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MORTGAGE BANKERS ASSOCIATION

July 31, 2023

The Honorable Sandra Thompson
Director
Federal Housing Finance Agency
400 7th Street, S.W.
Washington, D.C. 20219

RE: Tenant Protections for Enterprise-Backed Multifamily Properties – Request for Input (RFI)

Dear Director Thompson:

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to provide comments and recommendations on the impact of requiring additional enhancements for tenants at Enterprise-backed multifamily properties. The MBA thanks FHFA for its commitment to working with the industry on this issue and remaining open to receiving feedback from a variety of stakeholders.

The MBA agrees with FHFA that every renter deserves a safe, healthy and affordable place to live, but our members have significant concern with including additional enhancements for tenants – on top of the vast web of local, state and federal tenant protections - as part of the Enterprise multifamily programs for the following reasons:

- Lenders and servicers do not have a direct connection with tenants or the ability to monitor and report on the landlord/tenant relationship. The loan is serviced on behalf of the borrower. The landlord/tenant relationship is sacrosanct, and unrelated to commercial mortgage servicing.

- Involving the mortgage lender and/or servicer and attaching any additional enhancements for tenants to an Enterprise guaranteed mortgage is not a workable or lasting solution as the loan will pay off, often in 5 years or less, and those covenants and agreements will terminate with the mortgage. Furthermore, any enhancement would be within a contract that the renter never reviewed, provided input on, or signed.

- Enacting new or expanded obligations, like rent control, would disincentivize participation in the Enterprise multifamily programs or in the overall production of affordable housing. The most effective way to help renters in need is to increase the supply of affordable housing by fully funding successful, proven programs like Section 8, Low-Income Housing Tax Credits and more.

[1]The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 400,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

In addition, any new enhancements for renters through the Enterprise programs would only be applicable to a specific universe of properties (those with Enterprise loans) as opposed to all multifamily properties. Further, the implementation of such enhancements would effectively reduce the size of that universe by making Enterprise loans unattractive as the loans would become more cumbersome and intrusive, impose increased obligations compared to other financing sources, and become more expensive given the cost of staffing and systems required to monitor and enforce these new requirements.

Role of Mortgage Lenders and Servicers

As the Biden Administration works to improve the renter experience, tying any kind of additional enhancements for tenants to an Enterprise multifamily loan would create an unworkable approach. Any enhancements for tenants, covenants or requirements that are tied to an Enterprise-guaranteed mortgage will expire at loan payoff and would create a disservice to any tenant remaining in the property. Enterprise multifamily loans can have terms as low as five years with a balloon payment at maturity and often pay off before the end of the term. Tenants are currently protected and served by a multitude of federal, state and local laws that work together to create a well-established and everlasting framework.

Also, as stated in the RFI, the Enterprises do not own or manage multifamily properties and have limited ability to have a direct impact on the lives of tenants, but this is also true of the lenders and servicers. Lenders work directly with the borrower, who is often the developer and/or owner of the property, but have no interaction with tenants or day to day operations at a property. Lenders and servicers should not be required to police, collect data or report on compliance of owner/operators with any kind of enhancements for tenants. Trying to build a system in which lenders/servicers are responsible for identifying and enforcing tenant-related activities, and using a mortgage default as the enforcement mechanism, is not a workable approach as non-monetary defaults can often be difficult to enforce from a practical and legal perspective.

Affordable Housing Supply, not Rent Control, is the Answer

The Administration's announcement on new actions to better protect renters tasked FHFA with examining limits on "egregious rent increases" in the GSE programs.[2] To better serve tenants, more affordable housing is needed, and rent control has been proven to reduce both the supply and the overall health of affordable rental housing.[3] Implementing rent control in the GSE multifamily programs would cease the financing of affordable rental housing through the GSE platform and exacerbate the lack of supply of affordable rental housing. Rent control runs completely counter to the White House's Housing Supply Action Plan, which stated that "President Biden believes the best thing we can do to ease the burden of housing costs is to boost the supply of quality housing."[4]

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[2] Fact Sheet: Biden-Harris Administration Announces New Actions to Protect Renters and Promote Rental Affordability at: FACT SHEET: Biden-Harris Administration Announces New Actions to Protect Renters and Promote Rental Affordability - The White House

[3] The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco by National Bureau of Economic Research at: https://www.nber.org/system/files/working_papers/w24181/w24181.pdf

[4] President Biden Announces New Actions to Ease the Burden of Housing Costs at: https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/16/president-biden-announces-new-actions-to-ease-the-burden-of-housing-costs/

An example of rent control significantly reducing housing supply was recently seen in St. Paul, Minnesota. In November 2021, voters in St. Paul passed a rent control measure capping annual rent increases at 3%. As a result, according to HUD data, residential building permits decreased by approximately 50% from 2021 to 2022, the year following passing of the rent control measure.[5] Alternatively, during that same period from 2021 to 2022, Minneapolis, MN saw an increase in residential building permits by approximately 15%[6]. Even with major enhancements/amendments to the program, St. Paul is still hampered by a severe lack of supply of affordable rental housing.

There are several alternatives to rent control for the federal government to consider:

- Expansion of LIHTC – as outlined in the introduction of the Affordable Housing Credit Improvement Act (S. 1557 and H.R. 3238):
    - Increase Housing Credit allocations by restoring the 12.5 percent cap increase that expired in 2021 and further increasing resources by 50 percent to help meet the vast and growing need for affordable housing.
    - Allow states to maximize affordable housing production and preservation by lowering the threshold of Private Activity Bond financing — from 50 to 25 percent — required to trigger the maximum amount of 4 percent;
- Yes in My Back Yard or "YIMBY" legislation which provides the federal government tools to encourage localities to remove harmful land use regulations; and
- Increased funding for Housing Choice Vouchers.

Feedback on specific questions in the RFI

Question A-4: How might requiring tenant protections at Enterprise-backed multifamily properties impact housing supply, including new construction?

MBA Response: There are many well-established Federal, state and local laws in place to protect renters in times of need, including tenants of Enterprise-backed multifamily properties. Requiring additional requirements, like rent control, will disincentivize participation in the Enterprise programs, including the refinancing of construction loans, and significantly decrease affordable housing supply. Any restrictions should be structured so that there is some benefit to owners as opposed to only adding cost and reducing income.

Question A-5: Describe any gaps in available data that limit the ability to measure and assess the impact of various property management policies, procedures, and practices on tenants and the operations and finances of multifamily rental properties. How could such data gaps be addressed and what role might the Enterprises play?

MBA Response: Any additional data requirements related to the tenant experience cannot be fulfilled by the servicers of the mortgage. Servicers are in no position to police, collect data or report on

[5] See 2021 vs 2022 for St. Paul, Ramsey County, MN at: [SOCDS Building Permits Database (huduser.gov)]

[6] See id for Minneapolis, Hennepin County, MN.

property management policies, procedures, or practices as they do not have a direct connection to the tenant.

Question B-1: How might the Enterprises address barriers to multifamily tenants' access to housing?

MBA Response: The Enterprises should focus and build upon the programs they currently have in place through Duty to Serve, Equitable Housing Plans, and Housing Goals, particularly as it relates to increasing the supply of affordable housing.

As noted in the RFI, there are a number of programs the Enterprises currently have underway that are assisting renters and helping individuals and families gain better access to housing. Both Enterprises have developed programs to help renters establish, maintain, or improve their credit scores. When they pay rent on time, these positive rent payments can be reported to the credit bureaus to help build credit. Renters who understand their rights and have the ability to establish a credit history are much more likely to avoid evictions. Education and credit history building programs are two good ways to help renters stay in their homes.

There are also tools and resources that can help renters at risk for eviction, including access to housing counselors, tools for understanding lease agreements and advice on what to do after a disaster occurs. In the first three quarters of 2020, HUD's rental housing counseling program helped over 66,000 renters, of which over 11,000 avoided eviction and another 15,485 reported improved living conditions.[7] Rental housing counseling is also a simple and effective tool to help renters both understand their rights and find resources to help in times of need.

Also, per the Equitable Housing Plans, Fannie Mae plans to pilot options to defray or decrease the cost of renter security deposits, which can often be a significant barrier to accessing rental housing. The Enterprises can also continue to support expansion of Affordable Housing supply through housing goals, mission targets, Sponsor-Initiated Affordability (SIA), Expanded Housing Choice Initiative, expanded use of forward commitments, and Duty to Serve.

FHFA should also work with the Enterprises to explore various Fintech solutions that are designed to support renters and lower their risk of eviction. Through communication and education, the Enterprises can help owner/operators and tenants explore tools that provide benefits to the entire industry. One example is Stake,[8] which has a Return on Rent™ product that helps renters receive cash back rewards for paying rent. This product creates savings for renters and in some cases gives tenants their first bank account. Another example is WYL,[9] which crowd sources information and metrics about owner/operators and gives tenants the ability to review detailed information about properties and management companies.

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[7] Increasing Rental Housing Capacity and Awareness as a Prescription for Covid-19, Walsh, Berger and Radcliffe, Urban Institute at: Increasing Rental Counseling Capacity and Awareness as a Prescription for COVID-19 (urban.org)

[8] See Stake - Cash Back for Rent

[9] See WYL: Landlord Reviews | Renter Resources | Housing News

Question D-3 Please provide recommendations on possible requirements that could apply to each of the following, and/or examples of existing policies, including an assessment of the benefits and/or drawbacks: • Lease renewals, • Timing and amount of rent increases, • Upfront or ongoing fees, • Causes for eviction, • Notification of eviction actions, • Right to cure a cause for eviction, and • Time to vacate following eviction.

MBA Response: Lenders and servicers are not well situated to comment on possible requirements with respect to lease renewals, causes for eviction, notification of eviction, etc. because of their lack of involvement in the landlord/tenant relationship. However, with respect to requirements or restrictions on the timing and amount of rent increases, it is well established that any kind of rent control does not serve tenants in need and disincentivizes investment in affordable housing.

Question D-7: Should the Enterprises require borrower compliance with ongoing property maintenance after an initial inspection? What is a reasonable timeframe to provide unit maintenance and repairs?

MBA Response: The Enterprises currently have in place robust property inspection and quality standard requirements. Both Enterprises' loan agreements contain covenants that require that properties be managed and operated professionally, in accordance with law; be maintained in good repair; and provide a safe and lawful environment for tenants. Specifically,

- The borrower must keep the property in good repair and marketable condition with any repairs or improvements being completed in accordance with law and local building codes.
- The borrower cannot commit waste of the property, demolish, change or alter the property such that it disrupts tenant occupancy, or allow illegal activities to occur at the property.
- The borrower must comply with all laws, ordinances and regulations, including but not limited to, those pertaining to fair housing and anti-discrimination.

With respect to property inspections themselves, industry stakeholders, together with the Enterprises, have developed an agreed upon set of standards. All Enterprise-backed multifamily properties must utilize the MBA Standard Inspection Form,[10] and all inspectors must be certified and complete the MBA Inspection training course. If FHFA has concerns about safety and security at Enterprise-backed multifamily properties, the MBA encourages FHFA to work with lenders, servicers and borrowers to further evaluate possible enhancements to property inspections that include an examination of the security at these properties.

Conclusion

The Enterprise multifamily programs are critical to the health of the nation's rental housing market and the supply of housing for low-income individuals and families. It is important to ensure we have a liquid marketplace with ample supply and demand, as we know supply is severely lagging. We urge FHFA to

[10] See MBA Standard Inspection Form found at: MBA_Standard_Inspection_Form

refrain from enacting additional enhancements for tenants that may disincentivize participation in the Enterprise program.

Thank you in advance for your consideration of these comments. Should you have questions or wish to discuss further, please contact Stephanie Milner (smilner@mba.org) at (202) 557-2747.

Sincerely,

Mike Flood
Senior Vice President
Commercial/Multifamily Policy and Member Engagement