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July 31, 2023

The Honorable Sandra L. Thompson
Director, Federal Housing Finance Agency
Office of Multifamily Analytics and Policy
400 7th Street SW, 9th Floor
Washington, D.C. 20219

**Re: Comments in Response to the FHFA’s Request for Input on Tenant Protections
for Enterprise-Backed Multifamily Properties**

Dear Director Thompson:

Thank you for the opportunity to provide feedback on the Federal Housing Finance Agency’s (“FHFA”) Request for Information on tenant protections. We write to encourage the FHFA to condition government-backed loans on a set of tenant protections. Specifically, we would like to see protections that include housing quality requirements, bans on discrimination and retaliation, and safeguards that prevent displacement. In Philadelphia, we have seen the benefits of renter protections on the books, though enforcement remains an ongoing task. By requiring specific federal tenant protections at multifamily properties backed by Fannie Mae and Freddie Mac (the “Enterprises”), the FHFA could expand protections to millions of tenants across the country—a critical step in redressing the racial and economic inequities in our housing system.

At the Public Interest Law Center, we see the challenges that our clients and members, specifically poor and working class Black renters, face because of systemic failures and a stark power imbalance between landlords and renters. We use high-impact legal strategies to advance the civil, social, and economic rights of communities in the Philadelphia region facing discrimination, inequality, and poverty. As part of our work to advance renter rights, we organize renters in Philadelphia through Renters United Philadelphia (“RUP”), which educates and organizes tenant-members (“members”) to take collective action to fight for quality housing. RUP is an organization of majority Black working class renters who share several large¹ corporate landlords. Some of these large landlords own Enterprise-backed multifamily properties. Each day, RUP members grapple with the challenges that substandard and unaffordable housing conditions pose, and many would directly benefit from the federal tenant protections the FHFA is contemplating.

¹ We define “large corporate landlord” as business corporations owning several hundred units in Philadelphia.

The Housing and Economic Recovery Act of 2008, 12 U.S.C. § 4501 *et seq.*, grants the FHFA expansive authority in its role as conservator of the Enterprises “and permits the Agency to act in what it determines is ‘in the best interests of the regulated entity or the Agency’ . . . and, by extension, the public it serves.” 12 U.S.C. § 4617(b)(2)(J)(ii); *Collins v. Yellen*, 141 S.Ct. 1761, 1765 (2021). As conservator, the FHFA ensures the Enterprises carry out their duty to serve underserved markets by *inter alia* developing loan products and underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families. *See* 12 U.S.C. § 4565. We hope to see the FHFA continue to take specific measures, like the proposed renter protections, to ensure the Enterprises serve the public, and especially underserved low-income markets that serve renters like our clients and RUP members.

To this end, we recommend that the FHFA condition financing on a robust set of tenant protections. Based on our expertise and the personal experiences of our clients and members, our specific recommendations are as follows.

Ensure Housing Quality

Nearly all renters with whom we work, the majority of whom are low-income Black and Brown individuals, face housing quality issues. Renters report repair needs to property owners, but often face unresponsiveness and/or shoddy Band-Aid repairs. Housing quality issues persist as the number one concern for these Philadelphians and range from pest infestations, to structural issues, to leaks and flooding, to lack of winterization that causes heating and cooling issues.

In 2020, we went door-to-door and surveyed tenants in a large 60-unit apartment building in the Frankford section of Philadelphia to ascertain housing quality conditions. This particular building is financed by Fannie Mae and is home to majority Black working class renters. 100% of survey respondents had pest problems (31% bed bugs, 73% mice, and 91% roaches); 65% had broken windows; 76% reported that the broken elevator in the four-story building was a significant issue for them; and 58% reported structural issues in the hallways and stairs. Renters in the building came together as RUP members to pressure the landlord to address their concerns, winning desperately needed quarterly exterminations, upgrades to the hallways and stairs, a new security system and new laundry room.

In Philadelphia, the Department of Licenses & Inspections is responsible for inspecting housing quality issues and potential code violations in rental units throughout the City. Our clients and members, however, do not consistently receive a response or inspection after reporting habitability issues. Unlike in other similarly situated cities, Philadelphia has no program for regularly inspecting rental properties. Reactive inspections in response to formal complaints result in only about 7% of the City’s rental units being inspected each year.² In a City with an aging housing stock, we need regular affirmative inspections to ensure that necessary repairs are made consistently in order to avoid the unacceptable situations where tenants are displaced due to landlords’ failure to maintain their properties.

² Pew, *Rental Code Enforcement in Philadelphia: How it works, and what other cities are doing* (November 18, 2021) available at <https://www.pewtrusts.org/en/research-and-analysis/reports/2021/11/rental-code-enforcement-in-philadelphia>.

By attaching federal renter protections to Enterprise financing, the FHFA could play an important role in improving housing quality for poor and working class renters. In Philadelphia and across the country, we need smart strategies that both address improvements to housing quality and prevent displacement of tenants. There are myriad ways the FHFA could do this. While not an exhaustive list, here are some recommendations:

- Consider defining “habitable.” Design and require a set of federal standards to ensure housing quality. Every renter should have a home that is safe, healthy, accessible and suitable for dignified living.
- Require borrowers to undergo and pass an initial housing quality inspection to ensure habitable conditions. Consider partnering with local government agencies, like Philadelphia’s L&I, to carry out these inspections.
- Require borrower compliance with ongoing property maintenance. This could include setting reasonable timing requirements for maintenance repairs, and/or requiring ongoing annual housing quality inspections.

Promote Affordability by Implementing Source of Income Protections

Across the country, securing affordable housing is a major challenge for renters, especially for Black and Brown renters. In 2023, extremely low-income renters— that is, incomes at or below either the federal poverty guideline or 30% of their area median income, whichever is greater— face an affordable housing shortage in every single state. The supply of available affordable rental homes ranges from a low of 17 available affordable homes for every 100 low-income renter households in Nevada to a still concerning high of 58 in South Dakota. Overall, the U.S. has a shortage of 7.3 million rental homes affordable and available to extremely low-income renters.³

The racialized nature of our housing system is apparent. Ahead of the May 2023 Mayoral Primary in Philadelphia, the Lenfest Institute for Journalism/Every Voice, Every Vote survey sought to understand what Philadelphians feel are the biggest issues facing the City.⁴ Black Philadelphians and households making less than \$50,000 — populations deeply affected by housing policies from the federal to the local level — were most likely to say housing affordability and homelessness should be top priorities for Philadelphia. Twice as many Black Philadelphians as white residents think housing affordability should be a top priority. Three-quarters of Black survey respondents prioritized it, compared with fewer than two in five white respondents. More than 80% of the

³ National Low Income Housing Coalition, *No State Has an Adequate Supply of Affordable Rental Housing for the Lowest Income Renters*, (March 2023), available at [https://nlihc.org/gap?utm_source=NLIHC+All+Subscribers&utm_campaign=9b96f4c7b4-report_042122&utm_medium=email&utm_term=0_e090383b5e-9b96f4c7b4-293444466&ct=\(report_042122\)](https://nlihc.org/gap?utm_source=NLIHC+All+Subscribers&utm_campaign=9b96f4c7b4-report_042122&utm_medium=email&utm_term=0_e090383b5e-9b96f4c7b4-293444466&ct=(report_042122)).

⁴ Aseem Shukla and Julia Terruso, *What Philly residents said about the biggest issues facing the city in a new poll*, THE PHILADELPHIA INQUIRER, (March 14, 2023), available at <https://www.inquirer.com/news/philadelphia/inq2/philadelphia-poll-charts-2023-mayor-race-20230314.html>.

roughly 20,000 Philadelphia households with Housing Choice Vouchers are Black, according to the City.⁵

The FHFA could play a critical role in improving affordability for Philadelphia renters and renters in every government-backed multifamily property across the country by implementing source of income protections. Source of income discrimination is a persistent barrier to safe and affordable housing. The FHFA should prohibit landlords from discriminating against households receiving rental housing assistance such as Housing Choice Vouchers, or SSI, or other local rental assistance, so that families are able to afford to live in quality housing in their neighborhoods of choice.

Philadelphia's source of income discrimination protection has been on the books for over forty years, yet nearly 50% of respondents to a 2018 study cited source of income as the reason they were treated differently when looking for housing, the second highest response after race.⁶ This demonstrates that the objectives sought by fair housing laws that prohibit source of income discrimination are only realized with a parallel commitment to enforcement.

The FHFA is in a unique position to put teeth into these often-ignored protections. By tying a prohibition on source of income discrimination to the hundreds of billions of dollars the Enterprises spend each year on mortgages, the FHFA could both standardize source of income protections across the country *and* make those protections meaningful, particularly for Black and Brown renters.

Protect Renters Who Exercise Their Rights

The RFI queries whether the FHFA, and by extension the Enterprises, might play a role in enabling multifamily tenants to exercise their rights free from retaliation. In the same section, the FHFA asks how it might support efforts to collect and disseminate information. At the Law Center, we believe in the power of organized tenants to collectively assert their rights. RUP members have successfully organized to exercise their rights and have won many improvements to material conditions in their buildings and homes, lease renewals, accessible units, and counterclaims against landlords who refuse to make repairs. In several instances, organized RUP renters stood in the gap between what is legal and what is just to secure victories that legal strategies alone could not achieve. To this end, we encourage the FHFA to explicitly prohibit landlord retaliation against tenants for enforcing their legal rights.

⁵ Michaëlle Bond and Aseem Shukla, *How Philadelphians feel about housing security and affordability*, THE PHILADELPHIA INQUIRER, (March 27, 2023), available at <https://www.inquirer.com/real-estate/housing/affordable-housing-philadelphia-household-income-priorities-20230327.html>.

⁶ This tracks an Urban Institute Study from 2018, which found that 67% of Philadelphia landlords refuse to rent to voucher holders. *See* Mary Cunningham, et al., *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers*, Urban Institute (Sept. 2018) <https://www.huduser.gov/portal/pilot-study-landlord-acceptance-hcv.html>; *see also* Julia Teruso, "In Philly, two-thirds of landlords won't take affordable housing vouchers – even when the renter can afford the place," *Phila. Inq.*, (Aug. 27, 2018) <https://www.inquirer.com/philly/news/housing-vouchers-section-8-affordable-urban-institute-study-20180827.html>.

At present, there are 44 states with laws that prohibit retaliation in direct response to a tenant exercising their rights.⁷ These protections generally include complaining to a governmental agency about living conditions, requesting needed repairs from the landlord, joining a tenants' union/organization, and/or seeking legal remedies against the landlord. Under these statutes, prohibited retaliation commonly includes increasing rents, filing evictions, and/or refusing to renew a lease. Here in Philadelphia, we benefit from retaliation protections at both the city and state levels.⁸

Tenants' ability to exercise their rights, whether in the form of requesting repairs or joining an organization like RUP, is a critical component to improving housing conditions. Government officials, advocates, lawyers, and nonprofits can all endeavor to improve our housing system, but tenants themselves who know and assert their rights will certainly be the best architects of sustainable change. The FHFA should consider conditioning government-backed loans on a set of standard nationwide protections against retaliation.

Thank you for your work in this process. The FHFA's mission-focused commitment to the safe and sound management of the Enterprises is commendable. We look forward to ongoing opportunities for collaboration and input.

Very truly yours,



Mimi McKenzie
Legal Director

⁷ Freddie Mac Multifamily, *A National Survey of Tenant Protections Under State Landlord Tenant Acts* (January 2023), p. 9, available at <https://mf.freddiemac.com/docs/tenant-protections-white-paper.pdf>.

⁸ See Phila. Code § 9-804(2); 68 Pa. Stat. Ann. § 250.205.