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by Oksana Mironova and Samuel Stein

Thank you to the Federal Housing Finance Agency (FHFA) for soliciting public input on issues faced by tenants in multifamily properties and on potential impact of new tenant protections in multifamily properties backed by Fannie Mae and Freddie Mac (the Enterprises). Our names are Oksana Mironova and Samuel Stein, and we are senior policy analysts at the Community Service Society of New York (CSS), a leading nonprofit organization that promotes economic opportunity for New Yorkers. We use research, advocacy, and direct services to champion a more equitable city and state, including to urgently address the effects of New York State's housing affordability crisis.

CSS is over 175 years old and has been at the forefront of advocacy for better housing conditions since the beginning, from the city's first tenement laws in the 1800s to contemporary organizing for stronger rent regulation.

Today, renters across the country are facing an increasingly unaffordable housing market, often paired with poor living conditions and punitive behavior from landlords. The [latest](#) Joint Center for Housing Studies shows that housing affordability has decreased across the country, even as multifamily building construction has reached a 50-year-high. This is not just an issue in high-cost cities. One of the report's authors [noted](#): "it's a little bit startling that the supply of low rent units is falling everywhere. Even in places like Ohio and Michigan, Missouri, Indiana, low-cost states that have previously had the largest shares of low rent units. These states are losing low rent units too."

The Joint Center's research shows that new multifamily construction has overwhelmingly focused on high rent units. At the same time, existing multifamily properties with low-rent units are targeted by corporate investors, who are [more likely](#) to increase rents and non-rent fees, cut services, and evict tenants. The country's very limited public and federally assisted housing stock (i.e., Project-based Section 8, Section 236) has been under immense pressure to privatize since the 1980s, meaning that very few permanently affordable units are truly shielded from market pressure.

The United States' devolution of responsibility over regulation of the rental market to the states is unique. This lack of federal oversight results in a highly uneven rental landscape, with rampant rent gouging, discrimination in tenant screening, and unjust eviction practices in many states. Freddie Mac's January 2023 survey of [tenant protections shows that](#) 29 states in the U.S. allow landlords to discriminate based on source of income. Just five states and Washington D.C. restrict the use of criminal history in the tenant screening process. Without local enforcement mechanisms, landlords in the vast majority of the U.S. can ignore [guidance](#) issued by HUD that bars housing discrimination based on justice-involvement. Only three states have anti-rent gouging laws or the right to counsel laws on the books.

This legal patchwork has left many tenants across the U.S. without any protections. With tightening rental markets across rural, suburban, and urban areas in the U.S., it is paramount for a federal agency to act. The FHFA is uniquely positioned to enact a base level of tenant protection

because of its regulatory power over the Enterprises, which in turn back multifamily properties across the U.S.

The FHFA can draw on local best practice (like right to counsel and anti-rent gouging statutes) and tenant protections in federally assisted properties (including good cause eviction protection in project-based Section 8 developments). [FHFA's temporary Covid 19 Multifamily Tenant Protections](#) are an important precedent for further action by the FHFA. They show that minimal tenant protection standards—like good cause eviction protections and limits on non-rent fees—do not undermine multifamily property values or conditions.

Below we outline best practices in tenant protections that the FHFA should adopt. In this comment, we have linked to our research into tenant protections in New York State.

### **Good Cause Eviction Protection/Anti-Rent Gouging**

FHFA should provide tenants living in Enterprise-backed multifamily properties with protection from arbitrary evictions. Good cause laws prevent evictions not justified by non-payment of rent, damage to the house or apartment, creating a nuisance, or similar reasons. They require landlords to offer tenants renewal leases, unless there is good cause for non-renewal. Strong Good Cause statutes, like those in California, Oregon, Washington D.C. and in localities across New Jersey, are bolstered by a limit on how much landlords can increase the rent at the end of the lease term.

Good cause fundamentally shifts the balance of power between tenant and landlord. Without it, landlords can, in essence, evict a tenant at the end of their lease term, simply by denying them a new lease, or by offering one at an unaffordable rent level. This power imbalance makes organizing for repairs or better living conditions in any rental housing without good cause eviction protection nearly impossible, because of the looming threat of landlord retribution.

CSS has researched Good Cause laws and their potential impact on New York State extensively:

- In [\*Good Cause for Alarm: Rents Are Rising for Low-Income Tenants in Unregulated Apartments\*](#) we show how many low-income New Yorkers are imperiled by the lack of Good Cause eviction protections.
- In [\*Good Cause Legislation Would Protect 1.6 Million Households, Nearly 50% of Tenants Statewide\*](#), we outline the geographic coverage of Good Cause Eviction protection in New York State, by county.
- In [\*Racial Justice and the Right to Remain\*](#), CSS, NYU's Urban Democracy Lab, and the Pratt Center find that Good Cause would extend protections for New York State's Black renters, and bolster state and local anti-discrimination laws.
- In [\*Right to Remain: A Case for Full Coverage in Good Cause Eviction Protections\*](#), CSS and the Pratt Center analyze the state's high-cost rentals, finding multigenerational and immigrant households in need of Good Cause protection.

- In *The Truth About Good Cause and Housing Supply*, CSS and the Pratt Center debunk several myths purported by opponents of Good Cause.

### **Eviction Protections & Right to Counsel**

FHFA should require Enterprise-backed multifamily properties to enact reasonable notice requirements for evictions, giving tenants adequate time to cure violations or pay back rent. Further, FHFA should enact strict limits on late rent fees, which compound tenants' debt, and prohibit fees from acting as a primary justification for eviction.

It is important to note that any minimum eviction protections enacted by FHFA will be toothless without a Right to Counsel statute. Right to Counsel laws provide tenants facing eviction or taking legal action against their landlord with a lawyer.

Because of the work of the NYC Right to Counsel Coalition, New York City's low-income tenants are eligible for free legal counsel when they are sued for eviction. Our research into this program has shown that 84 percent of tenants with Right to Counsel attorneys were able to remain in their homes.

Access to legal counsel does not increase a tenant's ability to pay rent. But, it does bolster their ability to navigate a complex legal system. Further, it allows them to negotiate repayment plans and cures for lease violations on a more equal footing with their landlord.

CSS has researched Right to Counsel and their potential impact on New York State extensively:

- *Assembly-Line "Justice": Eviction Attempts Reach Record Highs in 2022* shows the impact of inaction around the Right to Counsel law in New York City and New York State.
- *NYC Right to Counsel: First year results and potential for expansion*, which showed that evictions fell five times faster in zip codes covered by the city's Right To Counsel law than in similar zip codes without it.
- *Right to Counsel and Stronger Rent Laws Helped Reduce Evictions in 2019* analyzes the impact of the second year of the program.

### **Anti-Discrimination Standards**

Discrimination against people using vouchers to pay rent or people with criminal justice history involvement is pervasive in the U.S. Both act as proxies for racial discrimination.

Given the lack of legal mechanisms to prevent both types of discrimination in most states, FHFA should require Enterprise-backed multifamily properties to bar source of income and criminal-justice history involvement discrimination in tenant screening.

New York State and New York City both have strong Source of Income (SOI) discrimination laws. In New York City, the Commission on Human Rights is tasked with combatting SOI. The agency has been effective at obtaining immediate relief from discrimination through emergency interventions on behalf of tenants, proactively fighting discrimination through testing, and investing in public outreach and education. However, because of understaffing and underfunding, they are unable to reach most people in need of assistance.

Further, FHFA should bar housing discrimination based on a tenant or perspective tenant's immigration status. Federally-funded developments currently exclude undocumented people from support because of regressive and false assumptions built into our federal housing laws. The FHFA should not replicate this in their rulemaking.

Below are three reports by our colleagues in the field about source of income and criminal-justice involvement discrimination in housing:

- *An Illusion of Choice: How Source of Income Discrimination and Voucher Policies Perpetuate Housing Inequality*
- *Vouchers to Nowhere: How Source of Income Discrimination Happens and the Policies That Can Fix It*
- *Criminal Legal Records: An Impediment to Housing Choice*

### **Proactive Enforcement of Habitability Standards**

While most states in the U.S. have habitability standards for multifamily properties in place, many localities do not have the capacity to engage in proactive enforcement. Just like with eviction prevention, passive laws without enforcement mechanisms are generally not very effective. To ensure that Enterprise-backed properties meet basic habitability standards and do not put tenants in danger, FHFA should proactively assess rental housing, and trigger further intervention when necessary.

In New York State, there are a few examples of proactive enforcement programs. They include the Alternative Enforcement Program (AEP), Certificate of No Harassment (CONH), Proactive Preservation Initiative (PPI) and the Emergency Repair Program (ERP) in New York City. These programs either trigger active monitoring of a building's conditions or allow the City to directly make repairs in long-decrepit buildings, at the owner's expense. In Albany, the Residential Occupancy Permit (ROP) system requires an inspection of all rental units in the city every 24 months. Based on the successful campaign in Albany, tenants in Syracuse won a similar program. There are also Emergency Repair Ordinances that local tenant organizations fought to pass in both Rochester and Albany, which allow code enforcement officers to bid out the work to repair building violations when a landlord refuses to comply.

### **Access to Information (Open Books)**

Tenants exist in a state of informational asymmetry, where they may live for years, if not decades, in a building that is falling into financial distress only to be displaced at the point of foreclosure or sale.

FHFA should strengthen tenants' ability to access information about their building's finances, including details on ownership, operating statements, mortgage financing, and the terms of any other investments. Currently, tenants can only guess about their building's finances, culling together information about their landlord's income by asking their neighbors about their rents and making assumptions about building expenses.

Landlords benefit from this information asymmetry; the less tenants know, the easier it is for landlords to skirt legal obligations to provide repairs, thwart organizing efforts, and hide financial distress, including vulnerability to foreclosure.

An Open Books-type rule would provide another layer of protection for tenants living in Enterprise-backed buildings. Giving tenants access to information about their building's finances is not without precedent. Under New York City's 1947 rent control law and the 1955 Mitchell Lama program, landlords have to open their books to justify rent increases.

### **Right of First Refusal**

A building sale or foreclosure exposes tenants to the potential for decreased services, decline in building conditions, and eviction. Tenants shoulder a lot of risk, without any potential for benefit, during this vulnerable period in a building's life-cycle. FHFA should require Enterprise-backed properties to extend the right of first refusal to tenants, nonprofits, or local housing agencies.

Federally-assisted buildings, as well as a handful of municipalities in the U.S. have right of first refusal rules in place, which give tenants, public agencies and nonprofits a chance to intervene in building sales and offer them incentives to stabilize the building. Community Opportunity to Purchase laws give pre-approved nonprofit organizations a first shot at properties that are for sale or going into foreclosure. Tenant Opportunity to Purchase laws give tenants the right to make the first offer and the right of first refusal, or to assign their rights to a pre-approved nonprofit organization or public housing authority.

Right of first refusal laws are built on several pillars:

- **Neighborhood Stabilization:** gives tenants the ability to safely stay in their homes instead of being subject to displacement or neglect when a building is sold.
- **Permanent Affordability:** enshrines the legal rights of tenants and mission-driven nonprofits to acquire buildings that are for sale to convert them into permanently affordable social housing.

- Community Wealth: gives residents the ability to collectively exercise agency over the future ownership model of their housing and the opportunity to own the building in common or empower a community-based actor to take ownership.
- Resident Control: gives tenants more control where they live, regardless of a sale or foreclosure. By complicating landlords' ability to "walk away from the table" (i.e., sell the building), TOPA laws enhance tenants' ability to collectively bargain with their landlords around repairs and rent increases.

FHFA's adoption of these minimal tenant protections would go a long way toward extending a level of stability to tenants across the U.S. If you have any questions, please contact Oksana Mironova and Samuel Stein at [omironova@cssny.org](mailto:omironova@cssny.org) and [sstein@cssny.org](mailto:sstein@cssny.org).