NATIONAL
MULTIFAMILY
HOUSING
COUNCIL

April 26, 2023

The Honorable Sandra L. Thompson
Director
Federal Housing Finance Agency
400 Seventh Street SW
Washington, DC 20024

Dear Director Thompson:

We appreciate meeting with the FHFA staff to provide insight on the various challenges facing residents and housing providers in today's uncertain financial and regulatory environment. The following summarizes some of the key points made by our members during that meeting and offers suggestions for your consideration as you work to identify topics and questions for inclusion in the Request for Input (RFI) that we understand will be released in May.

Residents are the customers of the rental housing industry, thus the professionally managed apartment industry is, by definition, resident centered. There is no rental housing industry without our residents. As we also discussed at our meeting, the various segments of the apartment industry are not all being impacted in the same way by current economic conditions. Research shows that many of the areas identified by FHFA for further consideration are primarily impacting affordable housing and not other segments.

We share the Administration's commitment to addressing the affordable housing crisis facing this nation, and to working with you to identify workable, sustainable policies to address this challenge.

As representatives of the apartment industry who house 38.9 million Americans, we appreciate the importance of housing choice and access to stable, quality, affordable housing. However, inherent in ensuring the stability for our nation's renters, is maintaining the current and future viability of the rental housing supply in this country. During our meeting, our members strongly urged your staff to refrain from placing new or expanded federal obligations for private rental housing providers and instead to focus on leveraging federal resources in the form of incentives to bolster new housing supply.

The relationships between housing providers and residents, the community and the broader housing market are governed by layers of statutes, case law, regulations, and private contractual agreements – all providing specific protections and responsibilities. This includes renter protections in building codes, contract, fair housing, eviction, consumer reporting and debt collection laws and include enforcement provisions. Lease agreements outline the rights and responsibilities between residents and housing providers and are enforced by state and local courts.

Quite simply, the possibility of adding an additional layer of federal regulation to the regulated rental housing system is already causing concern in the multifamily capital markets at the very time when the need for more resources to increase housing supply has never been greater.

Notably, federally assisted housing, including urban and rural programs, has many if not more tenant protections than have been discussed. Rental markets vary widely across the country, which is why local solutions are most appropriate to be tailored to those individual markets. Additional federal requirements can circumvent or, in some cases, conflict with the lease agreement. In fact, the courts have addressed and limited the federal government's role in regulating non-federal rental housing and left this matter to the states and localities.

State and local laws can meaningfully protect renters' rights, and existing protections may, for example, include requirements to be notified of a rent increase or a change in the lease contract that may result from the sale, closure or foreclosure of their apartment community, and the right to cure lease violations prior to an eviction. The Enterprises already have the authority to enforce compliance with these requirements as all Enterprise multifamily documents have broad representations, warrants and loan covenants that require borrower\servicer compliance with all state and local laws.

We are already seeing evidence of the negative impact of current market conditions on multifamily housing finance. NMHC's January 2023 Quarterly Survey of Apartment Market Conditions[1] indicate the following troubling statistics:

- More than three-quarters of respondents (82%) reported declining sales volumes from three months prior.
- Nearly two-thirds (63%) indicated equity financing was less available; and
- Fully 60% said it was a worse time for mortgage borrowing compared to three months earlier.

NMHC members are also reporting that current economic and regulatory challenges are causing them to cut back significantly on development activities, in some cases, by as much as 50 percent. This slowdown has long-term implications for the ability for us to be

[1] https://www.nmhc.org/research-insight/quarterly-survey/2023/nmhc-quarterly-survey-of-apartment-conditions-january-2023/

able to address the shortage of supply at all price points, especially in the already strained affordable space.

As a nation, if we are going to ensure that we have the supply of housing that is needed, it is critical that the apartment industry continue to be viewed as a solid investment. Implementing added federal housing provider and resident requirements is already having a chilling impact on investors. Instead of imposing additional federal regulations, we recommend that FHFA focus on ways that the Enterprises can incentivize the private sector to generate more housing.

Resident Centered Management Practices

NMHC was one of the first to agree to participate in the Administration's resident centered-management practices initiative and were part of the pre-challenge effort when it was first released. We committed to working with our 2,000 members to identify business standards that align with principles of resident-centered management practices, such as helping residents build credit, providing resource information to residents in financial distress, and communicating these practices through a new resource hub on its website. NMHC formed a task force on Multifamily Business Principles and is working to fulfill this commitment by June 30.

The FHFA and the Enterprises also have an opportunity to play a significant role in educating housing providers and residents on resources, fair housing rights, and existing protections that already exist at the federal, state, and local levels. At our meeting, we shared some of the innovative initiatives already being undertaken by many in the professionally managed apartment community to work closely with residents who are struggling financially, including new flexible rent payment strategies, security deposit flexibility and other efforts. We encourage the Enterprises to incentivize more of these efforts to allow the opportunity to study their impact.

Recently, Freddie Mac published a white paper that surveyed statewide tenant protection laws across all fifty states. This paper provides a great start for the Enterprises and FHFA to understand the myriad laws that states require to protect residents. We suggest that the Enterprises undertake a review of the existing federal, state, and local laws to understand if there are gaps in meeting a resident-centered management practice outlined in the Blueprint before attempting to impose new mandatory federal requirements. This analysis will better inform FHFA in understanding the existing market practices and if any adjustments or changes are warranted in the Enterprise loan documents.

Housing Choice Voucher Program

Fannie Mae currently has launched a pilot program in North Carolina and Texas incentivizing borrowers to participate in the Section 8 Housing Choice Voucher program (HCV) The Section 8 HCV could be the nation's most effective affordable housing and community development tool; however, the program's potential success is limited by too many inefficient and duplicative requirements, which discourage private providers from accepting vouchers. These include a required three-way lease between the provider, resident, and the public housing authority; repetitive unit inspections; resident eligibility certification; and other regulatory paperwork. Collectively, these make it more expensive for a private owner to rent to a Section 8 HCV holder.

NMHC and its real estate partners are working with Congress and HUD to identify ways to streamline the Section 8 program and incentivize additional private participation. For example, the real estate industry and housing advocacy groups are supporting the Choice in Affordable Housing Act, bipartisan legislation that authorizes and directs additional resources to attract and retain property owners in the HCV program. The bill specifically permits voucher administrators to provide signing bonuses to property owners in low-poverty areas, helps with security deposits, reduces inspection delays, and expands the use of neighborhood-specific data to set rental subsidies. These represent practical strategies that we believe will help make the program more attractive. We urge FHFA to consider these types of initiatives as you look for ways for the Enterprises to increase voluntary acceptance of housing choice vouchers.

Some states and localities are attempting to require Section 8 participation yet there is a lack of training and understanding on how to administer the program. The Enterprises could undertake an educational campaign to help both residents and housing providers better understand the program and to investigate steps that could be taken to incentivize greater private sector participation. We offer some suggested questions that could be included in the RFI on enhanced utilization of the Section 8 program.

1. What financial and operational challenges do multifamily housing providers face in utilizing the Housing Choice Voucher program in buildings which are financed through GSE programs?
2. What things could be changed in the operation of the Housing Choice Voucher program that would make housing providers better able to accept HCV?
3. Are there ways that the GSEs could better incentivize housing providers to accept more HCV participants? If so, what would be effective incentives?

Evictions

NMHC members also shared their experiences surrounding the impact that the prolonged federal eviction moratorium and existing state and local restrictions have had on the industry, including the millions owed by residents refusing to pay their rent and communicate with property owners.

Evictions are a troubling experience for all parties involved, thus it is a last result for housing providers. Private, public, and non-profit rental housing providers engage in the eviction process as their only legal remedy to remove a resident who has breached the lease. While most evictions are premised on non-payment of rent, other causes include lease violations, fraud during the application process, and other criminal activities. One of our large, multi-state members, found that nearly 60 percent of the evictions that they conducted in the last few years involved resident fraud.

Notably, the eviction process is particularly important for small property owners who rely on consistent, reliable rental payments to meet their financial obligations. Property owners, large and small, often seek to mitigate evictions, most often by working with affected residents on payment plans and connecting them with social services. Without adequate resources to operate a property due to resident non-payment, housing providers are often unable to make needed investments, thus all of the residents in the building and the community at large suffer.

Evictions are time-consuming and expensive but are the only legal remedy to remove a resident who has breached the lease. Given the complex nature of housing policies at the state and local level, a one-size-fits-all approach should not be used. The appropriate federal role in evictions is leveraging federal dollars to help at-risk residents avoid eviction in the first place. Efforts to restrict the use of eviction could have unintended consequences that hurt the very population policymakers are trying to serve. Lastly, the further discussions surrounding eviction restrictions are creating greater uncertainty and disincentives for investors.

Addressing Supply is Critical

FHFA has been a great steward in directing the focus of the Enterprises to think creatively on expanding their programmatic offerings to address rental housing affordability. As a result, they have delivered a number of product offerings that have or hold the potential to support rental housing affordability. For example, Fannie Mae's SIA and Freddie Mac's TAC programs represent important ways the Enterprises can offer incentives to create or maintain affordable units. More can be done to educate the private sector on these important programs but also for the Enterprises to further enhance these programs to gain more participation. We offer some suggested questions below that could be included in the RFI which would elicit information about how the Enterprises could support the increased development, preservation, and rehabilitation of even more multifamily housing.

1. What are the challenges in using the GSE programs to increase the supply of multifamily units that serve households at or below 80 percent of AMI? What suggestions can you offer to improve these programs?

2. What are the GSE programs that best incentivize housing providers to generate more multifamily units for low to moderate income households? How can they be improved to provide even greater access?

3. Would providing project-based vouchers or rental assistance to GSE financed properties increase the supply of affordable housing?

4. A recent HUD rule on Affirmatively Furthering Fair Housing suggests that regional cooperation among local housing agencies and housing providers could enhance

fair housing outcomes. Are there ways that the GSE programs could work better with HUD programs in supporting regional approaches to creating more affordable housing units?

5. Are there other existing government programs that could be tapped by the Enterprises to create or incentivize the development and preservation of affordable and workforce housing?

6. There are hundreds of examples in multiple locations where affordable housing is being developed and preserved through a combination of federal, state, and local financing tools. How can the Enterprises aid in helping to identify and categorize those initiatives so that others can learn from those examples?

7. Developing and preserving affordable housing requires layered financing that carries with it multiple regulatory agreements and requirements. How can the enterprises assist in streaming those complicated processes.

Conclusion:

Thank you again for the opportunity to provide you with information as you work to craft the request for information in connection with the White House Blueprint. We are committed to working with the Administration and with FHFA on the shared goal of addressing the nation's housing affordability needs. However, in these uncertain economic times, we ask you to reconsider implementing added federal landlord and tenant requirements on an already complex and highly regulated state and local set of laws and regulations. We believe that this could have a devasting impact on investment in the apartment industry and could also have a significant impact on our shared goal of addressing the long-term housing affordability goals and supply shortages facing this nation. In the meantime, we will continue to work with the Enterprises and HUD to identify ways to enhance the current Enterprise SIA, TAC and Section 8 pilot programs that currently exist and have asked for additional suggestions on other voluntary pilot programs and recommendations that would help incentivize greater participation and ultimately lead to increased preservation and supply. We look forward to working with you on this effort.

Sincerely,

Sharon Wilson Géno
President
National Multifamily Housing Council