July 31, 2023

Federal Housing Finance Agency
Office of Multifamily Analytics and Policy
400 7th St SW, Washington, D.C. 20024

Re: Tenant Protections for Enterprise-Backed Multifamily Properties Request for Input

University Neighborhood Housing Program (UNHP) would like to thank the Federal Housing Finance Agency (FHFA) for issuing a Request for Information (RFI) on tenant protections in properties with federally-backed mortgages. We at UNHP have long paid attention to the role of Government-Sponsored Enterprises (GSEs) in multifamily rental housing in the Bronx and NYC, beginning in the late 1980s and early 1990s, when we assisted with a multi-year campaign to improve conditions in Freddie Mac financed properties in the Bronx. In the mid-2000s, UNHP created the Building Indicator Project (BIP) database, which tracks indicators of physical and financial distress across the over 70,000 properties that make up the NYC multifamily market. One of the aims of the database is to identify the senior lender that holds the active mortgage, which we capture for both balance-sheet lenders and holders of securitized mortgages. Through this work, we have been able to closely track the multifamily rental portfolios of both Fannie Mae and Freddie Mae, and have shared that data with the institutions for years, as we do with over 40 financial institutions with NYC multifamily loan books.

BIP has allowed us to monitor the outcomes in GSE-financed buildings that tenants most care about for over a decade and a half. And while the market for multifamily rental housing in NYC and nationwide has changed significantly in the decades since that original campaign focused on Freddie Mac properties in the Bronx, our analysis of GSE-financed housing remains the same. We believe that both Fannie Mae and Freddie Mac must go further to protect tenants, particularly low-income and working class households, in the millions of units that they finance across the country. Given the nature of the current housing crisis, this should mean: imposing rent regulation on GSE-financed landlord borrowers, ensuring adequate reinvestment of rental income back into the property, and proactively monitoring conditions and treatment of tenants in properties with mortgages held by GSEs, among other things.

The mission of UNHP is to create, preserve, and improve affordable housing and bring needed resources to the Northwest Bronx. UNHP achieves its mission by providing technical assistance to community leaders, neighborhood groups and affordable housing managers, by organizing around and researching the issues that impact housing affordability and attracting resources to

the community through the Northwest Bronx Resource Center (NWBRC). Our work in the Bronx over the past almost four decades makes us keenly aware of just how important financial institutions are to the well-being of the communities we serve: from small-dollar products for low-income Bronx households all the way to large loans to highly-valued rental housing. This is what makes the opportunity for significant reform in what is expected of GSE-financed properties so important. Freddie Mac and Fannie Mae are central actors in facilitating the type of investment into housing that prioritizes outsized profit at the expense of tenants, who are too often left to deal with exorbitant rent levels and substandard conditions. As such, the GSEs can be part of the solution as well, compelling their borrowers to operate safe, stable, and affordable housing. in exchange for the financing that is so central to their business plans.

Response to RFI Questions

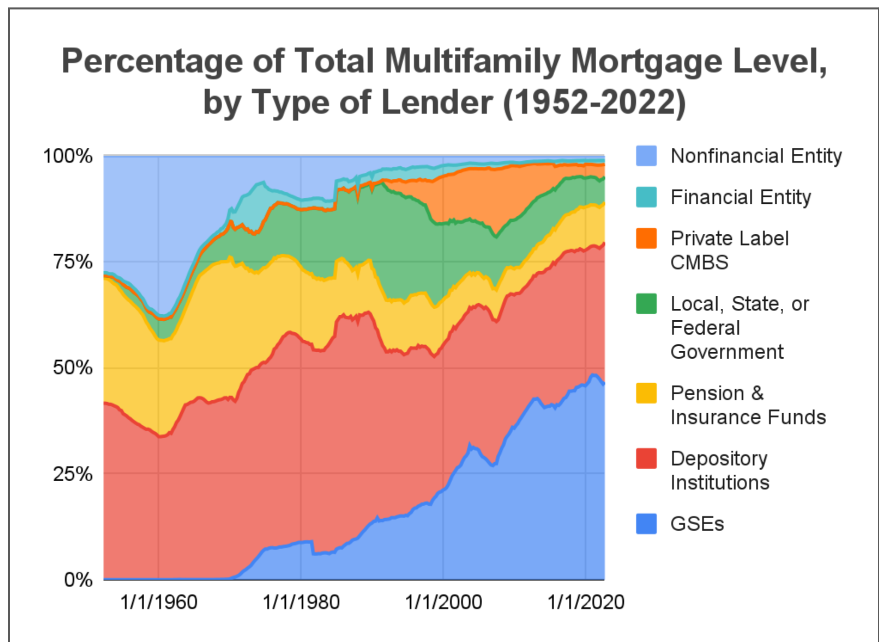
Our perspective on the questions posed by the RFI reflects a distinct understanding of the role of debt in multifamily rental housing operations. This understanding was articulated and tested in a report we published, in coordination with LISC, entitled *Gambling with Homes, or Investing in Communities*. The report uses over a decade of data collected on physical and financial building distress in the BIP database to examine the relationship between speculative investment in NYC rental housing and outcomes for tenants. The results provide an empirical basis for what many of us have known for a long time: that speculative real estate practices lead to worse outcomes for tenants, both in terms of eviction rates and housing maintenance quality.

This is particularly true when it comes to mortgages for multifamily rental landlords. One might imagine that the loan capital that is supported by high debt service levels is used for reinvestment to make up for these low operating expense figures, but in fact all signs point to the contrary. According to the research, high amounts of additional loan capital in NYC rental housing are statistically associated with significantly worse living conditions, measured by housing code violations. Far from being about reinvestment, then, this is evidence that mortgages to rental housing are often extractive, pulling money away from operations to pay for ever greater debt service amounts to cover mortgages through which landlords have not reinvested but rather cashed out. As we describe below, it is not uncommon to see debt service levels that translate into too little money left over operating expenses, leading to chronically substandard conditions. Moreover, such debt leverage places additional burdens on tenants in the form of rent increases, which both justify the high debt level already taken on and create new opportunities for the landlord to refinance at even higher levels.

This too common relationship between debt and worse outcomes for tenants relates to Question A-1 and A-3 of the RFI, regarding the GSEs general responsibility to protecting tenants in multifamily rental housing. In our opinion, this responsibility comes down chiefly to ensuring that underwriting standards in fact reflect what it takes to operate safe, stable, and affordable housing, up to and including limiting rent increases and forcing adequate reinvestment levels. Financing provided to landlord borrowers should be predicated on reinvestment levels (both operating and capital costs) that specifically ensure that buildings are safe and well-maintained, and any issues of substandard conditions or deferred maintenance are addressed. More, particularly in unsubsidized (i.e. non-income-restricted) properties, financing should be underwritten to current rent levels, and tenants should be protected from exorbitant rent increases or de-facto evictions as a result of such increases.

Again, without these improvements in lending standards by the GSEs, there is simply no evidence that loan capital provided to landlord borrowers affects tenant lives for the better, contradicting the GSEs mission and Duty to Serve obligations. At best, the current model of lending is a trickle-down theory, reliant on landlords choosing freely to use loan capital to ensure safe, stable, and affordable housing. This choice, however, is increasingly unlikely in the lucrative world of rental housing ownership. In the current market, it is no surprise that the data show that high debt levels are inversely correlated with outcomes tenants care most about.

Our work on the Building Indicator Project makes us keenly aware of changes in the real estate market both in NYC and country-wide, and means we have insight on the potential market effects of any changes in GSE lending practice. This is particularly relevant for Questions E-1 and E-2 of the RFI. All told, we believe that a thorough read of the market for multifamily mortgages shows that the GSEs have significant latitude to make changes to their lending practice without losing market share, and that the current moment is an important opportunity for the GSEs to take leadership to set a different approach for all senior lenders to owners of multifamily rental housing.



The first and most important fact about the state of the market is that the GSEs Freddie Mac and Fannie Mae lending comprises almost half of all multifamily mortgage debt outstanding . Currently, GSE-backed mortgages support at least eight million multifamily rental units across the U.S, which is about 28 percent of all rental units in the U.S. And, according to the Financial Accounts of the US, the GSEs currently account for just under 47% of total multifamily mortgage debt outstanding.[1] This percentage of multifamily debt outstanding includes luxury units; it is likely that in affordable multifamily housing (both subsidized and unsubsidized), the GSEs are an even larger market actor.

In New York City, the most developed capital market for multifamily lending in the US, the GSEs play a smaller but still crucial role in the multifamily lending market. According to the BIP database, the GSEs are the senior mortgage holders on an estimated four percent of total multifamily properties (n = 71,745). Among the subset of multifamily properties with rent-stabilized units — which comprise the central and most critical piece of NYC's affordable housing landscape — the two GSEs hold an active mortgage on at least 2,000 properties, or approximately five percent of the rent-stabilized market (n = 42,119).[2]

However, while traditional balance-sheet lenders predominate in the NYC multifamily market, representatives from those financial institutions still state that Freddie Mac and Fannie Mae set the floor of mortgage terms that they must offer their landlord borrowers. If balance-sheet lenders do not meet the terms offered through Freddie and Fannie programs, they risk losing their clients to the GSEs. And if even in a highly developed real estate lending market like New York City, Freddie Mac and Fannie Mae are market leaders, this is certainly the case in other metropolitan areas across the country with significant amounts of rental housing.

The GSEs role in the multifamily market is of critical importance to the questions posed by RFI. Fannie Mae and Freddie Mac are market leaders who largely set the terms of engagement for senior lenders in multifamily rental, and changes in lending practice that benefit tenants should therefore have significant positive impacts on the overall market. This is particularly true in the current market, where higher interest-rates and uncertainty about the future means that the GSEs have latitude to be demand more of their borrowers without losing market share. Put simply, landlords — especially those already debt-burdened — are going to be facing a more adverse financing environment in the coming years. In this market, the GSEs have a structural advantage; they use a different funding model than balance sheet lenders, which in this environment allows them to offer debt that is longer duration fixed rate, lower cost, and higher leverage. For

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[1] Financial Accounts of the United States, All Sectors; Multifamily Residential Mortgages; Asset, Level (and related tables), https://fred.stlouisfed.org/series/ASMRMA

[2] We consider a property to be rent-stabilized if, according to available data, it is likely to contain at least one rent-stabilized unit.

landlords who need to refinance debt in this very different environment, odds are that new and existing GSE programs will best fit their needs. In exchange for appropriate financing or extensions of mortgage instruments, the GSEs should be demanding that landlords improve conditions for tenants, specifically via rent regulation and reinvestment levels that actually conform to what the properties need to be operated safely.

Data and Insights from GSE-finances Properties in New York City

To help provide empirical support for the claims made above,The below provides an overview of government-sponsored enterprise (GSE) lending in New York City, with particular emphasis on GSE financing of rent-stabilized housing, or the approximately one million rental units which constitute the vast majority of rent-regulated housing in NYC. Rent-stabilized housing is by far the most important piece of affordable housing in New York City — the median annual household income of rent-stabilized tenants is approximately $44,500, three quarters of whom are households of color — and also constantly under threat by predatory and speculative landlord practices. Available data on the state of multifamily housing in New York City allows for an examination of the effect of GSE lending on crucial tenant outcomes, such as physical conditions or unpaid property taxes and other charges. These data, presented below, raise questions about the role of GSE lending in ensuring safe, stable, and affordable housing for NYC tenants in rent-stabilized housing and, by extension, tenants in similar unsubsidized multifamily housing across the country.

One reason why it is useful to look at GSE lending to multifamily rental housing in New York City is that, unlike in many other cities across the US, there is a range of publicly available data — analyzed and made accessible by community-based organizations — to examine the state of that housing.[3]

According to the available data, there are indications that tenants living in GSE-financed rental housing live in **worse conditions** than the citywide average for properties with active mortgages. As can be seen in the below table, as of the end of 2022, across the nearly 3,000 properties and over 164,00 units within the GSEs active loan portfolio, close to 14% of properties have at least two unresolved hazardous or immediately hazardous maintenance code violations per unit. Among properties across New York City with active mortgages, the number of properties with level of physical disrepair stands at just over 11%.

[3] Data in this section again comes from University Neighborhood Housing Program's Building Indicator Project database, as of the beginning of 2023.

Our BIP database also indicates that the GSEs have **relatively high levels of distress** in their multifamily rental portfolio. This is measured in the BIP database via the *BIP Score*, which is an identifier of physical or financial distress that takes into account code violations from a number of NYC agencies, as well as additional data like unpaid taxes and charges. Taken together, the *BIP Score* can be seen as a proxy for buildings that are likely distressed, which appears in the data as a mix of deferred maintenance and/or as an owner not meeting financial obligations like taxes, utilities, water charges, and more. As the below table shows, 6.1% of the portfolios of the two GSEs are identified in the BIP database as being likely distressed; this is compared to 4.6% of all properties across the database with active mortgages that are likely distressed (n = 43,358).

Importantly, as the below table shows, Freddie Mac financed properties perform significantly worse, in terms of both physical and financial distress, than Fannie Mae. In fact, in the below metrics, Fannie Mae actually performs slightly better than the citywide average for properties with active mortgages. Why Freddie Mac financed properties perform worse in terms of these indicators is an open question. However, it is likely at least partially connected to the difference in types of properties financed by each of the GSEs, in particular Freddie Mac's financing of smaller, rent-stabilized, "naturally occurring affordable housing," or NOAH (more on this below). In NYC, these properties are the major target for predatory landlord behavior, and most likely to be in distress.

Overview of Key Data on Fannie Mae and Freddie Mac Financing in New York City

(data current as of 1.1.2023)	**Fannie Mae**	**Freddie Mac**	**Total**
# of properties financed	1,295	1,611	2,906
# of units financed	105,418	58,744	164,162
% of properties with more than 2 hazardous or immediately hazardous open violations per unit	8.95%	17.6%	13.7%
% of likely distressed properties in portfolio, according to the Building Indicator Project (BIP)	4.2%	7.7%	6.1%

Using our BIP database, we can also compare outcomes in GSE-financed multifamily properties in NYC with those financed by the financial institutions who are the largest holders of multifamily senior mortgage debt. The below table shows data from five of the largest lenders to multifamily housing in New York City, all of whom are significant lenders to rent-stabilized

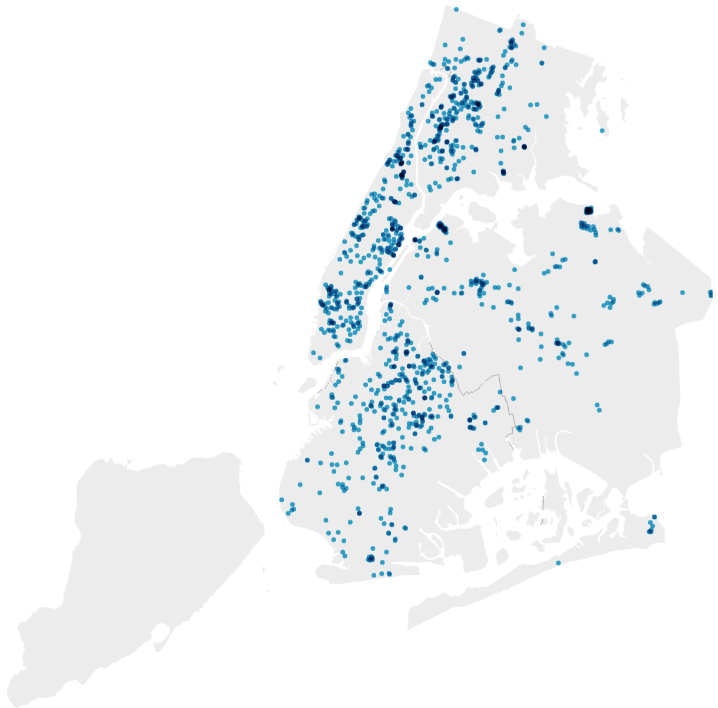
housing. Together, they hold the senior mortgages on approximately 36% of the multifamily properties in NYC with a likely active mortgage.

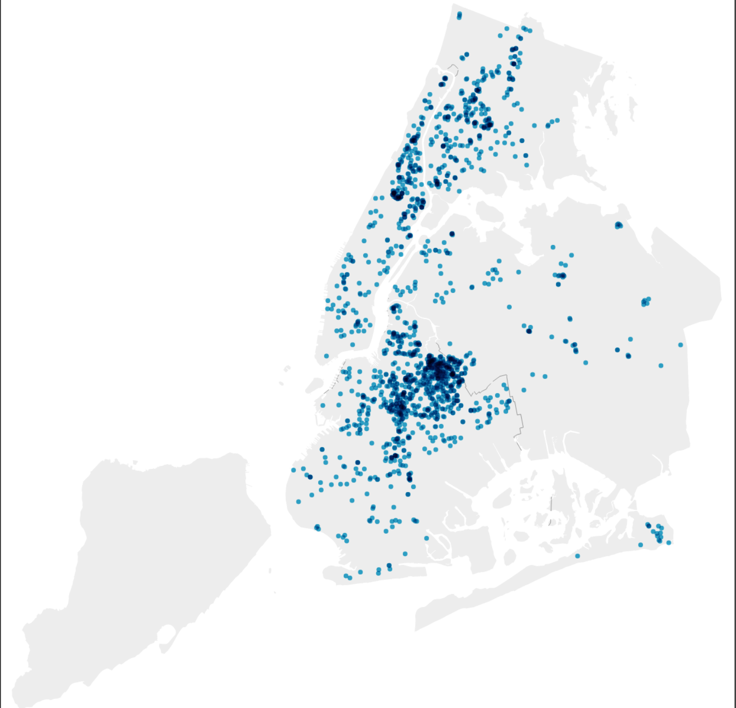
Overview of Key Data on Balance-Sheet Lender Financing in New York City

(data current as of 1.1.2023)	**Chase**	**Flagstar / NYCB**	**Signature**	**Capital One**	**Webster**
# of properties financed	5,117	4,076	2,944	1,511	1,932
# of units financed	131,870	169,206	80,502	48,716	44,912
% of properties with more than 2 hazardous or immediately hazardous open violations per unit	11.5%	7.6%	11.7%	9.1%	10.3%
% of likely distressed properties in portfolio, according to the Building Indicator Project (BIP)	2.1%	2.5%	3.9%	3.1%	4.9%

What the table reveals is that, on the whole, the multifamily portfolios of these lenders perform better in terms of distress than those of the GSEs. Specifically, the Fannie Mae portfolio has a higher percentage of likely distressed properties than four of the five financial institutions listed above, and an approximately average percentage of properties with two or more hazardous or immediately hazardous violations per unit. The Freddie Mac portfolio performs worse than **all** five balance-sheet lenders in terms of both likely distress according to BIP and the percentage of properties with two or more hazardous or immediately hazardous violations per unit. These are troubling figures given that GSE lending to affordable housing is supposed to be mission-driven, ensuring *better* outcomes for tenants in the properties they finance. In this case, however, these balance-sheet lenders — many of whom themselves have mixed reputations among tenants and community groups for their role in lending to speculative or predatory actors — lend to properties that seem to be in better standing.

Additionally, below are two maps which show the geographic spread of the portfolios of Freddie Mac and Fannie Mae. The maps show that both Freddie Mac and Fannie Mae lend in areas with high concentrations of both rent-stabilized housing and working class tenants of color — like the West Bronx, Upper Manhattan, or North Brooklyn. One can see an extreme concentration of lending in North Brooklyn by Freddie Mac in particular, worth noting as this area has been a hotspot for gentrification and displacement over the last decade.





Freddie Mac Small Balance Loan Program

Because of the performance of Freddie Mac's multifamily portfolio in terms of data relevant to building and tenant safety, we devote special attention below to the major GSE lending program to rent-stabilized housing in New York City, Freddie Mac's Small Balance Loan (SBL) program. The SBL program began in 2014 as a way for Freddie Mac to provide capital to smaller landlords of NOAH housing (between 5 and 50 units) in underserved areas.[4] In other words, the SBL program targets smaller multifamily properties that did not have any subsidy but housed lower-income renter households because of its condition or location, or, as one former Freddie Mac executive put it, "C, B-minus product that just happens to be affordable."[5] In New York City, the SBL program has financed over 1,400 properties, as the below table shows.

[4] https://mf.freddiemac.com/docs/small_balance_loans.pdf
[5] https://commercialobserver.com/2018/04/freddie-macs-david-leopold-on-the-insatiable-demand-for-multifamily/

Summary Statistics on Freddie Mac SBL Loans, by Borough			
(As of June 2022)			
	# of Properties	**Median Building Size (# of Units)**	**Total Loan Volume**
Bronx	238	16	$696.3 million
Brooklyn	850	8	$2.2 billion
Manhattan	256	18	$900.3 million
Queens	61	10	$151.4 million

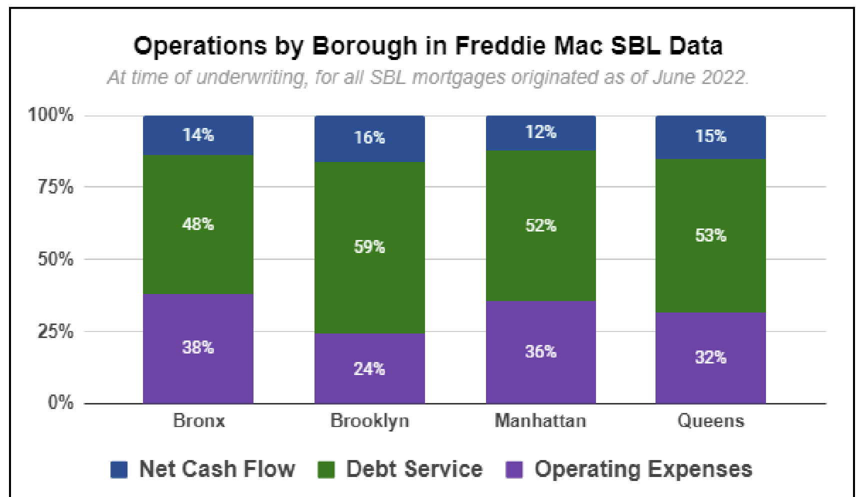
Given the profile of SBL-financed buildings, financing provided via this program in NYC and nationally is crucial to analyze in asking whether Freddie Mac is fulfilling its mission as outlined in the Duty to Serve Program. Importantly, SBL is primarily a refinancing program — both cash-out and rate & term refinance — used by landlords to add debt onto the properties they own either to pull out equity or to increase upfront yield via less expensive debt service payments. Despite this, there is no expectation that SBL borrowers reinvest those added funds; the question, then, is how tenants benefit from this additional debt.

As mentioned above, recent research conducted by UNHP and LISC examining the multifamily market in NYC has shown that over-financing of rental properties is a leading indicator of harmful and destabilizing outcomes for tenants — such as maintenance conditions and levels of displacement. This is because landlords more commonly take on added debt not to be used as capital for reinvestment but rather to super-charge their profit, by staying leveraged or turning the rising property value into actual cash to be used to enlarge their portfolio or as payout to investors. In this situation, added debt is *extractive* in nature, pulling rental income that could be used for reinvestment away from the property in the form of large mortgage payments, and putting upward pressure on rents to justify the debt level.

To understand how this plays out in practice, we can analyze aggregate operating data in buildings financed by the SBL program in NYC. This analysis produces quite revealing results, which are summarized in the chart below. First, according to the analysis, median operating

expenses for SBL-financed properties range between 24% to 38% depending on the borough, and as a result median net income ranges between 62% to 76%.[6]

These figures are essentially the inverse of the average operating statement among rent-stabilized properties, as reported by NYC's Rent Guidelines Board (RGB). In 2022, the RGB reported that operating expenses accounted for around 60% of rental income in NYC properties, meaning that net income was around 40%.



Second, SBL data shows that the vast majority of net income — and in some cases, the majority of rental income altogether — was used to make debt service payments. Depending on the borough, debt service hovered between 48% to 59% of rental income at the time of underwriting for SBL-financed properties. These large mortgage payments were used to support very high debt levels: from a median of approximately $138k per unit in the Bronx to an astounding $282k per unit in Brooklyn.

All told, then, SBL-financed properties are spending significantly less rental income than average on operating expenses, and more rental income supporting high debt levels. This operating model could help explain the high levels of distress in Freddie Mac's portfolio, according to the publicly available data. When more of the rental income is being used to meet debt service than is being reinvested back into the building as operating expenses, deferred maintenance and distress are likely to arise, particularly in the aging and unsubsidized housing that constitutes so much of NYC's rent-stabilized housing stock.

Anecdotally, it should be noted, even an expense level at 60% of rents is not necessarily enough to safely operate old-stock, unsubsidized, and rent-stabilized housing. According to many mission-driven operators of housing, that figure needs to be closer to 75% of rents, depending on the rent level in a particular building. In other words, the SBL program appears to commonly underwrite business models that prioritize landlord profit at the expense of adequate building reinvestment. And while, in the New York City context, rent stabilization means that rents are capped, outside of NYC, similar underwriting practices could very well be putting upwards pressure on rents in SBL-financed buildings to increase net income and more easily cover the

[6] These figures are aggregated for SBL financed properties in NYC at the time of underwriting.

debt service plus necessary maintenance. Given that the SBL program finances buildings that are likely to house poor and working class people, this fact should be especially troubling to policymakers and regulators.

SBL Case Study — Emerald Equity Group

To help ground the impact of SBL lending even further, we can look at one example of a series of loans provided to Emerald Equity Group, an NYC landlord with significant rent-stabilized real estate holdings in the Bronx and Uptown Manhattan. Emerald appeared on the scene in 2016, when they acquired their current holdings in the Bronx and East Harlem in the span of a year for a total of almost $500 million. And in 2017 and again in 2019, Emerald Equity refinanced their massive portfolio to the tune of $318 million of loans from Freddie Mac.

The two parts of Emerald Equity Group's portfolio — in East Harlem and the Bronx — took different paths. In late 2019 and early 2020, Emerald Equity's East Harlem portfolio was in the news multiple times for being in deep financial trouble.[7] The heavily-leveraged portfolio of 47 buildings (1,181 units) is known as the Dawnay Day portfolio, named after the infamous British private equity group that acquired the buildings and quickly let them fall into disrepair and foreclosure following the 2008 Financial Crisis.[8] Like Dawnay Day a decade ago, Emerald Equity bought the portfolio with the goal of capitalizing on gentrification in East Harlem. Their plan was to move out existing low-income tenants, renovate units, and then charge newcomers significantly higher rents. In the process, Emerald Equity became well-known for displacement and harassment tactics among the most extreme in New York City. Previous reporting details unbearable living conditions for low-income tenants, including rat infestations, lack of gas and hot water due to illegal renovations on vacant apartments, aggressive buyout offers accompanied by threats to report undocumented households, and more. Importantly, that reporting also found that low-income tenants were also being pressured to relocate to one of Emerald Equity's Bronx buildings.[9]

While there is less public reporting about Emerald Equity Group's Bronx portfolio, a look at the available data shows that they took out an enormous loan via Freddie Mac's SBL program in order to quickly profit from the buildings, without any sign that conditions for tenants have improved.
In total, Emerald's Bronx portfolio had 34 buildings comprising 851 units, of which 466 were identified as low-income units and 133 very low-income units. In March, 2016, all 34 buildings were purchased by Emerald Equity Group for a total of $126.7 million, which was financed by

[7] https://therealdeal.com/2020/01/16/emerald-equity-weighing-all-options-to-save-massive-multifamily-portfolio/
[8] https://www.nytimes.com/2009/12/22/nyregion/22dawnay.html
[9] https://indypendent.org/2018/07/vulture-equity-circles-east-harlem/

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an acquisition loan of $94.7 million from New York Community Bank, a prominent multifamily lender in New York City.

In August 2017, the portfolio was appraised for a total of $217.9 million by a party involved in the refinance of the original NYCB acquisition loans. This translates into an $91.2 million (or 71% increase in the value of the building in approximately 17 months. While prices for rental real estate have risen rapidly in New York City, this is an enormous difference between the actual purchase price and the appraised value in a relatively short amount of time. This suggests that these buildings might have been appraised at an inflated value.

Emerald Equity group then 'captured' this huge increase in the appraised value of their portfolio by refinancing the original NYCB loan via Sabal Capital — an approved third-party lender for the SBL program — for $129.3 million. The refinance provided Emerald Equity with an additional $34.6 million in debt. In this situation, the almost $35 million in extra funding could be used exclusively to 'pull equity out'. In other words, as long as Emerald Equity was able to pay the debt service, they were able to use the $35 million for whatever they wished. They could use the money to purchase additional buildings, provide returns to their investors, or make personal purchases. They are able to do this because there is no guarantee in the SBL program that refinancing money goes to rehabbing and improving building conditions.

In the year following the Freddie Mac refinance, 19 of the 34 buildings were subsequently sold to additional buyers, who then assumed the remaining Freddie Mac debt. Those 19 buildings sold for a total of $93.8 million, when they had been purchased for $70.2. This translates into a total profit of $23.6 million, or an average profit on each building of 39%, meaning that the sales price of the building increased 31% between March 2016 and 1.5 – 2.5 years later. It is worth noting that none of the buildings were sold at values significantly under the appraised values submitted to Freddie Mac around a year earlier when the $129.3 million refinance was included in the SBL program. This confirms that the appraisal values of the buildings were over-inflated.

All told, Emerald Equity Group was likely able to make close to $50 million on the Freddie Mac refinancing as well as the sale of part of the Bronx portfolio in the few years following their purchase in March 2016.

A more detailed account of the story of Emerald Equity Group's Bronx portfolio and Freddie Mac loan (including data from the Freddie Mac Multifamily Securities Investor Access portal) can be found at the end of a working paper from 2021. Additionally, a detailed look into the conditions in Emerald Equity owned buildings can be found in a recent article published in The Nation, which was based in part of the 2021 working paper.