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July 31, 2023

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

Re: Tenant Protections for Enterprise-Backed Multifamily Properties: Request for Input

To Whom It May Concern:

On behalf of the Stewards of Affordable Housing for the Future (SAHF), thank you for the opportunity to respond to the Federal Housing Finance Agency (FHFA)'s *Request for Input on Tenant Protections for Enterprise-Backed Multifamily Properties*. SAHF commends FHFA for exploring its role in strengthening resident rights and protections, as previewed in the Biden-Harris Administration's Blueprint for a Renters Bill of Rights and now with this RFI. While we recognize Fannie Mae and Freddie Mac (the Enterprises') limited scope in setting broad renter protections given their role as secondary market participants, ability to implement most changes only at the time of financing and mortgage document signing, and regulatory frameworks already in place at the state level, we know FHFA and the Enterprises can utilize their capital, as well as research and data capacities to better support resident protections and affordability.

SAHF is a national collaborative of twelve nonprofit affordable housing developers that collectively own and operate more than 149,000 affordable homes across the country. SAHF members preserve and develop affordable multifamily homes that expand opportunity and create dignity for low-income persons with disabilities, the elderly, families, and the homeless. Our mission-driven nonprofit members are committed to a more equitable and resident-centered housing market. SAHF members put this vision into practice not only through the homes they build, but also through the connections created to services and community that make a difference for residents. SAHF views resident protections as a broad set of resident-centered practices and policies that can span throughout an entire tenancy from application through move-out. We are committed to practical solutions to housing stability that promote resident well-being, such as service-enriched housing (accredited through our Certified Organization for Resident Engagement & Services (CORES) program), resident voice and agency, and data to inform our management practices and analyze resident outcomes.

SAHF and its members value not only the capital source of the Enterprises, but also the role that they can play in sparking innovation and best practices in the investment market. SAHF believes that FHFA and the Enterprises have a critical role in a more equitable rental housing market, and can better ensure resident well-being, including resident protections, through specific loan terms and financial incentives, as well as using the Enterprises' data and research capacities to better inform the industry (Question A-1). To that end, SAHF is provides best practices in this letter on promoting resident well-being, including resident protections, based on what our members have learned and shared through peer exchange, pilot programs, and data analysis. We follow each best practice with specific recommendations for how FHFA and the Enterprises can strengthen their actions in the respective area. We have organized our comments thematically by the resident experience–from accessing housing, tenancy, and eviction and displacement prevention–cross-referenced with question numbers from the RFI.

In addition to offering these recommendations on how FHFA and the Enterprises may be able to support resident well-being, we also acknowledge the important role that the Enterprises play in the multifamily mortgage markets and that housing providers face significant obstacles to creating and preserving housing supply. We urge FHFA to consider the impacts of any new requirements on Enterprise-backed financing on housing production and affordability and to avoid duplicative, costly new provisions that could confuse residents, create uncertainty in the housing market, and ultimately result in increased rents or barriers to financing (Question E-2).

Lower Barriers to Accessing Housing

Renters, especially those with low-incomes and from marginalized populations, encounter several challenges as they seek housing, including discrimination, tight rental markets, and a confusing web of information on assisted housing. The FHFA should consider how to make it easier for residents to overcome these barriers and access housing that is appropriate for their circumstances.

Database of Multifamily Housing

Identifying appropriate housing options through a disjointed and often nebulous variety of resources is a barrier for many residents who must prove their eligibility when applying for assisted housing. SAHF applauds the Enterprises for launching lookup tools during the pandemic to help renters understand whether their housing is backed by Enterprise loans, and thus subject to specific renter protections, and believe FHFA and the Enterprises could build upon this work. Specifically, we encourage <u>FHFA and the Enterprises to develop a user-friendly database of Enterprise-backed multifamily housing that renters could use as they search for a home, providing information on the location, relevant eligibility, and affordability restrictions of available, Enterprise-backed multifamily housing units</u> (Question B-1; Question C-1). This could be an incredibly useful tool that could advance the field. SAHF also envisions FHFA eventually partnering with the U.S. Department of Housing and Urban Development (HUD), Treasury, Agriculture (USDA), and other agencies to broaden the database into an even more comprehensive database of affordable housing options. The Enterprises could collaborate with state housing finance agencies, public housing agencies and industry associations such as the National League of Cities and Conference of Mayors to help promote such a resource.

Source of Income Protections

Housing Choice Vouchers (HCVs) are a reliable source of rental subsidy for over 2 million households. However, landlords in many states and localities are legally allowed to deny

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applicants for using a voucher to pay the rent. Landlord discrimination makes it much more difficult for residents to use their vouchers, especially in higher-cost neighborhoods with fewer options available to voucher residents. Well-balanced source of income (SOI) protections would prohibit landlords from rejecting applicants based on their source of rental income, including HCVs, without causing significant shifts in lending and rental markets. The Poverty & Race Research Action Council (PRRAC) keeps an updated list of active SOI discrimination laws at the local, state, and federal levels. SOI discrimination is already largely prohibited in federally assisted properties. However, this patchwork of protections is insufficient and SAHF strongly supports federal bans on SOI discrimination, as proposed in the Fair Housing Improvement Act of 2023.

Until this bill or a similar one is enacted to provide universal SOI protections, a broader SOI protection from the FHFA could protect additional residents and set an example for unprotected states and localities as well as non-federally assisted properties. We therefore urge FHFA and the Enterprises to take lessons learned from Fannie Mae's Expanded Housing Choice pilot and explore ways to expand SOI protections to all Enterprise loans for affordable housing properties receiving financing incentives and to encourage the adoption of SOI protections in the broader universe of Enterprise-backed properties. Instead of abruptly requiring SOI protections for all multifamily business, which could have the potential of driving business away from the Enterprises instead of protecting renters, expansion should align with an expansion of small area Fair Market Rents (SAFMRs) to the greatest extent possible, and with lessons learned through pilots. (Question A-2; Question B-2).

Promote Clear and Resident-Centered Communication

SAHF members, through peer sharing and research around best practices[1], understand the importance of clear, accessible, and equitable communication in landlord-resident relations through all stages of tenancy (Question C-4). It is the cornerstone of trust building and housing stability. Unfortunately, engaging residents in this way often proves difficult while operating in a complex financing and regulatory environment. For example, several federally subsidized programs have varying requirements for qualification and eligibility. These requirements are not only designed with an inherent mistrust of residents (requiring often multiple documentations of need), but also require property staff to undergo significant training on federal programs and compliance requirements, particularly income certifications and recertification. Coupled with tight budgets that limit the salaries of management and services and the stress of frontline work during the pandemic, these requirements have left staff overwhelmed and under-resourced and they are too often seen at odds with residents. FHFA and the Enterprises could play a role in better ensuring that adequate and resident-centered staffing is reflected in budgets and regulations are streamlined to promote trauma-informed and resident-centered communications more holistically.

[1] Fallons, Katherine et al. "Preventing and Mitigating Evictions after the COVID-19 Crisis". Urban Institute, February 2023.

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Staffing
Property staff—both management and resident services staff—are at the frontline of resident engagement and are key to positive experiences. For example, these staff were critical in connecting residents to emergency rental assistance and other supports during the pandemic. Yet, property budgets are often inadequate to properly resource these staff. The great resignation has impacted the affordable housing industry, with vacancies growing. Several SAHF members are seeking ways to lower burdens for staff but are often unable to increase salaries given their constrained budgets. FHFA and the Enterprises should explore whether their underwriting is allowing for appropriate staffing needs (Question A-3). SAHF would urge the Enterprises not to simply require more staffing (as this could be financially unsound), but rather consider budgets that reflect whether the property is in a high-cost area, allow for the property to be kept in good condition, and for adequate staffing to clearly engage with residents.

Lease Requirements
Model leases, consistent with state and local laws, should detail the following elements (Question C-2):

- Clauses regarding the lease term, renewal provisions, and termination;
- Security deposit requirements for the lease and what will the landlord do with the deposit;
- A clear explanation of how rent may be paid and a requirement for the landlord to provide a receipt for rent paid;
- Limitations on what late fees may be charged;
- Clear provisions regarding which parties are responsible for utilities and any other expenses incurred;
- Any pet-related provisions;
- Requirements that landlords provide sufficient prior notice before they can enter onto the premises as required under law;
- A process by which tenants may report needed repairs and damages; and
- Both the landlord and tenant's contact information and any additional documentation as required under law, such as information on the unit's lead safety status.

While the lease, eligibility documents, and other orientation materials may be helpful in stipulating both resident and landlord responsibilities, they can also lead to information overload. For example, lease documents providing the provisions mentioned above are often several pages long and include legal language that can be unclear to some audiences. FHFA and the Enterprises should consider ways to encourage multifamily property owners to conduct written and verbal walk-throughs of all lease requirements, and encourage the use of a worksheet, one-pager, or summary document that residents can use to remember key terms of the lease through the development of a sample optional form (Question C-3). This includes both resident requirements and landlord obligations, such as how to pay rent, changes in information that must be reported to the landlord, how the landlord will communicate with residents, how to request maintenance, how to address disputes, and when and where to reach out for assistance.

Resident Notices
Resident notices are an important communication tool, but timing and the content of these notices are often subject to local law and specific financing documents, leading to legal and financial complexities. SAHF members, as part of the *White House Resident-Centered Housing Challenge*, committed to at least 30 days' notice to vacate for nonpayment of rent; at least 5 days to cure a missed rent payment; and 60 days' notice to tenants of any proposed sale or closure of a property. SAHF is supportive of robust notice requirements for residents, but also acknowledges that this commitment was possible not only due to SAHF members' commitments to housing stability but also because these notices align with our portfolio composition. In general, housing policy is highly localized, and operations and management practices are shaped by state and local laws and regulations. FHFA should avoid blanket requirements that could cause misalignment of requirements that confuse residents and housing providers alike and fail to account for the unique housing needs of individual real estate markets. FHFA and the Enterprises could leverage their significant research capacity to evaluate the patchwork of notice requirements, including how the timing actually plays out in practice, to better understand the communication needs of residents as well as the economic vacancies for properties (Question D-3).

Support Resident Voice & Agency
The landlord-resident relationship has far too often been portrayed as a zero-sum game, but landlords and residents can and should be part of an equitable rental housing ecosystem. Resident-centered communications means not only conveying resident rights and responsibilities, but also landlord obligation to all the residents to ensuring a safe and heathy community. An emerging best practice that highlights this reciprocal relationship is co-creating housing rules with residents (Question C-3; Question C-4). This is also one way to better support resident voice and agency. In 2022, SAHF published a report on Measuring Resident Agency and Voice in an Affordable Housing Setting demonstrating how personal agency, along with the sense of belonging and connection to a community, play a significant role in a resident's wellbeing, and ways in which affordable housing providers could support and measure agency.

Resident Services
From a growing body of literature, as well as from our members, we know that resident services informed by the residents themselves can be a crucial piece of the puzzle to influencing positive resident outcomes. By pairing affordable homes with resident services, our members support residents in improving a wide range of outcomes from housing stability to income, employment, education, and health. SAHF members and others in the industry saw this firsthand during the pandemic when Resident Service Coordinators (RSCs) were on the frontline of connecting residents with emergency rental assistance, low-cost broadband, and assisting residents with food security. In a pre-COVID data analysis, SAHF member Mercy Housing found that households who participated in services had 41% less risk over time of a negative move-out than non-participants, even after removing the influence of region, population served, and the

property[2] (Question A-7; Question D-1). Through this relationship, RSCs can also play a key role in trust building between property management and residents, even mediating ongoing concerns.

Recognizing the importance of resident services, SAHF encourages the Enterprises to continue exploring opportunities to support service coordination in the underwriting of Enterprise-backed loans (Question A-3). These efforts could build on Fannie Mae's Healthy Housing Rewards program that incentivizes borrowers to prioritize high-quality resident services through its Enriched Resident Services (ERS) Pathway. ERS requires certification through the SAHF-managed CORES program—a unique certification that recognizes owners and third-party providers that have developed a robust commitment, capacity, and competency in providing resident services coordination in affordable housing communities.

Housing Stability

SAHF's commitment to housing stability precedes the pandemic. Compared to national eviction rate data from the Eviction Lab, SAHF members' rates were consistently lower for a five-year pre-COVID time period (Question D-1), and on average roughly half of that national rate over this time period. We have also committed to exploring policies and practices that advance housing stability, through an 18-month housing stability cohort. FHFA and the Enterprises could also play a role in expanding the learning on housing stability efforts, both through data analysis and lifting up best practices (Question D-2).

Resources Audit

FHFA and the Enterprises should examine current requirements, including those in the Delegated Underwriting and Services (DUS) guide, to consider whether management agents and owners should be required to adopt core written processes for stability (including but not limited to communications with residents, notice periods, and connections to resources) as part of underwriting (Question D-2).

Housing Stability Data

The FHFA has a role in creating affordable housing programs with resident services that support housing stability. FHFA should continue to identify and pilot operating practices, financing structures and services that support housing stability, particularly for those at greatest risk. More analysis is needed on whether certain models of programs or interventions are more successful at preventing evictions than others. SAHF encourages the FHFA to consider how it could contribute to expanding an evidence base on housing stability practices (Question A-5).

Renter Protections Data

Any evaluation of the impact of multifamily resident protections should encompass all the factors and drivers that support the availability of affordable, safe, quality rental housing in the

[2] Gowan, Benjamin. "Staying Power of Resident Services: A Time to Event Analysis of Mercy Housing Residencies--Mercy Housing National Resident Services Program Evaluation." Mercy Housing, 2019.

U.S. The Enterprises should evaluate how resident protections support housing stability and reduce evictions for residents, how protections impact the financial performance and health of properties, and any subsequent impacts on the overall supply of affordable rental housing in the U.S. (Question A-6; Question E-4).

Renter Asset Building

The Enterprises have taken several actions already to incentivize resident savings and asset building over the years. As affordability and financial security can be critical to housing stability and resident well-being, FHFA and the Enterprises should share lessons learned and consider ways to further promote financial coaching (Question D-2).

Eviction and Displacement Diversion

Just Cause Requirements

Just cause requirements under which landlords may only evict renters for specific reasons—such as failure to pay rent, lease violations, and criminal activity at the property—provide clarity and create standard processes around when a resident can be removed from a property. Due to the lack of a federal just-cause requirement, only some multifamily properties are covered by state and local just-cause measures in jurisdictions that have adopted such legislation. While clearly documenting lease violations is already considered to be an industry best practice, FHFA should require just-cause for evictions at multifamily properties with Enterprise-backed loans (Question D-3).

Qualified Contract Provision

FHFA and the Enterprises can further protect residents by safeguarding housing stock at risk of losing its affordability. In the Low-Income Housing Tax Credit (Housing Credit) program, for example, there is a qualified contract (QC) provision that allows investors to circumvent a property's affordability requirements after only 15 years of affordability. According to the National Council of State Housing Agencies (NCSHA), approximately 10,000 units of affordable housing are lost each year due to the QC loophole. The FHFA should take the following actions to address the QC issue and preserve thousands of affordable units (Question A-4):

1. Prohibit the Enterprises from investing in Housing Credit properties unless the owner has agreed to waive its Qualified Contract rights.
2. Prohibit the Enterprises from acquiring multifamily loans on Housing Credit properties unless the owner has agreed to waive their Qualified Contract rights.
3. Prohibit the Enterprises from acquiring multifamily loans on properties financed with Housing Credits where an owner has taken the property through the Qualified Contract process and terminated the rent and income limitations on the property, unless the owner agrees to affordability restrictions such as Sponsor-Initiated Affordability.
4. Prohibit Federal Home Loan Banks from providing Affordable Housing Program funds to Housing Credit properties unless the owner has agreed to waive its Qualified Contract rights.

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SAHF thanks the FHFA for its ongoing commitment to resident protections. We appreciate this opportunity to provide input on the actions FHFA and the Enterprises can take to support residents. Please feel free to contact Althea Arnold, SAHF's Senior Vice President for Policy (aarnold@sahfnet.org) or Jenna Hampton, SAHF's Policy and Program Manager (jhampton@sahfnet.org) with any questions about our comments above.

Sincerely,

Althea Arnold
Senior Vice President, Policy