Comment on the FHFA's RFI on The Equitable Housing Finance Plans developed by the Enterprises (June 7th, 2024)

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Summary

Thank you for the opportunity to comment on the EHFPs, which is an enormous undertaking and will be crucial to the evolution of housing conditions in the US. To be complementary to other commenters, I focus my comments on multifamily mortgages and tenant protections, as I believe that most comments you will receive from the organizations that typically comment on the FHFA's RFIs and proposals will focus on mortgages and single-family housing. For example, my frequent collaborators at the Urban Institute are submitting a comment (by Laurie Goodman et al, submitted on June 7th 2024), outlining the need for the EHFPs to focus on scalable projects, and to have transparent and standardized metrics.

The US is in a housing crisis where tenant protections are barebone and evictions are extremely harmful to households. Tenants (relative to homeowners) are disproportionately lower-income, Black, and Hispanic. Even within tenants, Black and Hispanic tenants have worse outcomes than average.

The Enterprises jointly securitize around 45% of the outstanding multifamily mortgages, thus have an enormous amount of influence on the market, and could make dramatic improvements to tenants' well-being, which would disproportionately benefit Black and Hispanic tenants.

Instead, the Enterprises have accomplished virtually nothing for tenant protection in the last few years. Enterprises can standardize and scale tenant protections across the US, and lead the way to making those protections a norm. Some protections do not need to be studied, as we know the right answers already: for example, requiring no source of income discrimination from multifamily borrowers (putting tenants with housing choice vouchers and social security supplemental income on equal footing, like they already are in LIHTC buildings) and requiring just cause/good cause evictions only. Other protections require nuanced considerations and study, like slowing the eviction process for households that can document sudden hardships (medical conditions or unemployment), especially those with small children.

Arguably even worse, we do not know the basic facts, and Enterprises have no plans to collect or analyze the data: for example, whether Enterprise-backed buildings have lower eviction rates, all else equal or whether Enterprise-backed buildings have lower rents all else equal, and whether both are still true in neighborhoods with large Black and Hispanic population. We also do not have a standardized way for tenants to submit their complaints about landlords breaking various laws and rules.

The Enterprises have the ability to change this in their 2025-2027 Equitable Housing Finance Plans. We suggest they take action now to promote renter stability, while collecting data and engaging in research projects which will allow for informed programs in the future.

Background

The US is in the middle of a housing affordability crisis. And Black and Hispanic Americans are experiencing even worse housing outcomes than whites. In particular, this gap appears in each of the following aspects of housing: homelessness, evictions, cost-burdened renters, homeownership rate, home equity accumulation, equity enhancing and stripping activities (refinances during lower interest rate periods for example pandemic vs cash-out refinances into higher interest rates now), and foreclosure rates. The outcomes, in each of the above, are frequently 1.5x-2x worse for Black Americans, depending on the exact measurement.[1]

In the last few decades, this issue stopped being limited to particular neighborhoods or geography. The issue is spread across states, and is no longer an urban phenomenon, with close to half evictions happening in the suburbs. Similar issues are there for manufactured housing (MH) too: even though Blacks and Hispanics are somewhat underrepresented in MH overall, they are almost twice more likely to have chattel MH loans relative to MH mortgages.

To choose one of the metrics that might be less familiar to the FHFA, evictions are back to the pre-pandemic levels (and in many places exceeding pre-pandemic).[2] We know that evictions are incredibly detrimental to households, both at the moment and going forward, and both from documented lived experience and from sophisticated econometric research.[3] Yet, one of the top programs mentioned between the two EHFPs is supporting “Rent Resource Organizations” that can connect tenants with “services and resources to prevent evictions.”[4] Unsurprisingly for EHFPs, there is no sense of the volume of the program or metrics of success, but even if the number of tenants helped across the US in a year is more than a few hundred, the Enterprises can surely do more than help tenants connect to other resources. Fannie Mae does mention an upcoming study of rent relief programs in 2024, but the entire description of the program merits literally two sentences in an appendix about future research.[5]

Actions that could be completed this year[6]

The following actions are by far the most frequently mentioned protections and concerns,[7] and almost surely disproportionately affect Black and Hispanic tenants. Requiring these practices from multifamily borrowers is arguably simply affirmatively further fair housing outcomes, as is

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[1] See, e.g., https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2024.pdf, https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf, and https://evictionlab.org/demographics-of-eviction/.

[2] See, e.g., https://evictionlab.org/ets-report-2023/.

[3] See, e.g., https://evictedbook.com/ and https://academic.oup.com/qje/article-abstract/139/1/57/7276608.

[4] See https://sf.freddiemac.com/docs/pdf/renter-resource-organizations.pdf.

[5] See https://www.fanniemae.com/media/51166/display p43.

[6] Much of the action recommendations is based on https://www.urban.org/sites/default/files/2023-11/Ensuring%20Tenant%20Stability%20in%20Federally%20Backed%20Rental%20Properties.pdf.

[7] See, e.g., https://www.fhfa.gov/sites/default/files/2024-01/rfi-summary-tenant-protections-january-2024.pdf.

Congressionally required of all government agencies (including the FHFA).[8] Some of these practices are already required by various jurisdictions and government programs (for example, LIHTC), and thus will not be a surprise to landlords, did not crash multifamily markets in jurisdictions and in the programs that require them, and should be presented as an addendum requirement to the multifamily mortgages going forward (like lease pad requirements in manufactured housing communities).

1) Not discriminating based on source of income – already prohibited in many states and municipalities, and prohibited in LIHTC properties that are often backed by Enterprise multifamily mortgages.[9]
2) Limit evictions to just (good) cause only. There are already multiple large jurisdictions requiring this, for example, states of CA, NJ, NH, OR, and WA.[10] Just (or good) cause evictions should include the option for the landlord to not renew the lease once the lease is over. There are many reasons for why the tenant and the building/landlord/neighbors might not be a good match, for example various nuisance and noise concerns.
3) Requiring landlords to pay $200 as a fee for each eviction, either to the Enterprises or the lender. Research suggests that a relatively small fee like this could considerably lower the incidence of eviction.[11]
4) Not using debt collectors and not reporting debts to credit bureaus. The reporting to the credit bureaus and debt collectors is very haphazard, and sends the tenant into a tailspin of housing insecurity. Future landlords who require only the most pristine tenant records will likely use signals like checking account inflows and outflows that might be considerably more informative than previous debt collections.
5) Requiring right to habitability and habitability transparency, with bright lines for when the tenant can move out before the end of the lease without being stuck with a massive amount of debt, for example if there is "no heating (during cold weather), no running or hot water, or no electricity or unusable accessibility accommodations (elevators or ramps), with the landlord failing to fix the issue or to provide alternative accommodation for more than two business days after being informed."[12] The landlord should also have the duty to inform all tenants in a building when there is either an open code violation from the country or the city, or when one or more of the tenants are dealing with a particular glaring issue that could warrant ending the lease early without penalties. Such

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[8] See https://www.hud.gov/AFFH.

[9] Fannie Mae already had an initiative in North Carolina and Texas, offering lower rates to borrowers who commit not to discriminate on source of income. However, that's too low of a bar, especially given the prohibition in LIHTC and multiple states – it should not be an option, nor should the Enterprises pay for it.

[10] See, e.g., https://nlihc.org/sites/default/files/Promoting-Housing-Stability-Through-Just-Cause-Eviction-Legislation.pdf.

[11] See https://evictionlab.org/tenants-pay-for-cheap-evictions/. However, in some jurisdictions landlords can simply charge the evicted tenant this fee, see https://www.networkforphl.org/wp-content/uploads/2021/05/Fact-Sheet-Deterring-Serial-Eviction-Filing.pdf

[12] See https://www.urban.org/sites/default/files/2023-11/Ensuring%20Tenant%20Stability%20in%20Federally%20Backed%20Rental%20Properties.pdf, p 13. See also https://www.uniformlaws.org/viewdocument/final-act-119/, §302.

transparency would enable other tenants to also report issues, and move out if necessary.

6) Establishing a tenant reporting portal, mirrored across the Enterprises and the FHFA. The reporting portal could be as simple as the one at the FTC, or as sophisticated as the one at the CFPB – the right start might be the FTC version, to follow with the CFPB version later, while allowing the data to flow in. The FHFA already established during the pandemic a portal that allowed tenants to check whether the property is backed by an Enterprise multifamily loan. Extending that portal to allow tenant complaints should be trivial.
7) Limit security deposits to one month of rent, and allow security deposit alternatives (like insurance protecting the landlord).
8) Not discriminating whether to accept an application from a tenant based on previous incarceration history, at least for non-violent crimes. Not discriminating based on arrests (as opposed to convictions) or filed evictions (as opposed to completed).

There are many other potential considerations, but many would likely fall into price transparency issues and unfair and deceptive practices. For example, dozens of unavoidable fees, consistent practices of charging ever increasing rents to households who find it hard to move out, and using mandatory arbitration clauses to prevent class actions.

Data to be collected

Unlike the actions above, there will be many other potential actions for which it is not clear whether they should be undertaken or what the best method is of imposing a particular requirement. However, the Enterprises and the FHFA will continue living in the dark without data collection. Here is some data that the Enterprises should start collecting immediately:

I) *Monthly rent rolls with tenant performance and outcomes*. Multifamily borrowers already submit rent rolls, some of them have to do so annually. However, the rent rolls miss crucial information – for example, how many tenants get evicted (and primary reasons), how many tenants are currently behind on their payment (and total arrears), how quickly tenants get evicted once they fall behind, what the rent increases in the building are, and so on.[13] This information, especially combined with the property's address and census tract characteristics, is crucial for ensuring fair housing outcomes, but could also help with predicting multifamily borrower distress for prudential considerations.

II) *One-time submission of the information that the landlord uses to qualify tenants* (income, credit score, and so on). It is not clear what is actually predictive of the risk of nonpayment, how much of that information is accurate, and which variables are likely discriminatory.[14] As Urban

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[13] See https://www.urban.org/sites/default/files/2023-11/Ensuring%20Tenant%20Stability%20in%20Federally%20Backed%20Rental%20Properties.pdf p3-4 for a more complete list of variables to collect on expanded rent rolls.

[14] See, e.g., https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf.

Institute notes, "Making selection criteria public provides clarity to applicants; allows landlords to clearly state reasons for rejections, minimizing future risks of fair housing concerns; and improves workflow by allowing for faster and better-documented decisions by those in the organization."[15] The landlord should update its submission whenever there are material changes. And, at the very least, each landlord should follow guidance from the FTC and the CFPB on the topic.[16]

III) *One-time submission of the ultimate ownership shares of the multifamily borrower* (if an LLC or a similar entity) by either individuals, publicly-traded corporations, larger privately-held firms or real estate investment trusts. The borrower has to submit any material changes in ownership structure if those occur. This data collection could connect one-building LLCs with the ultimate owners, and help monitor better for systemic offenders and for ownership concentration for prudential purposes.

Special considerations for Manufactured Housing Communities (MHCs)
Investors are able to purchase MHCs using Enterprise multifamily loans, often pricing out community ownership models and vastly increasing land rents soon after purchasing, knowing that it is typically cost-prohibitive for tenants to move their manufactured homes elsewhere. Thus, in addition to also often being lower income, MHC tenants require even more protections as they are subject to this lock-in. While Blacks are underrepresented in manufactured housing ownership in general, they are overrepresented for these home-only (without land, often in MHCs) purchases and mortgages.[17]

MHC owners should be required to *offer an option of long-term pad lease (five years), tying the maximum lease increases to inflation*. The Enterprises could require MHC owners to offer the option of a pre-specified schedule of rent increases over the next five years, with each annual increase no more than CPI inflation of the previous year plus 5% (consistent with a recent California law[18]), or potentially a somewhat higher threshold.

The Enterprises already require renewable leases in their current pad lease protections. Renewable lease requirement is meaningless if the landlord can offer a renewal at three times the previous price. An alternative option to a longer-term contract option is simply rent control, similarly tied to previous year's inflation. MHCs are a unique case where rent control might be economically helpful due to the asset lock-in of the virtually unmovable manufactured house owned by the pad tenant.[19]

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[15] See https://www.urban.org/sites/default/files/2023-11/Ensuring%20Tenant%20Stability%20in%20Federally%20Backed%20Rental%20Properties.pdf, p4.
[16] See https://consumer.ftc.gov/articles/tenant-background-checks-and-your-rights and https://www.consumerfinance.gov/rules-policy/tenant-background-checks.
[17] See https://files.consumerfinance.gov/f/documents/cfpb_manufactured-housing-finance-new-insights-hmda_report_2021-05.pdf p6.
[18] See https://oag.ca.gov/consumers/general/landlord-tenant-issues#limits.
[19] In general, we can't rent control our way out of a housing supply crisis. Binding rent control could lead to the higher-income tenants benefiting (subsidized by the taxpayers), misplaced incentives on

Future research

After establishing the protections and data gathering requirements above – not as pilots in lieu of rent reduction for a handful of properties, but as permanent requirements on every multifamily loan going forward – there will be much more work to do. The Enterprises have taken many steps to stabilize single-family mortgage borrowers, including the recent work by the FHFA to extend a version of pandemic-style forbearance into the future permanently.[20] Similar stabilization efforts will be useful for multifamily tenants. Given the negative consequences of eviction, research is necessary into what's the optimal tenant loss mitigation waterfall, and the Enterprises could help research the most cost-effective methods and standardize them across the US.

For example, a program of tenant financial support in limited cases might pass a cost-benefit test. Certain life events are often outside of tenant control, hard to predict, and are easy to document (serious health issues, unemployment, or death of an income-earner, for example).[21] Similar to single-family mortgage forbearance if the tenant was on time with their payments for most of their lease, then tenants affected by these documentable events should be able to stay for the rest of their lease at a lower rate that they can afford, instead of getting evicted immediately. In effect, this would be akin to an insurance, protecting the tenant from eviction for the duration of the lease. An actual insurance like this could raise many adverse selection and moral hazard issues. But a standardized requirement applying to all tenants could mitigate adverse selection concerns, and requiring documentation could limit moral hazard concerns.

Such an insurance-like program does not have to be subsidized by the taxpayers, just like ultimately mortgage borrowers are the ones paying for loss mitigation waterfalls options, especially for privately-held mortgages. The program could be administered by third-party insurers, with every Enterprise tenant having to sign up for it, and effectively treat it as a part of the monthly rent payment. Or the program could have the landlords "self-insure" and simply have that option available, potentially subsidized by higher monthly rent. Or the program could have Enterprises providing payments on behalf of affected tenants directly to the landlords. The overall point is that this type of an insurance-like program could be tremendously beneficial to tenants (even if they have to pay for it ultimately after all the pass-through and economic incidence calculations), yet we have little research to show the potential effectiveness or ineffectiveness.

There is also an important question of which supply-increase or rent-decrease subsidization the Enterprises could or should do. Current programs, like Fannie's Sponsor-Dedicated Workforce (SDW), strongly resemble LIHTC. Unfortunately, while LIHTC seems to be successful in at least

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maintenance and evictions, waste of resources by potential tenants trying to secure an apartment and stay there for decades, and an eventual decline in the Enterprise multifamily volume and lower housing supply in general.

[20] See https://www.fhfa.gov/news/news-release/fhfa-announces-enhanced-payment-deferral-policies-for-borrowers-facing-financial-hardship.

[21] See also https://www.urban.org/sites/default/files/2022-08/Normalizing%20Forbearance.pdf.

somewhat revitalizing the neighborhoods, LIHTC does not seem to result in either cost-effective rent reductions or supply creation.[22] Instead, more loans for developers, both for construction and bridge loans, might be more beneficial.

The Enterprises can also establish, potentially even jointly, a semi-independent research center to study housing insecurity in general – evictions (and couchsurfing and homelessness), problems obtaining housing in the first place, rent increases, tenant loss mitigation waterfall options, and also tie it to mortgages, with questions like servicing waterfalls and transitions from tenants to homeowners, and home prices with zoning and other restrictions on supply. Resolving these problems and collecting this data would help everyone, but in particular Black and Hispanic consumers who currently suffer the most from the associated issues. And using funding to hire external researchers for a period of a few years would provide a good foundation and would provide sufficiently long lead times so that the research agenda does not change every couple of years.

Conclusion

The Enterprises (and the FHFA) had accomplished virtually nothing for tenant protections during the current administration, either through the EHFPs or otherwise, even though tenants are disproportionately likely to be Black and Hispanic relative to homeowners (let alone homeowners with Enterprise mortgages), and even within tenants, Black and Hispanic tenants suffer much worse outcomes. Moreover, there is nothing in the current EHFPs to even hint at better outcomes in the following few years. Instead, some of the pension investment funds are already somehow ahead, starting to require many if not most of the proposals above, without having the public duty to do so and without having the Enterprises and the FHFA's expertise.[23]

The Enterprises have a great opportunity to use the EHFPs to make a national-level difference in the rental market. They should do so, and lead the way for others to adopt similar requirements, including pension funds and investors concerned about their reputation. Otherwise, it is not clear what public purpose the Enterprises are serving by being in the multifamily market.

The actions described above and data collection are a start that the Enterprises and the FHFA can effect this year. Even these actions, that are not particularly costly to the landlords,[24] can dramatically improve tenant outcomes and the perception of the FHFA's and Enterprises' involvement in the multifamily space.

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[22] See, e.g., https://www.sciencedirect.com/science/article/pii/S1051137722000134, but see https://evansoltas.com/papers/SoltasJMP.pdf, https://www.sciencedirect.com/science/article/pii/S0047272710000885, and https://www.aei.org/events/the-workforce-and-middle-income-housing-tax-credit more generally.

[23] See, e.g., https://comptroller.nyc.gov/wp-content/uploads/documents/04.15.2024-NYC-Fire-Pension-Fund-Investment-Meeting-Agenda-Package-Public-1.pdf.

[24] And if some landlords choose private financing instead, somewhat lowering the Enterprise share in the market, that might be a win-win – these landlords will do no worse on tenant protections than they are doing with the current Enterprise policy of effectively no tenant protections, and the taxpayers will be on the hook for less money in the multifamily market.