



July 31, 2023

Federal Housing Finance Agency
Office of the Secretary
Constitution Center
400 7th Street, SW
Washington, D.C. 20219

RE: REQUEST FOR INPUT ON MULTIFAMILY TENANT PROTECTIONS

HOMES GUARANTEE CAMPAIGN

The Homes Guarantee is a long term agenda for the full transformation of housing from commodity to guaranteed public good. Our campaign is led by tenants, public housing residents, manufactured homeowners, and unhoused people. This summer, as a part of our efforts to generate as many tenants comments as possible to inform this Request for Input, our campaign knocked on 4,719 doors in Enterprise-backed properties, organized over 2,000 comments from tenants and their allies, and helped to form five tenant unions through this process in Illinois, Missouri, Kentucky, and Massachusetts.

The tenant unions and community organizations involved with our campaign’s strategy team include: Youth Alliance for Housing (National), African Communities Together (National), Bedford County Listening Project (TN) , KC Tenants (MO), Faith in the Valley (CA), Kentucky Tenants (KY), Louisville Tenants Union (KY), Progressive Leadership Alliance of Nevada (NV), Rights and Democracy New Hampshire (NH), Neighbor to Neighbor (MA), Community Voices Heard (NY), South Carolina Housing Justice Network (SC), Cape Girardeau Tenants (MO), ONE Northside (IL), Action St. Louis (MO), POWER LA (CA), Not Me We (IL), Bozeman Tenants United (MT), Westside Community Organization (MN), PA United (PA), Hoosier Action (IN), Northwest Bronx Community and Clergy Coalition (NY).

On behalf of the tenants, tenant unions, grassroots organizations, academic, policy, and legal allies that make up the Homes Guarantee campaign, we commend the Federal Housing Finance Agency (FHFA) for launching this RFI process, one of the most meaningful outcomes of the whole-of-government call to protect tenants, issued by the Biden-Harris administration in January 2023.

INTRODUCTION

We believe that everyone deserves a safe, truly affordable home, and we believe this country can deliver on that promise. Unfortunately, we are far from that reality today. In fact, in our nation’s housing policy, the goal of safely and securely housing people often seems secondary to the goal of maintaining the status quo: a system that is fundamentally oriented toward the market, too often at the expense of everyday people. The status quo fails tenants and creates economic instability. We must embrace the opportunity to change the system as we know it today for the better.

Tenants are paying too much for rent. Half of all tenants spend over 30 percent of their income on rent, with 27 percent spending over 70 percent of their income on housing costs alone.¹ In 2022, there is not a single state, metro area, or county where a worker employed full-time at the federal minimum wage can afford a modest two-bedroom apartment.² In fact, to afford a two-bedroom apartment, a minimum wage worker would need to work four jobs or have three roommates.³ As a result, rent increases deeply impact overall economic security, especially for low- to

¹ Joint Center for Housing Studies of Harvard University, *The State of the Nation’s Housing 2023*, (https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2023.pdf).

² National Low Income Housing Coalition, *The Gap: A Shortage of Affordable Rental Homes*, (March 2023) (<https://nlihc.org/gap>)

³ Nicole Bachaud, *Three Roommates or Four Jobs Needed to Afford a Two-Bedroom Rental on Minimum Wage*, Zillow, (Jan. 31, 2023) (<https://www.zillow.com/research/minimum-wage-rent-32060/>)

moderate-income households.⁴ Every rent increase is a threat to a tenant's ability to pay for medication, feed their children, and age with dignity. When families are forced to cut back on expenses, cutting back on housing is not an option. With a shortage of truly affordable housing, moving or downsizing are often not viable options; the alternative is homelessness.

Rents are a major driver of core inflation, and unchecked rent inflation poses a long term threat to our nation's economic stability. Nationally, median rent surpassed \$2,000 for the first time ever.⁵ Landlords are raising rents at the highest rates in over 40 years.⁶ Rent makes up approximately one-third of the Consumer Price Index (CPI), impacting urban, suburban, and rural communities alike. Even as inflation has eased since last summer, July 2023 inflation numbers show that rent is now the core driver of inflation.⁷ The affordability crisis displaces tenants with lower paying jobs which exacerbates labor shortages and threatens economic growth and stability.^{8,9}

Housing insecurity disproportionately impacts tenants of color. In 2020, 72 percent of White households owned their homes, compared to 42 percent of Black households, 48 percent of Latino households, 42 percent of Pacific Islander households and 58 percent of Native American households.¹⁰ Due to systemic racism in real estate practices, predatory lending, lower household incomes, pervasive housing discrimination, and a lack of deeply affordable housing, a majority of Black and Latino tenants were already paying rents higher than they could afford prior to the current rent crisis. In 2020, 56 percent of Black tenants and 54 percent of Latino tenants were cost-burdened (spent more than 30 percent of their income on housing), compared to 45 percent of white tenants.¹¹ Matthew Desmond's 2020 research showed that Black and Latino tenants are disproportionately threatened with eviction and disproportionately evicted from their homes.¹² 40 percent of homeless Americans are Black even though just 13 percent of the population is Black. Rapidly escalating rents and the shortage of truly affordable housing make tenants more at risk of discriminatory harassment and abuse by landlords because they lack other options, and puts them at risk of homelessness.

Institutional investors have consolidated the rental market, creating the conditions to exploit tenants and maximize returns. Beginning in earnest after the 2008 financial crisis, corporate landlords have bought up an increasing share of our nation's housing supply, including both single-family and multi-family units. As of June 2022, it is estimated that at a minimum, private equity firms owned properties rented by around 1.6 million households, including at least 1,071,056 apartment units, 275,468 manufactured home lots, and over 239,018 single-family rental homes.¹³ Because of private equity's deliberate opacity, these numbers are an underestimation of private equity ownership in the rental market. Disproportionate market control has laid the groundwork for institutional investors to raise rents beyond the costs of maintenance, improvements, or the rate of inflation.¹⁴ This amounts to price gouging, and has grave implications for community-level rent-setting.¹⁵ For example, research found that for every 1 percent increase in net purchases by institutional investors, rents rose by 4.6 percent in a

⁴ U.S. Government Accountability Office, *Better HUD Oversight of Data Collection Could Improve Estimates of Homeless Population*, (July 2020) (<https://www.gao.gov/assets/gao-20-433.pdf>); Abha Bhattarai & R. Siegel, *Inflation is Making Homelessness Worse*, Washington Post, (July 2022) (<https://www.washingtonpost.com/business/2022/07/03/inflation-homeless-rent-housing/>)

⁵ Viega, Alex. (2023). "US rent growth easing, but remains a burden for many tenants." *Associated Press*.

<https://apnews.com/article/rents-cost-of-renting-apartment-rents-affordable-housing-2bfab9ae45572e3e31cc91713637ab90>

⁶ Lee, Medora. (2022). "Rents are rising at fastest pace in 40 years. Why it's bad for inflation, the Fed, and you." *USA Today*. Accessed July 31 at <https://www.usatoday.com/story/money/economy/2022/09/13/soaring-rent-impact-on-inflation-rate-fed-consumers/10365417002/>

⁷ U.S. Bureau of Labor Statistics. (July 2023). "Economic News Release: Consumer Price Index Summary."

<https://www.bls.gov/news.release/cpi.nr0.htm>

⁸ Shroyer, Aaron, and Veronica Gaitán. (2019). "Four Reasons Why Employers Should Care about Housing." *Urban Institute*.

<https://housingmatters.urban.org/articles/four-reasons-why-employers-should-care-about-housing>

⁹ Stacy, Christina Plerhoples, et al. (2020). "Spatial Mismatch and Federally Supported Rental Housing." *Urban Institute*.

<https://www.urban.org/research/publication/spatial-mismatch-and-federally-supported-rental-housing>

¹⁰ National Equity Atlas, "Homeownership: United States, 2020," PolicyLink and the USC Equity Research Institute, accessed June 13, 2023,

<https://nationalequityatlas.org/indicators/Homeownership>.

¹¹ National Equity Atlas, "Housing burden: United States, 2020," PolicyLink and the USC Equity Research Institute, accessed June 13, 2023,

https://nationalequityatlas.org/indicators/Housing_burden?breakdown=by-race-ethnicity.

¹² Heppburn, Peter, Renee Louis, and Matthew Desmond. 2020. "Racial and Gender Disparities among Evicted Americans." *Sociological Science* 7: 649-662.

¹³ Americans for Financial Reform, "Research Memo: New AFR Research Estimating Minimum Numbers of Private Equity-Owned Housing Units," (June 28, 2022),

<https://ourfinancialsecurity.org/2022/06/letters-to-congress-new-afr-research-estimating-minimum-number-of-private-equity-owned-housing-units/>

¹⁴ Accountable.US, *America's Biggest Multifamily and Single-Family Landlords Continue to Reap Huge Profits and Take Advantage of Tenants*, (April 10 2023)

(<https://accountable.us/wp-content/uploads/2023/04/2023-04-10-Updated-Research-On-Housing-Profiteering-FINAL.docx-1.pdf>)

¹⁵ Vogell, Heather. (2022). "Rent Going Up? One Company's Algorithm Could be Why." *ProPublica*.

<https://www.propublica.org/article/yieldstar-rent-increase-realpage-rent>

causal relationship.¹⁶ Property management companies have begun using algorithms and other anti-competitive practices to artificially increase the price of rents.¹⁷ Private equity firms and other corporate landlords filed to evict over 58,000 households within six months of the federal eviction moratorium expiring, and large corporate landlords were 68 percent more likely to evict tenants than other owners.^{18,19}

Market consolidation and deregulation have generated record profits for institutional investors as tenants struggle to stay housed. The ten largest publicly traded apartment companies reported profits soaring by 57 percent from 2020 to 2021.²⁰ The top executives of these companies saw their pay increase by over 22 percent in a one-year period, while thousands of tenants who rent their homes struggled to make ends meet.²¹ As corporate landlords consolidate control of the U.S. rental market, they are also able to tack on new fees to generate further profits for their investors, further squeezing tenants – who have nowhere else to turn – for a profit.²²

Institutional investors are subject to some limited, patchwork regulation, mostly under state law, but their businesses have expanded beyond state lines and require federal regulation. As the rental marketplace has become national and even multi-national, Federal housing policy has failed to adequately track and regulate the market in order to protect tenants. In the absence of universal minimum tenant protections for the roughly 44 million households currently living in rental housing, tenants are inconsistently protected depending on where they live.²³ Some jurisdictions cap rent increases, others require transparent tenant screening practices and prohibit the consideration of biased data, while many provide no baseline protections for tenants at all.

FHFA has a key role to play in promoting stability in the American economy, including by protecting tenants, especially with regard to the power imbalance between tenants and institutional investors that are dominant in the multifamily market. Congress established FHFA to oversee the safety and soundness of the Enterprises and the Federal Home Loan Banks and to ensure that those regulated entities achieve the purposes of the Safety and Soundness Act of 1992, the Enterprises' charters, and other applicable laws. Since 2008, FHFA has also served as the conservator of the Enterprises. The Enterprises have a responsibility to ensure liquidity, but also to address challenges faced by tenants and other parties in the multifamily market.²⁴ Through its oversight and conservatorship of Fannie Mae and Freddie Mac, FHFA is involved in \$150 billion in financing to landlords every year, and in approximately one-quarter of US multifamily assets.²⁵

In today's market, Enterprise-backed financing has become a tool that enriches real estate investors, often at the expense of tenants. The Enterprises do not lend directly to multifamily landlords but rather purchase multifamily loans from lenders. This promotes liquidity in the multifamily lending market while relieving lenders of default risk. Even though the Enterprises do not directly lend to landlords, they guarantee the loans that landlords take out, allowing lenders to continue making loans to other landlords. The Enterprises provide a major financial benefit to lenders and the multifamily housing finance system as a whole; these terms benefit landlords and their investors, often at the tenants' expense. The Enterprises have a track record of buying and providing guarantees to overvalued loans.²⁶ Many of these loans can only be paid down if the borrower plans to hike rents and fees, neglect

¹⁶ Lambie-Hanson, L., Li, W., & Slonkosky, M. (2019). Leaving Households Behind: Institutional Investors and the U.S. Housing Recovery (Working Paper (Federal Reserve Bank of Philadelphia) No. 19-01; Working Paper (Federal Reserve Bank of Philadelphia), pp. 19-01). Federal Reserve Bank of Philadelphia. <https://doi.org/10.21799/frbp.wp.2019.01>.

¹⁷ Heather Vogell, *Rent Going Up? One Company's Algorithm Could be Why*, ProPublica, (Oct. 15, 2022) (<https://www.propublica.org/article/algorithm-rent-increase-rent>)

¹⁸ Raymond, E., Duckworth, R., Miller, B., Lucas, M., & Pokharel, S. (2018). From Foreclosure to Eviction: Housing Insecurity in Corporate Owned Single-Family Rentals. *Cityscape*, 20(3). <https://www.huduser.gov/portal/periodicals/cityscpe/vol20num3/ch9.pdf>

¹⁹ Chang, Melissa. February 2022. "[How Institutional Landlords are Changing the Housing Market](#)." *Private Equity Stakeholder Project*.

²⁰ Wallace, Jacob. (2022). "Skyrocketing Rents Deliver 57% Profit Growth to Large Apartment Owners." *Bisnow*. <https://www.bisnow.com/national/news/multifamily/rent-increases-brought-billions-in-profit-for-largest-apartment-owners-113330#:~:text=The%20top%2010%20publicly%20traded,income%20surging%20beyond%202019%20levels>.

²¹ Ivanova, Irina. (2022). "Corporate landlords' profits have surged despite eviction ban fears." *CBS News*. <https://www.cbsnews.com/news/rent-apartment-housing-price-landlords-profits-eviction/>

²² Nelson, Ariel, April Kuehnhoff, Chi Chi Wu, and Steve Sharpe. (2023). "Too Damn High: How Junk Fees Add to Skyrocketing Rents." National Consumer Law Center. <https://www.nclc.org/resources/too-damn-high-how-junk-fees-add-to-skyrocketing-rents/>

²³ *A National Survey of Tenant Protections Under State Landlord Tenant Acts*, Freddie Mac Multifamily, (Feb. 2023) (<https://mf.freddiemac.com/docs/tenant-protections-white-paper.pdf>)

²⁴ 12 U.S.C. § 1723a(n) and 12 U.S.C. § 1456(f)

²⁵ Board of Governors of the Federal Reserve System (US), Government Sponsored Enterprises; Multifamily Residential Mortgages; Asset, Level, [BOGZ1FL403065405Q] retrieved from FRED, Federal Reserve Bank of St. Louis; (<https://fred.stlouisfed.org/graph/?g=16xbf>) (June 27, 2023).

²⁶ Mari, Francesca. (2020). "A \$60 Billion Housing Grab by Wall Street." *New York Times*. <https://www.nytimes.com/2020/03/04/magazine/wall-street-landlords.html>

building maintenance, and evict tenants. The Enterprises have enabled a market that, in some ways, incentivizes predatory behaviors by landlords.^{27,28}

As the supervisor and conservator of the Enterprises, FHFA has the opportunity and the authority to implement tenant protections in an estimated eight million rental units with Enterprise-backed mortgages.²⁹ The FHFA has established a precedent of imposing tenant protections as a loan condition through its COVID-19 eviction moratorium and its tenant pad lease protection requirements for loans to manufactured housing communities. Implementing robust tenant protections, as we outline in this comment, will be critical to protecting the safety and soundness of the secondary mortgage market and preserving the existing supply of affordable rental housing. Furthermore, by incorporating the tenant protections recommended here, FHFA can take leadership in moving this country towards a more just and equitable housing system, promoting true affordability and racial equity.

In this comment, we will make the case for FHFA's actions to this end by describing our policy recommendations overall, making the case for rent regulations as a critical measure to preserve supply of affordable housing, and by providing our analysis of FHFA's authority to implement tenant protections.

SECTION 1: POLICY RECOMMENDATIONS

FHFA has taken actions to help promote multifamily tenant protections at properties with loans that have been purchased or securitized by an Enterprise; to address the pressing challenges laid out in the introduction of this comment, FHFA should expand and universalize a set of tenant protections that would apply to all Enterprise-backed properties. FHFA should require the following of all borrowers of Enterprise-backed mortgages:

- Limits on egregious rent hikes;
- Good cause eviction protections;
- Recognition of tenants' right to organize;
- Ban on source of income discrimination;
- Expanded discrimination protections;
- Safe, quality housing standards;
- Fair lease provisions; and,
- Participation in a rental registry.

These protections must be implemented together, as they are interdependent. For example, a tenant's right to organize must be protected by ensuring good cause eviction, otherwise the tenant could be subject to lease non-renewal as retaliation for organizing. Similarly, good cause eviction protections are insufficient without limits on large, unreasonable rent increases, which can serve as *de facto* evictions. We often hear the argument that landlords will sustain extra costs if they implement such protections, and they might pass those costs along to their tenants; this is why rent regulations are vital to the mix of requirements for borrowers of Enterprise-backed mortgages.

These protections must apply to all future Enterprise-backed mortgages, not limited by loan type, size, or regional context. Given the central role that the Enterprises play in the secondary market, universalizing a set of protections like this will have a major impact on the multifamily market overall. Universality is the best way to maximize the impact of these protections, and it will minimize potential loopholes. These protections should be a condition of any refinancing or new business with the Enterprises, and any borrower who benefits from Enterprise-backed financing should be required to apply these protections across their full portfolio.

These protections must be *requirements*, built into the loan terms for Enterprise-backed mortgages. Compliance with these protections should not be voluntary or incentivized through even more lucrative terms. The Enterprises

²⁷ Greenberg, David, et al. (2022). "Gambling with Homes, or Investing in Communities: How speculation drives evictions and poor housing quality, and how affordable housing protects neighborhoods of color." Accessed at https://www.lisc.org/media/filer_public/fc/26/fc26b3d0-8d45-41d6-a90c-f3b9966b7796/032422_gambling_with_homes_or_investing_in_communities.pdf

²⁸ Markey, Eileen. 2023. "How Freddie Mac Helps Private Equity Profit from Tenant Misery." *The Nation*. <https://www.thenation.com/article/society/freddie-mac-private-equity-housing/>

²⁹ Goodman, L., Kaul, K., Neal, M. *The CARES Act Eviction Moratorium Covers All Federally Financed Rentals- That's One in Four US Rental Units*, Urban Institute. Accessed July 19, 2023. <https://www.urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-thats-one-four-us-rental-units>

are already providing a great benefit to borrowers through risk-mitigation; these protections should be considered a floor for access to Enterprise-backed lending. This is the clearest way that FHFA and the Enterprises can take seriously the Enterprises' role in providing liquidity to the multifamily housing market, towards their mission to support the availability of safe, affordable housing.

These protections, once connected to the Enterprise-backed property, must remain in place in perpetuity, even after the loan term. This will promote stability in the multifamily market and ensure the long-term impact of these protections. FHFA, working in coordination with the Enterprises, should take the lead on enforcement from the outset so that the mortgage servicer is not responsible for enforcement after the loan is paid off. After the loan is paid, any future loan agreements or residential leases related to the property must provide for these protections.

The protections outlined in this comment will require diligent and proactive enforcement. In addition to instituting these requirements for borrowers of Enterprise-backed mortgages, FHFA should create an Office of Tenant Protections to implement and enforce tenant protections.

LIMITS ON EGREGIOUS RENT HIKES

The FHFA should require an annual limit of 3% on rent increases in Enterprise-backed properties. Like all the recommended protections in this comment, this limit on rent hikes should be applied universally and as a requirement of Enterprise-backed financing. FHFA should not allow for exemptions based on building type, age of the property, new construction, or anything else.

FHFA should accompany the rent increase limit for borrowers of Enterprise-backed loans with vacancy control, which ensures that the maximum allowable rent increase is set, even if tenancy changes, to avoid landlords using evictions as a work-around.

Imposing limits on rent increases is a proven policy that can immediately stabilize prices, halt rent gouging, and reduce the risk of displacement and homelessness, while increasing housing security and affordability over the long term.³⁰ Limits on rent increases will protect tenants from eviction and/or homelessness by creating a schedule for reasonable and gradual rent increases.

Regulating rents is critical to preserving the supply of affordable housing. Currently, landlords of Enterprise-backed properties face little to no federal restrictions regarding whether and how much they can increase their tenants' rents. In fact, their business model often depends on raising rents at a rate that relies on displacement of existing tenants and replacement with higher-income tenants.

Please see the next section for a thorough accounting of rent regulation policies, how they work, and how research responds to industry arguments against them.

GOOD CAUSE EVICTION PROTECTIONS

The FHFA should require good cause eviction protections in Enterprise-backed properties. For Enterprise-backed properties, the definition of good cause for eviction should be especially narrow. Common exceptions from other contexts are unlikely to be relevant, such as the event that the landlord would wish to live in a unit as an owner-occupant. We recommend the following grounds for FHFA's good cause standard: damage/destruction to property, repeated lease violations, and/or behavior impacting the health and safety of other tenants. Even in the instance that tenants landlords have "good cause" to evict, tenants should be given at least 60 days to remedy the issue before the landlord can file an eviction.

Good cause (sometimes referred to as "just cause") protections means that landlords can only evict tenants in the event of serious and repeated lease violations when the tenant has failed to cure their breach after being given notice. The purpose of good-cause evictions should be to protect the health and safety of residents and employees, to protect the premises from major damages, and to enforce the obligation to pay rent. Good cause eviction policies protect the rights of tenants to seek repairs and to organize with other tenants. Lease non-renewals and evictions are often used by landlords in retaliation for maintenance requests or tenant organizing.

³⁰ Chew, A., Treuhaft, S. (2019). "Our Homes, Our Future: How Rent Control Can Build Stable, Healthy Communities." Right to the City Alliance, PolicyLink, The Center for Popular Democracy. <https://www.policylink.org/resources-tools/our-homes-our-future>.

Good cause is an established protection in federally assisted housing programs such as the Low Income Housing Tax Credit (LIHTC) program and the HOME Investments Partnerships (HOME) program.^{31,32} Additionally, several states, including California, New Jersey, Oregon, and Washington, have good cause protections.³³

RECOGNITION OF TENANTS' RIGHT TO ORGANIZE

The FHFA should require landlords with Enterprise-backed mortgages respect tenants' rights to organize, form tenant unions, and elect tenant union leadership, all free from any form of retaliation or other interference. The right to organize is required in several federal housing programs, including public housing and HUD-supported multifamily housing.³⁴

It is critical that FHFA proactively protect this right: the risk of landlord retaliation is too pronounced for most tenants to feel safe opposing habitability violations, sexual harassment, and other unfair, deceptive, and abusive acts and practices. When tenants can come together, however, it is much harder for their landlords to retaliate against them.³⁵

BAN ON SOURCE OF INCOME DISCRIMINATION

FHFA should require that borrowers of Enterprise-backed loans comply with a ban on source of income discrimination. Bans on source of income discrimination require landlords to accept all lawful forms of payment, including Housing Choice Vouchers and other forms of housing assistance.

FHFA must develop a strong plan for enforcement of this protection, including mechanisms for tenants to report potential discrimination directly to the Agency. Such reporting will be critical to the Agency's ability to track patterns across borrowers' practices and hold them accountable accordingly. FHFA must ensure that landlords cannot get around the ban by using common tactics like instituting income-to-rent ratio requirements that use the full rent for the unit (instead of the tenant's share), or excessive credit screening.

Source of income discrimination perpetuates residential racial segregation, isolates low-income families from good jobs and well-resourced schools, and undermines the effectiveness of one of the federal government's largest housing programs.³⁶

These protections are already required for recipients of HOME and LIHTC funding.³⁷ Source of income discrimination is currently prohibited in the states and municipalities that are home to a majority of the country's population.³⁸

EXPANDED DISCRIMINATION PROTECTIONS

FHFA should enforce existing laws that prohibit landlords from denying a tenant rental housing based on race, physical or mental ability, and family make-up, and expand protections to prohibit discrimination based on sexual orientation, gender expression or identity, immigration status, conviction and/or arrest history, bankruptcy history, eviction history, or credit score in Enterprise-backed properties.

SAFE, QUALITY HOUSING STANDARDS

FHFA should require a clear set of habitability standards for borrowers of Enterprise-backed mortgages. FHFA should model its standards on the U.S. Department of Housing and Urban Development's Housing Quality Standards for the Housing Choice Voucher program,³⁹ but should clarify and strengthen the standards in a few key ways: FHFA should identify the presence of unhealthy levels of mold and the lack of air conditioning as conditions that would

³¹ IRS Revenue Ruling 2004-82: Answering 12 Questions About Low-Income Housing Credit Under I.R.C Section 42." (2004). Accessed at <https://www.nhpi.org/wp-content/uploads/2018/04/IRS-Good-Cause-Revenue-Ruling.pdf>.

³² 24 C.F.R. § 92.253(c).

³³ Local Housing Solutions. "Just Cause Eviction Policies." Accessed July 31 2023 at <https://localhousingsolutions.org/housing-policy-library/just-cause-eviction-policies/>; also see further information on [New Jersey law](#); [Oregon law](#); [Washington state law](#).

³⁴ White House Domestic Policy Council and National Economic Council, *The White House Blueprint For a Renters Bill of Rights*, accessed June 13, 2023, 14, <https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf>.

³⁵ Hassan Kanu, *D.C. Renters' Lawsuit Is a Blueprint for Tenant Organizing*, Reuters (July 22, 2021), <https://www.reuters.com/legal/transactional/dc-renters-lawsuit-is-blueprint-tenant-organizing-2021-07-22/>.

³⁶ Mary Cunningham et al., *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers*, HUDUser.gov (Sept. 2018), <https://www.huduser.gov/portal/portal/sites/default/files/pdf/Landlord-Acceptance-of-Housing-Choice-Vouchers.pdf>.

³⁷ Local Housing Solutions, "Source of Income Laws," Housing Policy Library, accessed June 13, 2023, <https://localhousingsolutions.org/housing-policy-library/source-of-income-laws/>.

³⁸ Poverty & Race Research Action Council, *Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program*, Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination, PRRAC.org (June 2023), <http://www.prrac.org/pdf/AppendixB.pdf>.

³⁹ 24 C.F.R. § 982.401.

cause a unit to fail inspection.⁴⁰⁴¹ If borrowers fail to comply with these standards, the Enterprises should consider them in default and take legal action against them pursuant to their loan agreements. These borrowers should be considered ineligible for future Enterprise loans.

In addition to protecting tenants, a universal set of habitability standards will go further to protect the collateral, in alignment with efforts already underway at the Enterprises. Fannie Mae and its Delegated Underwriting and Servicing (DUS) Lenders require a Physical Needs Assessment (PNA), essentially a property condition report, before financing on many types of residential properties, including multifamily, assisted living facilities, student housing, and manufactured housing communities. Freddie Mac requires a Physical Risk Report on conventional or targeted affordable housing mortgages with certain criteria. Borrowers are already subject to these requirements from the Enterprises; adding more to protect tenants will only benefit all parties.

FAIR LEASE PROVISIONS

FHFA should develop a standard set of fair lease provisions for all borrowers of Enterprise-backed mortgages and require their use across borrowers' portfolios. In developing fair lease provisions, FHFA should view existing state lease requirements as a floor rather than a ceiling and go further to protect tenants. In particular, fair leases should:

- Provide at least a 10-day grace period in which to pay rent before any late fee is assessed;
- Cap late fees at 5% of the amount of rent owed;
- Ban junk fees;
- Limit security deposits to one month's rent; and,
- Clarify the circumstances under which landlords can withhold security deposits and the procedural steps that they have to take to be authorized to do so.

These standardized fair leases should clearly communicate material lease terms and obligations to tenants and should not contain any unfair, deceptive, and abusive terms, including terms that violate local, state, or federal law.⁴²

PARTICIPATION IN A RENTAL REGISTRY

The FHFA should require all Enterprise-backed properties to participate in a rental registry that is publicly-available and accessible to tenants. The registry should include information that will help tenants make informed decisions about leasing an apartment, such as the number of code violations, nature and number of eviction filings, and recent rent changes. Borrowers must also provide contact information of the real, beneficial owner(s) of the property.

OFFICE OF TENANT PROTECTIONS

FHFA should create an Office of Tenant Protections that is responsible for ensuring that borrowers of Enterprise-backed loans are in compliance with the required tenant protections.

The Office of Tenant Protections should have the capacity to receive complaints from tenants, tenant unions, and community groups, investigate those complaints, and compel corrective action. In carrying out this enforcement work, the Office of Tenant Protections should coordinate with the offices responsible for enforcing borrowers' loan obligations at the Enterprises, as well as other federal agencies with relevant enforcement powers, including the Department of Housing and Urban Development, the Federal Trade Commission, the Consumer Financial Protection Bureau, and the Department of Justice.

In addition to enforcing this new set of protections, the Office of Tenant Protections should enforce existing laws that prohibit landlords from denying a tenant rental housing based on race, physical or mental ability, and family make-up, and expand protections to prohibit discrimination based on sexual orientation, gender expression or identity, immigration status, conviction and/or arrest history, bankruptcy history, eviction history, or credit score in Enterprise-backed properties. Additionally, the Office of Tenant Protections should evaluate the effectiveness of

⁴⁰ National Center for Healthy Housing, Mold, NCHH.org (last visited July 8, 2023), <https://nchh.org/information-and-evidence/learn-about-healthy-housing/health-hazards-prevention-and-solutions/mold/>.

⁴¹ Sam Whillans, Toward a Renter's Right to Heat-Safe Housing, Expert Blog (June 9, 2022), <https://www.nrdc.org/bio/sam-whillans/toward-renters-right-heat-safe-housing>.

⁴² The White House, Fact Sheet: Biden-Harris Administration Announces New Actions to Protect Renters and Promote Rental Affordability, WhiteHouse.gov (Jan. 25, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/25/fact-sheet-biden-harris-administration-announces-new-actions-to-protect-renters-and-promote-rental-affordability/>.

existing tenant protections, conduct research on how market trends and emerging practices affect tenants' rights, and propose additional protections to ensure that FHFA's tenant protections adapt to changes in the market.

Part of this Office's charge should be the creation and maintenance of a publicly-available registry of all borrowers of Enterprise-backed mortgages, including all of the information listed in the section on the registry above. A registry would benefit tenants and would support full enforcement of tenant protections. Tenants often do not know critical information that can help them make sound choices about where to rent, and they often have no way to contact their landlord because the property owner has shielded themselves through the use of LLCs (which can also preclude state and local government enforcement).⁴³ Such a registry would also help the federal government track which landlords benefit from which types of Enterprise-backed financing, federal subsidy, tax credit, or other public assistance.

The Office of Tenant Protections would be responsible for identifying landlords (both corporate entities and the individuals behind them) who must be investigated and/or barred from future participation in Enterprise-backed mortgage programs in the event of serial and/or egregious violations of tenants' rights.

Such an Office does not exist within the federal government, but it is a good fit at FHFA given the Agency's role as the overseer and conservator of the Enterprises.

SECTION 2: THE CASE FOR RENT REGULATION

Rent regulations are essential to ensuring that everyone has a safe, truly affordable home. The rent is too high, and nonpayment cases are the vast majority of evictions; rent regulations are a straightforward and effective antidote to the most acute pain point for tenants and for our economy. Rent regulations will not solve everything in our housing system, but we will not solve anything without them.

RENT REGULATION IN AMERICAN HISTORY AND TODAY

Throughout American history, especially since the 1920s, rent regulations have been used as a tool to protect tenants and stabilize the market.⁴⁴ The federal government has twice issued nationwide rent controls: the first time was during World War II to protect tenants during a moment of constrained supply as construction resources were being diverted elsewhere to support the war,⁴⁵ and the second time in the early 1970s when Congress passed the Economic Stabilization Act to help mitigate rapid price escalation at a moment of severe inflation.⁴⁶ In both instances, the rent regulations were upheld in the face of legal challenges, found to be constitutional exercises of federal authority.⁴⁷ The 1970s saw an emergence of a "second generation" of rent controls, mostly instituted at the state and local levels, proliferating in places like New York, New Jersey, California, and Washington DC. The period was followed by an era of retrenchment in the 1980s and 1990s, as many states passed laws limiting or entirely preempting local jurisdictions from regulating rents.

The contemporary stigmas against rent regulation are the product of a decades-long lobbying effort on the part of the real estate industry. Since the beginning of 2022, the top real estate industry lobbying organizations have spent nearly \$10 million lobbying against rent control in Congress and to the Biden Administration.⁴⁸ The National Multifamily Housing Council publicly opposed President Biden's Blueprint for a Renters Bill of Rights, and has spent over \$4 million annually lobbying Congress and the federal executive branch to block common sense regulation in the housing market.⁴⁹ Their membership includes some of the world's largest private equity firms, including Blackstone and Avalon Bay, both of whom have leveraged Fannie Mae and Freddie Mac financing to buy distressed properties, defer maintenance, and hike rents.

⁴³ Brian Mykulyn & Elora Raymond, *When Landlords Hide Behind LLCs*, Shelterforce (Aug. 23, 2022), <https://shelterforce.org/2022/08/23/when-landlords-hide-behind-llcs/>.

⁴⁴ Kenneth K. Baar, *Rent Control in the 1970's: The Case of the New Jersey Tenants' Movement*, 28 *HASTINGS L.J.* 631, 634 (1977).

⁴⁵ Pub. L. 77-421, 56 Stat. 23 (repealed 1947).

⁴⁶ Pub. L. 92-210 § 202, 84 Stat. 799 (1970).

⁴⁷ *Yakus v. United States*, 321 U.S. 414 (1944); *Amalgamated Meat Cutters and Butcher Workmen of N. Am. v. Connally*, 337 F. Supp. 737, 743, 745 (1971).

⁴⁸ More Perfect Union (2023). "Video: National rent control is closer than you think." Accessed at <https://twitter.com/MorePerfectUS/status/1684216192154624000?s=20>

⁴⁹ Shankar, Vishal, et al. (2023). "Harlan Crow's Minions are Keeping Your Rent High." *Revolving Door Project*. Accessed at <https://therevolvingdoorproject.org/harlan-crow-nmhc/>

Despite concerted industry attacks, as of 2018, 182 cities and municipalities across the country had some form of rent regulation.⁵⁰ The last five years has seen a period of renewed interest in rent regulation and associated tenant protections. In 2019 California and Oregon passed rent regulations, becoming the only states with statewide limits, and joining Washington DC as jurisdictions with broadly applicable laws. Maryland, New Jersey, New York, and Maine have not passed statewide rent limits, but explicitly allow them at the local level.⁵¹ In 2020, Portland, Maine approved its first rent regulation law.⁵² In 2021, St. Paul followed suit, and Minneapolis voters approved a charter amendment authorizing the city council to do so.⁵³ During the 2022 midterm elections, voters in Orange County (Florida), Portland (Maine), and Santa Monica, Pasadena, and Richmond (California) passed additional voter initiatives to regulate rents and expand protections for tenants.⁵⁴ In the last five years alone, more than a dozen other states have introduced bills that would roll back preemptions, introduce rent regulations, or extend related tenant protections.⁵⁵

Below are some of the rent regulations that have been enacted or strengthened in various jurisdictions recently.

Table 1: Recent Rent Regulations in US Jurisdictions (2020-2022)⁵⁶

Jurisdiction	Annual Rent Cap	Date Passed
Cudahy, California	Consumer Price Index (CPI) or 3%, whichever is lower	June 2023
Ojai, California	4%	March 2023
Oakland, California	60% of CPI or 3%, whichever is lower	May 2022
Richmond, California	60% of CPI or 3%, whichever is lower	November 2022
Santa Ana, California	80% of CPI or 3%, whichever is lower	October 2022
Pasadena, California	75% of CPI	November 2022
Antioch, California	60% of CPI or 3%, whichever is lower	August 2022
Perth Amboy, New Jersey	3% (2.5% if tenant also pays water bill)	October 2022
St. Paul, Minnesota	3%	November 2021
Portland, Maine	70% of CPI	November 2020

Notwithstanding these recent efforts, and despite widespread popularity of the policy,⁵⁷ rent regulation remains out of reach in most places in the US, as more than 30 states continue to preempt local jurisdictions from regulating rents.⁵⁸ FHFA has an opportunity to protect tenants in those states where rent regulations are off the table, which are also some of the states with the weakest tenant protections across the board.

⁵⁰ Prasanna Rajasekaran, Mark Treskon & Solomon Greene, Urb. Inst., Rent Control: What Does the Research Tell Us About The Effectiveness of Local Action? 3 (Jan. 2019), 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.

⁵¹ National Multifamily Housing Council, Rent Control By State Law 1 (July 2022), https://www.nmhc.org/globalassets/advocacy/rent-control/rent-control-by-state-law-chart_2022.pdf.

⁵² City of Portland, Maine. "Rent Control and Rental Housing Rights." Accessed July 31 at <https://www.portlandmaine.gov/1148/Rent-Control-Rental-Housing-Rights>

⁵³ Capps, Kriston. (2021). "As Housing Costs Spike, Voters Look for Hope in Rent Control." *City Lab*. Accessed at <https://www.bloomberg.com/news/articles/2021-11-04/rent-control-scored-a-big-election-night-victory>

⁵⁴ Janie Har, "Rent Stabilization Measures Win in US Midterm Election," *AP News* (Nov. 16, 2022), <https://apnews.com/article/2022-midterm-elections-inflation-florida-california-ef325d98687bbc08f2900b230a155852>; Jennifer Ludden, "Rent Control Expands as Tenants Struggle with the Record-High Cost of Housing," *NPR* (Nov. 28, 2022), <https://www.npr.org/2022/11/28/1138633419/rent-control-economists-tenants-affordable-housing-ballot-measures>.

⁵⁵ Homes Guarantee analysis of legislation introduced in state legislatures between 2017 and 2023.

⁵⁶ Homes Guarantee analysis of recent rent regulation policies passed in U.S. jurisdictions between November 2020 and June 2023.

⁵⁷ Fairclough II, Tenneth. (2022). "Voters are Concerned About the Increasing Cost of Housing and Want Government Action." *Data for Progress*. Accessed at

<https://www.dataforprogress.org/blog/2022/8/11/voters-are-concerned-about-the-increasing-cost-of-housing-and-want-government-action>

⁵⁸ Sharon Yamen, Hilary Silvia & Linda Christiansen, *In Defense of the Landlord: A New Understanding of the Property Owner*, 50 Urb. Law. 273, 279-80 (2020).

RENT REGULATION WORKS

Rent regulations increase housing stability and reduce evictions. A 2019 literature review of academic research on the economic and social impacts of rent regulations found the following:⁵⁹

- When rent regulations are in place, affordability for tenants improves. Long-term tenants living in regulated units receive considerable benefits by paying substantially less than they would otherwise.
- On balance, rent regulations do not increase the cost of non-regulated units, and where they do, closing policy loopholes (such as condo conversions), can help.
- In fact, some research shows that rent regulations could help keep rent more affordable for all tenants. For example, a 2007 study of rents in three Massachusetts cities found that having 10 to 12 percent of units in an area rent-stabilized decreased the rents of non-regulated units by \$23 to \$28.⁶⁰

Rent regulations are efficient, providing immediate relief at scale. Rent regulations are the only policy tool that can immediately provide relief to tenants facing housing insecurity. Because rent regulations cover private rental housing where the vast majority of tenants live, it outperforms all other affordable housing tools in terms of scale and impact.⁶¹

Rent regulations are cost-effective. While rent regulation requires a government apparatus to implement and enforce, the costs for operating programs can be covered by modest fees and can even be cost-neutral, especially when we consider the government expenditures on shelters and homeless services that can be avoided when strong rent regulations are introduced.⁶²

Rent regulations protect the most vulnerable tenants. Like all consumer protections, rent regulations will be most effective if they are applied universally, without any means-testing. Even so, rent regulations disproportionately benefit low-income tenants, seniors, people of color, female-headed households, people with disabilities and chronic illnesses, families with children, and others who have the least choice in the rental market and who are most susceptible to rent gouging, harassment, eviction, and displacement.⁶³

Rent regulations improve housing quality. Deferred maintenance and habitability issues have existed long before, and in the absence of, rent regulations. A comprehensive 1990 study of the rental housing market in Washington DC found a positive relationship between rent control and building maintenance, with the share of physically deficient units declined from 26 percent to 20 percent after the passage of rent control. Moreover, units exempt from rent control had higher rates of deficiencies than those under rent control (25 percent versus 20 percent). In a survey of 3,600 unassisted tenant households in Washington DC, 80 percent said that building maintenance was as good or better than it had been in the absence of rent stabilization. In fact, low-income tenants, especially, said rent regulation made them more willing to insist on repairs.⁶⁴

Rent regulations will benefit public health. With rent regulations in place, tenants would be physically and mentally healthier. Eviction is a traumatic event with cascading effects that can harm health and well-being for years, contributing to chronic stress and ongoing financial instability.⁶⁵ Rent regulations prevent evictions, keeping families healthier in the long run.

Rent regulations extend benefits to the whole community. When tenants are more financially secure, the economy is more stable. According to the National Equity Atlas, the overall amount of disposable income tenants would have if they paid only what they could afford on housing (and thus, experienced no rent-burden) has grown from \$78 billion in 2000 to \$141 billion in 2020.⁶⁶ The greatest gains would go to tenants of color, reducing racial inequity. When low-income households gain income, they are more likely than higher income households to

⁵⁹ Pastor, M., Carter, V., Abood, M. (2018). "Rent Matters: What Are the Impacts of Rent Stabilization Measures?" USC Dornsife Program for Environmental and Regional Equity. https://dornsife.usc.edu/assets/sites/242/docs/Rent_Matters_PERE_Report_Final_02.pdf.

⁶⁰ Sims, David P. 2007. "Out of Control: What Can We Learn from the End of Massachusetts Rent Control?" *Journal of Urban Economics* 61(1):129-51.

⁶¹ Chew, A., Treuhaft, S. (2019). "Our Homes, Our Future: How Rent Control Can Build Stable, Healthy Communities." Right to the City Alliance, PolicyLink, The Center for Popular Democracy. <https://www.policylink.org/resources-tools/our-homes-our-future>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Margery Turner, "Housing Market Impacts of Rent Control: The Washington, D.C. Experience," Washington, DC: Urban Institute, 1990, 84-94.

⁶⁵ Desmond M, Kimbro RT. Eviction's Fallout: Housing, Hardship, and Health. *Soc Forces*. 2015;94(1):295-324. doi:10.1093/sf/sov044

⁶⁶ National Equity Atlas, "Eliminate Rent Burden: United States, 2000-2020," PolicyLink and the USC Equity Research Institute, accessed May 18, 2022, <https://nationalequityatlas.org/indicators/Eliminate-rent-burden>.

actually spend these extra funds, creating local business activity, employment, and tax revenues.⁶⁷ Rent regulations have long term benefits as well; children would do better in school, since frequent moves disrupt education.⁶⁸ Furthermore, rent regulations help ensure we have income diverse regional economies, which is necessary to ensure that lower-wage essential workers can live within commuting distance to work.⁶⁹

See below for a more robust list of empirical research indicating the positive impact of rent regulations in maintaining below-market rent levels, moderating price appreciation, and increasing housing stability for tenants:

- Autor, D., Palmer, C., Pathak, P. (2014). "Housing Market Spillovers: Evidence from the End of Rent Control in Cambridge, Massachusetts." *Journal of Political Economy* 122 (3): 661-717.
- Early, D. (2000). "Rent Control, Rental Housing, and the Distribution of Tenant Benefits." *Journal of Urban Economics* 48 (2): 185-204.
- Heskin, C., Levine, N., Garrett, M. (2000). "The Effects of Vacancy Decontrol: A Spatial Analysis of Four California Cities." *Journal of the American Planning Association* 66 (2): 162-176.
- Clark, W., Heskin, A. (1982). "The Impact of Rent Control on Tenure Discounts and Residential Mobility." *Land Economics* 58 (1): 109-117.
- Levine, N., Grigsby III, E., Heskin, A. (1990). "Who Benefits from Rent Control? Effects on Tenants in Santa Monica, California." *Journal of the American Planning Association* 56 (2): 140-152.
- Ambrosius, J., Gilderbloom, J., Steele, W., Meares, W., Keating, D. (2015). "Forty Years of Rent Control: Reexamining New Jersey's Moderate Local Policies After the Great Recession." *Cities* 49: 121-133.
- Diamond, R., McQuade, T., Qian, F. (2019). "The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco." *American Economic Review* 109 (9): 3365-3394.
- Glaeser, E., Luttmer, E. (2003). "The Misallocation of Housing under Rent Control." *The American Economic Review* 93 (4): 1027-46.
- Gyourko, J., Linneman, P. (1989). "Equity and Efficiency Aspects of Rent Control: An Empirical Study of New York City." *Journal of Urban Economics* 26 (1): 54-74.

RENT REGULATION IS NECESSARY TO PRESERVE SUPPLY

The real estate industry consistently misrepresents the housing supply problem, which is not a problem of supply generally, but a problem of truly affordable supply. Multifamily housing production was "extraordinarily" strong over the last year, with 342,000 units added in 2022, mostly targeting the high end of the market, creating a higher vacancy rate in that segment of the market and failing to address the true supply gaps.⁷⁰ While multifamily production is at a decades-long peak, those units are inaccessible to the tenants who need them most.⁷¹ The industry continues to push for more liquidity to build, with limited commitments to the affordable supply we need, and with no evidence that building in the high-end market translates to more affordable housing supply.

We are losing affordable housing supply to deregulation faster than we can build new supply. The supply of low-cost units has been declining consistently for years, leaving low-income tenants with even fewer places to live. This is not a story of underproduction; this is a story of deregulation. The market has lost 3.9 million units with rents below \$600 (the maximum amount affordable to households with incomes of \$24,000 or less, about 30 percent of all tenant households) in the last decade, and the loss has been accelerating. That segment of the market lost 1.2 million units between 2019-2021 alone.⁷² In the same period of time, 14 states lost more than 15 percent of their affordable housing stock. These units were not demolished—landlords increased the rent. The rent increases did not correspond to improvements in the quality or conditions of the homes, but on whatever the market would allow.

The lack of regulation in Enterprise-backed properties has a profound, negative impact on affordable housing supply. One example of how this plays out in Enterprise-backed properties is in Alexandria, Virginia. Southern Towers, 2,311 units of housing, is home to predominantly African immigrants and other working class people of color. CIM Group acquired Southern Towers in August 2020 with \$346.7 million in acquisition financing

⁶⁷ Jonathan Fisher et al., "Estimating the Marginal Propensity to Consume Using the Distributions of Income, Consumption, and Wealth" (Washington Center for Equitable Growth, April 19, 2018), <https://equitablegrowth.org/working-papers/marginal-propensity-consume/>.

⁶⁸ Opportunity Starts at Home, "Stable, Affordable Housing Drives Stronger Student Outcomes," accessed July 5, 2023, <https://www.opportunityhome.org/wp-content/uploads/2018/02/Education-Fact-Sheet.pdf>

⁶⁹ Stacy, Christina Plerhoples, et al. (2020). "Spatial Mismatch and Federally Supported Rental Housing." *Urban Institute*. <https://www.urban.org/research/publication/spatial-mismatch-and-federally-supported-rental-housing>

⁷⁰ Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing 2023*.

(https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2023.pdf).

⁷¹*Id.*

⁷²*Id.*

from Freddie Mac, one of the biggest multifamily deals of that year.⁷³ The Freddie Mac loan that facilitated this purchase translates to a value and debt per unit that likely only makes financial sense for the landlord if their intention is to raise rents immediately and regularly thereafter. Within six months of acquisition, between September 2020–February 2021, they filed to evict over 250 households during the pandemic and instituted 9% rent increases for the rest.⁷⁴ CIM was targeting 13 percent annual returns within six years for their investors, hoping to change the character of these properties entirely. In their press release announcing the purchase of Southern Towers, CIM noted that the property is “six miles from Amazon’s HQ2...,” previewing their expectation that the Towers can one day house higher-wage and higher-rent paying households with Amazon corporate workers.⁷⁵ While Alexandria has lost 88 percent of its affordable housing since 2000, Southern Towers had been a stronghold, until CIM entered the picture.⁷⁶

Rent regulation is key to preserving affordable housing supply. The best attempts to encourage housing supply, like the Biden Housing Supply Action Plan, would create 1.5 million units over several years. Without rent regulation, that infusion of supply will not meaningfully impact the market, as we are on track to lose another several million units to speculation in the meantime. Rent regulation is the only hope to preserve existing supply of truly affordable housing, stabilize the market in order to see the impact of new supply, and protect tenants in the short term.

Tenant protections do not negatively impact supply, and in fact they can boost supply. Despite industry fear-mongering about the impact of rent regulations on the supply of new housing, multiple studies have found that rent regulations have little impact on depressing new construction:

- **Massachusetts:** An analysis of three Massachusetts cities found that multifamily building construction permits reached their height in the mid to late 1980s—a time when rent stabilization policies were in full effect.⁷⁷
- **New Jersey:** Multiple studies comparing New Jersey municipalities with and without rent control found no significant relationship between rent control and new housing construction.⁷⁸ This is especially significant given the number of jurisdictions in New Jersey that have some form of rent regulations - over 100.
- **Washington DC:** A study of rent control in the District of Columbia, published in 1990, found no significant relationship between rent control and new housing construction.⁷⁹ New rental units were built in DC and other uncontrolled cities during the 1970s and 1980s, even when the rental stock nationwide was shrinking.
- **California:** Assessing housing production from 2007–2013, a study found that the six cities with rent control in the Bay Area produced more housing units per capita than cities without rent control.⁸⁰ A study considering the effect of rent control from 1978–1994 and concludes that “the best available evidence shows that rent control had little or no effect on the construction of new housing.”⁸¹
- **Minneapolis, MN:** Financial modeling showed that even the strictest rent regulation would affect a minority of Minneapolis apartment units.^{82,83}

⁷³ Nicoll, Alex. (2022). “A band of immigrant tenants went to war with their \$31 billion landlord. It’s a sneak peek at what’s to come across America.” *Insider*. Accessed at <https://www.businessinsider.com/southern-towers-apartment-tenants-battle-investor-landlord-2022-11>

⁷⁴ Southern Towers research from African Communities Together. See <https://africans.us/southern-towers>.

⁷⁵ African Communities Together. (2021). “Invested in Evictions: CIM Group, Southern Towers, and the Crisis of Publicly-Financed Displacement.” Accessed at https://africans.us/sites/default/files/Invested%20in%20Evictions%20with%20hyperlinks_0.pdf.

⁷⁶ Ibid.

⁷⁷ David Sims, “Out of Control: What Can We Learn from the End of Massachusetts Rent Control?” *Journal of Urban Economics* 61, 1 (2007): 141–142.

⁷⁸ John I. Gilderbloom and Ye Lin, “Thirty Years of Rent Control: A Survey of New Jersey Cities,” *Journal of Urban Affairs* 29, 2 (2007): 213–214; Joshua Ambrosius, John Gilderbloom, William Steele, Wesley Meares, and Dennis Keating, “Forty Years of Rent Control: Reexamining New Jersey’s Moderate Local Policies after the Great Recession,” *Cities* 49 (2015): 128.

⁷⁹ Margery Turner, “Housing Market Impacts of Rent Control: The Washington, D.C. Experience,” Washington, DC: Urban Institute, 1990, 84–94.

⁸⁰ Miriam Zuk, “Rent Control: The Key to Neighborhood Stabilization?” Urban Displacement Project, September 9, 2015, <https://www.urbandisplacement.org/blog/rent-control-the-key-to-neighborhood-stabilization/>.

⁸¹ Planning & Development Department, “Rent Control in the City of Berkeley, 1978 to 1994: A Background Report,” City of Berkeley, May 27, 1998, 76.

⁸² Edward G. Goetz, Anthony Damiano, Peter Hendee Brown, Patrick Alcorn, Jeff Matson, “Minneapolis Rent Stabilization Study,” Center for Urban and Regional Affairs at the University of Minnesota, September 2021, <https://www.cura.umn.edu/research/minneapolis-rent-stabilization-study>.

⁸³ The real estate lobby often points to the passage of rent stabilization in St. Paul as an example of rent stabilization not working. In reality, it is much too soon to assess the long-term impact of rent stabilization, and any premature claims of policy failure must be accompanied with facts about the timing of development, policy passage and implementation in the St. Paul context. First, St. Paul has only had rent stabilization in effect since May 1st, 2022, which is not enough time to complete a longitudinal study on its impact on housing supply and development. Studies that focus on too narrow of a temporal window cannot separate the impact of policy on development from the impact of general market ebbs and flows. For example, 2020–2022 has seen drastic changes in interest rates, a global supply chain crisis and a steep rise in construction costs. These global and economic factors have a much stronger impact on development than local ordinances. Secondly, the timing of the St. Paul development community’s capital strike shows a weak relationship between development and actual policy implementation. Numbers reported by local sources show that developers began their capital strike as early as September 2021, when rent stabilization had yet to be voted on. Furthermore, the ordinance that was placed on the November 2021 passed a policy that was not implemented until May 1, 2022, but the

REGULATING ENTERPRISE-BACKED BORROWERS WILL SHAPE THE MARKET FOR THE BETTER

The Enterprises have influence in the secondary market that can shape it for the better while maintaining their safety and soundness. In many ways, the Enterprises are the table setters for the multifamily real estate market. The Enterprises own nearly half of the \$2 trillion in currently outstanding mortgage debt, and their market share has increased steadily since 2008.⁸⁴ The Enterprises' increasing influence over the multifamily rental market is, in large part, due to the lucrative loan terms they offer, which in many cases are stronger than those of regional banks. These loan terms include interest-only periods, high loan-to-value ratios, and longer term loans at fixed rates that are lower than what banks can typically offer. multifamily rental market nationally and, in many regional contexts, allows the Enterprises to outcompete other secondary lenders. FHFA must acknowledge this leverage to create a housing market that works for all by ensuring that tenants have the protections that they need.

The Enterprises have a particular advantage in the current market, which is shaped by a period of interest-rate instability, and they should use this leverage to set new precedent for tenant protections. The Enterprise lending model and implicit government guarantee means that they can price long-duration financing that balance sheet lenders cannot. Higher interest rates significantly increase the costs of mortgages and are likely to change the nature of the landlord mortgage market, putting a downward pressure on asset values. Since the Enterprises have an implicit government guarantee to their securities and do not need to match interest rates with depositors in the same manner, they can offer longer term loans at fixed rates that are lower than what banks can offer. Given these dynamics, we believe that regulating Enterprise-backed borrowers will help shape the market for the better without negatively impacting the Enterprises' influence.

There is no rigorous research indicating that tenant protections on federally-backed mortgages would lead to a significant decrease in market influence for the Enterprises or meaningfully stall the construction of new housing. The real estate industry often points to a small survey it administered to argue that regulations will decrease developers' involvement in the real estate market. This survey fails to live up to rigorous research methods; it only surveys 49 housing developers nationwide, and is not a representative sample of the full range of landlords and developers operating in the US rental market.⁸⁵ Furthermore, the National Multifamily Housing Council's statistic that "a majority of the 49 developers avoiding development in jurisdictions with rent control" does not reflect a relevant comparison when considering a national policy to prevent egregious rent hikes that would be consistent across market contexts. In fact, the idea that a developer would move to a different market to evade a specific regulatory context is yet another reason why developing federal policy for tenant protections and rent regulations will help prevent policy loopholes and create a fairer housing market.

supposed drop in development took place well before that. Lastly, the numbers that have been recorded for development permits in St. Paul require extra explanation, as some will argue that city numbers contradict HUD numbers and overestimate development. The City of St. Paul's Department of Safety and Inspections measures permit requests at the beginning of the development process, and HUD measures approvals at the end of the process - which is why City numbers are higher than HUD numbers for development.

⁸⁴ Homes Guarantee analysis of Board of Governors of the Federal Reserve System (US), All Sectors; Multifamily Residential Mortgages; Asset, Level [ASMRMA], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/ASMRMA>, May 30, 2023.

⁸⁵ Emrath, Paul and Caitlin Sugrue Walter. (2022). "Regulation: 40.6 Percent of the Cost of Multifamily Development." *National Multifamily Housing Council and National Association of Home Builders*.

SECTION 3: FHFA AUTHORITY TO IMPLEMENT PROTECTIONS

FHFA has a well established statutory mandate to address “the challenges faced by tenants...in the multifamily housing market” and to “assess [the Enterprises’]...policies and business practices that affect low and moderate-income families or cause racial disparities, including how their activities support the objectives of comprehensive housing affordability strategies.”

The Agency, like all parts of our government, exists to serve a public purpose, but today it falls short of that charge, mostly due to the role that the Enterprises have played in the multifamily market. The Enterprises are doing well by the mortgage companies, financial institutions, and corporate landlords. The Urban Institute recently estimated that the annual benefit in tax-payer backed subsidy to these market players totals \$6 billion per year.⁸⁶ It is past time that FHFA and the Enterprises require a basic level of protection, stability, and affordability for tenants. These protections will have the added benefit of stabilizing the American economy and the multifamily market.

CONSERVATOR VS. REGULATOR

As both conservator and regulator, the FHFA Director has substantial authority over the Enterprises. Per the Housing and Economic Recovery Act of 2008 (HERA), which modified the Safety and Soundness Act of 1992, the FHFA has a statutory charge to make Enterprises sound and solvent, as well as take appropriate actions to support ongoing Enterprise business conduct while preserving and conserving Enterprise assets and property.⁸⁷ These statutes include what is known as the “duty to serve” (DTS) provision that requires Fannie Mae and Freddie Mac to invest more resources into three underserved markets: affordable housing preservation, rural housing, and manufactured housing.⁸⁸ HERA also imposed affordable housing obligations for single- and multi-family housing on the Enterprises.⁸⁹

As a conservator, FHFA has been responsible for conducting and administering all aspects of the Enterprises’ operations, business, and affairs. At its discretion, FHFA maintains the power to review any delegated decision made by the Enterprises’ directors and manager and the authority over decisions that require agency approval. For example, adopting an Equitable Housing framework and implementing targeted fee increases for specific loans are two exercises of power consistent with FHFA’s responsibility as a conservator. The Agency intended the Equitable Housing Finance Plan framework to operate as a tool for the Enterprises to undertake sustainable and meaningful actions that advance equity in the housing markets while ensuring safety and soundness.⁹⁰ Separately, the agency also directed the Enterprises to set minimum ongoing guarantee fees by product type and announced targeted increases to the Enterprises’ upfront fees for certain high-balance and second-home loans.⁹¹ Notably, FHFA can and has implemented such fee increases without disrupting the existing beneficial pricing treatment of specific programs, such as HomeReady, Home Possible, HFA Preferred, and HFA Advantage, thus demonstrating their commitment to affordable housing.⁹²

As a regulator, FHFA has the authority to engage in rulemaking, supervise and examine the Enterprises, enforce statutes, regulations, and policy guidance, and use emergency tools to ensure that the Enterprises adhere to the DTS provision established by Congress.⁹³ Concerning the agency’s authority to supervise and examine, FHFA issues Advisory Bulletins on a timely basis regarding critical matters such as credit risk management and model risk governance. FHFA also conducts the mission oversight of the regulated entities to maintain a comprehensive view

⁸⁶ “[How Fannie and Freddie Can Use Pricing to Expand Affordable Homeownership](#)” Urban Institute, April 2022, Goodman, Parrot, Ryan, Zandi

⁸⁷ 12 U.S.C. 4617(b)(2)(D); <https://www.fhfa.gov/Conservatorship/Pages/History-of-Fannie-Mae--Freddie-Conservatorships.aspx>.

⁸⁸ The Safety and Soundness Act defines “Fannie Mae and any affiliate thereof” and “Freddie Mac and any affiliate thereof” as regulated entities. 12 U.S.C. § 4502(20); *Duty to Serve Program*, FED. HOUS. FIN. AGENCY, <https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/Duty-to-Serve.aspx> (last updated May 31, 2023).

⁸⁹ 12 U.S.C. 4561

⁹⁰ FED. HOUS. FIN. AGENCY DIV. OF HOUS. MISSION & GOALS, ENTERPRISE EQUITABLE HOUSING FINANCE PLANS: REQUEST FOR INPUT (Sept. 2021), <https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Equitable-Housing-Finance-Plans-RFI.pdf>.

⁹¹ FED. HOUS. FIN. AGENCY, FANNIE MAE AND FREDDIE MAC SINGLE-FAMILY GUARANTEE FEES IN 2020 (Dec. 2021), <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/GFee-Report-2020.pdf>; *FHFA Announces Targeted Increases to Enterprise Pricing Framework*, FED. HOUS. FIN. AGENCY (Jan. 5, 2022), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Targeted-Increases-to-Enterprise-Pricing-Framework.aspx>.

⁹² FED. HOUS. FIN. AGENCY DIV. OF HOUS. MISSION & GOALS, FANNIE MAE AND FREDDIE MAC SINGLE-FAMILY GUARANTEE FEES IN 2018 (Dec. 2019), <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/GFee-Report-2018.pdf>.

⁹³ 12 U.S.C. § 4511 (b)(1) and (2); 12 U.S.C. § 4511(b)(2); 4517 (examination authority); 4631(a) (enforcement authority); *Housing Finance Reform: Powers and Structure of a Strong Regulator*, FED. HOUS. FIN. AGENCY (Nov. 21, 2013), <https://www.fhfa.gov/Media/PublicAffairs/Pages/Housing-Finance-Reform-Powers-and-Structure-of-a-Strong-Regulator.aspx>.

of risks and housing finance activities.⁹⁴ As an enforcer, the Agency can issue cease and desist orders, impose civil money penalties, debar officials, and act against institution-affiliated parties.⁹⁵ The Agency also created the Suspended Counterparty program to penalize individual or corporate counterparties found guilty of criminal law violations.⁹⁶ Finally, FHFA maintains a working capital fund and can impose special assessments on the regulated entities to address any shortfalls in its resources to respond to emergencies.⁹⁷ For example, FHFA entered a support agreement with the US Department of Treasury, which provided the Enterprises with temporary emergency funding that remains the primary source of funding to provide capital support to the conservatorships.⁹⁸

In sum, FHFA has the broad authority necessary to facilitate equitable and sustainable access to housing. The agency is also well equipped, in both its capacities as a conservator and regulator, to ensure that the Enterprises adhere to their mandate.

The following sections outline precedent for FHFA's authority to implement tenant protections in Enterprise-backed properties.

PAD LEASE PROTECTIONS

FHFA has established precedent for requiring tenant protections as a loan condition through its tenant pad lease protection requirements for loans to manufactured housing communities. These pad lease protections were first implemented through the FHFA Duty to Serve (DTS) program, which was established under HERA and requires the Enterprises to serve three specified underserved markets—manufactured housing, affordable housing preservation, and rural markets—in order to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for very low-, low-, and moderate-income households in those markets. HERA also requires FHFA to separately evaluate each Enterprise's compliance with respect to each underserved market.

Following widespread reports of resident exploitation at manufactured housing communities that received Enterprise financing, FHFA placed additional requirements on DTS for manufactured housing. In order to count towards DTS credit, a manufactured housing community must either provide the following eight tenant pad lease protections or be subject to state and local laws that require them:

- One year renewable lease, unless there is good cause for nonrenewal;
- 30-day written notice of rent increases;
- Five-day grace period for rent payments and right to cure defaults on rent payments;
- Tenant has the right to sell the manufactured home without having to first relocate it out of the community;
- Tenant has the right to sublease or assign the pad lease for the unexpired term to the new buyer of the tenant's manufactured home without any unreasonable restraint;
- Tenant has the right to post "For Sale" signs;
- Tenant has the right to sell the manufactured home in place within a reasonable time period after eviction by the manufactured housing community owner; and
- Tenant has the right to receive at least 60 days advance notice of a planned sale or closure of the manufactured housing community.⁹⁹

These requirements provide an important precedent for conditioning FHFA-regulated loans on tenant protections. Additionally, under 12 U.S.C. 4565(c), the FHFA Director can recommend to Congress that additional categories be required of Enterprises in their DTS requirements. The Director also has sole discretion to evaluate Enterprise compliance with DTS and the ability to modify current plans under §1282.32(h).

In April 2022 the FHFA applied three of those protections to tenants for all loans involving manufactured housing communities, requiring borrowers to agree to provide a 30 day notice to vacate, a five day notice to cure a default/missed rent payment, and a notice of sale.

⁹⁴ 12 U.S.C. §§ 1430(k), 1456(e), 1723a(m), 4514.

⁹⁵ *Housing Finance Reform*, *supra* note 31.

<https://www.fhfa.gov/Media/PublicAffairs/Pages/Housing-Finance-Reform-Powers-and-Structure-of-a-Strong-Regulator.aspx>

⁹⁶ *Suspended Counterparty Program*, FED. HOUS. FIN. AGENCY,

<https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/Suspended-Counterparty-Program.aspx>.

⁹⁷ *Id.*

⁹⁸ 12 U.S.C. §§ 1455(l), 1719(g).

⁹⁹ 12 U.S.C. § 1282.33(c)(4).

RENT RESTRICTIONS FOR MISSION-DRIVEN LOANS

The FHFA has established precedent for imposing tenant protections as a loan condition through its 2023 Scorecard for the Enterprises.¹⁰⁰ In its role as conservator of the Enterprises, FHFA issues an annual scorecard in which it publicly sets priorities and expectations for the Enterprises. In its 2023 Scorecard for the Enterprises, the FHFA set standards for what it considers “mission-driven” loans. For multifamily housing that is considered “workforce housing,” meaning it is not subject to HUD or other government tenant protection standards, the FHFA will classify loans to preserve affordability as mission-driven “if the property has units that are subject to either rent or income restrictions codified in loan agreements.”¹⁰¹ FHFA will classify as mission-driven units where the loan agreements require a sponsor to preserve affordability at the “other affordable” market levels outlined below or that adhere to the standard of a state or local housing affordability initiative, for at least 10 years or the term of the loan.

EVICTION NOTICE PERIOD

During COVID-19, FHFA established precedent for imposing tenant protections as a loan condition through its 2021 requirement that multifamily properties with mortgages backed by the Enterprises must provide tenants who are subject to eviction for nonpayment of rent with 30 days’ notice to vacate before the tenant can be required to leave the unit. This requirement applies to all Enterprise-backed multifamily properties, regardless of whether the loan is in forbearance.¹⁰²

RADON MITIGATION PROGRAM

The FHFA has established precedent for imposing tenant protections as a loan condition through its Radon Mitigation Program. Earlier this year, after extensive engagement with a wide range of stakeholders,¹⁰³ FHFA exercised its conservatorship by implementing its 2023 Enterprise Multifamily Radon Policy, which increased the radon testing requirements for Enterprise-backed properties.¹⁰⁴ FHFA clarifies that the policy creates a floor, a minimum threshold of radon testing, to which all multifamily properties (subject to specific exemptions) must adhere: “if there appears to be a conflict with any Enterprise radon requirements, the Lender must comply with all state and local regulations, as well as any more stringent Enterprise requirements.”¹⁰⁵ FHFA passed this policy through its supervisory powers over the Enterprises, and cited the agency’s “mission to responsibly foster a sustainable housing finance system that supports equitable access to affordable, decent, and safe homeownership and rental housing.”¹⁰⁶ FHFA could apply a similar approach to regulating rents and instituting tenant protections.

AFFIRMATIVELY FURTHERING FAIR HOUSING (AFFH)

FHFA has a duty to administer their programs and activities relating to housing and urban development in a manner that affirmatively furthers fair housing.¹⁰⁷ This duty requires FHFA to do more than simply refrain from discrimination; it requires FHFA to take meaningful action to end discrimination and segregation. Cf. NAACP v. HUD, 817 F.2d 149 (1987) (describing HUD’s duty to AFFH). The duty also extends to the Enterprises as entities regulated by FHFA.

Without strong tenant protections to prevent egregious rent hikes and no-cause evictions, the risk of displacement falls heavily on Black and Latino tenants, who are overrepresented compared to the general population of tenants. Rising rents and the lack of affordable housing converge to reduce the likelihood that these tenants will find replacement housing in the neighborhoods from which they are displaced, which threatens to re-segregate Black communities and other communities of color.¹⁰⁸

Findings from San Mateo County’s Assessment of Fair Housing illustrate the fair housing issues at play. Of the nearly 4000 residents surveyed, two in five Black and Latino tenants reported experiencing displacement in the last

¹⁰⁰ FED. HOUS. FIN. AGENCY, 2023 SCORECARD FOR FANNIE MAE, FREDDIE MAC, AND COMMON SECURITIZATION SOLUTIONS (Dec. 2022), <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2023-Scorecard.pdf>.

¹⁰¹ *Id.*

¹⁰² *FHFA Announces Multifamily Tenant Protections*, FED. HOUS. FIN. AGENCY (July 28, 2021), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Multifamily-Tenant-Protections.aspx>.

¹⁰³ FHFA, Freddie Mac and Fannie Mae Multifamily Radon Standards Listening Session (July 20, 2021), <https://www.fhfa.gov/Videos/Documents/Multifamily-Radon-Standards-Transcript.pdf>.

¹⁰⁴ Fannie Mae, 2023 Enterprise Multifamily Radon Policy (Jan. 19, 2023), <https://multifamily.fanniemae.com/media/16641/display>.

¹⁰⁵ Fannie Mae, Fannie Mae and Freddie Mac’s Joint Multifamily Radon Policy Frequently Asked Questions (Jan. 19, 2023), <https://multifamily.fanniemae.com/media/16646/display>.

¹⁰⁶ <https://www.fhfa.gov/Media/Blog/Pages/FHFA-Increases-Radon-Testing-Requirements-at-Enterprise-Backed-Multifamily-Properties.aspx>

¹⁰⁷ 42 USC 3608(d); 42 U.S.C. 3601 et seq. (imposing the duty to affirmatively further fair housing to all federal agencies with regulatory or supervisory authority over financial institutions).

¹⁰⁸ Anne Bellows, *The Fair Housing Imperative to Address the Displacement Crisis*, *Civi Rights Insider* 5 (2018), <https://www.fedbar.org/wp-content/uploads/2019/12/civil-rights-winter-2018-v-3-pdf.pdf>

five years, due in large part to decades of exclusionary housing policies that made homeownership difficult, if not impossible for many.¹⁰⁹ 80 percent of tenant households who are displaced leave their neighborhoods, often with reduced access to jobs. A third leave San Mateo County altogether.

In April 2023, FHFA issued a notice of proposed rulemaking to codify its practices related to fair lending, fair housing, and Equitable Housing Finance Plans. The NPRM is a step in the right direction because it makes permanent an important process for the Enterprises to plan for and implement policies to increase equitable access to housing, including in the rental housing market.

SUSPENDED COUNTERPARTY PROGRAM

Tenant protections are only effective if they are enforced. Through the Suspended Counterparty Program (SCP), the Enterprises are required to refer to FHFA any current or former counterparty or affiliate that has been convicted of, or sanctioned administratively for, covered misconduct within the last three years.¹¹⁰ The program requires Fannie, Freddie, and the Banks to submit a report to FHFA within 30 days after it becomes aware of any covered misconduct.¹¹¹ In addition to the regulated entities, OIG and HUD also make suspended counterparty referrals to FHFA.¹¹²

The SCP could be an important tool for FHFA enforcement of tenant protections, particularly if the definition of “covered misconduct” is expanded to include violations of FHFA-instituted tenant protections, such as rent hikes or evictions without cause. The current rule restricts covered misconduct to financial misconduct, because these are the kinds of behaviors that would compromise the safety and soundness of the financial markets in which the GSEs operate.

However, the current chaos and instability of the market is due to a lack of rent regulation and just cause eviction protections. The current housing system encourages a level of risk that compromises the health of the overall market and can create negative consequences for many parties, including the Enterprises. Instituting tenant protections would be an act of market stabilization in its own right; therefore, a borrower or counterparty who violates these tenant protections would be a destabilizing force. Under FHFA’s safety and soundness mandate, expanding the SCP would be a necessary part of passing and enforcing comprehensive tenant protections.

CONCLUSION

The Homes Guarantee campaign is proud to have organized thousands of tenants as part of this historic public comment process to win federal rent regulations and tenant protections in properties with federally-backed mortgages.

Across the country, tenants are relying on FHFA to take the steps we have outlined in our comment and create a housing market that works better for all. The patterns of racial discrimination, privatization, corporate consolidation, and government deregulation that have commandeered our housing market must be stopped across all levels of government, and within every agency.

FHFA should require the following of all borrowers of Enterprise-backed mortgages:

- Limits on egregious rent hikes;
- Good cause eviction protections;
- Recognition of tenants’ right to organize;
- Ban on source of income discrimination;
- Expanded discrimination protections;

¹⁰⁹ Anne Bellows & Lorena Melgarejo, Renters Rights are Civil Rights, The Daily Journal (Oct. 16, 2017), https://www.smdailyjournal.com/opinion/guest_perspectives/renters-rights-are-civil-rights/article_1ee2c38c-b20e-11e7-970a-23fca667d7b0.html

¹¹⁰ 12 C.F.R. §§ 1227.2, 1227.4(a). Since the regulation limits FHFA to suspending a counterparty within three years of when a conviction or sanction (for any of various specified offenses in connection with a mortgage, mortgage business, mortgage securities, or other lending product) was imposed on the counterparty, OGC asserts that it may rely on its statutory authorities under HERA to effectuate suspensions in cases where this time bar has passed. See Housing and Economic Recovery Act of 2008, Pub. L. 110-289 (HERA). See FHFA Office of the Inspector General, Compliance Review of FHFA’s Suspended Counterparty Program (Aug. 25, 2021), <https://www.fhfaog.gov/sites/default/files/COM-2021-008.pdf>.

¹¹¹ Id. at 79677.

¹¹² FHFA Office of the Inspector General, Compliance Review of FHFA’s Suspended Counterparty Program (Aug. 25, 2021), <https://www.fhfaog.gov/sites/default/files/COM-2021-008.pdf>.

- Safe, quality housing standards;
- Fair lease provisions; and,
- Participation in a rental registry.

Additionally, FHFA should create an Office of Tenant Protections that is responsible for ensuring that borrowers of Enterprise-backed loans are in compliance with the required tenant protections.

Efforts to advance tenant protections—and thus, correct the gross imbalance of power between landlords and tenants—will unsurprisingly face opposition by those who stand to profit from our current housing system. FHFA will hear from realtors, apartment associations, investors, lenders, and many other parties who benefit from the status quo, as inequitable as it is. Their messages will be the same as ever: any proposed change will impact their ability to do business. What we have to consider, in the face of these arguments, is who their business serves, and who it does not serve. The system as we know it today has failed everyday people, many of whom make impossible choices between rent and food, their homes or their medications. The status quo is not working for the people, it is only working for the profiteers, and it is time for change.

It is time for the federal government to make changes to that system, to correct the imbalance of power between landlords and tenants, to protect tenants, and to stabilize the American economy.

Thank you for the opportunity to support FHFA's work to address the problems faced by multifamily tenants of Enterprise-backed properties. We welcome the opportunity to discuss this comment, provide more information on the tenant protections outlined, or answer any questions. Please do not hesitate to contact Homes Guarantee Campaign Director Tara Raghuvver, at t.raghuvver@peoplesaction.org.