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Federal Housing Finance Agency
Office of Multifamily Analytics and Policy
400 7th Street SW, 9th Floor
Washington, D.C. 20219

The National Coalition for Asian Pacific American Community Development (National CAPACD) is deeply appreciative of the opportunity to provide commentary on the Federal Housing Finance Agency's (FHFA) request for information regarding tenant protections at multifamily properties backed by Fannie Mae and Freddie Mac (the Enterprises). We are committed to assisting FHFA in identifying concrete solutions to alleviate the hardships encountered by tenants across the nation, particularly within underserved communities. The Biden Administration's Blueprint for a Renters Bill of Rights that was developed in consultation with community advocates like National CAPACD is a step forward in addressing challenges faced by renters, and we hope FHFA can work towards expanding on those rights for tenants in properties backed by the Enterprises.

As a coalition of more than 100 member organizations, National CAPACD advances equity and creates vibrant, healthy neighborhoods by mobilizing and strengthening a powerful coalition of Asian American, Native Hawaiian, and Pacific Islander (AA & NHPI) community-based organizations working in low-income communities. Our members employ a diverse set of comprehensive community development strategies designed to embrace a community's culture and assets as well as address the needs of historically divested and marginalized communities. They are experts in the areas of affordable housing & community institutions, assistance for renters and homeowners, services for financial capability and empowerment, community organizing, workforce development, and small business sustainability and entrepreneurship.

In the aftermath of the Great Recession and housing crisis, National CAPACD established the nation's first AA & NHPI-serving U.S. Department of Housing and Urban Development (HUD) Housing Counseling Intermediary in 2010. Twelve of our member organizations run HUD-approved housing counseling programs providing culturally and linguistically relevant counseling and education in more than 30 languages, particularly focused on low and moderate-income AA & NHPI homeowners and renters.

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National CAPACD's Findings on Tenant Experiences

The patchwork of locally defined and enforced tenant rights are inconsistent and often insufficient to protect low-income tenants from being arbitrarily displaced. This was particularly the case during the recent COVID-19 pandemic. The pandemic exacerbated an existing housing crisis that disproportionately impacted communities of color, particularly AAs & NHPIs. In 2021, National CAPACD conducted a survey of our membership to assess the impact of the tenant protection programs like the Eviction Moratorium and Emergency Rental Assistance (ERA) Program that was made available through the pandemic.¹ While the survey revealed the need for such programs, it also unveiled some unfortunate realities for low-income AA & NHPI tenants. Our research respondents reported alarming landlord behaviors, including the deliberate avoidance of lease renewals, neglecting necessary repairs, employing harassment tactics, implementing exorbitant rent hikes, and resorting to retaliatory actions upon being presented with eviction moratorium declarations. Furthermore, in situations where landlords assumed renters could access rental assistance during the pandemic, they unscrupulously imposed unrealistic late charges on rental fees, exacerbating the challenges faced by tenants. Conversely, in some cases during the same period, tenants themselves were hesitant to cooperate with landlords in the application process for rental assistance, leading to further complexities in resolving the crisis. These concerning trends emphasize the pressing need for comprehensive measures to address the exploitative practices and miscommunication that exacerbate housing instability during these challenging times and beyond. Efforts must be directed towards fostering a more collaborative and empathetic relationship between landlords and tenants while ensuring equitable access to rental assistance programs. Only through such concerted actions can we hope to achieve a more stable and just housing landscape for everyone involved.

National CAPACD believes federal renter protections play a pivotal role in addressing the inherent power disparity between landlords and renters. Without these protections, tenants are at an elevated risk of housing instability, harassment, and even homelessness, with low-income communities of color most at risk. National CAPACD believes that at a minimum, FHFA should consider the following floor for tenant protections on multifamily properties backed by Enterprise financing:

¹ National CAPACD ERA Survey Fact Sheet, <https://www.nationalcapacd.org/wp-content/uploads/2021/09/ERA-Survey-Fact-Sheet.pdf> (Sep. 25, 2021)

1. ***Enforcement of Habitability Standards:*** To safeguard the well-being of tenants and guarantee that properties supported by Enterprises meet essential standards of habitability, FHFA should conduct proactive evaluations of rental housing conditions and implement additional measures when deemed necessary. National CAPACD, in coalition with our member organizations and other housing and civil rights advocates, is working hard to ensure that residents of Cathay Manor Apartments, a HUD-supported senior housing project in Chinatown Los Angeles, are living in habitable conditions. The building has experienced numerous structural and safety violations, including inoperable elevators, rodent and roach infestations, exposed wires and electrical hazards, inoperable fire protection, mold and mildew, and broken sanitation systems. These poor conditions have not only affected the health and well-being of the 300 seniors living in the building, but have also created a tremendous burden for HUD. It is much less costly and burdensome to address repairs in a timely fashion than to ignore issues that allow violations to become even greater, more complex, and expensive problems. In situations like these with GSE-backed properties, FHFA should consider proactive enforcement of habitability where FHFA can directly make timely repairs or bid out repair work and charge the landlord.
2. ***Just Cause Eviction:*** FHFA should implement robust protections for tenants residing in Enterprise-backed multifamily properties, including safeguarding them from arbitrary evictions. Just cause eviction plays a pivotal role in preventing evictions without justified reasons, such as non-payment of rent, property damage, or disruptive behavior. This would require landlords to provide renewal leases unless there is a valid cause for non-renewal. Without these safeguards, landlords could easily evict tenants by denying them a new lease or offering one at an unaffordable rent level, effectively exploiting their position of authority. This power imbalance makes it exceptionally challenging for tenants to advocate for repairs or better living conditions in rental housing, as they fear potential retaliation from their landlords. Implementing FHFA-backed just cause protections would foster a fairer and more balanced housing landscape, promoting stability and security for tenants in multifamily properties.
3. ***Right to Lease Renewal:*** FHFA must ensure that multifamily properties provide a right to a renewable lease term, unless there is good cause for non-renewal. After the initial lease term expires, the tenant should have a right to continue the tenancy at a minimum on a month-to-month basis under the same terms. With a right to renewal, tenants are shielded from the risk of

displacement due to non-renewal of their lease. Without this protection, tenants might be forced to find new housing at the end of their lease term, which can be financially burdensome and emotionally stressful, particularly for vulnerable populations, such as low-income individuals or limited-English proficient (LEP individuals).

4. ***Right to Counsel for Low-Income Tenants Facing Eviction:*** FHFA should provide a right to counsel where low-income tenants are provided or appointed a lawyer for their eviction case at government expense, and with language assistance if necessary. Legal representation for renters facing eviction is a critically important intervention to keep people in their homes and prevent the long-term harms of eviction. Those who have eviction records have more difficulty accessing safe and affordable housing opportunities, regardless of the outcome of the eviction, and regardless of the merits of the eviction. The American Civil Liberties Union (ACLU) has also reported that evictions can contribute to a cycle of poverty that can result in homelessness, lead to job loss, and cause long-term damage to physical and emotional health.²
5. ***Fair Notice Requirements:*** FHFA should require that Enterprise-backed multifamily properties implement fair notice requirements for evictions, providing tenants with ample time to rectify violations or settle overdue rent. If a tenant is limited-English proficient, then notice must also be provided in language and language barriers will prevent individuals from understanding eviction notices.
6. ***Right of First Refusal to Purchase:*** FHFA should require multifamily property landlords to provide a right of first refusal to purchase, which gives the tenant the right to have the first opportunity to buy a property or space at the same price and on the same terms and conditions as those contained in a third party offer that the owner has expressed a willingness to accept. These policies also help to preserve the ongoing affordability of dedicated affordable rental because then mission-oriented buyers such as affordable housing development nonprofits can purchase the property to continue affordable housing and subsidy programs.

² American Civil Liberties Union, "No Eviction Without Representation," <https://www.aclu.org/report/no-eviction-without-representation?redirect=evictionbrief>

7. **Protection for Tenants' Right to Organize:** Renters should have the freedom to organize without obstruction or harassment from their housing provider or property manager. FHFA must prevent landlords from retaliating against tenant organizers. Tenant organizers fight for the rights of tenants with the goal of keeping people in their homes under the threat of eviction, or when a tenant is dealing with unconscionable rent increases or unlivable conditions. Reports from the National CAPACD housing network indicate that tenant organizers have ended up on "Blacklists" that limit their housing opportunities. This limits their opportunities for future housing because tenant applications often have boilerplate language asking, "Have you ever been in Housing Court?" without any opportunity to explain the reason or the outcome. Tenants or organizers who have taken a landlord to court for housing violations would then be met with challenges for rental applications.

8. **National Rent Control, Preventing Excessive Fees and Source of Income Discrimination:** FHFA should consider exploring economically feasible rent control measures for multifamily properties backed by the Enterprises that do not diminish affordable housing supply. Additionally, FHFA should either forbid late fees on rent by landlords or place caps on fees, preventing landlords from exacerbating tenants' debts and forbidding their use as a primary basis for eviction. Lastly, FHFA should bar housing discrimination based on a tenant's immigration status as well as source of income as removing overburdensome barriers to eligibility for rental assistance and drive assistance directly to renters.

In addition to the tenant protections mentioned above, FHFA should consider how it can increase disaggregated data collection of tenants in multifamily properties backed by the Enterprises as well as increased accountability for landlords in providing language access to limited-English proficient individuals.

Language Access

FHFA should consider ways in which they can increase language access by requiring landlords to provide translated documents and language assistance and/or providing financial assistance to landlords that do. In 2020, National CAPACD released a report titled "Crisis to Impact: Reflecting on a Decade of Housing Counseling Services in Asian American and Pacific Islander Communities," which is a compilation of invaluable insights and best practices garnered by National CAPACD staff and member organizations from their housing counseling network throughout

the past decade.³ Notably, the issue of language access continues to present a formidable challenge for AA & NHPI communities, hindering their ability to avail themselves of vital services and opportunities.

National CAPACD's report highlighted a concerning trend, revealing that a significant proportion of severely cost-burdened tenants belong to limited English proficient (LEP) households. To put this into perspective, a staggering 54% of severely cost-burdened Asian households experience language barriers, while this figure is significantly lower at 9% for white households facing similar burdens. For LEP individuals, the lack of adequate language support can serve as a substantial impediment to accessing and maintaining suitable housing. For instance, tenants may struggle to comprehend the terms of their lease, or they may find themselves facing a subsidy termination hearing without access to an interpreter. Additionally, housing providers might discriminate against LEP applicants, and numerous providers lack policies that facilitate meaningful language access.

The failure to implement robust language access policies not only perpetuates inequalities but also deprives LEP individuals and families of equal access to housing opportunities compared to their English-speaking counterparts. It is crucial that concrete measures be taken to rectify this disparity and ensure that language does not become a barrier to accessing fair and equitable housing for all. LEP individuals need assistance in the application process and very little information made available in-language for LEP individuals by landlords. FHFA should also consider how it can overall increase in-language information and outreach to both tenants and homeowners, as well as small landlords through partnerships with community-based organizations that can provide in-language counseling and assistance for small landlords and homeowners.

Collecting Disaggregated Data

FHFA should require landlords to document certain disaggregated data from their tenants so that we can have a better understanding of housing experiences based on race and ethnicity. Data disaggregation is a fundamental and vital component of tenant protections in multifamily properties with mortgages backed by the

³ National CAPACD, in partnership with the UCLA Asian American Studies Center and UCLA Center for Neighborhood Knowledge, "Crisis to Impact: Reflecting on a Decade of Housing Counseling Services in Asian American and Pacific Islander Communities," (2021) <https://www.nationalcapacd.org/data-research/crisis-to-impact-reflecting-on-a-decade-of-housing-counseling-services-in-asian-american-and-pacific-islander-communities/#:~:text=March%202021-.Crisis%20to%20Impact%3A%20Reflecting%20on%20a%20Decade%20of%20Housing%20Counseling,anticipated%20wave%20of%20displacement%20of>.

Enterprises as it allows us to gain a more comprehensive understanding of the unique challenges and disparities faced by AA & NHPI communities in the housing sector. Furthermore, data disaggregation plays a pivotal role in holding landlords, property owners, and other stakeholders accountable. It helps highlight any potential discrimination or disparities in access to housing resources and services. Armed with this information, we can advocate for equitable and just policies that safeguard the rights and well-being of AA & NHPI tenants, ensuring they have fair and equal access to safe, affordable, and quality housing. The following sets of data, disaggregated by race and ethnicity, are examples of what the Enterprises should consider collecting from landlords or tenants of Enterprise-backed multifamily properties:

- **Language Proficiency:** Collecting data on language proficiency is crucial as language barriers can significantly impact access to housing resources, services, and information, particularly for those with limited English proficiency.
- **Household Composition:** Understanding the size and composition of AA & NHPI households, including the presence of extended family members or multi-generational households, can provide insights into their unique housing needs and preferences.
- **Housing Tenure:** Differentiating between homeownership and rental tenure is essential as the challenges and protections required for AA & NHPI homeowners and renters can vary significantly.
- **Reported Housing Conditions:** Gathering data on the physical conditions of housing units occupied by AA & NHPI households, including issues like maintenance, safety, and habitability, helps identify potential disparities in housing quality.
- **Eviction and Displacement:** Disaggregating data on eviction rates and displacement incidents can shed light on whether AA & NHPI communities face higher risks of eviction and involuntary displacement.
- **Access to Services and Programs:** Disaggregating data on AA & NHPI participation in tenant protection programs, rental assistance or voucher programs, and other housing-related services ensures that these programs effectively reach and benefit diverse AA & NHPI communities.

Collecting and reporting disaggregated data promotes accountability and transparency in housing practices. It helps identify potential discriminatory practices and ensures that housing providers and policymakers can be held accountable for any disparities or inequities.

Conclusion

National CAPACD thanks the FHFA for the opportunity to provide feedback on how we can strengthen protections for renters in multifamily housing. We call upon the FHFA to embrace decisive action by enacting mandatory, uniform safeguards, reinforced by robust enforcement measures, to protect all households residing in properties with federally backed mortgages, irrespective of size – be it larger developments or smaller residences. Throughout the process of formulating and implementing renter protections, FHFA must maintain active engagement with tenants and directly affected individuals, placing racial and social equity at the forefront as explicit objectives. These vital protections – in conjunction with substantial, sustained investments in affordable housing are imperative in ensuring that every individual, including the most vulnerable and financially disadvantaged renters, can secure a secure, high-quality, affordable, and accessible place to call home.

Sincerely,



Seema Agnani
Executive Director