NATIONAL ASSOCIATION OF REALTORS®

July 31, 2023

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

**RE: Tenant Protections for Enterprise Backed Multifamily Properties – Request for Input**

*Submitted Electronically via: https://www.fhfa.gov/AboutUs/Contact/Pages/Request-for-Information-Form.aspx*

Dear Director Thompson:

On behalf of the more than 1.5 million members National Association of REALTORS® (NAR), the Institute of Real Estate Management (IREM), and the CCIM Institute, we thank you for the opportunity to provide feedback to the Federal Housing Finance Agency's request for input (RFI) on tenant protections in multifamily properties with mortgages backed by Fannie Mae and Freddie Mac (the Enterprises). Approximately 40% of NAR's members own at least one rental housing unit, and our membership counts thousands of "mom-and-pop" housing providers among its numbers. NAR appreciates the opportunity to work with the Administration to address the critical housing supply shortage and affordability issues, which is a top priority for our organization and members.

The United States is facing an estimated 5.5 million unit housing shortage, making it crucial that policymakers at all levels of government seek long-term solutions that address the root causes. The shortage of homes available for purchase and rental housing goes hand-in-hand: lack of access to affordable housing for potential homeowners to buy creates tension and higher demand for rental housing units, driving up costs and reducing availability. Thus, holistic solutions that address both shortages are the best option. At the state or local level, those solutions can include removing barriers to creating new inventory – especially affordable housing – by re-examining their zoning and permitting requirements. The federal government can assist by incentivizing such action at lower levels of government and working with Congress to improve or enact new policies that promote housing development and improvement.

NAR has led the support for solution-focused policies both in Congress and in the Federal Agencies. We support the *Neighborhood Homes Investment Act*, which would mobilize private investment to build and rehabilitate 500,000 affordable homes over the next decade; improving the Low Income Housing Tax Credit by passing the *Affordable Housing Credit Improvement Act* to expand and increase it by leveraging private investments; and the *Choice in Affordable Housing Act*, which would improve the Section 8 Housing Choice Voucher Program to attract more housing providers to participate in it and increase the number of rental units that accept vouchers. NAR has also been working with Congress since the COVID-19 pandemic to develop policies that encourage converting under-utilized commercial real estate into affordable housing. Additionally, we support increased funding for existing HUD programs to support the

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preservation or development of new affordable housing, and the use of appropriations from the State and Local Fiscal Recovery Funds from the CARES Act to support development and preservation of affordable rental housing. Such federal programs include Project Based Rental Assistance (PBRA), Rental Assistance Demonstration (RAD), homelessness programs, the HOME Investments Partnership Program, Community Development Block Grants (CDBG), the Housing Trust Fund, FHA Multifamily Programs, rural housing programs, and more.

With a stated mission "to serve as a reliable source of liquidity and funding for housing finance and community investment," the Enterprises play a critical role in the multifamily rental housing market. Their share of multifamily rental housing mortgages was forecast by Fannie Mae to come in at approximately 26% in the second quarter of 2022. (During the financial crisis in 2008 – 2009, their share of the market was over 70%, and in more recent years it has typically wavered between 28% and 40%.)[1] Thus, any new policy directives specific to Enterprise-backed multifamily mortgages would impact approximately a quarter of the entire sector, if not more. This has the potential to create disruption in the market and confusion for housing providers and renters alike, so we urge caution and thoughtfulness by the FHFA.

As the RFI notes, Enterprise-backed rental housing already includes additional resident protections that go above other state, local, or federal requirements. In the manufactured housing sector for example, manufactured housing communities are only eligible for Enterprise financing when the owner agrees to additional protections for the lease on the land beneath the housing unit, which include renewable lease terms and advance notice of the sale of a manufactured housing community. During the COVID-19 emergency period, the Enterprises exchanged forbearance on multifamily mortgage payments for pausing resident evictions due to non-payment of rent, late fees or penalties for back rent, and added an additional 30-day notice requirement to any eviction proceedings.

The Enterprises also offer voluntary programs for housing providers, in which they Enterprises exchange flexible credit terms or more favorable financing for preserving affordable rent levels or restricting rents in a certain percentage of units for low-income residents. The Enterprises are additionally considering ways to incentivize housing provider participation in the Section 8 Housing Choice Voucher Program.

NAR's housing provider members are committed to providing safe and healthy rental housing for their residents. They are experts on federal, state and local requirements and regulations on rental housing, and belong to professional organizations such as the Institute of Real Estate Management (IREM) which provides continuing education and resources related to property management practices.

Further, REALTORS® are highly aware of and educated on Fair Housing laws and practices. NAR opposes policies and practices that have disproportionately adverse effects on a demographic group defined by race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity, unless such policies or practices are justified by a legitimate business necessity and there is no less discriminatory alternative. NAR agrees with the Supreme Court's approach in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*,

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[1] 2023-2024 Multifamily Enterprise Housing Goals, p 19, https://www.fhfa.gov/SupervisionRegulation/Rules/RuleDocuments/2023-2024%20MF%20Enterprise%20Housing%20Goals%20Final%20Rule_for%20Web.pdf. PDF file.

which we believe strikes the proper balance between combatting discrimination and ensuring that real estate professionals and housing providers have appropriate latitude to make legitimate business decisions in the pursuit of nondiscriminatory objectives. Protecting against discrimination and working to provide equal opportunities to access housing are the cornerstone of NAR's Code of Ethics.

Rental housing policies are inherently localized, and thus regulation in this area is the purview of state and local governments, which are most closely attuned to the specific needs and conditions of their communities. Rent increases, eviction proceedings, and other aspects of rental housing practices have long been limited and regulated by state and local policies that prevent housing providers from unreasonable actions against residents, with further protections provided to those residents in the judicial system. Adding additional layers of federal regulations on certain properties in a community will lead to confusion for housing providers and their residents, as well as the court system of the jurisdiction they are in.

For housing providers of all sizes, but especially smaller ones, the right to collect rent on time and make reasonable rent increases to adjust for the changing market and additional costs is critical to providing those safe and healthy living environments for their residents, not to mention to support their own businesses and livelihoods. Inflation is not selective in its impact, and rising energy, maintenance, and insurance costs are born by the owners of these properties.

Proposals to place rent control or rent stabilization measures on rental properties backed by Fannie Mae and Freddie Mac – which represent a large share of the market - would have a hugely detrimental effect on rental housing in the country, including potentially exacerbating inequities in housing. Such policies, if implemented, will have many unintended consequences, including but not limited to driving many housing providers from the market – especially smaller, "mom-and-pop" landlords who are unable to absorb rising costs that increase at a rate higher than they can raise rents. Housing providers of all sizes may be unable to afford basic improvements, or even maintenance on the properties, and eventually be forced to sell – likely to large, corporate landlords with histories of higher rents. Shifting the full burden of cost increases and inflation onto housing providers is harmful for renters and for the economy long-term and does not allow states and localities to make policy decisions that are best suited to the unique needs and demands of their communities. Further, rent control or rent stabilization measures will lead to lower property values and tax revenues due to a decline in the return on investment on rental housing.

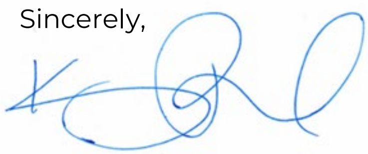
Far from alleviating rent increases and creating more affordable rental units, rent control policies have consistently resulted in development slowing in communities and lower quality rental housing. Higher-income households may actually benefit the most when rent control policies are implemented, as many rental properties are converted to condominiums by the owners when faced with the prospect of limiting their ability to raise rents to meet market rates and increased maintenance costs. We strongly urge you to consider these economic challenges faced by both residents and their housing providers.

Eviction proceedings are generally the last resort of a housing provider, as they are time-consuming, costly, and result in one less occupied rental unit. These may occur due to nonpayment of rent, but they also are the result of unsafe behavior, property damage, or other activities that put the safety of other residents and their ability to enjoy their home at risk. When it comes to issues with rental payments, many housing providers – especially smaller ones – would prefer to work with their residents or help them find financial assistance from various state, local, or federal programs to meet their lease obligations rather than begin the eviction process, as it can be financially draining on them and take away time from running and maintaining their properties.

The ability to evict has long been limited by state and local regulations that prevent housing providers from unreasonable actions against residents and provide further protections for those renters within the judicial system. Housing providers understand these limitations and upon entering the business, including the responsibilities they have to insure and maintain their properties and to protect their tenants, when necessary, from other residents whose actions qualify them for eviction. Residents likewise recognize their rights and responsibilities under the law and within their lease contract. Once again, placing an additional layer of federal regulation on top of the existing state and local requirements will lead to confusion for housing providers, residents, and the judicial system, and will disincentivize new housing providers from entering the market while potentially driving out those who are already in it.

The United States is facing a new challenge in housing, which comes down to one root cause: lack of supply. This lack of supply is driving up costs for homes to purchase, which in turn keeps more people in rental housing for a longer period of time, and therefore puts more pressure on the existing rental inventory (with even more tightness in low-cost units). The solution to this problem is not to create policies that drive housing providers out of the market, but to find new solutions to increase development and enhance and fund existing programs which incentivize creating more affordable housing of all types. NAR is proud to support such solution-oriented policies and looks forward to continuing to work with the Administration and Congress to develop new and creative ways to support housing providers and residents alike across the country.

Sincerely,



Kenny Parcell
2023 President
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