affordable housing.

- Increased Affordable Housing Financing. Expansion both by type and amount of federally backed financing for different forms of affordable housing.

- Reduce Housing Construction Costs. Improvements to the supply chain to ensure that materials are delivered more rapidly to housing construction and initiatives that support the building of less expensive forms of affordable housing including manufactured housing.

- Tying "S" to "E". We support initiatives that explicitly tie federal funding of infrastructure and other federal funding for "green" initiatives to local assurances to improve exclusionary zoning and other impediments to building more affordable housing.

- Reducing Regulatory Costs. Multifamily housing development can be subject to a significant array of regulatory costs, including a broad range of fees, standards and other requirements imposed at different stages of the development and construction process. According to research by the National Association of Home Builders (NAHB) and the National Multifamily Housing Council (NMHC), regulation imposed by all levels of government accounts for an average of 40.6 percent of multifamily development costs. Reducing these costs is essential to expanding housing supply.

Importance of Enterprise Capital Availability

Many factors influence the ability of the multifamily housing industry to meet the nation's growing demand for rental housing, but the availability of consistently reliable and competitively priced capital is the most essential.

The Enterprises' multifamily programs serve a critical public policy role and ensure that multifamily capital is available in all markets at all times, so that multifamily housing providers, can address the broad range of America's housing needs from coast to coast and everywhere in between.

We have seen evidence of the negative impact of current market conditions on multifamily housing finance and development—causing many in our industry to cut back significantly on new apartment construction. The actions contemplated in this RFI would impose confusion in the market and increase market uncertainty. This in turn would deter much-needed investment in housing supply and increase costs for housing providers and residents alike.

Rental Housing is Largely a State and Local Issue

The relationships between multifamily housing providers and residents, the communities our members serve, and the broader housing market are governed by layers of federal, state and local statutes, case law, regulations, and private contractual agreements—all providing specific rights and responsibilities. This includes building codes; required lease terms and conditions; contractual notices and disclosures; fair housing; eviction processes and protections; consumer reporting and debt collection laws; and enforcement provisions to guard against fraud and abuse. Lease agreements outline the rights and responsibilities between residents and housing providers and are enforced by state and local courts.

Given that our members' policies and operations are largely governed by state and local laws and regulations based on local real estate market conditions, any one-size-fits-all new "protections" will undoubtedly lead to misaligned requirements that do not account for the unique housing needs of each of the communities our members serve, nor other communities in dire need of affordable housing opportunities. Moreover, increased regulatory burden is a direct disincentive to housing production and is therefore counter-productive to the desired goal of increasing affordable housing units.

For example, federal law requires affordable housing developments that receive low-income housing tax credits (LIHTC) receive 50% of their financing from state allocated private activity bonds (PABs). For many states, including Texas, bond volume cap is oversubscribed and the ability to issue bonds for affordable housing is limited by competing policy priorities like infrastructure and education. The Affordable Housing Tax Credit Coalition estimates that lowering the bond threshold from 50% to 25% alone, could result in 1.5 million new affordable housing units built over the next 10 years.

The wide variation in state policies on the landlord/tenant relationship create significant challenges in overlaying a uniform set of additional (or potentially conflicting) tenant protections. State and local courts enforcing the provisions of leases will look to the governing law to determine compliance.

Rent Control and Other Price Control Measures Have Been Repeatedly Proven to Limit the Supply of Rental Housing and Increase Costs

While well-intentioned, rent control does not aid in the expansion of housing supply**.** In fact, rent control creates a disincentive for investment in and development of housing stock. As such, rent control is not a solution – in the near or long term – and it cannot solve the challenges of expanding the supply of affordable housing. Rent control research[4], however, has proven repeatedly that rent control is a failed policy that does nothing to get at the root of the challenge—our nation's lack of supply.While rent control purports to improve housing affordability, it has exactly the opposite outcome and leads to increased costs and a reduction in the available supply of rental housing. . In fact, despite having the greatest rent regulations in-place, cities like New York City, San Francisco, and Los Angeles have the most limited new supply and greatest affordability challenges.

As policymakers contemplate imposing property operating restrictions – such as rent control – on Enterprise financing, such restrictions are not only counterproductive to increasing housing supply but will only lead to higher rent inflation as capital is diverted away from highly regulated housing and invested in other places. As such, we caution against any FHFA efforts that could limit broader housing availability and affordability goals, especially at this time of market uncertainty. FHFA should avoid any type of rent regulations, including rent control (and to be clear, rent stabilization is rent control), or pricing policies as they would harm national affordability goals by deterring investment in much needed housing production, including investment in the Enterprises' backed secondary mortgage market.

It is vital that FHFA remain focused on the Enterprises stated mission which is, "to serve as a reliable source of liquidity and funding for housing finance and community investment." To this end, policies should encourage investment in housing and not be a disincentive to investment in housing.

Federal Policies Should Target the Root Causes of Eviction, As It Is Almost Always a Last Resort

Evictions are a troubling experience for all parties involved, thus it is a last resort for us as housing providers. Private, public and non-profit rental housing providers engage in the eviction process as their only legal remedy to remove a resident who has breached the lease. While most evictions are premised on

[4] The Impacts of Rent Control: A Research Review and Synthesis, Lisa Sturtevant, Ph.D., May 02, 2018, https://www.nmhc.org/globalassets/knowledge-library/rent-control-literature-review-final2.pdf

non-payment of rent, other causes include lease violations, fraud during the application process and other criminal activities..

Eviction is not a positive outcome for a housing provider as it results in lost rent, high turn costs and costs related to finding another tenant. In cases where a good tenant finds themselves in a bad situation, our members generally seek to mitigate evictions, most often by working with affected residents on payment plans and connecting them with social services. For example, during the pandemic, institutional owners offered payment plans and others took additional steps such as deferring and waiving rent and fees to mitigate eviction filings. However, leaving non-paying or otherwise non-compliant tenants in place not only hurts the housing provider, it may negatively impact other residents if non-compliance threatens health and safety or involves criminal behavior, but also eliminates the unit's availability for a tenant who has the means to pay and who will comply with the lease. Thus, allowing the eviction process to run its course as governed by state law is often the best outcome for all involved.

It is important to note that institutional owners of multifamily (and in the market generally) have a very low eviction rates.

Conclusion

We share the Administration's commitment to addressing the affordable housing crisis in our nation. However, imposing additional obligations for Enterprise multifamily borrowers will create instability in an already challenged market and undermine the important goals of fostering a healthy housing market, increasing supply and creating successful apartment communities. Inherent in ensuring stability for our nation's renters, is maintaining the current and future viability of the rental housing supply in this country.

As such, we respectfully encourage the FHFA to refrain from placing new or expanded federal obligations on private rental housing providers and instead focus on leveraging federal resources in the form of incentives to bolster new affordable housing supply.

Sincerely,

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President & Chief Executive Officer

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