July 31, 2023

The Federal Housing Finance Agency
Office of the Director
400 7th Street, S.W.
Washington, D.C. 20219

To Whom It May Concern in the Office of Multifamily Analytics and Policy:

The undersigned national real estate associations represent a broad coalition of housing providers and lenders that are committed to working together with the Federal Housing Finance Agency (FHFA) and the Enterprises to address America's housing affordability crisis. Today, we offer these comments in response to FHFA's request for input (the "RFI")[1] regarding *Tenant Protections for Enterprise-backed Multifamily Properties*. We are committed to addressing the nation's pressing housing challenges; however, we face serious obstacles in addressing rising housing costs and delivering much-needed supply. We urge you to consider the impacts of new requirements on Enterprise-backed financing on housing production and affordability.

The FHFA serves an important role in the multifamily housing market, particularly with respect to the involvement of the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively with Fannie Mae the "Enterprises"). Therefore, as FHFA contemplates changes and/or new requirements on Enterprise-backed financing, we strongly urge FHFA to avoid duplicative, costly new provisions that will confuse residents and housing providers, create uncertainty in the housing market, and ultimately result in increased rents for Enterprise-backed multifamily properties. As discussed below, even well-intended policy requirements can negatively impact housing production and exacerbate nationwide housing affordability and availability challenges. We believe there are incentives and voluntary strategies that the Enterprises can employ to better achieve FHFA's goals and increase housing opportunities for all.

Our members strive to create thriving communities and successful resident experiences. As such, we appreciate the importance of federal, state, and local laws and regulations already in place that create rights and responsibilities for residents and housing providers alike. Adding layers of FHFA requirements on top of pre-existing federal, state, and local regulations is not an effective solution

[1] Tenant Protections for Enterprise-Backed Multifamily Properties Request for Information – May 2023, https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Multifamily-Tenant-Protections-RFI.pdf (the "RFI").

for addressing the nation's housing challenges. Doing so would likely serve to increase market uncertainty, discourage use of Enterprise-backed financing, and disincentivize investment in affordable housing. Instead, FHFA and the Enterprises should focus on solutions that encourage new housing supply and remove the true barriers to housing construction and rehabilitation.

As multifamily housing providers and lenders, our members understand that resident rights are a critical part of the rental housing ecosystem and are committed to providing safe, quality housing at a fair price for renters in all of our communities. It is vital that FHFA remain focused on the Enterprises' stated mission of "serv[ing] as a reliable source of liquidity and funding for housing finance and community investment" and avoid limiting broader housing availability and affordability goals.

Housing Supply and Affordability Needs

The best way to help the nation's renters find affordable housing is to focus on housing creation. Private housing providers and developers share FHFA's and the Enterprises' respective goals of providing more affordable housing to all Americans.

Therefore, FHFA should consider policy initiatives that incentivize the use of Enterprise-backed financing to bolster the supply of affordable multifamily housing across markets and in all economic conditions. For example, Fannie Mae's Sponsor-Initiated Affordability (SIA) and Freddie Mac's Tenant Advancement Commitment (TAC) programs represent important ways the Enterprises can offer incentives to create or maintain affordable units, particularly in the multifamily housing market. FHFA should be looking for ways to expand these voluntary programs and to identify new incentives that lead to greater participation.

New federal requirements related to tenant protections for Enterprise-backed multifamily homes will decrease both private sector investment into, and development of, affordable housing stock if there is a discernible impact on the return on investment and the long-term viability of a property. The risk that borrowers will seek financing elsewhere or decide not to invest in the multifamily market due to onerous and repetitive regulations would be gravely detrimental to FHFA's and the Enterprises' purpose and affordable housing goals.

We appreciate that the Administration has elevated discussion of housing affordability and highlighted the importance of a positive resident experience through efforts like the White House Resident-Centered Housing Challenge. Therefore, we urge FHFA to consider that many of the contemplated solutions would be detrimental to our shared goals of expanding affordable housing opportunities nationwide.

The Administration and FHFA would be better served by addressing barriers to housing production including exclusionary zoning, excessive permitting and approval processes, environmental review requirements, high fees and assessments imposed on developers, and, most notably, the lack of incentives for the further development of multifamily housing in general and affordable housing in particular.

Continuation of Reliable Enterprise Capital

While improvements to housing affordability and access depend on increases in housing supply, our industry faces significant challenges with new apartment construction, development, preservation, and renovation. Though many factors influence the apartment industry's ability to meet the nation's demand for rental housing, the availability of consistently reliable and competitively priced capital is critical. The nation's affordability goals cannot be met without capital to support development and renovation at all price points and in all markets, including urban, rural, and smaller secondary and tertiary markets. We strongly support the mission of FHFA and the Enterprises of ensuring that multifamily capital is available in all markets and at all times, and that American taxpayers are protected, and urge them to further these missions with appropriate solutions.

A focus on prudent risk management while providing market liquidity has allowed the Enterprises to achieve and maintain a sterling performance record in the multifamily sector; they have been able to build a balanced book of business, including both market rate and deeply targeted affordable housing properties, such as Section 8 and Low-Income Housing Tax Credit properties. Through their broad platforms, the Enterprises' multifamily programs have been able to provide capital for properties located in markets that do not meet the credit or return standards required by many private capital debt providers and would otherwise lack proper investment. The existing multifamily lending platform allows the Enterprises to manage risk while ensuring that there is a sufficient supply of liquidity in severe market downturns.

The public mission of all federally supported secondary multifamily market should be squarely focused on the creation and sustainability of critical market liquidity. If mandated, the proposals suggested in the RFI will undermine that mission and result in increased rents, as housing providers will be forced to seek financing from more costly sources of capital. We caution FHFA against efforts that stray from this critical mission as an overreach into other housing policy areas could have adverse and unintended consequences.

We have already seen first-hand evidence of the negative impact of current market conditions on multifamily housing finance and development—forcing many in our industry to cut back significantly on new apartment construction. The actions contemplated in this RFI would impose confusion in the market and increase market uncertainty, deterring much-needed investment in housing supply and increasing costs for housing providers and residents alike. In particular, FHFA should avoid creating any type of rent regulations--including rent control, rent stabilization, or pricing policies--as they would harm national affordability goals, deterring investments in much needed housing production, including the Enterprise-backed secondary mortgage market.

Rental Housing is Already a Heavily Regulated Industry

Housing providers are subject to a wide range of federal, state, and local laws and regulations, and private lease agreements further define the rights and responsibilities of the parties involved in rental agreements. These protections and requirements include fair housing practices, consumer reporting and debt collection laws, property operation and management rules, eviction process requirements and enforcement provisions to guard against fraud and abuse.

Further, housing policy is highly localized, and operations and management practices are largely shaped by state and local laws and regulations. Any new one-size-fits-all 'protections' therefore risk a misalignment of requirements that do not account for, or conflict with, the unique housing needs of individual real estate markets.

The proposed tenant rules under consideration clearly indicate that there must be *express congressional authorization* for FHFA and/or the Enterprises to enact new regulatory frameworks that directly or indirectly preempt an area that is the particular domain of state law:

the landlord-tenant relationship. Neither the Safety and Soundness Act nor the terms of the Enterprises' charter express congressional intent to authorize the Enterprises to do so. For example, while certain parties point to the 30-day notice to vacate requirement for federally subsidized and/or backed projects and loans as an example of action FHFA could undertake, that requirement flowed from a direct congressional directive set forth under the Coronavirus Economic Stabilization ("CARES") Act. Neither FHFA nor the Enterprises in the RFI or elsewhere point to a corresponding express congressional directive that would authorize additional federal requirements preempting state landlord-tenant laws.

Rent Control and Other Price Control Measures Have Been Repeatedly Proven to Both Limit the Supply of Rental Housing and Increase Costs

Rent control research has proven repeatedly that rent control is a failed policy which does nothing to alleviate the root causes of housing affordability issues—namely our nation's lack of housing supply. In fact, while rent control and rent stabilization laws purport to improve housing affordability, they often have exactly the opposite outcome and lead to increased costs and a reduction in the available supply of rental housing, further damaging the communities they are attempting to serve.

The facts indicate that rent control stifles housing investments across markets, particularly in underserved communities, ultimately hindering communities of color in their quest for affordable housing. Rent control neither produces outcomes favorable to the population FHFA is seeking to protect, nor does it allow FHFA to satisfy its overall goal of creating more affordable housing opportunities for residents. In fact, a February 2022 study indicated that only 27% of firms surveyed said that they would be willing to keep their current investments, or add new ones, in rent-controlled markets.[2] We strongly urge FHFA and the Enterprises to take such facts into account and avoid rent control or other proposals that interfere with a property's ability to properly manage their costs and revenue. FHFA and the Enterprises must consider that rent control may sound beneficial in name, but in reality, it results in a reduction of the available supply of rental housing in an already undersupplied market.

Rent control has proven to push housing providers out of applicable markets, to the detriment of the communities that so desperately need more affordable housing units. In a San Francisco case study, the National Bureau of Economic Research (NBER) found that rent control "reduced rental housing supply by 15%, causing a 5.1% city-wide rent increase."[3]

Federal Policies Should Target the Root Causes of Eviction, As It Is Almost Always a Last Resort

Evictions are a cumbersome and difficult process, taking months to complete, that negatively affect both housing providers and residents and are often the last resort of a housing provider at the breach of a lease or other contractual agreement. Evictions result not only from a resident's lack of payment, but also from application fraud, a resident's engagement in criminal activity, or some other serious violation of the resident's lease. The eviction process is a laborious one and is especially painstaking for small property owners who rely on residents' payments to meet their own financial needs. Rental payments are used by housing providers to make much needed

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[2] https://www.nmhc.org/news/nmhc-news/2022/nmhc-rent-control-update-multifamily-firms-reconsider-investments-in-rent-control-markets/.

[3] https://www.nber.org/system/files/working_papers/w24181/w24181.pdf.

investments in their current properties, and in future ones, to provide more housing to a nation facing a woeful housing shortage.

We are cognizant of the difficult nature of evictions on impacted households. Providers often attempt to aid residents prior to evictions, such as helping create payment plans or providing information for social services, among other efforts. Such efforts cannot be standardized, however, as there are different root issues that result in evictions, including fundamental income and housing affordability challenges. We urge FHFA and the Enterprises to center their efforts on these root causes, rather than creating broad or one-size-fits-all regulations, to ensure that focus is placed on arenas which will best help the nation's renters.

States and localities have long addressed the issue of evictions, and other housing matters, through policies and laws which have served residents well; the further addition of a federal layer will only serve to exacerbate the complex nature of housing law and hinder the creation of additional affordable housing. It is imperative that FHFA and the Enterprises aid in the mitigation of the need for evictions and foster the generation of additional affordable housing for the nation's renters.

Conclusion

We share the Administration's commitment to addressing the affordable housing crisis in our nation. However, imposing additional obligations for Enterprise multifamily borrowers will create instability in an already challenged market and undermine the important goals of fostering a healthy housing market, increasing supply, and creating successful apartment communities. Inherent in ensuring stability for our nation's renters, is maintaining the current and future viability of the rental housing supply in this country. As such, we respectfully advise FHFA to refrain from placing new or expanded federal obligations on private rental housing providers and instead focus on leveraging federal resources in the form of incentives to bolster new affordable housing.

Sincerely,

American Seniors Housing Association
Council for Affordable and Rural Housing
Commercial Real Estate Finance Council
Institute of Real Estate Management
Leading Builders of America
Manufactured Housing Institute
Mortgage Bankers Association
NAIOP, the Commercial Real Estate Development Association
National Affordable Housing Management Association
National Apartment Association
National Association of Home Builders
Nareit
National Association of REALTORS®
National Association of Residential Property Managers
National Housing & Rehabilitation Association
National Leased Housing Association
National Multifamily Housing Council
The Real Estate Roundtable