

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

July 31, 2023

Dear Director Thompson:

I am writing on behalf of the National Housing Conference (NHC) to comment on the Federal Housing Finance Agency's (FHFA) Request for Input (RFI) on tenant protections at multifamily properties with mortgages backed by Fannie Mae and Freddie Mac (the Enterprises), released on May, 30, 2023. We appreciate the opportunity to address the significant increase in rental costs and concerns of tenant advocates regarding enhanced protections for renters.

NHC is a diverse continuum of affordable housing stakeholders that convene and collaborate through dialogue, advocacy, research, and education, to develop equitable solutions that serve our common interest: an America where everyone is able to live in a quality, affordable home in a thriving community. We have successfully advocated for nearly every major piece of housing legislation including the National Housing Acts of 1937 and 1949, the Housing and Community Development Act of 1968, and the Homeowners Assistance Fund of 2021 to name just a few. Politically diverse and nonpartisan, NHC is a 501(c)3 nonprofit organization.

This response was informed by the input of a working group convened by NHC and conversations with our members. The working group consists of a diverse group of subject matter experts and stakeholders representing various interests within the multifamily housing industry. The group convened for a series of discussions that informed NHC's stance on answering this RFI. While this letter is informed by their contributions, it represents the views solely of the National Housing Conference.

Rising rent costs continue to be a major concern of housers, and even more so for renters struggling to find and maintain residency at affordable apartments. According to a report from the Joint Center for Housing Studies at Harvard, third-quarter spikes in rents occurred in 148 of 150 markets, with 77 metros showing double-digit rent increases.¹ The consequences of these increases are felt particularly hard by lower-income families who were or are at risk of being cost-burdened by rent. Given these realities of the market, it is commendable for FHFA to seek comments on tenant protections to help keep renters stably housed.

NHC recognizes that housing instability inevitably leads to increases in homelessness. For instance, Phoenix, Arizona saw the largest rent increases in the country as well as the largest increase in homelessness. Notably, Phoenix also has a significant shortage of housing supply as its economy has continued to grow. While some estimates show that 901,000 people exited homelessness between 2017 and 2020, another 909,000 people entered homelessness over the same period.² To a significant extent, our homelessness crisis can be solved by keeping people from becoming homeless in the first place.

¹ https://www.jchs.harvard.edu/sites/default/files/interactive-item/files/Harvard_JCHS_Americas_Rental_Housing_2022_Press_Kit.pdfm

² <https://www.nytimes.com/2023/02/03/business/economy/us-homeless-population-count.html#:~:text=Nationally%2C%20some%20901%2C000%20people%20exited,Shaw%20said.>

Finding common ground on reasonable tenant protections may help to protect renters at risk of entering homelessness due to short term economic hardships.

NHC also recognizes that implementing reasonable renter protections requires navigating the friction that is created between administrative requirements of additional protections and overall efforts to increase affordable housing supply. The lack of an adequate number of affordable units is the chief culprit of housing unaffordability. The urgency of creating more affordable housing supply is widely recognized by the affordable housing community and is reflected in the Biden Administration's Housing Supply Action Plan.³ The issue of rent control and anti-rent gauging policies remain highly controversial. Fair housing and low-income housing advocates are unequivocal in their condemnation of price-gouging and evictions. Industry representatives strongly oppose measures that would create disincentives to invest and manage affordable rentals or force landlords to carry the economic burden of tenants that are a threat to their neighbors or don't pay their rent.⁴ It has been repeatedly proven that extreme measures, particularly rent control provisions, are ineffective, discouraging housing production⁵ and making building maintenance more difficult.⁶ This leads to future increases in rents in uncontrolled markets and in turn harms the very people it is intended to help.⁷ Given this continued controversy, FHFA should maintain a focus on tenant protections that can be agreed upon a broad range of housing groups.

There is precedent for basic tenant protections already adopted in other segments of the housing market. These include FHFA's manufactured housing standards under Duty to Serve⁸, the Low-Income Housing Tax Credit program⁹ and the HOME Investments Partnership program¹⁰. These programs already have basic tenant protections built into their program implementation. NHC encourages the streamlining of such basic protections across programs wherever possible to promote simplicity of implementation and avoid contradictory and confusing regulation. 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. Given the many alternatives to a GSE loan, the market could easily shift out of the GSE channel to other loan options. In its role as regulator of the Enterprises, FHFA should strive to maintain a focus on protections that promote voluntary uptake of protections through incentives, education of renters and landlords through best practices and resources, encouragement of mediation options between landlords and tenants, and eviction diversion efforts.

General Questions on Tenant Protections

³ <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/16/president-biden-announces-new-actions-to-ease-the-burden-of-housing-costs/>

⁴ <https://www.nmhc.org/advocacy/issue-fact-sheet/rent-control-fact-sheet/>

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https://www.urban.org/sites/default/files/publication/99646/rent_control._what_does_the_research_tell_us_about_the_effectiveness_of_local_action_1.pdf

⁶ <https://www.nmhc.org/globalassets/knowledge-library/rent-control-literature-review-final2.pdf>

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https://www.urban.org/sites/default/files/publication/99646/rent_control._what_does_the_research_tell_us_about_the_effectiveness_of_local_action_1.pdf

⁸ <https://mf.freddiemac.com/docs/tenant-protections-manufactured-housing-communities.pdf>

⁹ https://www.novoco.com/sites/default/files/atoms/files/rr_2004_82.pdf

¹⁰ <https://www.law.cornell.edu/cfr/text/24/92.253>

How should the Enterprises protect tenants in multifamily rental housing? What role should the Enterprises play in providing tenant protections at Enterprise-backed multifamily properties?

The Enterprises must stay true to their mission of being a reliable source of funding and maintaining housing affordability goals. NHC cautions against any drift in mission that requires the Enterprises to adopt a compliance or enforcement role beyond their housing affordability mission. The affordable housing finance landscape is already extremely dense with regulation and policy; any alignment that can be found between the entities and the Department of Housing and Urban Development or other existing affordable housing programs is highly encouraged to help simplify this landscape and streamline processes, procedures, and compliance for both residents and landlords operating programs.

The Enterprises should continue playing an important role in this landscape through their implementation of pilot studies that can effectively test tenant protections without the risk of long-term negative impacts or unintended consequences. For example, Fannie Mae's Sponsor-Initiated Affordability¹¹ and Freddie Mac's Tenant Advancement Commitment¹² 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.

What minimum tenant protections should FHFA consider at Enterprise-backed multifamily properties? What are the benefits of each tenant protection, and what associated risks or challenges might the Enterprises face during implementation? Please provide specific examples as appropriate.

NHC recommends that eviction be clearly defined as a last resort option for landlords utilizing Enterprise financing. The eviction process is cumbersome and often difficult, and negatively impacts both the landlord and the tenant. FHFA-backed properties can help increase tenant stability by adopting clear standards that eviction is a last resort option for landlords, not a means to end lease agreements with tenants as a form of retaliation that some bad actors have been known to use. While NHC recognizes that many landlords are already following this rule and only using eviction when necessary, for instance in cases of failure to pay rent, property damage, disturbance or disorderly conduct, criminal activity, and the intent on the part of the landlord to sell, repair, or move into the unit, it is useful to have formal standards of best practices as a protection for tenants that may be applied consistently across the market. This definition will help tenants should they need to defend themselves in eviction court proceedings.

NHC also supports incentives for rent increases that are above the rate of inflation to require longer notice periods from housing providers. A standard practice would require minimum 30-day notice to tenants for any rent increase, and a minimum of 120-day notice of any increase in excess of the CPI, with a provision allowing tenants to terminate the lease with no penalty or fees in such circumstances.

The Enterprises should also establish a requirement for just cause eviction standards similar to the good cause requirements for the Low-Income Housing Tax Credit program and HOME

¹¹ <https://multifamily.fanniemae.com/financing-options/conventional-products/sponsor-initiated-affordability>

¹² https://mf.freddie.com/docs/product/tenant_advancement_commitment.pdf

Investments Partnership program.¹³ Several states and jurisdictions already have just cause policies¹⁴, and FHFA has already imposed just cause requirements on borrowers for manufactured home communities through Pad Lease protections.¹⁵ Common instances of “just cause” evictions or non-renewal of a lease include failure to pay rent, property damage, disturbance or disorderly conduct, criminal activity, and the intent on the part of the landlord to sell, repair, or move into the unit.¹⁶

Are there opportunities for improvements to current Enterprise multifamily programs or policies that would benefit tenants directly? What impact might these improvements have on the finances and operations of multifamily rental housing?

Fannie Mae currently has a pilot program in Texas and North Carolina that encourages voluntary landlord participation in the HCV program.¹⁷ Further analysis of these programs to find incentives that would draw in more voluntary participation is encouraged. NHC recommends exploring additional benefits for landlords to participate in these pilots to determine a structure that will incentivize new landlords and management companies to accept vouchers.

Further analysis and improvement of the current voluntary rent restriction programs at the Enterprises is also encouraged. Understanding how we can enhance voluntary participation in those programs and providing clear cut underwriting benefits for those who do participate would be beneficial to expansion. NHC also recommends researching and developing better incentives to build and maintain naturally occurring affordable housing. Lastly, the Enterprises have been exploring the potential of emerging technologies. More research and analysis of new technologies, improvements in risk mitigation and underwriting utilizing such tools is encouraged to bolster overall risk management.

How might requiring tenant protections at Enterprise-backed multifamily properties impact housing supply, including new construction?

The chief concern of enacting renter protections for many housing groups is the impact on overall housing supply. Each market has a unique range of factors impacting the cost of housing, but the lack of adequate supply is likely the largest common denominator. According to a recent study, the U.S. has a shortage of at least 3.8 million units of affordable housing.¹⁸ This has helped fuel inflation and created enormous stress on people in nearly every major metropolitan area and income level. The temptation of resolving the rental affordability crisis with rent control protections is gaining traction, however it is imperative that regulators understand that rent control has been proven to make rent affordability worse, not better, when enacted. There are numerous case studies of this impact that not only show that rent control does not work, but

¹³ <https://www.nhlp.org/wp-content/uploads/2018/04/IRS-Good-Cause-Revenue-Ruling.pdf>

¹⁴ [https://localhousingolutions.org/housing-policy-library/just-cause-eviction-policies/#:~:text=%E2%80%9CJust%20cause%E2%80%9D%20\(or%20%E2%80%9C,of%20the%20lease%20before%20they](https://localhousingolutions.org/housing-policy-library/just-cause-eviction-policies/#:~:text=%E2%80%9CJust%20cause%E2%80%9D%20(or%20%E2%80%9C,of%20the%20lease%20before%20they)

¹⁵ <https://mf.freddiemac.com/news/2022/20220425-update-mhc-tenant-protections>

¹⁶ <https://nlihc.org/resource/14-1-advancing-tenant-protections-just-cause-eviction-laws>

¹⁷ <https://multifamily.fanniemae.com/financing-options/specialty-financing/expanded-housing-choice-initiative>

¹⁸ <https://upforgrowth.org/wp-content/uploads/2022/09/Up-for-Growth-2022-Housing-Underproduction-in-the-U.S.pdf>

moreover that it fundamentally harms the very people it is intended to help by increasing rent costs long term.¹⁹ Rent control has historically driven investors out of the housing market, further constricting an already dwindling supply of affordable housing. 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.²⁰ NHC further encourages FHFA to adopt new policies to require the Enterprises refrain from financing properties that could or have taken advantage of a loophole to prematurely end affordability requirements in the Low-Income Housing Tax Credit program. This loophole, known as the Qualified Contract provision, is resulting in the loss of approximately 10,000 affordable housing apartments annually,²¹ significantly reducing the supply of affordable housing units and increasingly contributing to the increase in shelter costs as part of Core CPI.

Access to Housing

How might the Enterprises address barriers to multifamily tenants' access to housing?

FHFA could provide a resource that acts as a one-stop shop for applying for affordable housing that list all Enterprise-supported properties. Navigating the vast number of search engines and application portals for apartments is a complex and often frustrating process for renters seeking housing. Alternatively, FHFA could offer a template website that individual states could adapt to their needs to ease the search for an affordable unit for the tenant. Some states, like Virginia, already have a platform that landlords can opt in to and list their properties for prospective tenants.²² Such a database would further be helpful in informing residents of which properties they will have any newly imposed tenant protections at, given that it will list all properties utilizing Enterprise financing.

What actions should the Enterprises take, if any, to ensure universal acceptance of sources of income at Enterprise-backed multifamily properties?

While NHC also recognizes the benefits of enacting universal source of income protections, source of income protections must be paired with material improvements to the Section 8 Housing Choice Voucher (HCV) program, which is not within the purview of FHFA. The administrative costs and burdens associated with program participation are very disruptive for landlords, particularly smaller landlords, who are not equipped to effectively participate even if they desire to do so. Should the program be improved, interest and participation in the program will significantly increase.

Further, making the program easier to use will allow for quick identification of bad actors who refuse to rent to voucher holders by eliminating any reasoning for denial of applications due to the burdens of participation. Currently, a requirement for program participation could adversely affect the overall market by disincentivizing participation in the rental market, further reducing the number of affordable rental units on the market and constricting overall supply. NHC urges

¹⁹<https://www.brookings.edu/articles/what-does-economic-evidence-tell-us-about-the-effects-of-rent-control/>

²⁰ <https://www.nmhc.org/news/nmhc-news/2022/nmhc-rent-control-update-multifamily-firms-reconsider-investments-in-rent-control-markets/>

²¹ <https://nlihc.org/sites/default/files/LIHTC-QC-Letter-to-FHFA-Director-Thompson-07-12-23.pdf>

²² <https://www.virginiahousingsearch.com/index.html>

the Enterprises to bolster their voluntary participation efforts by creating products to encourage participation of landlords who are able to adapt to the administrative and financial costs of the program as is. This includes increased investments from the Enterprises in tax credit and equity investments and loan purchases.

An Advance Notice of Proposed Rulemaking (ANPR) by the U.S. Department of Housing and Urban Development (HUD) on improving the HCV program should be done before source of income protections are enacted, and source of income protections should be reconsidered once the program has been improved upon.

Access to Information

What information do multifamily tenants need to make well-informed decisions about applying for and leasing apartments? Do multifamily tenants have access to the information they need to make well-informed decisions? If not, please explain and identify specific gaps. What are potential solutions for increasing access to information? What are the associated challenges? Please include any best practices for providing “all-in” rental costs, utility cost responsibilities, and tenant amenity information.

The Enterprises should provide sample documents for tenants that offer guidance on common practices and terms within the rental industry. Such documents could include information on how to read a lease agreement in clear language, next steps after receiving an eviction notice or lease violation, grievance procedures for disputes, and other applicable subjects. Wherever possible, these guides should be kept short and in plain language, and be adaptable to individual markets that can customize the information for the communities and existing regulations.

What role might the Enterprises play to enable multifamily tenants and landlords to be well-informed of their rights, to exercise their rights effectively, and fully meet their responsibilities? How could FHFA support efforts to collect, disseminate, and use this information?

Are tenants provided with resources on emergency rental assistance programs, offered repayment agreements, or offered legal resources? Do housing providers’ current practices differ from the legal/regulatory standards that they are required to follow?

The Enterprises should act as trusted providers of information for tenants and landlords alike. Currently, education about the HCV program is needed for landlords to encourage more participation and provide the resources needed to grow the program. The Enterprises could provide this service to interested parties. NHC recommends that a new resource is created for residents that provides a database of existing tenant protections across jurisdictions. This resource would offer clear, concise information in a single place that better informs residents of their rights within their specific communities. The current landscape of policies surrounding renters and their rights is multifaceted and extremely diverse across states and localities.

One report from the Government Accountability Office noted that during the moratorium, a significant issue was lack of awareness of protections offered for landlords and tenants.²³ Further, this database should include resources available for tenants to protect and act on their rights should they feel that they have been violated by a housing provider. This includes legal aid, counseling services, tenant advocate offices, tenant organizations, and other applicable

²³ <https://www.gao.gov/products/gao-21-370>

resources that would provide assistance to tenants. Lastly, collecting this information will also help to determine standards of practice across the country and identify commonalities among current tenant protections that potentially could be federally adopted at a later date.

Should landlords provide a written notice to prospective tenants that their lease application has been rejected, including a description of the reasons for rejection? What are the potential benefits and challenges of delivering such notices? If a written notice is provided, what information should it include?

Enterprises should offer standard documents for housing providers to use to notify applicants of a rejection, similar to how standards documents are provided for use in single-family loan closing.

Tenant Housing Stability

Have any eviction prevention programs or policies (either voluntary or required) improved the housing stability of multifamily tenants? Please describe those programs and policies, how performance was measured, and please share any data or evidence on performance, if possible.

How can the owners and managers of Enterprise-backed multifamily properties reduce evictions and improve housing stability of tenants? What role can the Enterprises play in promoting housing stability of tenants at Enterprise-backed multifamily properties?

The Enterprises could best explore these practices through a research capacity. During the COVID-19 pandemic, numerous new eviction diversion programs were funded from various new funding streams meant to help limit the number of evictions taking place during the crisis, and many have continued after the state of emergency was lifted. The Enterprises could conduct a study of such programs to identify model programs and best practices to incorporate into their underwriting standards as preferred practices that in turn receive incentives for voluntary program participation or enactment. This includes eviction diversion efforts, landlord-tenant mediation, and right to counsel programs.

The Enterprises should adopt just cause eviction standards as noted in our answer to Question 2 under General Questions on Tenant Protections.

Should the Enterprises define housing safety and if so, how?

Yes. This definition should align with existing standards across other affordable housing programs.

Should the Enterprises define housing habitability and if so, how?

Yes. This definition should align with existing standards across other affordable housing programs.

Should the Enterprises require borrower compliance with ongoing property maintenance after an initial inspection? What is a reasonable timeframe to provide unit maintenance and repairs?

How could the quality of housing units be assessed and how could the Enterprises support the ongoing monitoring of such efforts?

Concerns of deferred maintenance given any potential rent control measures that would constrict the ability to reinvest in property maintenance are understandable. However, given the life of a typical loan is between seven and ten years, the likelihood of a property significantly deteriorating in that time is fairly low. Many affordable properties are already subject to various inspections from the state housing authority, property investor, management company, and more. Such inspections can be inconvenient and disruptive for residents who are expected to allow inspectors in their units, possibly several times, as these inspections are conducted. NHC does not recommend adding additional inspections to sites already subject to many requirements.

Risk Management

What are the potential short-term and long-term financial benefits and risks associated with requiring certain tenant protections at Enterprise-backed multifamily properties, and how might such benefits and risks change over time? How might such risks, now or in the future, affect the ability of each regulated entity to operate in a safe and sound manner, fulfill its statutory mission, transfer credit risk and foster liquid, efficient, competitive, and resilient national housing finance markets?

As stated in our introduction, rent control measures have a high likelihood of causing rent increases in the years after they are enacted due to consequential supply constrictions. Properties risk deferring maintenance and repairs due to inability to raise rents to cover necessary improvements and lead to property deterioration. FHFA must consider how the administrative or financial requirements of tenant protections might draw interested investors away from Enterprise financing and into the private market. The real estate market is extremely competitive, and requirements of investors without corresponding incentives and benefits for funding streams could negatively impact interest in Enterprise financing.

FHFA must balance the desire to protect tenants from eviction with the risk of creating a pattern of changed behavior that ultimately leads to large outstanding debts that harm both the landlord and the resident. Existing multifamily properties cannot effectively function without reliable sources of steady income that are paid with resident rent. Systematic changes that allow residents to go months into nonpayment not only make it extremely difficult for landlords to meet their financial obligations, but also dig a deeper hole of debt for residents who are unable to bring their rent current and can result in residents being evicted from a property with many months worth of debt reflected on their credit report rather than just a few.

What potential benefits or risks to the Enterprises' lenders, servicers, and multifamily borrowers/property owners should the Enterprises consider when assessing each Enterprise's role in addressing tenant protections?

Any new protections being considered must be flexible enough to adapt to the state and local policies that are already in place. Adopting new required tenant protection standards ultimately adds to the already complicated patchwork of housing programs by enacting such protections only under

FHFA-backed properties. These protections could further complicate and confuse the affordable housing landscape with additional layers of regulation that often conflict with existing state and local regulations. Rental housing is largely a state and local issue, thus additional one-size-fits all regulations are not always the ideal method to meet the needs of local real estate markets and the residents they serve. Implementation of federal policies will also be complicated, as was ultimately recognized in the Administration's Blueprint for a Tenant Bill of Rights.²⁴

Conclusion

We reiterate that housing affordability goals cannot be met without increased market capital and a focus on increasing housing supply. NHC is supportive of enacting tenant protections that offer additional education and resources for renters without further reducing overall supply or creating additional confusion in an already uncertain and difficult market.

Sincerely,



David M. Dworkin
President and CEO

²⁴ <https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf>