



July 31, 2023

Submitted electronically

Honorable Sandra L. Thompson
Director
Federal Housing Finance Agency
400 7th St SW
Washington, DC 20024

Dear Director Thompson,

I am writing on behalf of the Bay Area Apartment Association (BAAA), the leading membership organization representing owners, operators and developers of rental housing across 12 counties in the greater Tampa Bay region. Currently, BAAA members manage over 250,000 rental units in more than 1000 apartment communities. I am writing to share our views on the Federal Housing Finance Agency (FHFA) Request for Input (RFI) on Tenant Protections for Enterprise-Backed Multifamily Properties.

The Tampa Bay region, like much of the country, is suffering from a shortage of rental housing. The Florida Apartment Association's Housing Scarcity Dashboard (buildflorida2030.com) provides detailed statistics for each county in Florida, and across our 12 counties shows a shortfall of over 27,000 apartment homes to meet current demand. Furthermore, this gap is projected to grow to over 97,000 apartment homes by 2030. Chronic underproduction has led to higher costs for Florida consumers, especially in affordable and underserved markets. This supply gap cannot be met without the necessary capital for development and rehabilitation in all markets, especially those that may not meet the credit or return standards required by many private capital debt providers. To bring down rental costs in the underserved markets of my state, the FHFA, Fannie Mae and Freddie Mac (the Enterprises) should be focused on supply and facilitating a secondary mortgage market which helps create more affordable housing stock.

The housing providers in my state must comply with existing local, state and federal laws that govern the rights and responsibilities of landlords and tenants. As such, the FHFA and Enterprises' consideration of adding more regulations to the already complex housing regulatory system is a major concern for my members. Any additional requirements associated with Enterprise-backed financing would impact rental housing providers' ability to comply with existing laws, adding uncertainty to a market already subject to intense scrutiny and regulation across all levels of the government.

There is also significant concern about the types of interventions that the FHFA and Enterprises are considering; rent regulation, source of income mandates and restrictions on eviction, to name a few examples, all impact a housing provider's ability to comply with the economic terms of their loans and meet their additional mandatory operational expenses. Indeed, while such interventions may be well intentioned, we believe many if not all will negatively impact housing



providers and residents by raising costs and making housing affordability even more challenging than it already is. We address a few of the specific ideas raised in the RFI below:

Source of Income

We do not believe the Enterprises should take any action regarding the acceptance of sources of income, including Housing Choice Vouchers. The Housing Choice Voucher program, and other similar programs, have always been intended to be voluntary in nature and housing providers should have choice in whether to participate in these programs. Further, participation in the voucher program can increase housing provider costs and burdens that impact operations and put additional pressure on housing affordability. Below are just some of the issues identified by our members:

Lost Income/Rent: Prior to moving a voucher recipient into a unit, a House Authority official must review and approve necessary paperwork and the Housing Authority must conduct an inspection of the unit. Frequently, it takes several weeks for this process to be completed. The housing provider is never compensated for this period of waiting, which could amount to hundreds if not thousands of dollars in lost rent. Additionally, housing providers may be subject to rent abatement if the unit does not pass future inspections. While housing providers take their role of providing safe and quality housing seriously, there are instances where voucher residents are directly responsible for the inspection failure. Nevertheless, the penalty of abatement is directed to the housing provider, forcing the housing provider to both lose rent and cover the repair costs of the damage caused by the resident. We believe there are gaps in available information documenting the extent of these issues and we recommend that at minimum the Federal government capture and publicly report 1) the length of time between the submission of an RFTA and Inspection of the subject unit, broken out by Housing Authority, and 2) the frequency of abatement with a determination on whether the abatement was based on an issue caused by the resident.

Administrative Burden: There is substantial paperwork and attendant administrative actions that housing providers must take with each voucher resident. This includes at minimum completing the Request For Tenant Approval (RFTA), corresponding with Housing Authority officials regarding rent amounts (in the context of rent reasonableness determinations), completing and management of the Housing Assistance Payments (HAP) Contract, making staff available for inspections, and sending resident notices to the Housing Authority. Additionally, there are various issues that frequently come up that add even more administrative burden, including having to resend the same documentation due to poor document management on the part of Housing Authority officials; accounting challenges because changes were made to the voucher recipients rent portion (i.e., due to change of voucher recipients income); and in the context of renewals, completion of approvals/paperwork by Housing Authorities after the renewal date. One member noted that in order to properly keep up with the administrative burden associated with accepting vouchers, a property should budget at least a 50% increase in staff resources compared to a similarly situated property that does not accept vouchers.



Rigid Inspection Standards: Rental housing adheres to the standards of the state and local jurisdictions in which they are located, which may not necessarily be the same requirements set forth by the Federal government in the form of Housing Quality Standards (HQS), which are currently required for units with voucher recipients. If acceptance of vouchers were required, then it is likely properties would have to adhere to HQS standards, which in at least some cases may require substantial and costly changes to properties. This scenario recently arose in our region, where an HQS inspection identified a drainage pipe from a water heater was half an inch in diameter while the HQS required that the pipe be three quarters of an inch. There were no complaints or issues with the functioning of the water heater or pipe, but in order to replace these pipes, the housing provider would need to cut through concrete walls, leading to thousands in additional costs per unit.

High Costs/Limitations on Insurance: Property insurers regularly collect information from housing providers on the number of households at an apartment community who receive housing subsidies, like Housing Choice Vouchers. Based on conversations we have had with experts in the field last year, it is our understanding that insurers will base their rates, in part, on the number of subsidized units at a property, offering coverage at a higher premium to properties with subsidized units than similarly situated properties would be charged that have no subsidized units. We have also been told that many insurers will not offer properties coverage if they have more than a nominal number of subsidized households, and for those insurers that do offer coverage for properties with subsidized households, most will drop coverage if more than 20% of the units are rented to subsidized households.

Resident Applications/Documentation

We do not believe the Enterprises should set any requirements for lease applications and tenant documentation. Housing providers tailor their lease applications and tenant documentation requirements to address their specific needs, the level of acceptable risk they are willing/able to assume, and the unique circumstances in their local housing market. A universal or portable application would likely not meet the needs of all (or even most) housing providers.

Furthermore, our members have reported more frequent and increased sophistication of fraudulent documentation provided by prospective residents that include fake identification, fake pay stubs, fake bank statements, fake employment information, and fake/incomplete residential history information. Additionally, members report encountering more frequently use of social security numbers of deceased/incorrect individuals, use of credit protection numbers in lieu of social security numbers used as a means to hide poor credit and rental histories and missing/incomplete eviction history.

To be able to stay ahead of these fraudulent actions, housing providers must regularly update their application/documentation requirements and procedures. Requiring a universal/portable application and documentation will likely impede housing providers' ability to adopt methods and technologies to address new fraudulent schemes as they arise.



Eviction Diversion

An eviction is the last thing a housing provider wants to pursue, and many of our members go to great lengths to communicate and engage with residents who are late with rent, however at times evictions can be a necessary recourse when residents fail to uphold their obligations under the lease contract. Our members report that the vast majority of eviction filings they initiate are for nonpayment of rent. Available data confirms this, including a recent report by the City of St. Petersburg which noted that over 90% of eviction filings cited nonpayment of rent as the basis for the filing. We believe the design of an effective eviction program must take this fact into account, and include the following elements:

- The program should be voluntary for both housing providers and residents;
- The program should cover the full balance owed to the housing provider;
- Application and processing of rent payments should be expeditious and take no more than seven days;
- Delinquent rent payments should go directly to the housing provider;
- The program should be available prior to an eviction filing;
- The program should not impose extraneous conditions like limiting the ability of the housing provider to seek an eviction if nonpayment of rent occurs in the future;
- Documentation requirements should not be overly burdensome for either the housing provider or the resident;
- Access to the program should be limited to households that can demonstrate a one-time sudden/unexpected change in circumstances; and
- Housing providers should have the opportunity to initiate the application process and submit documentation directly to the program.

While the world's recent experience with the COVID emergency can only be described as tragic, this period also afforded the opportunity for local governments to experiment with various mechanisms to provide rental assistance as part of diversion efforts. We note that some rental assistance programs in our region did incorporate many of the above elements. Taken together, we believe programs with these elements were most effective at making both the housing provider and resident whole, which encouraged participation by all parties in such programs.

Additionally, we note that there are important gaps in the understanding of evictions, particularly the impact they have on housing providers. For instance, we know of no study that looks at the losses housing providers experience as a result of evictions. These losses include unpaid rent, filing fees and court costs, attorney fees, and unit turn costs. Related, there are no studies to our knowledge that document how these costs can further be increased due to policy choices, such as extended notice to vacate requirements, eviction moratoriums, government funded challenges to eviction proceedings, and any delays in resolution that occur as a result of mandatory participation in eviction diversion program.



Lease Renewals

We do not believe the Enterprises should apply any requirements related to lease renewals. Leases are a contract for a specific term that requires performance of housing providers (provision of safe, decent housing) in exchange for a resident's consideration (monthly rent payments). Once the lease contract is fulfilled, it is up to both parties to agree to continue the contractual relationship through a lease renewal. Importantly, each party has the same right to choose not to continue the contractual relationship, for whatever reason they want.

Some groups have made the argument that a housing provider not renewing a lease is tantamount to an eviction and refer to this as an "informal eviction." This view, we believe, incorrectly describes this scenario and ignores the fact that both parties are afforded the same right to not continue the contractual relationship. Applying limitations on housing providers' ability to not renew a resident would fundamentally alter what are now equal rights enjoyed by both housing providers and residents, into unequal rights that favor residents.

Furthermore, there are important practical reasons for housing providers to exercise their right not to renew the lease contract. Housing providers encounter some residents who regularly disturb the peace of other residents, consistently violate lease provisions, and/or are consistently late with their rent payments. Each of these scenarios impacts a housing provider's ability to provide safe, quality, and affordable housing. While in some cases a housing provider may seek an eviction to address these issues, initiating the eviction process is costly and time consuming (as noted earlier and where gaps of data should be addressed). In some cases, housing providers cost/benefit analysis will favor waiting out the term of the lease instead of pursuing an eviction. If housing providers are limited in their ability to non-renew residents, there may be an increase in eviction filings as evictions become the only means of addressing issues with residents as described above. This will not only raise costs for housing providers, but also can lead to detrimental future housing outcomes (because of an eviction record) for residents.

In conclusion, Fannie Mae- and Freddie Mac-backed financing is a critical tool to keep housing costs affordable for low- and moderate-income renters. However, increased regulation would only increase the cost of providing housing and contribute to the affordability gap we see today. The FHFA and Enterprises should instead look to programs which can increase housing production and supply by making Enterprise products more competitive to help us meet our collective housing needs. Thank you for soliciting these comments and considering our views.

Sincerely,

Eric Garduño

Eric Garduño

Government Affairs Director