NCSHA
National Council *of*
State Housing Agencies

July 31, 2023

The Honorable Sandra Thompson
Federal Housing Finance Agency
400 Seventh St., SW
Washington, D.C. 20219

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

Dear Director Thompson,

The National Council of State Housing Agencies (NCSHA)[1] appreciates the opportunity to comment on behalf of our state Housing Finance Agency (HFA) members on the Federal Housing Finance Agency's (FHFA) Request for Information on Tenant Protections for Enterprise-Backed Multifamily Properties.

We commend FHFA for investigating whether establishing additional protections for tenants in multifamily housing with financing supported by Fannie Mae and Freddie Mac is advisable in light of the numerous considerations that need to factor into such a decision. As housing affordability problems persist and worsen, taking reasonable action to provide more affordable housing and protect tenants is necessary and appropriate. Rent increases, low vacancy rates, economic hardships, differing policies in various jurisdictions, uneven understanding of legal requirements, lack of resources for tenant counsel, and insufficiently broad understanding of owner obligations and tenants' rights, are placing many tenants – lower income households in particular –increasingly at risk of displacement and eviction.

It is sensible and important for FHFA to consider ways in which it might help address these issues as conservator and regulator of the government-sponsored enterprises, Fannie Mae and Freddie Mac (the Enterprises). Not only do the Enterprises have statutory responsibilities related to affordable housing, FHFA under your leadership is pushing the companies to more proactively and substantively address long-running inequities in the housing system.

This letter summarizes what state HFAs are doing to address these issues and includes considerations and recommendations for FHFA as it determines what actions to take in this area.

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[1] NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

State HFAs Play Several Key Roles in the Affordable Multifamily Housing System

State HFAs finance the production and preservation of more than 150,000 affordable multifamily rental homes each year through financing, administration of the federal Low Income Housing Tax Credit ("Housing Credit") program, and delivery of numerous federal and state resources providing gap financing, rental assistance, additional equity and capital, and other sources of support for multifamily properties. Additionally, HFA program administration and compliance monitoring activities help ensure the habitability and affordability for hundreds of thousands more low-income renters.

In 33 states, HFAs administer federal project-based rental assistance contracts, in which capacity the agencies provide an array of services and resources that protect and support low-income renters. As state-based, mission-driven organizations, HFAs have a deep knowledge of local housing markets and their needs, as well as robust relationships with multifamily property owners and tenants. These connections facilitate efficient and effective oversight of these properties, timely response to tenant complaints, and the leveraging of other federal and state resources to maintain habitability and affordability. State HFAs fulfill many of the same responsibilities when they service the multifamily mortgages they have financed to acquire, produce, and preserve affordable rental housing.

In 29 states, as administrators of the Emergency Rental Assistance program, representing roughly one-third of total funds appropriated, HFAs have been deeply involved in efforts to address tenants' financial hardships and prevent evictions. Many are partners in the growing number of financial assistance, eviction diversion, and housing stabilization service programs through partnerships with landlords, state and local governments, court systems, and nonprofits providing services to at-risk tenants. HFAs are also innovators in new approaches for furthering renter protections, including rent reporting for credit-building, apartment search assistance to households looking for affordable housing, and overcoming credit review, background check, security deposit, and other barriers to accessing such housing.

Several HFAs are establishing a variety of tenant protections under the many federal and state programs they administer. For example, some require properties with loans they finance to accept housing choice vouchers. Other policies being implemented or considered at the state or local level include tenant selection plan guidelines, rental agreement and lease provisions, rent increase limitations and notice requirements, and fair and transparent policies regarding fees. In every case, each HFA must navigate the scope of their resources and authorities, the current conditions affecting tenants and owners, and the interplay of current law and regulation in their state.

Finally, the state HFAs have collaborated for decades to develop recommended practices in the administration of the Housing Credit program. These practices, while voluntary, are widely adopted by agencies across the country. NCSHA is in process of revising the recommended practices, assessing feedback from HFAs, apartment owners and capital providers, and tenant advocacy organizations. Several tenant protection practices are under consideration. We will provide an update to FHFA and the public in the Fall.

America's Multifamily Affordable Housing Faces Major Challenges

Effective public policies, dedicated owners, and vigilant capital providers have ensured that the inventory of regulated affordable housing is in generally good shape overall coming out of the pandemic and in a period of high inflation and interest rates. A variety of studies have shown that overall delinquencies and foreclosures have remained low for affordable housing properties and real estate in general.

This said, HFAs hear often from owners that their properties have not recovered from the financial impacts of pandemic rent moratoria and resulting deferred maintenance. Many owners face lower than expected rent collections, high material costs, labor shortages, other challenges to production and preservation, and financing difficulties exacerbated by higher interest rates and other market dynamics.

At the same time, the ability in some cases to raise rents has made covering operating cost increases easier and improved feasibility for some production and recapitalization. Many of the supply chain problems that bedeviled the building industry recently have mostly been resolved. The owners and operators of HFA-financed multifamily affordable housing have been overwhelmingly successful in their efforts to keep their tenants affordably housed during an unprecedented period of economic stress.

Threats to affordable housing production and preservation remain looming storm clouds on the horizon, however. Incomes are not keeping up with production costs. Many costs, including materials, labor, and insurance, continue to rise, sometimes sharply. Many multifamily and other commercial real estate loans will come up for refinancing or restructuring during this relatively unfavorable environment of high interest rates and barriers to building. New production – which has been relatively robust recently though long inadequate to keep up with need – is expected to slow in the coming years.

Most troubling, federally backed, rent-regulated affordable units – those most likely to have enforceable, manageable federal tenant protections – are at ever greater risk of being lost from the stock. The Harvard Joint Center for Housing Studies estimates that the nation has lost 3.9 million "low-cost rentals" overall during the last 10 years. Moody's recently estimated that up to 188,000 Housing Credit apartments may be eligible to convert to market rate rents by 2027.

Preservation Should be a Focus of GSE Tenant Protection Efforts

The most important tenant protection strategy Fannie and Freddie can support at scale in the near term is preserving the quality and affordability of existing regulated properties. We recognize that the term "preservation" is not always included in discussions of tenant protections. We believe this is a mistake: the circumstances that create immediate preservation needs – expiring subsidy commitments and protections, aging property systems and accruing repair needs, for example – put whole buildings of low-income tenants at enormous risks. And of course, when properties cannot be preserved as affordable and convert to significantly higher rents or fall into obsolescence communities as well as existing renters are affected. As financial enterprises with affordable housing missions, Fannie Mae and Freddie Mac can and should play a greater role in preservation.

FHFA should push the Enterprises to do much more through their Duty-to-Serve (DTS) responsibilities and specifically enable and facilitate more Enterprise equity investment in Housing Credits. One related benefit of increased Housing Credit production is more tenant choice and more production of housing that features some tenant protections already, due to program rules related to just cause eviction and requiring owners to accept vouchers, for example. And, since the potential classification of the Enterprises as tax-exempt controlled entities (TECEs) is one barrier to increased Housing Credit investment, we urge you to work with Treasury and others to clarify the Enterprises are not TECEs. We transmitted detailed recommendations to FHFA on these issues recently.

We also encourage FHFA to protect tenants against displacement, rent increases, and possible evictions that may come about after owners take advantage of loopholes in the Housing Credit "qualified contract process. As NCSHA and several other organizations wrote FHFA recently, we urge FHFA to adopt policies prohibiting the Enterprises from providing financing to Housing Credit properties for which the owner has not and will not waive its qualified contract rights.

In another separate letter, NCSHA expressed support for FHFA's proposed rule modifying several provisions of the Enterprise Regulatory Capital Framework (ERCF) that would reduce by 40 percent the risk multiplier for multifamily mortgages backed by properties receiving government subsidies, including the Housing Credit. We also urged FHFA to consider reducing the risk multiplier further and applying it to properties receiving funding through the HOME Investment Partnerships program and from tax-exempt multifamily housing bonds. Taking these steps would also improve opportunities for tenants and increase Enterprise financing for affordable housing featuring tenant protections based on the federal subsidies also included in the financing.

Finally, FHFA should encourage the Enterprises to pilot new forms of financing and other support for at-risk affordable properties, including "naturally occurring" as well as subsidized affordable ones. FHFA should also encourage the Enterprises to actively support "eviction diversion" partnerships between state and local agencies, apartment owners, court systems, and renter-serving organizations, either through direct investments or incentive-based programs tied to Enterprise financing. There are many promising models and initiatives the Enterprises and FHFA could support in this area.

Consideration of New Tenant Protection Measures Should Be Based on Data and Analysis

FHFA and the Enterprises have sophisticated and robust data collection and research capabilities. It would be advisable to bring these resources to bear on developing a better understanding of the efficacy of various tenant protections and their impact on tenants, owners, financing terms, the Enterprises' competitiveness and market share, and other related issues. FHFA and the Enterprises could also fund and share industry-wide data on rent levels, operating reserves, and deferred maintenance levels to provide a picture of renter and property sustainability.

In particular, in light of the variety of multifamily financing options other than the Enterprises and other investment options available to parties considering multifamily housing, FHFA should assess the risks and costs that additional requirements could reduce the Enterprises' market share and possibly even reduce investment in housing in general.

FHFA also must be careful in determining which policies would be appropriate to establish at the federal level. Allowing states and localities to tailor their policies to the particular circumstances of their communities adheres to principles of federalism and the appropriate respect and deference to local policy-makers so they can decide what is most appropriate for their communities.

The Biden Administration has recently distributed information, established new policies, and highlighted best practices in a number of areas related to tenant protections, including tenant screening, appropriate and reasonable fees, background checks, credit checks, rent increase notices, and just cause eviction. As such information, notices, and requirements become more standard and widespread, there is less likelihood that the Enterprises imposing them on their customers, owners, and managers will seriously harm them. In addition, as more and more housing stakeholders become aware of and familiar with policy guidance, best practices, and other forms of technical assistance, FHFA may have more leeway to require them without adverse consequences.

Thank you for this opportunity to provide input on this important policy area. We look forward to continuing to work together with you to advance positive changes on behalf of tenants and affordable housing.

Sincerely,

Garth Rieman
Director of Housing Advocacy and Strategic Initiatives