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BY:

State of California
Office of the Attorney General

ROB BONTA
ATTORNEY GENERAL

June 29, 2023

Imperial Valley Housing Authority
1402 D Street
Brawley, CA 92227

Re: Application of California's Tenant Protection Act to Recipients of Section 8 Housing Choice Vouchers

Dear Colleague:

Californians are facing a housing crisis of epic proportion, made worse by the lingering impacts of the COVID-19 pandemic and ongoing economic challenges. Renters, in particular, are navigating housing shortages and skyrocketing costs, which too often make it hard to keep a roof over their heads. Against this backdrop, local housing authorities provide critical support to some of the most vulnerable Californians through administration of the Section 8 Housing Choice Voucher program. I greatly appreciate the work your agencies do to keep Californians housed, and I am writing to ask for your help in ensuring that all tenants – including Section 8 Housing Choice Voucher recipients – receive the benefits of California's tenant protection laws.

In the last several years, as urgency over our state's housing crisis has grown, the California legislature passed a series of new laws aimed at increasing protections for California renters. One such law is the Tenant Protection Act of 2019 (AB 1482). In addition to imposing new limits on evictions for most tenants who have been living in their units for at least a year, the Tenant Protection Act caps rent increases for most tenants in California. Under the law, landlords cannot raise rent annually more than 5% plus inflation according to the regional Consumer Price Index, or 10%, whichever is lower. (Civ. Code, § 1947.12.)

I write to confirm that the Tenant Protection Act applies to recipients of Section 8 Housing Choice Vouchers, and similar vouchers, and to request your assistance in ensuring that landlords participating in the Section 8 program do not impose unlawful rent increases on their tenants. Given that your agencies must approve any rent increases for tenants with Section 8 vouchers, local housing authorities play an important role in protecting those tenants who, as their participation in the Section 8 program signals, can least afford to pay unlawful rent increases. Indeed, HUD regulations and case law make clear that a housing



authority's rent reasonableness determinations should be consistent with state and local rent control laws. (24 C.F.R. § 982.509; see also *Barrientos v. 1801-1825 Morton LLC* (9th Cir. 2009) 583 F.3d 1197, 1209 [holding that "HUD regulation expressly subjects section 8 rent reasonableness determinations to local rent control"].) Unfortunately, my office has learned that some local housing authorities have approved rent increases that violate the Tenant Protection Act, leading landlords to believe, wrongly, that they are in compliance with state law. I ask that you carefully scrutinize future rent increase requests to ensure that they comply with the Tenant Protection Act and any other applicable state or local laws.

Contrary to arguments advanced by some landlords, the narrow exception in the Tenant Protection Act for housing that is restricted as affordable housing by deed, government agency agreement, or other recorded document, or that is subject to an agreement that provides housing subsidies for affordable housing, does not also exempt Section 8 Housing Choice Voucher recipients. (Civ. Code, § 1946.2, subd. (e)(9).) As you know, Section 8 Housing Choice Vouchers help tenants pay for market-rate housing that landlords offer to the general public at market-rate rents. These market-rate units do not constitute "affordable housing" as that term is used in the Tenant Protection Act. Section 8 Housing Choice Vouchers also apply to specific tenancies, not to the housing itself. Market-rate tenancies assisted by Section 8 Housing Choice Vouchers, and other similar voucher programs, are therefore not exempt from the Act's protections.

This is clear from the Tenant Protection Act's language, and also from the fact that carving out Section 8 Housing Choice Voucher recipients from the Act's protections would lead to counterintuitive and unfair results. Consider a large apartment building where two long-term residents – one a Section 8 voucher holder and one not – both receive notices that their rent is increasing from \$1,000 to \$1,500. Clearly, this \$500 increase would be unlawful as applied to the non-Section 8 tenant, since it far exceeds the Tenant Protection Act's absolute cap of 10%. At most, this tenant could be forced to pay a \$100 (or 10%) monthly rent increase. Absent the Tenant Protection Act's rent cap protections, however, a housing authority evaluating the Section 8 tenant's increase might deem the new rent "reasonable" if newer tenants were paying at or near \$1,500. And if the housing authority was already paying the maximum subsidy based on the payment standard, the Section 8 tenant could potentially be forced to bear the entire \$500 increase. This result – a tenant with no voucher paying an additional \$100 per month while their Section 8 neighbor absorbs a \$500 monthly increase - is incongruous and plainly wrong. By declining to certify rent increases of this magnitude, housing authorities will give proper effect to the Tenant Protection Act, and will ensure that vulnerable Section 8 tenants receive protections equivalent to those enjoyed by their otherwise similarly situated neighbors.

Some local housing authorities have already issued public guidance clarifying that the Tenant Protection Act applies to Section 8 voucher recipients. (See, e.g., [Housing Authority of the City of Los Angeles, Section 8 Landlord Newsletter \(March 2020\)](#) ("The Housing Authority has determined that the Tenant Protection Act of 2019 does apply to units that receive tenant based rental assistance.")) In addition to monitoring future rent increases, I encourage all local housing authorities to take similar steps to make clear to landlords that participating in the

Imperial Valley Housing Authority

June 29, 2023

Page 3

Section 8 program does not give them a free pass to ignore state laws, including but not limited to the Tenant Protection Act, or local tenant protections.

Again, I commend your agencies for your daily efforts to ensure that Californians have access to safe and secure housing. Please do not hesitate to contact my office to discuss this letter or any other matter impacting California renters.

Sincerely,



ROB BONTA

Attorney General