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To: Federal Housing Finance Agency Office of Multifamily Analytics and Policy

From: Falak Momin, Jacqueline Calvert, and Greg Zlotnick, Housing Rights Project,
Consumer Protection Clinic, St. Mary's University School of Law

Date: July 31, 2023

Re: Request for Input on Tenant Protections for Enterprise-Backed Multifamily Properties

The St. Mary University School of Law's Consumer Protection Clinic submits this Memorandum in response to the Federal Housing Finance Agency (FHFA)'s Request for Input on Tenant Protections for Enterprise-Backed Multifamily Properties.¹

The Consumer Protection Clinic is a part of the Center for Legal and Social Justice at St. Mary's Law. Our Clinic's Housing Rights Project provides multiple housing-focused services to our clients and the community in San Antonio, Texas. Law students, attorneys, and staff respond to hotline calls (mostly related to rent, mortgage, and title issues), represent clients in eviction cases at Justice of Peace courts, and educate the public on housing rights through outreach programs to the community.

Since July 2023, the Clinic has contracted with the City of San Antonio to provide services under HUD's Eviction Protection Grant Program. This focuses on rental housing

¹ The work that provided the basis for this publication was supported by funding under an award with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Government.

stability built upon the Clinic's efforts since the COVID-19 pandemic to reach area renters. Through its Housing Hotline, direct representation, and community education events, the Clinic's work has led Clinic students, attorneys, and staff to reach hundreds of area households facing the threat of eviction and homelessness. We and our colleagues have observed not only the challenges that renters living in enterprise-backed properties face, but also the opportunities available to the FHFA to use its regulatory authority to stabilize housing.

Some observations from clinic students in this program are outlined below. They are organized around topical areas in the RFI.

A. General Framework for Tenant Protections

FHFA is uniquely positioned to establish a nationwide baseline of protections for renters living at enterprise-backed properties. The continued success of the CARES Act demonstrates the viability for such nationwide safeguards. Beyond reaffirming the 30-day notice to vacate period the CARES Act codified, FHFA can use its regulatory authority to advance the following housing stabilization measures:

- Require enterprise-backed landlords to demonstrate cause to terminate or not renew leases. FHFA should adopt the standards found in 24 C.F.R. Part 982, governing leases with Housing Choice Voucher Program participants.
- Require landlords to allow tenants the opportunity to cure alleged defaults (whether nonpayment or lease violations) prior to filing eviction lawsuits.
- Require landlords to provide copies of notices to vacate to both tenants and FHFA, mirroring the standard in 24 C.F.R. Part 982 that requires landlords to send notices to vacate to public housing authorities that are delivered to tenants with Housing Choice Vouchers.

B. Removing Barriers to Fair, Affordable Rental Housing

In addition to continuing to underwrite the financing for affordable housing development, FHFA can expand tenants' access to affordable housing through the following steps:

- Require backed properties to not discriminate in the leasing and provision of housing on the basis of a tenant or prospective tenant's source of income. This includes, but is not limited to: Housing Choice Vouchers; public or private rental assistance; public or private relocation assistance; other public benefits; or the source of earned, gift or investment income.
- Require backed properties to waive application fees, risk fees, and any and all other upfront costs that may prevent families from obtaining housing.

C. Access to Information: Mandate Open Access to Tenant and Applicant Information and Rights

FHFA can use its regulatory authority to expand not only tenant access to information, but also to courts, housing advocates, and other stakeholders seeking to increase housing stability.

As a preliminary matter, enterprise-backed properties should be required to keep complete records of leases, agreements, notices, and payments making them available to tenants upon request. Too often, apartment complexes will prevent tenants who fall behind on rent from entering online renters' portals. This not only exacerbates issues of nonpayment, but also routinely denies tenants the ability to obtain vital information regarding their tenancies. Enterprise-backed properties should be prohibited from denying tenant access to such portals, as well as the information contained within those sites.

Enterprise-backed properties should also be required to take affirmative steps to share their practices, as well as tenants' and prospective tenants' rights, during the rental application and residency process. Plain-language explanation of late fee policies, applicable pre-eviction notice-to-vacate requirements, and other relevant practices should be made available to prospective and current tenants. Properties should share this

information in writing, as well as in prominent places on their websites and social media profiles. Additionally, leases should contain addenda detailing rights regarding eviction specific to residents at backed properties.

In our experience, tenants are often most responsive to text messages. Enterprise-backed properties should consider using text messages to provide regular updates about property policies and procedures, as well as reminders about tenants' rights. While this should not and would not supplant state-law requirements for written notices to vacate or service of process, it would better inform tenants of their rights and obligations while residing at enterprise-backed properties.

D. Tenant Housing Stability: Require and Promote Legal Representation

Eviction protection programs that connect tenants facing housing instability with legal information, advice, and representation have appreciable, measurable benefits to tenants.² While our law school clinical program—which is oriented towards teaching student attorneys—does not represent the same volume of clients that large legal aid offices service, we have found firsthand the benefits of our representation. From April–June 2023 alone, each client the Housing Rights Project represented obtained, at minimum, additional time to move out prior to an eviction judgment. Half of the 18 clients who had matters that required courtroom representation won decisions that preserved their tenancies and allowed them to remain in their homes. Several other clients were able to re-enter their homes following illegal lockouts; negotiated payment plans; or otherwise had their matters dismissed. Moreover, this data does not capture the brief advice, information, and referrals given to 60 callers to our project's Housing Hotline during that period.

² For more about the success of “right to counsel” initiatives in eviction proceedings, see National Coalition for a Civil Right to Counsel, “Intro to Right to Counsel,” http://civilrighttocounsel.org/highlighted_work/organizing_around_right_to_counsel.

Residents at FHFA-backed properties should be guaranteed counsel in eviction proceedings. This will ensure that property owners receiving enterprise support do not wrongfully evict their residents—and that tenants in buildings receiving federal support receive meaningful access to due process.

Further, any eviction proceedings at FHFA-backed properties should only occur after tenants receive an opportunity to cure nonpayment of rent or other alleged lease violations. This will further stabilize tenants' housing, while also allowing a meaningful opportunity for landlords to be made whole without the expense and time of litigation.

Landlords wishing to terminate, or not renew, leases should also be required to provide, in writing, cause for termination or non-renewal. FHFA could adopt the regulations for landlords accepting Housing Choice Vouchers, found in 24 C.F.R. § 982.310, as a framework for stated-cause terminations.

Conclusion

As the most recent White House Fact Sheet on renter protections states, our nation's patchwork system of legal protections—which in turn are routinely underenforced³—leaves tenants vulnerable to exploitation, wrongful eviction, and homelessness. As a federal agency responsible for critical underwriting and financing of the multifamily housing market, FHFA can and should play a leading role in bringing uniformity to landlord-tenant relationships around the country. As multistate corporations increase the share of rental properties under their ownership and operation,⁴ clear, consistent regulations across

³³ For more on the challenges of enforcing tenants' rights, see David Super, *The Rise and Fall of the Implied Warrant of Habitability*, 99 CAL. L. REV. 389 (2011).

⁴ For more about increasing corporate ownership of rental housing, see Alexander Ferrer, *The Real Problem with Corporate Landlords*, THE ATLANTIC (June 21, 2021), <https://www.theatlantic.com/ideas/archive/2021/06/real-problem-corporate-landlords/619244/>.

jurisdictions will provide both tenants and landlords with predictable, understandable rules to follow.

Thank you for your time and for helping us advocate for our clients. We look forward to continued efforts from the Agency to address the pressing issues facing our clients and our community.

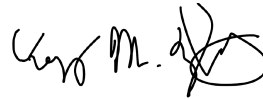
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