July 31, 2023

The Honorable Sandra Thompson

Federal Housing Finance Agency

Washington, D.C.

Director Thompson:

I am the director of policy and advocacy at Together, a service organization in Omaha, Nebraska, that works to prevent and end hunger and homelessness in our community. I appreciate the chance to provide information on the Federal Housing Finance Agency’s (FHFA) Request for Input because strong tenant protections help us effectively and efficiently assist individuals and families experiencing homelessness. What’s more, measures that protect tenants’ rights go a long way in preventing housing instability that can lead to chronic homelessness.

A-2

FHFA should consider prohibiting source-of-income discrimination. Tenants benefit when they are not automatically excluded from certain multifamily properties because they use housing vouchers or another legal source of income to afford rent. This eases the strain on low-income renters because there are more housing options and increases community diversity. Additionally, housing authority inspections can ensure landlords adhere to housing codes and other minimum standards for health and safety. However, the landlord-housing authority relationship may pose a challenge in some jurisdictions since the bureaucracy of a government agency introduces inspections and other requirements, ledger complications, and other processes that landlords may find frustrating or even detrimental to their business. Legislation to ban source of income discrimination has been introduced in recent legislative sessions, including in 2023. During this year’s session, almost all landlords who testified at the bill’s committee hearing opposed the legislation, indicating that their main reluctance to accept Housing Choice Vouchers or other government benefits was because of the headaches of working with the housing authority.

Also, it is important to consider limiting evictions to just-cause evictions (also known as for-cause evictions). When confined to just-cause evictions, landlords are prevented from evicting tenants who have not breached the lease agreement or otherwise given any good cause for eviction. This provides more stability for renters and makes it less likely that a landlord could engage in retaliatory actions or otherwise punish tenants for acting within their legal rights, which makes it more likely that tenants will file a complaint, advocate for improvements, and/or organize in response to poor living conditions, discrimination, or other illegal landlord behavior. A just-cause eviction policy also discourages a renter from self-evicting in response to an eviction notice and can even protect tenants from dramatic rent increases.

A-3

We believe there are opportunities for FHFA to incentivize landlords to incorporate programs and policies that directly benefit tenants. For instance, encouraging landlords to use community mediation services in appropriate circumstances. Often, both landlords and tenants benefit when they address and attempt to resolve landlord-tenant issues before an eviction filing, saving time, legal fees, and court costs. Additionally, with a professional mediator involved, it is likely that the agreement will be more balanced and favor the parties equally.

A-5

It can be difficult to ascertain whether a tenant is protected by current FHFA measures because it is somewhat difficult to determine if the multi-family property is backed by an Enterprise mortgage. Currently, there are two separate databases, and the search engine appears to be case sensitive. We often feel like the lack of search results is due to a slight mistake, choosing a slightly different way of entering the property address, or difficulty pinning down the address used for larger-scale multi-family properties.

B-3

Perhaps the most effective way for the Enterprises to support fair housing is to impose meaningful penalties on landlords who violate the Fair Housing Act. To be an effective deterrent, penalties must be substantial—such as imposing a significant fine.

The Enterprises could also provide information and guidance on fair housing best practices. For example, landlords may benefit from information on how to ensure a landlord’s practice of screening applicants using criminal history records complies with FTC and CFPB regulations and does not violate the FHA for having a disproportionate effect on Black Americans.

D-4

We find that it is difficult to hold housing providers to the legal/regulatory standards they’re required to follow. Often times, a practice or lease provision arguably violates statute, but tenants and advocates frequently lack the resources and capacity to contest landlords’ improper practices. In the legal sense, an attorney’s primary goal is to achieve their client’s ends, which rarely involves raising all the violations of statute or regulation that the landlord has committed.

Frequently, the legal remedy has no significant value to the individual client and runs the risk of confusing the issues or making things more contentious. Thus, bringing these violations to light can run counter to the best interests of a client and typically falls outside the scope of representation. In short, holding housing providers to the prescribed standards is extremely difficult to do on an individual level. The most effective way to ensure compliance is for the government, government agencies, or some type of private oversight to better police and enforce (or incentivize) proper practices.

For example, we house many of our participants exiting homelessness at a property with a lease that states the landlord is responsible for the cost of electricity. The landlord is insisting that all tenants, even those under current lease agreements, must sign a lease addendum requiring that tenants put electricity service in their name and assume responsibility for the bill. In representing our participants in contesting the unilateral modification of the material terms of the lease, I have noticed numerous improper lease provisions (waiving rights and remedies guaranteed by state statute, agreeing that if a claim is filed the losing party will pay attorney’s fees, agreeing to limit liability of the landlord for actionable negligence, establishing pest control responsibilities counter to city ordinance, etc.). Many of these lease provisions are simply unenforceable. However, most tenants do not know that or feel empowered to push back, given the extreme power differential. As for me, it is not in our participants’ interest for me to raise these improper lease terms in the current circumstances when they are not in issue. Even if I did provide the landlord information about which provisions were in violation of state law, it is unlikely that the landlord’s practices would change, given there is much to gain from tenants who do not know their rights and absolutely no risk to keeping the lease as it is.

Together encourages the FHFA to expand its current tenant protections, continuing to level the playing field between property owners and renters. Equally important, these tenant protections must have effective enforcement mechanisms that compel landlords’ compliance through serious penalties. Violations must affect a property owner’s bottom line—through fines or by making it worthwhile for an aggrieved party to file a claim—or the requirements will have no real effect.

We greatly appreciate the FHFA’s interest in protecting tenants, a often overlooked and underserved population, and care in considering our input. Bold initiatives that center lived experiences, work to counter structural racism, and provide necessary oversight to counteract an extreme power differential are necessary to ensure that every person has a safe, affordable place to call home. Housing is a human right, and Together appreciates the FHFA’s contribution to the ongoing effort to act on this fundamental truth.

Sincerely,

Alicia Christensen

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Together

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