



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

Dear Director Thompson,

PolicyLink applauds the Federal Housing Finance Agency (FHFA) for taking necessary steps towards addressing the issues faced by tenants in multifamily properties backed by Fannie Mae and Freddie Mac, many of whom have access to limited tenant protections to ensure stable housing. PolicyLink also appreciates the opportunity to comment on this request for input to advance opportunities for the more than 100 million individuals, families, and children who experience financial insecurity to have guaranteed access to safe and affordable housing.¹

In particular, PolicyLink commends and affirms the FHFA's actions to align these practices with the whole-of-government call to action set forth by the Biden-Harris administration to advance equity for all, and particularly communities that have experienced persistent discrimination. As addressed in Executive Orders 13985 and 14091, federal agencies have been charged with the responsibility of identifying, addressing, and correcting existing policies and practices that have historically impeded equal opportunity. These more recent orders are further affirmed by the equal rights clause of the 14th Amendment to the U.S. Constitution and Title VI of the Civil Rights Act of 1964, which establish the affirmative duty of the federal government to not only prohibit but actively prevent discrimination on the basis of race, color, or national origin. We applaud the FHFA for leaning into this affirmative duty.

As the nation becomes a majority people-of-color country, the face of America's neighborhoods is changing, but the persistence of deep and entrenched patterns of discrimination in housing continues. To advance equity, PolicyLink advocates for groundbreaking policy changes that enable everyone, especially people of color, to be economically secure, live in healthy communities of opportunity, and benefit from a just society. PolicyLink is guided by the belief that the solutions to the nation's challenges lie with those closest to these challenges: when the wisdom, voice, and experience of those traditionally absent from policymaking drive the process, profound policy transformations emerge. This is especially true for this RFI on multifamily tenant protections, where already, hundreds of tenants have shared their experiences as renters experiencing unjust treatment, predatory rent increases, and uninhabitable housing conditions.

¹ PolicyLink. "100 Million and Counting: A Portrait of Economic Insecurity in America." (2019) <https://www.policylink.org/resources-tools/100-million>.

Introduction

The United States is a renter nation. Renters represent the majority in the country's 100 largest cities, yet they face an untenable mix of rising rents and stagnant wages.² Rooted in a history of racially discriminatory housing and land policies, and paired with more recent trends of financialization and corporate consolidation of property, our housing market is at a precarious point. In 2020, 72% of White households owned their homes, compared to only 42% of Black households, 48% of Latino households, 42% of Pacific Islander households and 58% of Native American households.³ Accordingly, the lack of tenant protections in the rental market disproportionately impacts renters of color. Evictions and rapidly rising rents – two problems that can be solved directly by passing tenant protections – are experienced in greater magnitudes by communities of color. The Eviction Lab's 2020 research showed that Black and Latino renters are disproportionately threatened with eviction and disproportionately evicted from their homes.⁴ Due to pandemic tenant protections like eviction moratoria and historic investments in emergency rental assistance, evictions dropped by 65% during the pandemic.⁵ However, the expiration of those protections has led to rapidly rising eviction rates, with some cities seeing rates that are more than 50% higher than their pre-pandemic average.⁶ Furthermore, federal policies and private practices to disinvest in communities of color and exclude them from various wealth-building initiatives and opportunities have contributed to a larger racial wealth gap, meaning households of color have less money to spend on housing, health care, education and other important needs. Between 2019 and 2021, the number of cost-burdened renters increased by 1.2 million to a record 21.6 million households. More than half of those 21.6 billion households were severely cost-burdened, spending more than 50% of their income on housing.⁷

Since the 2008 financial crisis, housing and real estate has been transformed by global capital markets and excess concentrated wealth. As millions of Americans faced foreclosure and were forced out of homeownership during the financial crisis, an influx of institutional investors and corporate landlords entered the market and bought up many rental homes.⁸ It is estimated that, as of June 2022, private equity firms owned real estate rented by no less than 1.6 million families, including at least 1,071,056 apartment

² PolicyLink. "When Renters Rise, Cities Thrive." (2017)

<https://www.policylink.org/equity-in-action/newsletters/fact-sheets-renter-week-of-action>.

³ National Equity Atlas, "Homeownership: United States, 2020," PolicyLink and the USC Equity Research Institute, accessed June 13, 2023, <https://nationalequityatlas.org/indicators/Homeownership>.

⁴ Hepburn, Peter, Renee Louis, and Matthew Desmond. (2020). "Racial and Gender Disparities among Evicted Americans." *Sociological Science* 7: 649-662.

⁵ Hepburn, P., Louis, R., Fish, J., Lemmerman, E., Alexander, A. K., Thomas, T. A., Koehler, R., Benfer, E., & Desmond, M. (2021). U.S. Eviction Filing Patterns in 2020. *Socius*, 7. <https://doi.org/10.1177/23780231211009983>

⁶ Casey, Michael and R.J. Rico. "Eviction Filings Soar Over 50% Above Pre-pandemic Levels In Some Cities As Rents Increase." *PBS Newshour*. (June 17, 2023).

<https://www.pbs.org/newshour/nation/eviction-filings-soar-over-50-above-pre-pandemic-levels-in-some-cities-as-rents-increase>

⁷ Joint Center for Housing Studies of Harvard University. "The State of the Nation's Housing 2023." (2023)

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

⁸ Raymond, E. L., Duckworth, R., Miller, B., Lucas, M., & Pokharel, S. (2018). From Foreclosure to Eviction: Housing Insecurity in Corporate-Owned Single-Family Rentals. *Cityscape*, 20(3), 159–188.

<https://www.jstor.org/stable/26524878>.

units, 275,468 manufactured home lots, and over 239,018 single-family rental homes.⁹ The growth of ownership and control of housing by institutional and private equity investors is a risk to national housing security. Researchers across the country have studied the effects of corporate and investor-owned homes, and the impacts are well-documented. For example, research by the Federal Bank of Philadelphia found that for every 1% increase in net purchases by institutional investors, rents rose by 4.6% in a causal relationship.¹⁰ Furthermore, large corporate landlords were 68% more likely to evict tenants than other owners in Fulton County, Georgia.¹¹

In this pivotal moment, we must decide whether we continue down the path of commodification and wealth extraction, or turn towards reasonable regulation to sustain the stability of communities, renter households and the entire housing market. Regulation is not new to the housing and real estate industry. For decades, rules have dictated where and how developers can build housing, and more recently, where and how banks can finance housing. Unfortunately, it is more common for regulation to protect those who own and control housing than those who call it their home. From racially restrictive covenants and redlining, to discriminatory tenant screening practices and a lack of eviction protections, regulations have been used as a tool to uphold discriminatory and racist practices in our housing system and deny access – or only offer predatory inclusion – to communities of color.

This RFI is an opportunity for FHFA to create regulations that address significant equity and fair housing issues for the millions of tenants who live in federally-backed multifamily homes. There is already strong precedent for FHFA to attach conditions to federal financing, such as Duty to Serve for manufactured housing communities and COVID-19 multifamily tenant protections. Our comment uplifts the need for FHFA to support the transformation of the multifamily rental housing market into one that promotes equity and fairness as core values, and in which every tenant – especially those living in federally-backed homes – is entitled to safe, stable and affordable housing. In order to create more equitable practices and outcomes in the multifamily rental housing market in a way that allows FHFA to serve as a reliable source of liquidity and funding for the housing finance market, PolicyLink broadly recommends the following:

- The FHFA should continue to embody the Biden Administration’s “Whole of Government” approach through continued coordination with other federal agencies. Specifically, the FHFA should partner with HUD to release regularly updated Fair Housing Guidance that provides GSEs with clear and timely expectations on how to fulfill their AFFH duties. Additionally, FHFA can recommend that HUD issue a rule or guidance explicitly recognizing that a lack of tenant protection policies has a disparate impact on renters of color, thereby violating the Fair Housing Act. This recognition would emphasize the need for fair and equitable practices that do not perpetuate discriminatory outcomes in the rental housing market.

⁹ Americans for Financial Reform. “Research Memo: New AFR Research Estimating Minimum Number 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/>.

¹⁰ Lambie-Hanson, Lauren and Li, Wenli and Slonkosky, Michael, Leaving Households Behind: Institutional Investors and the U.S. Housing Recovery (January, 2019). FRB of Philadelphia Working Paper No. 19-1, Available at SSRN: <https://ssrn.com/abstract=3314570> or <http://dx.doi.org/10.21799/frbp.wp.2019.01>.

¹¹Raymond, E. L., Duckworth, R., Miller, B., Lucas, M., & Pokharel, S. (2018). From Foreclosure to Eviction: Housing Insecurity in Corporate-Owned Single-Family Rentals. *Cityscape*, 20(3), 159–188.

- We affirm the recommendations provided by the Homes Guarantee Campaign of tenant protection policies FHFA can implement and enforce for renters in multifamily buildings with federally backed mortgages. These tenant protections would support renters in accessing and maintaining safe and stable housing. The recommendations are listed in the order at which they would impact tenants in their experience of the housing market, from finding and accessing housing, to maintaining stable housing, then leaving. They are:
 - Changing Tenant Screening Practices
 - Banning Source of Income Discrimination
 - Fair Leases
 - Safe, Quality Housing Standards
 - Rent Regulation
 - Just Cause Eviction Protections
 - Tenant Right to Counsel
 - Tenant or Community Opportunity to Purchase

FHFA Duty to Affirmatively Further Fair Housing

FHFA has a duty to administer its programs and activities relating to housing and urban development in a manner that affirmatively furthers fair housing.¹² This duty requires FHFA to do more than simply refrain from discrimination; it requires the agency to take meaningful action to end discrimination and segregation. Implementing the recommended tenant protections is foundational to FHFA's ability affirmatively furthering fair housing. The duty also extends to the GSEs as entities regulated by FHFA. In addition to implementing and enforcing tenant protections, FHFA should partner with HUD to release regularly updated Fair Housing Guidance that provides GSEs with clear and timely expectations on how to fulfill their AFFH duties. Furthermore, FHFA can recommend that HUD issue a rule or guidance explicitly recognizing that a lack of tenant protection policies has a disparate impact on renters of color and other protected classes, thereby violating the Fair Housing Act. This recognition would emphasize the need for fair and equitable practices that do not perpetuate discriminatory outcomes in the rental housing market.

Without strong tenant protections to prevent egregious rent hikes and no-cause evictions, the risk of displacement falls heavily on Black and Latino renters, who are overrepresented compared to the general population of renters. Rising rents and the lack of affordable housing converge to reduce the likelihood that these renters will find replacement housing in the neighborhoods from which they are displaced, which threatens to re-segregate Black communities and other communities of color.¹³ Findings from San Mateo County's Assessment of Fair Housing illustrate the fair housing issues at play. Of the nearly 4,000 residents surveyed, two in five Black and Latino renters reported experiencing displacement in the last five years, due in large part to decades of exclusionary housing policies that made homeownership

¹² 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).

¹³ Anne Bellows, The Fair Housing Imperative to Address the Displacement Crisis, Civil Rights Insider 5 (2018), <https://www.fedbar.org/wp-content/uploads/2019/12/civil-rights-winter-2018-v-3-pdf.pdf>

difficult, if not impossible, for many.¹⁴ Eighty percent of renter households who are displaced leave their neighborhoods, often with diminished access to jobs and health care. 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 was a step in the right direction because it makes permanent an important process for the GSEs to plan for and implement policies to increase equitable access to housing, including in the rental housing market. FHFA can use the Equitable Housing Finance Plan process to require the GSEs to study rent regulation and how it increases sustainable equitable housing opportunities for renters of color, renters with disabilities, and renters from other protected classes. To facilitate these studies, FHFA could provide data in the same way that HUD provides robust datasets to its grant recipients in implementing its duty to AFFH. Additionally, FHFA may require the GSEs to collect the data directly from borrowers to help provide a more robust dataset for research. Such planning/process requirements are not the end goal, but rather a stepping stone toward the ultimate goal of rent regulation for tenants.

Our response to FHFA's Request for Input is organized into the following sections:

- I. Implementing Tenant Protections
- II. Creating a Rental Registry
- III. Addressing Myths Regarding Risk

I. Implementing Tenant Protections

This section addresses the following questions in the RFI:

A-1: How should the Enterprises protect tenants in multifamily rental housing? What role should the Enterprises play in providing tenant protections at Enterprise-backed multifamily properties?; A-2: What minimum tenant protections should FHFA consider at Enterprise-backed multifamily properties? What are the benefits of each tenant protection, and what associated risks or challenges might the Enterprises face during implementation? Please provide specific examples as appropriate.; A-7: With respect to the foregoing questions, FHFA invites interested parties to submit any studies, research, legal analysis, reports, data, or other qualitative or quantitative information that supports a commenter's response or is otherwise relevant.; B-1: How might the Enterprises address barriers to multifamily tenants' access to housing?; B-2: What actions should the Enterprises take, if any, to ensure universal acceptance of sources of income at Enterprise-backed multifamily properties? B-3: What actions should the Enterprises take in support of existing federal fair housing laws, including protections related to familial status, accessibility, and design and construction standards? B4: Are there areas of the lease application process or tenant documentation requirements that could be streamlined? Would those changes benefit multifamily tenants, landlords, or both? Please explain and include examples of existing best practices, if applicable.; C-1: What information do multifamily tenants need to make well-informed decisions about applying for and leasing apartments? Do multifamily tenants have access to the information they need to make well-informed decisions? If not, please explain and identify specific gaps. What are potential solutions for increasing access to information? What are the associated challenges? Please include any best practices for providing "all-in" rental costs, utility cost responsibilities, and tenant amenity informational C-2: What are the components of a model rental agreement?

¹⁴ 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

Please provide sample leases or lease forms that might be considered exemplary. C-3: What role might the Enterprises play to enable multifamily tenants and landlords to be well-informed of their rights, to exercise their rights effectively, and fully meet their responsibilities? How could FHFA support efforts to collect, disseminate, and use this information? C-6: Should landlords provide a written notice to prospective tenants that their lease application has been rejected, including a description of the reasons for rejection? What are the potential benefits and challenges of delivering such notices? If a written notice is provided, what information should it include? D-1: Have any eviction prevention programs or policies (either voluntary or required) improved the housing stability of multifamily tenants? Please describe those programs and policies, how performance was measured, and please share any data or evidence on performance, if possible. D-2: How can the owners and managers of Enterprise-backed multifamily properties reduce evictions and improve housing stability of tenants? What role can the Enterprises play in promoting housing stability of tenants at Enterprise-backed multifamily properties? D-3: Please provide recommendations on possible requirements that could apply to each of the following, and/or examples of existing policies, including an assessment of the benefits and/or drawbacks: Lease renewals, Timing and amount of rent increases, Upfront or ongoing fees, Causes for eviction, Notification of eviction actions, Right to cure a cause for eviction, and Time to vacate following eviction. D-4: Are tenants provided with resources on emergency rental assistance programs, offered repayment agreements, or offered legal resources? Do housing providers' current practices differ from the legal/regulatory standards that they are required to follow? D-5: Should the Enterprises define housing safety and if so, how? D-6: Should the Enterprises define housing habitability and if so, how?

Whether homeowner or renter – across race, class and zip code – all people deserve the chance to put down roots in their communities. Tenant protection policies are key to creating the housing conditions in which all people can not only access quality housing, but achieve long-term stability and experience fair and just treatment throughout their housing journey. **The following policies are ones that we recommend FHFA implement and enforce across all multifamily rental properties in exchange for the massive subsidy provided to mortgage companies, financial institutions and corporate landlords via FHFA financing.**¹⁵ Each policy recommendation is accompanied by research on impacts if available, model legislation, and notes on overcoming implementation challenges.

Changes to Tenant Screening Practices

Overview of Policy

Eviction, credit and criminal history records are markers that disproportionately impact people of color, especially Black people, given our country's historic and current policies related to eviction, credit access, and criminalization. The fair housing implications of tenant screening and background checks are significant, as demonstrated by the findings of various surveys and studies. A 2022 survey of landlords found that 90% of landlords reported using practices that check an applicant's previous evictions, income, job and rental history, credit scores and criminal backgrounds to make housing decisions.¹⁶ The consequences of these screening practices are far from equitable. Another 2022 survey of over 6,000

¹⁵ Laurie Goodman, Jim Parrott, Bob Ryan, Mark Zandi. "How Fannie and Freddie Can Use Pricing to Expand Affordable Homeownership." Urban Institute, (April 2022). <https://www.urban.org/sites/default/files/2022-04/How%20Fannie%20and%20Freddie%20Can%20Use%20Pricing%20to%20Expand%20Affordable%20Homeownership.pdf>

¹⁶ Abby Boshart, "How Tenant Screening Services Disproportionately Exclude Renters of Color from Housing," Urban Institute (December 2022). <https://housingmatters.urban.org/articles/how-tenant-screening-services-disproportionately-exclude-renters-color-housing>

tenants in Philadelphia showed that 80% of respondents with an eviction history had a rental application denied, with 52% of respondents denied in the last two years, and 46% indicating application denials between two and five years ago.¹⁷

When reviewing applications for tenancy, landlords regularly rely on tenant screening reports to package an applicant's credit history, criminal history, and eviction records into a format that gives a quick indication to a landlord whether they should rent to a prospective tenant, without additional nuance or detail.¹⁸ Tenant screening processes often cause critical delays for tenants searching for housing, and causes tenants with fewer resources to pay more in rental application fees.¹⁹

In many states across the country, eviction records are public and can be viewed by anyone with access to the internet or to a court repository. The type of information retained and made public vary from state to state, while the terminology and case statuses that are used when recording cases can also vary, and may not always translate well to another jurisdiction or individual's understanding of the case. Publicly available eviction data in court repositories has given landlords substantial power and access to the personal information and eviction histories of housing applicants, and has even prompted landlords and property managers to conduct their own criminal history or eviction background checks. However, when landlords employ their own searches, they may be conducting the background check inaccurately as they may not be able to interpret a case disposition or may overlook issues with matching names or other identifiers between the applicant and a record. The vast majority of eviction records are not reliable indicators of tenants' suitability and should, therefore, not be considered in the tenants screening process.²⁰

Landlords and property managers use both written and unwritten blanket ban policies against tenants with any mention of an eviction history, even though eviction records may not accurately reflect the outcome or disposition of a case. Landlord's screening protocols may also disregard the outcome of an eviction case in their housing decision, (e.g. if it was settled, mediated, or the plaintiff was found to be in breach of providing healthy habitation standards). The way that eviction records are captured in court repositories can prevent a landlord from being able to see the nuances of an eviction case that may not have been a tenant's fault or may have been the result of a landlord retaliating unfairly against a tenant. For example, over a quarter of filings in Philadelphia Municipal Court from 2015-2020 did not result in a judgment against a tenant – that represents 29,236 eviction filings in which the filing was withdrawn or the tenant won their case. Even when evictions are decided in favor of the landlord, the landlord often does not

¹⁷ Claudia Aiken, Sydney Goldstein, Yeonhwa Lee, "Trends and Challenges in the Philadelphia Rental Market," Community Legal Services of Philadelphia and The Housing Initiative at Penn (June 2022).

https://phillytenant.org/wp-content/uploads/CLS_Report_6-14_Small-1.pdf
¹⁸ Tech Equity Collaborative. "Tech, Bias, and Housing Initiative: Tenant Screening," (February 23, 2022).
<https://techequitycollaborative.org/2022/02/23/tech-bias-and-housing-initiative-tenant-screening/>.

¹⁹ Consumer Financial Protection Bureau. "Tenant Background Checks Market." (November 2022).
https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf.

²⁰ Adam Porton, Ashley Gromis, Matthew Desmond, "Inaccuracies in Eviction Records: Implications for Renters and Researchers" Housing Policy Debate Vol. 31, NOS. 3-5:377-394 (2021).
<https://doi.org/10.1080/10511482.2020.1748084>.

remove the tenant because the tenant continues to pay rent. Nevertheless, these records are collected en masse by tenant screening companies and used to evaluate – and often reject – tenants.²¹

Tenant screening regulations are necessary to prevent, restrict, or clarify the power landlords and tenant screening companies have to utilize background information, like eviction, credit, or criminal history records from adversely impacting tenants. Under the Fair Credit Reporting Act (FCRA), the federal government allows screening companies to report eviction records that are up to seven years old. Prospective landlords and property managers are also required to notify tenants if a tenant screening report or credit report was used in their decision to deny housing. If a tenant requests to know why they were denied housing, landlords and property managers are also required to provide contact information for the tenant screening company used, notify applicants of their right to dispute the information, and notify applicants of their entitlement to a free copy of their screening report within 60 days of their denial. However, landlords often do not make tenants aware of these rights and keep their own screening criteria, or the information they used to make a decision, ambiguous. When tenants attempt to exercise their rights under FCRA after finding errors in tenant screening reports, tenant screening companies are seldom responsive to a tenant’s requests to correct a record.^{22,23} State and local laws that regulate the screening protocols that landlords use, regulate the type of information tenant screening companies can include in reports, and restrict landlord and tenant screening companies’ access to eviction records, can help enforce FCRA.

The FHFA should create equitable tenant screening practices and require that landlords of properties with GSE-backed mortgages adopt those tenant screening practices as a condition of agency financing. Changes to tenant screening practices can take various forms, including:

- Requiring landlords to provide uniform screening criteria to every prospective tenant who applies to live in a unit
- Mandate that a landlord take a holistic approach when evaluating the potential of an applicant’s tenancy by giving weight to other circumstances besides an applicant’s credit, criminal, or eviction history
- Prohibiting screening practices that reject a tenant’s application to a unit solely as a result of an applicant’s credit score, criminal, or eviction record history
- Eliminating look-back periods for eviction histories that landlords can consider when screening a prospective tenant, so that they do not consider eviction histories, including settlements entered before applicant submits application, dismissed evictions or evictions resulting in judgment for the applicant
- Establishing shorter look-back periods for criminal histories that landlords can consider when screening a prospective tenant, such as:

²¹ Phillips, Collins, and London, “Breaking the Record: Dismantling the Barriers Eviction Records Place on Housing Opportunities”. https://clsphila.org/wp-content/uploads/2020/12/Breaking-the-Record-Report_Nov2020.pdf.

²² Consumer Financial Protection Bureau. “CFPB Reports Highlight Problems with Tenant Background Checks.” (November 15, 2022). <https://www.consumerfinance.gov/about-us/newsroom/cfpb-reports-highlight-problems-with-tenant-background-checks/>.

²³ Ucini, Andrea. “Access Denied: Faulty Automated Background Checks Freeze Out Renters.” May 28, 2020. <https://themarkup.org/locked-out/2020/05/28/access-denied-faulty-automated-background-checks-freeze-out-renters>.

- Requiring that owners of FHFA-backed properties do not consider misdemeanors with dates of sentencing older than three years; felonies with dates of sentencing older than seven years; convictions for certain felonies with dates of sentencing older than 10 years, including first-degree murder, second-degree murder, third-degree murder, first-degree manslaughter, kidnapping, first-degree criminal sexual conduct, first-degree assault, first-degree arson and first-degree aggravated robbery
- Requiring that landlords provide a written notice of adverse action stating the specific reasons and consumer report or information that led to the denial of tenancy²⁴

Model Legislation/Precedents

Communities across the country are continuing to push for tenant screening regulations. Seven states and multiple cities have implemented changes to tenant screening, including:²⁵

- Philadelphia, PA: Philadelphia advocates, tenant organizers, and policymakers recognized that eviction filings disproportionately occurring in majority Black neighborhoods undermined fair and equitable access to stable housing.²⁶ The [Renters' Access Act](#) (RAA), enacted October 2021, created a tenant screening policy that provides guidelines for prospective landlords on how eviction records can be used when landlords review tenant applications. Under the RAA, before accepting a tenant's application to rent a unit, landlords and property managers must provide all prospective tenants with uniform screening guidelines that specify what criteria will be used to evaluate their applications. The law prohibits tenants from being denied admission based solely on their credit score, tenant screening score, or the existence of an eviction record. If the prospective landlord rejects a prospective tenant's application, the landlord is required to provide a written reason why the tenant's application was rejected, along with copies of any third-party reports or information that a landlord used to make their decision. The Renters' Access Act also prohibits landlords from considering certain criteria, including failure to pay rent or utility bills during Covid-19 emergency periods, and certain kinds of eviction records. The law also gives applicants the right to dispute inaccurate information or seek reconsideration in the case of mitigating circumstances, while requiring landlords to give time for consideration of new information.
- Minneapolis, MN: In 2019, Minneapolis City Council passed a package of [tenant protections](#) in an effort to remove barriers to housing that disproportionately affect low-income people and people of color. This package of tenant protections limited security deposits to a single month's rent, and enacted new limits on landlords' screening practices, restricting their ability to legally reject prospective tenants due to criminal history, eviction history, and credit scores. Related to criminal history, landlords can no longer consider the following elements of criminal history in determining tenancy: misdemeanors with dates of sentencing older than three years; felonies with

²⁴ On July 27, 2023, the White House announced guidance provided by [HUD](#), [USDA](#), [CFPB](#), [ETC](#), and [FHFA](#) to encourage best practices that ensure renters have an opportunity to address incorrect tenant screening reports, which included requiring landlords to a written notice of adverse action.

²⁵ PolicyLink. "Eviction Records and Tenant Screening Protections," (March 27, 2023). <https://www.policylink.org/resources-tools/tools/all-in-cities/housing-anti-displacement/eviction-records-tenant-screening-protections>.

²⁶ Phillips, Rasheedah. "Breaking the Record: Dismantling the Barriers Eviction Records Place on Housing Opportunities," (November 2020). https://clsphila.org/wp-content/uploads/2020/12/Breaking-the-Record-Report_Nov2020.pdf.

dates of sentencing older than seven years; convictions for certain felonies with dates of sentencing older than 10 years, including first-degree murder, second-degree murder, third-degree murder, first-degree manslaughter, kidnapping, first-degree criminal sexual conduct, first-degree assault, first-degree arson and first-degree aggravated robbery. In regards to rental history, landlords can no longer consider evictions where judgment was entered three or more years from date of application, settlements entered one or more years before applicant submits application, dismissed evictions or evictions resulting in judgment for the applicant, and cannot screen out for insufficient rental history. Furthermore, if a landlord requires an income equal to three times the rent or higher, the landlord must allow an exception where the applicant can demonstrate a history of successful rent payment with an income less than three times the rent. Lastly, related to credit history, landlords can no longer screen based on credit score (but can consider information in a credit report *if* relevant to ability to pay rent), and cannot screen out for insufficient credit history.

Additional policies related to eviction record sealing, expungement, and tenant screening regulations can be found on [this PolicyLink page](#). In addition to this section on tenant screening, we ask that FHFA refer to PolicyLink's comment submitted to the FTC/CFPB request for information on tenant screening (submitted May 30, 2023; ID FTC-2023-0024-0586) as an addendum to this comment.

Overcoming Implementation Challenges

Tenant screening changes cannot be impactful if landlords are not aware of new requirements or if tenants are not aware of their strengthened rights. The creation of any new regulation should be paired with educational opportunities, such as landlord education classes through local landlord associations, and know-your-rights trainings through local legal and housing advocacy groups. These are most impactful when organizations, especially renter-facing organizations, are provided with grants or financial support to host and facilitate trainings. Special consideration should be given to landlords who own fewer properties, as they may not be a part of a local landlord association that would typically notify landlords of new regulations. There may also be a need to shift technology infrastructure to accommodate new standards of tenant screening across all FHFA-backed properties.

Tenant screening regulations can be even more effective when paired with other protections that help to disrupt a system that locks renters out of future housing opportunities. For example, tenant right to counsel programs provide legal support to fight evictions and ensure the best outcomes for tenants in the proceedings, while attorneys can also ensure that sealing or expungement protections are applied where they are available. Additionally, rental registries can help track, evaluate, and enforce tenant screening laws.

Ban Source of Income Discrimination

Overview of Policy

Across the country, voucher programs have been used by localities and states as a way to increase housing access for a variety of populations, ranging from low-income households and veterans to youth aging out of foster care. At the federal level, the Housing Choice Voucher (HCV) program was designed with two main goals in mind: to eliminate concentrations of poverty and to provide low-income households with greater access to more well-resourced neighborhoods. However, research suggests that voucher holders who would like to move to well-resourced neighborhoods are unable to do so. One of the most prominent

reasons for this is that in most cities and states, local laws allow landlords to discriminate against potential tenants based on their source of income.²⁷ With 65% of all voucher holders being people of color, this denial of housing based on income serves as a proxy for the racial discrimination – which is a clear violation of the Fair Housing Act.²⁸ This has massive implications for racially concentrated areas of affluence that continue to hoard wealth and exclude access to low-income communities of color.

Source of income (SOI) discrimination perpetuates residential racial segregation, isolates low-income families from economic opportunities, and undermines the effectiveness of one of the federal government’s largest housing programs serving over 2.2 million households.²⁹ All voucher recipients should be covered by SOI protections, yet, in the absence of local and state SOI protections, the vast majority of FHFA-backed property owners are not required to accept housing vouchers. Thus, they are free to discriminate against voucher holders and be in violation of the Fair Housing Act. **FHFA should require a prohibition on source of income discrimination as a condition of its financing, requiring all borrowers to accept vouchers.**

Research on Impact

Early research shows that SOI anti-discrimination laws are effective at increasing the likelihood of HCV recipients finding a place to live, and moving to a “higher opportunity” – or more well-resourced – neighborhood. A study of forty-eight PHAs and 2,600 voucher households found that, all else equal, the probability of successfully using a voucher within the program time frame was twelve percentage points higher in jurisdictions with an SOI anti-discrimination law.³⁰ Other studies have supported that finding, estimating that voucher utilization rates increase by five to twelve percentage points when there is an SOI anti-discrimination law in place.³¹

Landlords can also benefit from vouchers.³² For example, accepting vouchers increases their ability to access an additional 2.2 million households nationwide as potential renters – and that does not even include the number of additional vouchers distributed at the state and local level. A larger pool of potential tenants increases their ability to reduce vacancy rates, which reduces overhead and turnover costs of operating rental housing. Furthermore, housing voucher payments are guaranteed by the government, which provide landlords with a high level of security in knowing they will receive rent. Research shows landlords like the reliability of voucher rental payments, as most of the rent is paid

²⁷Tighe, J. Rosie, Megan E. Hatch, and Joseph Mead. (2017). Source of Income Discrimination and Fair Housing Policy. *Journal of Planning Literature* 32 (1) 3-15. <https://doi.org/10.1177/0885412216670603>.

²⁸ Swann, Steven. “Protection Renters from Income Discrimination,” Enterprise Community Partners. (June 12, 2023). <https://www.enterprisecommunity.org/blog/protecting-renters-income-discrimination>.

²⁹ Council of Large Public Housing Authorities. “Program Facts,” accessed July 10, 2023. <https://clpha.org/programs/hcv/program-facts>.

³⁰ Finkel, M., and L. Buron. (2001). “Study on Section 8 Voucher Success Rates. Volume I. Quantitative Study of Success Rates in Metropolitan Areas.” Prepared by Abt Associates for the US Department of Housing and Urban Development, 2-3. Washington, DC: US Department of Housing and Urban Development. https://www.huduser.gov/portal/publications/pdf/sec8success_1.pdf.

³¹ Freeman, Lance. (2011). “The Impact of Source of Income Laws on Voucher Utilization and Locational Outcomes.” Washington DC: US Department of Housing and Urban Development Office of Policy Development and Research. https://www.huduser.gov/publications/pdf/freeman_impactlaws_assistedhousingrcr06.pdf.

³² Kilroy, Ashley. “Becoming a Section 8 Landlord: A Guide,” Rocket Mortgage. (July 10, 2023). <https://www.rocketmortgage.com/learn/section-8-landlord#>.

automatically each month.³³ This consistency is especially important to withstand fluctuations in the housing market and economy, such as a recession or other periods of time where non-payment of rent increases.

Model Legislation/Precedents

There are a multitude of pre-existing SOI discrimination policies for FHFA to refer to in creating similar regulations for federally-backed homes. More than 20 states and 120 jurisdictions have laws banning SOI discrimination, varying in specificity.³⁴ For example, Washington, D.C. explicitly names voucher holders as a protected class³⁵, whereas New Jersey protects “source of lawful income” without defining the phrase.³⁶ In 2000, California passed legislation prohibiting discrimination based on SOI but did not include HCV. This changed in 2019, when Governor Newsom signed into law an amendment to the state code that expanded SOI discrimination to include any verifiable income paid directly to a tenant, to a representative of a tenant, or to a housing owner or landlord on behalf of a tenant, including HCV.³⁷ Oregon has a similar history; state law banned SOI discrimination in 1995, and explicitly excluded HCV recipients until 2014, when the exemption was repealed.³⁸ In recent years, at least two states – Iowa and Texas – have explicitly prohibited cities from passing SOI discrimination ordinances through state preemption. Dozens of local governments have also passed ordinances protecting SOI discrimination, including Chicago, New York City, and Seattle.³⁹

In order to avoid unnecessary litigation, explicitly naming that “source of income” includes federal and state housing subsidies – especially Housing Choice Vouchers – is recommended to ensure a strong policy. Another element of effective policy is to cover as many housing units as possible in the law, which means choosing not to exempt small owners or owner-occupied properties from SOI discrimination laws. The type of landlord a tenant has, or whether they live in the same structure as their landlord, should not impact their ability to use their HCV.⁴⁰

Overcoming Implementation Challenges

First, it is important to note that some states have laws preempting localities from passing and enforcing SOI discrimination laws. However, if FHFA were to create regulation for FHFA-backed properties, it would not be affected by state preemption laws, as those preemption laws can only stop local anti-discrimination legislation – they cannot prevent a third party from imposing anti-discrimination as a condition of funding.

³³ Goodman, Laurie, Karan Kaul, and Michael Stegman. “Leveraging Financing to Encourage Landlords to Accept Housing Choice Vouchers,” Urban Institute. (September 2022). <https://www.urban.org/sites/default/files/2022-09/Leveraging%20Financing%20to%20Encourage%20Landlords%20to%20Accept%20Housing%20Choice%20Vouchers.pdf>.

³⁴ Poverty & Race Research Action Council, “Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program.” (Updated July 2023). <http://www.prrac.org/pdf/AppendixB.pdf>.

³⁵ D.C. Human Rights Act of 1977 (D.C. Code Ann. §2-1402.21)

³⁶ N.J. Stat. Ann. §10:5-12

³⁷ Cal. Gov. Code §12955

³⁸ OR. Rev. Stat. § 659A.421

³⁹ Poverty & Race Research Action Council, “Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program.” (Updated July 2023). <http://www.prrac.org/pdf/AppendixB.pdf>.

⁴⁰ Poverty & Race Research Action Council, “Crafting A Strong and Effective Source of Income Discrimination Law.” (March 2020). <http://www.prrac.org/pdf/crafting-a-strong-and-effective-source-of-income-discrimination-law.pdf>.

Ensuring that SOI discrimination laws are followed is a challenge that can be addressed with intentional regulatory language and strong enforcement. For example, a popular landlord excuse has been to argue that the refusal to rent to voucher families is based on the administrative burdens of the HCV program, not on the desire to “discriminate” against voucher families. This argument can be avoided by inserting language in regulation that refers to the administrative requirements of the voucher program, as Minneapolis did. Minneapolis’ SOI ordinance describes “discrimination in property rights” to include “status with regard to a public assistance program, or any requirement of a public assistance program is a motivating factor.”⁴¹ Another defense that has been used by landlords is the “minimum income” argument, through which landlords claim that HCV households do not satisfy minimum income requirements, which can be set at numbers as high as three times monthly rent. To avoid this issue, regulation should include language stating that any minimum income requirement be related to the portion of the rent to be paid by the tenant.

Education and outreach are key to successful implementation. This can include a public education campaign, such as outreach to landlord groups and real estate brokers to explain how the law works and why it is needed. It is also necessary to provide adequate funding for local enforcement groups, such as fair housing or legal services organizations, to investigate and prosecute SOI complaints. Furthermore, explicitly including and defining mechanisms for enforcement, such as fines and fees for failure to follow SOI regulations, can create a deterrent to breaking the law, thus making it more effective. For instance, including both a private right of action and an administrative complaint procedure gives victims of discrimination multiple options to enforce their rights. According to the U.S. Department of Justice’s Civil Rights Division, the Supreme Court has established “an implied private right of action” under Title VI, leaving it “beyond dispute that private individuals may sue” to address allegations of intentional discrimination.⁴² Uncapped damages should also be made available, including damages for emotional distress and punitive damages. While not every exercise of private right of action will result in damages, a few well-publicized cases can have a deterrent effect on discriminatory landlords. Finally, court-awarded attorneys’ fees for a successful claimant are a necessary component of implementation, as they incentivize lawyers to take on cases.

Fair Leases

Overview of Policy

Leases are vital for laying out the rights and responsibilities of both landlords and tenants entering into a residential rental agreement. They are not only binding contracts that can be enforced in court, but also outline important details about what can and cannot happen during the term of the lease agreement. Strong lease agreements are clear in naming the obligations that landlords and tenants have to each other. However, because leases are provided by landlords for renters to sign, this can result in leases that, at best, focus more on landlord rights and tenant responsibilities, and at worst, include unfair or deceptive terms that are racially discriminatory. Research from the University of Pennsylvania Law School has shown that Black renters in Pennsylvania not only received stricter or more unfair leases than non-Black renters, but that their leases included provisions related to drug and crime that weren’t included in other renters’

⁴¹ M.C.O. §139.40(e)

⁴² The Civil Rights Act Of 1964 42 U.S.C. § 2000d Et Seq.

leases, leading Black tenants to be more susceptible to eviction based on crime or drug use on the premises.⁴³

Having fair and standardized leases helps to correct the power imbalance, reduce racial discrimination, and ensures that the rights and responsibilities of both parties entering into an agreement are equally considered and outlined – especially tenant rights and protections. **The FHFA should develop standard fair lease provisions and require landlords of federally-backed homes to use them.** These standardized fair leases should clearly communicate material lease terms and obligations to tenants and should not contain any unfair, deceptive, or abusive terms, including terms that violate state or federal law. This is already common practice in government sponsored housing, such as Section 8 housing vouchers, public housing, and some LIHTC properties (depending on the state) – which require standard or model lease provisions.

Model Legislation/Precedents

In developing fair lease provisions, the FHFA should view existing federal lease requirements as a floor, rather than a ceiling, and go farther to protect tenants from exploitation. At minimum, leases should include the following provisions:⁴⁴

- The length of the lease and when the lease ends;
- The amount of rent;
- When the rent is due;
- Where to send the rent;
- How rent should be paid (such as by check, money order, etc.);
- The amount of any extra fees if a rent check bounces;
- What happens when rent is paid late, including late fees;
- The amount of notice landlords must provide to raise the rent under a month-to-month tenancy;
- How much time tenants have to pay rent or move out before the landlord can file for non-payment of rent and/or eviction.

More specifically, fair leases should:

- Provide at least a ten-day grace period in which to pay rent before any late fee is assessed;
- Cap late fees at no more than 5% of the amount of rent that is due;
- Limit security deposits to one month's rent;
- Make clear the circumstances under which landlords can withhold security deposits and the procedural steps they must take to be authorized to do so;
- Include good or just cause provisions specifying the reasons why a landlord can legally evict a tenant or not renew a tenant's lease;
- Make clear the timeframe in which a landlord must respond to maintenance requests and habitability issues.

⁴³ 19 J. Empirical L. Stud. 90 (2022). <https://doi.org/10.1111/jels.12309>.

⁴⁴ Vernon, Darryl. "Rental Agreements & Leases," New York City Bar. (Updated November 2018). <https://www.nycbar.org/get-legal-help/article/landlord-tenant/rental-agreements-leases/>.

Leases should *not* include the following provisions:

- Stating the landlord is not responsible for any injuries to persons or property caused by the landlord's wrongdoing;
- Stating that the landlord can use "self help" or evict a tenant without going to court;
- Stating that tenants will give their household furniture as security for rent;
- Stating that tenants take the apartment "as is" or that tenants waive their rights under any warranty of habitability laws
- Imposing junk fees, such as convenience fees to pay rent online, and fees for mail sorting and trash collection;
- Unnecessary restrictions to the ability of tenants to sublet or assign their units;
- Stating that tenants are responsible for landlords' attorney's fees and costs.

HUD has four model leases for its programs, listed below. FHFA should strongly consider building off of pre-existing federal model leases in creating regulation for a standard lease, in particular the Model Lease for Subsidized Programs.

1. The [Model Lease for Subsidized Programs](#) (also known as the family model lease) is used for the following programs: Section 221(d)(3) BMIR, Section 236 Interest Reduction, Section 8 New Construction, Section 8 Substantial Rehabilitation, RHS 515 with Section 8, Section 8 Loan Management Set-Aside (LMSA), Section 8 Property Disposition Set-Aside (PDSA), Rental Assistance Payment (RAP), and Rent Supplement.
2. The [Model Lease for Section 202/8 or section 202 PACs](#) is used for Section 202 Programs for the Elderly and Persons with Disabilities in conjunction with Section 8 assistance, and Section 202 Programs for the Nonelderly Disabled Families and Individuals in conjunction with Section 162 assistance.
3. The [Model Lease for Section 202 PRACs](#) is used for the Section 202 Program of Supportive Housing for the Elderly.
4. The [Model Lease for Section 811 PRACs](#) is used for the Section 811 Program of Supportive Housing for Persons with Disabilities.

Additionally, HUD has a [sample lease for public housing](#) that can be referred to as a resource in creating FHFA's standard lease. Leases should be made available to tenants in their primary language, similar to how HUD has made its model leases available in [over a dozen languages](#).

Some state housing finance agencies create model leases or have minimum standards for Low Income Housing Tax Credit property owners. For example, the Pennsylvania Housing Finance Agency clarifies just cause provisions in a [lease addendum](#). This is detailed even further in a [tenant guide](#), stating, "The lease should spell out clearly what situations are considered a "default" or violation of the lease, but not every example can go into the lease." Examples of good cause include failing to pay rent, not reporting all income in applications or recertifications, and keeping apartments in a way that makes it dangerous to others. Examples of things that are not good cause include being late with rent once, increased income, hosting one loud party, and experiencing domestic violence, sexual assault, dating violence, or stalking.

Below are examples of state statutes related to late fee caps and grace periods:

- [Maine](#): 15-day grace period, late fee cap of 4% of one month's rent
- [North Carolina](#): 5-day grace period, late fee cap of \$15 or 5% of one month's rent (whichever is greater)
- [Tennessee](#): 5-day grace period, late fee cap of 10% of the amount of rent past due
- [Delaware](#): 5-day grace period, late fee cap of 5% of monthly rent

Here is a [list of state security deposit limits](#), many of which are capped at one month's rent. In addition, some states have created standard residential leases, such as [Minnesota](#) and [Illinois](#). As mentioned before, these state leases should be seen as floors, not ceilings, for what FHFA should strive to mandate across federally-backed properties.

Overcoming Implementation Challenges

Ultimately, having a uniform or standard lease that all housing landlords are required to use inherently reduces implementation challenges. Education and outreach to tenants, landlords, and property managers are key to successful implementation. Trainings should be held through local landlord groups and real estate associations to explain new regulations work, and the penalties for non-compliance. Having strong consequences for non-compliance helps deter unfair practices. Funding should also be provided for local enforcement groups, such as fair housing or tenant organizing organizations, to support tenants whose landlords may not be complying with regulations. Additionally, it will be necessary to regularly review lease agreements and rental policies to ensure they remain fair and up to date with changing fair housing laws and other related regulations. FHFA should increase alignment and collaboration with HUD to find the relationship between unfair practices being used against tenants and tenants' race, national origin, sex, religion, color, disability and familial status – such as the aforementioned example of Black tenants in Philadelphia. Making clear the connection allows FHFA to implement and enforce fair leases as a part of fulfilling its AFFH obligations to advance fair housing.

Safe, Quality Housing Standards

Overview of Policy

Housing standards establish the minimum criteria for the health and safety of residents. No rental properties, especially those benefiting from federal assistance, should be a threat to the health and safety of its residents; yet, currently, there are rental properties with federally-backed mortgages that are uninhabitable, and no habitability standards exist outside of the FHA appraisal process, which does not ensure long-term maintenance of safe and high-quality housing.⁴⁵ **The FHFA should articulate a clear set of habitability standards with which borrowers must comply.** Because states and jurisdictions have differing standards for habitability, rental licensing and housing or code inspections, it can be challenging to have visibility into housing conditions. Having a federal housing quality standard and a mandate for proactive inspection of federally-backed properties would support consistency for tenants, property owners and state and local governments. The FHFA should also work with the GSEs, state and local code

⁴⁵ See Sosseh Prom, Request for Immediate Investigation into Predatory Practices of Federally-Funded Entity, the CIM Group, Africans.us (Nov. 8, 2022), <https://africans.us/sites/default/files/Formal%20Complaint%20Against%20CIM%20Group.pdf>.

officials, and tenants to enforce these standards. The FHFA should model the standards off of the U.S. Department of Housing and Urban Development’s Housing Quality Standards for the Housing Choice Voucher (HCV) program, and should clarify and strengthen those requirements in key ways: ⁴⁶

- Specifically identify the presence of unhealthy levels of mold⁴⁷ and lead,⁴⁸ and the lack of air conditioning⁴⁹ as conditions that would cause a unit to fail inspection.
- Specifically require connections to utilities like electricity and water, which is an emerging habitability issue as weather events disrupt utility grids.
- If landlords fail to comply with these standards, FHFA should take legal action against them pursuant to their loan agreements, and they should be considered ineligible for future loans through the Suspended Counterparty Program.
- If landlords fail to comply with these standards, FHFA should require them to bring homes back into code before selling or transferring ownership of the property, as to prevent the costs of deferred maintenance being shifted to the next buyer. This ensures that FHFA’s assets and investments are protected, and reduces financial burden on the next owner, especially if the next owner is a preservation buyer.
- FHFA should establish a complaint process for tenants to report unsafe housing conditions, and this process must have mechanisms for protecting tenants against retaliation.

Research on Impact

The relationship between housing quality and health is well-documented. Poor housing quality and inadequate conditions – such as the presence of lead, mold, or asbestos, poor air quality, and overcrowding – can contribute to negative health outcomes, including chronic disease and injury.⁵⁰ Lead exposure from paint, pipes, and faucets can lead to irreversible adverse health effects.⁵¹ Even low levels of lead exposure can have serious effects on children’s health and behavior, including nervous system and

⁴⁶ 24 C.F.R. § 982.401.

⁴⁷ 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/>.

⁴⁸ Davenport, Coral. “E.P.A. Proposes Tighter Limits on Lead Dust in Homes and Child Care Facilities,” *The New York Times*. (July 12, 2023). <https://www.nytimes.com/2023/07/12/climate/epa-lead-dust-homes.html>.

⁴⁹ 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>.

⁵⁰ Bonnefoy, X. (2007). Inadequate housing and health: An overview. *International Journal of Environment and Pollution*, 30(3/4), 411. <https://doi.org/10.1504/IJEP.2007.014819>;

Krieger, J., & Higgins, D. L. (2002). Housing and health: Time again for public health action. *American Journal of Public Health*, 92(5), 758–768;

⁵¹Weitzman, M., Baten, A., Rosenthal, D. G., Hoshino, R., Tohn, E., & Jacobs, D. E. (2013). Housing and child health. *Current Problems in Pediatric and Adolescent Health Care*, 43(8), 187–224. <https://doi.org/10.1016/j.cppeds.2013.06.001>;

Jacobs, D. E., Wilson, J., Dixon, S. L., Smith, J., & Evens, A. (2009). The relationship of housing and population health: A 30-year retrospective analysis. *Environmental Health Perspectives*, 117(4), 597–604. <https://doi.org/10.1289/ehp.0800086>;

Gostin, L. O. (2016). Politics and public health: The Flint drinking water crisis. *The Hastings Center Report*, 46(4), 5–6. <https://doi.org/10.1002/hast.598>

cognitive development.⁵² Lack of air conditioning and heating can also affect residents' health.⁵³ Cold indoor conditions have been associated with high blood pressure and respiratory conditions.⁵⁴ Additionally, water leaks are associated with mold growth, which has been shown to affect respiratory health and increase the likelihood of asthma, coughing, and wheezing.⁵⁵ Lack of smoke alarms, carbon monoxide detectors, and other fire suppression requirements can lead to injury and death.⁵⁶ Addressing the quality of housing as a public health issue helps prevent and reduce negative health outcomes. Housing codes and laws, such as banning the use of lead paint, have led to increased quality of housing.⁵⁷

Model Legislation/Precedents

One set of pre-existing housing standards impacting one of the largest groups of tenants are the Housing Quality Standards of the Housing Choice Voucher program. Current Housing Quality Standards regulations consist of 13 key aspects of housing quality, performance requirements, and acceptability criteria to meet each performance requirements. Furthermore, there are requirements for all housing types, including single and multifamily dwelling units, as well as specific requirements for special housing types such as manufactured homes, congregate housing, single room occupancy, shared housing, and group residences. The 13 key aspects of housing quality are:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and security
- Thermal environment
- Illumination and electricity
- Structure and materials
- Interior air quality

⁵²Schnoor, J. L. (2016). Recognizing drinking water pipes as community health hazards. *Journal of Chemical Education*, 93(4), 581–582. <https://doi.org/10.1021/acs.jchemed.6b00218>;

Centers for Disease Control and Prevention. *CDC response to Advisory Committee on Childhood Lead Poisoning Prevention recommendations in "Low Level Lead Exposure Harms Children: A Renewed Call of Primary Prevention."* (2012). 16.

⁵³Hwang, S., Fuller-Thomson, E., Hurlchanski, J., Bryant, T., Habib, Y., & Regoeczi, W. (1999). *Housing and population health: A review of the literature*. Sociology & Criminology Faculty Publications, 1–135.

Office of the Surgeon General. (2009). *The surgeon general's call to action to promote healthy homes*. U.S. Department of Health and Human Services. <https://www.ncbi.nlm.nih.gov/books/NBK44192/>;

Evans, J., Hyndman, S., Stewart-Brown, S., Smith, D., & Petersen, S. (2000). An epidemiological study of the relative importance of damp housing in relation to adult health. *Journal of Epidemiology and Community Health*, 54(9), 677–686. <https://doi.org/10.1136/jech.54.9.677>

⁵⁴Lloyd, E. L. (1991). The role of cold in ischaemic heart disease: A review. *Public Health*, 105(3), 205–215. [https://doi.org/10.1016/s0033-3506\(05\)80110-6](https://doi.org/10.1016/s0033-3506(05)80110-6)

⁵⁵Adamkiewicz, G., Zota, A. R., Fabian, M. P., Chahine, T., Julien, R., Spengler, J. D., & Levy, J. I. (2011). Moving environmental justice indoors: Understanding structural influences on residential exposure patterns in low-income communities. *American Journal of Public Health*, 101(Suppl 1), S238–S245. <https://doi.org/10.2105/AJPH.2011.300119>;

Mendell, M. J., Mirer, A. G., Cheung, K., Tong, M., & Douwes, J. (2011). Respiratory and allergic health effects of dampness, mold, and dampness-related agents: A review of the epidemiologic evidence. *Environmental Health Perspectives*, 119(6), 748–756. <https://doi.org/10.1289/ehp.1002410>

⁵⁶Swope, C. B., & Hernández, D. (2019). Housing as a determinant of health equity: A conceptual model. *Social Science & Medicine*, 243, 112571. <https://doi.org/10.1016/j.socscimed.2019.112571>

⁵⁷Jacobs, D. E., Wilson, J., Dixon, S. L., Smith, J., & Evens, A. (2009). The relationship of housing and population health: A 30-year retrospective analysis. *Environmental Health Perspectives*, 117(4), 597–604. <https://doi.org/10.1289/ehp.0800086>

- Water supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary conditions
- Smoke detectors

The National Center for Healthy Housing has also published a robust tool outlining various housing standards that constitute minimum performance standards for a safe and healthy home.⁵⁸ These standards consist of 7 categories, described below:

- Duties of owners and occupants
- Structures, facilities, plumbing, and space requirements
- Safety and personal security
- Lighting and electrical systems
- Thermal comfort, ventilation, and energy efficiency
- Moisture control, solid waste, and pest management
- Chemical and radiological agents

FHFA should consider the HCV Housing Quality Standards as a minimum, and add elements of the National Center for Healthy Housing to create a robust set of housing standards for all federally-backed homes. Lastly, FHFA should consult with partners at the Department of Housing and Urban Development, who have recently published the final rule for the National Standards for the Physical Inspection of Real Estate (NSPIRE), to understand the systems being created for strengthened inspection standards.

Overcoming Implementation Challenges

As with city building code enforcement, implementation of housing standards relies on robust and proactive inspection processes that do not exclusively rely on tenant complaint processes. As mentioned above, there should be a complaint process so that FHFA can quickly respond to tenant concerns; however, relying solely on a complaint process will not be enough, as tenants often fear landlord retaliation when enforcing their rights to safe, quality housing. One way to mitigate tenant fears of retaliation is to have local housing authorities or local housing code enforcement bodies respond to complaints by conducting an inspection, and having them require landlords to make repairs (rather than having the tenant ask the landlord directly). This is similar to how the Housing Choice Voucher complaint process is modeled. In addition, FHFA can implement, enforce, and increase transparency around housing quality standards through the creation of a rental registry, the details of which will be described in the section titled “Creating A Rental Registry.”

⁵⁸ National Center for Healthy Housing & American Public Health Association. (May 16, 2014). National healthy housing standard. Columbia, MD: National Center for Healthy Housing. <https://nchh.org/resource-library/national-healthy-housing-standard.pdf>.

Rent Regulation

Overview of Policy

Rent regulations, sometimes referred to as rent stabilization, is an effective yet underutilized tool to increase housing stability and affordability for current tenants. It works by protecting tenants from excessive rent hikes, usually by creating a predictable schedule for the maximum rent increase allowable each year, while ensuring a fair return for landlords. It is a smart, 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. Recent polling showed that 78% of voters agree that the government should step in and regulate the corporate landlords it provides loans to, and 79% of voters are in favor of federal policies that limit rent increases.⁵⁹ Just as workers have federal minimum wage as a baseline protection, tenants must have baseline tenant protections. The long-term financial stability and predictability that homeowners and property owners access through fixed interest rate mortgages is an example of how the federal government has intervened to ensure housing stability, and this benefit must be expanded to tenants, especially ones living in homes owned by landlords that receive government support. **It is unacceptable for the FHFA to finance housing deals that rely on predatory and egregious rent hikes to be profitable; therefore, the agency must take action to prevent excessive rent increases in properties with federally-backed mortgages through rent regulation that caps rents at 3% annually.**

Research on Impact

- *Rent regulations work – they increase housing stability and affordability for current tenants.* A 2019 literature review of academic research on the economic and social impacts of rent regulations by USC Dornsife’s Program for Environmental and Regional Equity found the following:⁶⁰
 - Affordability for tenants in rent-regulated units is improved. Long-term tenants living in rent-regulated units receive considerable benefits by paying substantially less than would otherwise be the case.
 - On balance, rent regulations do not increase the cost of renting non-regulated units – and where they do, closing policy loopholes (such as condo conversions) can help. In fact, research shows that rent regulations could help keep rent more affordable for all renters. For example, a 2007 study of rents in Boston, Cambridge, and Brookline, Massachusetts, distinguished between controlled and uncontrolled units, indicated that having 10-12% of rent-stabilized units in an area decreases the rents of non-controlled units by \$23 to \$28.⁶¹
- *Rent regulations are unrivaled in speed and scale.* Rent regulations are the only policy tool that can immediately provide relief to renters facing unaffordable rent increases. Because rent

⁵⁹ Lake Research Partners. “Findings From A Nationwide Survey on Housing and Renter Protections,” (July 11, 2023). https://houseus.org/wp-content/uploads/2023/07/HouseUS_July2023_Research_Report.pdf

⁶⁰ 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.

⁶¹ 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.

regulations cover private rental housing where the vast majority of renters live, it outperforms all other affordable housing tools in terms of scale and impact.⁶²

- *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 considering the government expenditures on shelters and homelessness.⁶³ Considering the growing cost of construction, as well as extended construction timelines, there must be a mechanism to ensure tenant stability while the supply gap is closed.
- *Rent regulations protect low-income households.* Like all consumer protections, rent regulations apply to renters of all incomes. However, rent regulations disproportionately benefit low-income tenants, seniors, people of color, women-headed households, people living 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.⁶⁴
- *The stability and affordability provided by rent regulations has cascading benefits for communities and broader society.* Renters would be more financially secure, with more disposable income to spend on other household needs and in the local economy. The overall amount of disposable income renters would have if they paid only what they could afford on housing (and thus, experienced no rent-burden) has grown from from \$78 billion in 2000 to \$141 billion in 2020.⁶⁵ The greatest gains would go to renters of color, reducing racial inequity. When low-income households gain income, they are more likely than higher income households to actually spend these extra funds, creating local business activity, employment, and tax revenues.⁶⁶
- *Research on wartime federal rent controls during World War II found that homeownership grew rapidly during the era of federal rent control.*⁶⁷ In 1940, roughly 80% of the housing stock was in areas that were put under rent control between 1941 and 1946. Within that same time period, the rate of homeownership increased by approximately 10 percentage points – about half the net change over the entire 20th century. In fact, cities in which rent control was more severe at the time of control – as measured by the degree to which control was meant to lower rents – had greater increases in home ownership. This is important literature to consider, especially as much of the literature on rent regulation has focused on single-market case studies rather than nationwide trends.
- *With rent regulations in place, renters would be healthier, since housing stability and affordability contribute to mental and physical health.* Eviction is acutely traumatic but also has cascading effects that can harm health and well-being for years, contributing to chronic stress and ongoing

⁶² 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>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ 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>.

⁶⁶ 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/>.

⁶⁷ Fetter, Daniel K., 2016. "The Home Front: Rent Control and the Rapid Wartime Increase in Home Ownership," The Journal of Economic History, Cambridge University Press, vol. 76(04), pages 1001-1043. doi: 10.3386/w19604.

financial instability.⁶⁸ Children would do better in school, since frequent moves disrupt education.⁶⁹ And our democracy would be fortified, since stability increases civic and political participation.

While no single policy can solve the renter crisis, rent regulation offers meaningful, immediate and widespread relief for tenants facing unsustainable – and sometimes unconscionable – rent increases. Rent regulations are an essential element of a comprehensive approach to address our affordability challenge; they won't solve everything, but we can't solve anything without them.

Places in which rent regulations have shown success include:

- In [Hoboken, New Jersey](#) rent stabilization has been in place since 1973 and applies to any residential property built before 1987 and any residential property with less than 4 rental units regardless of when it was built. The ordinance allows annual rent increases up to the consumer price index, as well as petitions for tax, water, and capital improvement surcharges. To oversee the policy, the city's Rent Leveling and Stabilization Office offers both landlords and tenants assistance in interpreting the local ordinance, and a 9-person Rent Leveling Board is convened bi-monthly to review appeals, uphold ordinances, and pass regulations. The Hoboken Fair Housing Association helps educate tenants of their rights under rent control. Research has shown that in New Jersey - the state with the most jurisdictions with rent regulations - cities with rent regulations had 10% lower growth in median rents than cities without rent regulations, even when controlling for other factors.⁷⁰
- In [Washington, D.C.](#) the Rental Housing Act of 1985 (amended in 2006) limits rent increases in units built before 1975 owned by people or LLCs who own 5 or more units. Today, nearly 80,000 units fall under the city's rent stabilization program, which limits rent increases to the increase in the consumer price index (CPI) plus 2%, with an annual maximum increase of 10%. For disabled or elderly tenants, rents can increase by CPI alone with a maximum of 5%. When a rent-stabilized unit becomes vacant, landlords are permitted to raise rent to a level comparable for similar units; however, they cannot increase the rent by more than 30% of the previous rate. According to an Urban Institute report, and contrary to myths about the impact of rent stabilization on housing stock maintenance, the share of physically deficient units quickly declined after rent stabilization and 61% of tenants said they were more willing to insist on repairs.⁷¹
- Oakland, California has had rent stabilization in place since 1980 in the form of the [Rent Adjustment Program Ordinance](#). The ordinance allows landlords to increase rent once in a 12-month period by an amount equal to the consumer price index (CPI), and exempts condominiums, single-family and cooperative housing, and buildings built after January 1, 1983.

⁶⁸ Desmond M, Kimbro RT. Eviction's Fallout: Housing, Hardship, and Health. *Soc Forces*. 2015;94(1):295-324. doi:10.1093/sf/sov044.

⁶⁹ 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>

⁷⁰ Pastor, Manuel, Vanessa Carter, and Maya Abood. "Rent Matters: What Are The Impacts of Rent Stabilization Measures?" University of Southern California Program for Environmental and Regional Equity. (October 10, 2018). https://dornsife.usc.edu/assets/sites/242/docs/Rent_Matters_PERE_Report_Final_02.pdf.

⁷¹ Tatian, Peter A., and Ashley Williams. "A Rent Control Report for the District of Columbia." The Urban Institute. (June 2011). <https://www.urban.org/sites/default/files/publication/27346/412347-A-Rent-Control-Report-for-the-District-of-Columbia.PDF>.

Oakland’s ordinance allows landlords to bank unused rent increases with some limitations and has a process through which they can petition for a rent increase based on fair return. In the midst of record-inflation levels, Oakland City Council adopted an amendment to change the formula used to calculate the annual allowable rent increase to 60% of the change in CPI or 3%, whichever is lower. This change went into effect August 1, 2022, effectively strengthening the ordinance. Oakland voters also passed the Just Cause for Eviction Ordinance in 2002, requiring a property owner to prove one of the eleven just causes before they could evict a tenant. Within the Bay Area, where Oakland is the city with the second-highest number of units covered by rent stabilization, rent stabilization has been found to decrease the probability of moving out for extremely low socioeconomic status residents.⁷²

See below for a 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.

⁷² Hwang, Jackelyn, Iris Zhang, Jae Sik Jeon, Karen Chapple, Julia Greenberg, and Vasudha Kumar. “Who Benefits from Tenant Protections? The Effects of Rent Stabilization and Just Cause for Evictions on Residential Mobility in the Bay Area.” Institute of Governmental Studies at the University of California, Berkeley. (March 2022). https://www.urbandisplacement.org/wp-content/uploads/2022/03/IGS_2_Tenant-Protections_Brief_03.01.22.pdf.

Model Legislation/Precedents

Various forms of government-imposed rent regulation have existed in the U.S. since the 1920s when cities like New York passed laws that limited rent increases and extended other renter protections.⁷³ At the national level, the federal government has twice issued nationwide rent controls. The first time was during World War II in an effort to stabilize rents at a moment of constrained supply as construction resources were being diverted elsewhere to support the war.⁷⁴ The second time was in the early 1970s when Congress passed the Economic Stabilization Act to help mitigate rapid price escalation at a moment of severe inflation.⁷⁵ In both instances, the rent regulations were upheld in the face of legal challenges as constitutional exercises of legislative power.⁷⁶ The 1970s saw the emergence of “second generation” rent controls. In contrast to strict rent caps, these state and local laws incorporated various features, like vacancy decontrol (allowing for rent increases between tenancies) and new construction exemptions, in an attempt to balance market incentives with tenant protections. This era saw a proliferation of rent control ordinances, particularly in New York, New Jersey, California, and Washington, D.C.

As of 2018, 182 cities and municipalities had some form of rent regulation.⁷⁷ 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, D.C. 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.⁷⁸ In 2020, Portland, Maine approved its first rent regulation law. In 2021, St. Paul followed suit, and Minneapolis voters approved a charter amendment authorizing the city council to do so. 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.⁷⁹ Bills have been introduced in more than a dozen other states that would rollback preemptions, introduce rent regulations, or extend related tenant protections.

⁷³ Kenneth K. Baar, *Rent Control in the 1970's: The Case of the New Jersey Tenants' Movement*, 28 HASTINGS L.J. 631, 634 (1977).

⁷⁴ Pub. L. 77-421, 56 Stat. 23 (repealed 1947).

⁷⁵ Pub. L. 92-210 § 202, 84 Stat. 799 (1970).

⁷⁶ *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).

⁷⁷ 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.

⁷⁸ Nat'l Multifamily Hous. 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.

⁷⁹ 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>.

Below are some of the recent rent stabilization policies jurisdictions have been enacted or strengthened.

Table 1: Recent Rent Regulations in U.S. Jurisdictions (2020-2022)

Jurisdiction	Annual Rent Cap	Date Passed
Montgomery County, Maryland	CPI + 3% or 6%, whichever is lower	July 2023
Cudahy, California	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

No two rent stabilization policies look the same. When designing a rent stabilization ordinance, FHFA must consider many policy elements. These elements, and the best approach to maximize protections, are described below:

- **Setting limits on rent increases:** Maximum annual rent increases can be set as an absolute percentage, linked to changes in cost of living (often measured by the consumer price index), or structured as a combination of both. In order to maximize long-term affordability, rent regulations should have low annual limits on rent increases, such as the recent policies outlined in Table 1.
- **Vacancy control or decontrol:** Vacancy decontrol allows a landlord to raise rent without restriction when a unit becomes vacant, and creates an incentive for eviction and/or tenant turnover. Vacancy control ensures that the maximum allowable rent increase is in place even if tenancy changes. Partial decontrol is a middle ground in which landlords can increase rent between tenancies with some limitations. In order to maximize long-term affordability and maintain protections across populations, rent regulations should have complete vacancy control.
- **Exemptions:** The most common exemption in rent stabilization ordinances is for new construction, and this can be rolling or fixed (ex: the first 10 years of the life of a building are exempt or any building built after a certain date is exempt). Exemptions can also include certain sizes or types of buildings. Policymakers should pay close attention to who is more likely to rent certain units when selecting exemptions as to avoid undermining housing stability for renter populations who need it most. In order to maximize affordability and benefits to renters, rent

regulations should have short and rolling new construction exemptions, if at all. There is still a lack of financial analysis to justify new construction exemptions and explain why longer new construction exemption periods are “better” for financing.

- **Pass-throughs:** Some cities allow landlords to recover a portion of their expenses related to maintenance and capital improvements by passing it onto the tenant. Cities should be careful in specifying what costs are eligible in pass-throughs as to prevent unnecessary rent increases for trivial maintenance and renovations. In order to maximize long-term affordability and prevent misuse, rent regulations should carefully outline eligible pass-through costs and have them assessed by an implementation or enforcement body before allowing property owners to charge tenants.
- **Banking:** In some cities with rent stabilization, when a landlord implements a rent increase that is lower than the amount they are legally allowed to make, they are able to recover the foregone rent increase in subsequent years. The “banked” amount can be applied at the end of a vacancy, and limits can be placed on the amounts that landlords accumulate. In order to maximize long-term affordability, rent regulations should have capped banked amounts, if at all.

Overcoming Implementation Challenges

The creation and funding of administrative mechanisms for enforcement are key to implementation of rent regulations. Maintaining records of units covered by rent stabilization is critical for transparency and enforcement. One way FHFA can administer rent regulations is by creating a rental registry through which the agency can collect data on rental units, monitor changes in tenancy, and track allowable rent increases. Because tenants are likely to reach out to their local tenant organizing or legal aid organization when facing hardships with their landlord, funding should be provided to those groups to do client intake, investigate complaints, and support tenants in legally enforcing their rights. Furthermore, strong consequences for non-compliance, such as fines or other penalties, disincentivize landlords from increasing rents above the annual allowable amount.

If rent regulation policies include processes for landlords to request rent increases over the annual allowable amount, the agency in charge of enforcement should make sure that all requests are seen and approved by a decision-making authority, whether that is a rent board or staff member. Self-certification processes, such as the one used in St. Paul, MN, are not recommended if jurisdictions want to achieve fair and transparent policy implementation.

Enacting rent regulations at the federal level through FHFA has a unique challenge because tenants rarely know if they are living in a home with a federally-backed mortgage. Whereas tenants in some cities and states may have more visibly obvious ways of knowing they are protected by rent regulations (i.e., they live in a building with a certain number of units, to which rent regulations apply), it is much more difficult for tenants of federally-backed homes to know they are protected from egregious rent hikes. Similar to how employers are required to post minimum wage laws in every work place, FHFA should require every landlord to post maximum annual rent increases in every rental home. This would support increased awareness of tenant rights and help tenants enforce their housing rights.

Finally, while enacting rent regulations at the federal level has its unique challenges, it also comes with distinct advantages. For example, when rent regulations are considered at the local level, local developers

threaten to disinvest from and stop building in jurisdictions that want to pass rent regulations, as a form of capital strike. They threaten to build in a neighboring jurisdiction, where their ability to increase rent by any amount is uninhibited. This is less of an effective threat to states, as it is more difficult to shift operations out of an entire state than just a city or region. The benefit of FHFA enactment of rent regulation is that developers have nowhere else to go. Developers' threat of leaving the market is even more difficult to believe than usual because it is highly unlikely they will relocate to build in a different country. Not only is it unlikely they will leave the country to build in an environment without rent regulation, it is even more unlikely that they will find better benefits than the ones that come with federal financing.

Just Cause Eviction Protections

Overview of Policy

Just cause eviction protections are designed to prevent arbitrary, retaliatory, or discriminatory evictions by establishing that landlords can only evict renters for specific reasons — just causes — such as failure to pay rent. In many cities and states, landlords can evict tenants or simply not renew leases without providing any reason at all. Just cause eviction ordinances are an important policy tool to prevent displacement and promote tenant stability, especially in neighborhoods where rents are rising and vacancies are low, and where landlords may seek to evict existing tenants to attract wealthier renters at higher prices. Just cause also protects tenants who report inadequate housing conditions or request repairs, making it less risky to exercise their right to livable conditions. **FHFA should impose just cause eviction protections as a condition for receiving FHFA financing.**

Research on Impact

Just cause policies have been shown to work. A study of just cause ordinances in four California cities found that the policies were effective in decreasing eviction.⁸⁰ In concert with other anti-displacement strategies, just cause policies can help shift the power imbalance between landlords and tenants in the housing ecosystem. Eviction protections promote equity since people of color disproportionately rent⁸¹ and face greater eviction risks: studies have found that Black renters experience evictions at higher rates than other racial/ethnic groups.⁸² Just cause policies can help slow the processes of gentrification that can displace entire neighborhoods and maintain neighborhood stability — allowing all residents, regardless of

⁸⁰ Cuellar Julieta. “Effect of Just Cause Eviction Ordinances on Eviction in Four California Cities,” Princeton University. (May 21, 2019).

<https://jpia.princeton.edu/news/effect-just-cause-eviction-ordinances-eviction-four-california-cities>.

⁸¹ National Equity Atlas, “Homeownership: United States, 2020,” PolicyLink and the USC Equity Research Institute, accessed June 13, 2023,

<https://nationalequityatlas.org/indicators/Homeownership#/?geo=0100000000000000>.

⁸² Arnold, Chris. “Corporate Landlord Evicts Black Renters At Far Higher Rates Than Whites, Report Finds,” *National Public Radio*. (June 3, 2021).

<https://www.npr.org/2021/06/03/1001404416/corporate-landlord-evicts-black-renters-at-far-higher-rates-than-whites-report-f>;

Hepburn, Peter, Renee Louis, and Matthew Desmond. “Racial and Gender Disparities Among Evicted Americans,” Eviction Lab. (December 16, 2020). <https://evictionlab.org/demographics-of-eviction/>;

David Robinson & Justin Steil (2021) Eviction Dynamics in Market-Rate Multifamily Rental Housing, *Housing Policy Debate*, 31:3-5, 647-669, DOI: 10.1080/10511482.2020.1839936.

race or income, to stay and benefit from reinvestment and growth.⁸³ And by stemming eviction, just cause policies can prevent the negative health consequences of eviction including depression, poorer health, higher levels of stress, and higher rates of material hardship, especially among low-income mothers.⁸⁴ The nation also has a fiscal interest in housing stability: when financially insecure residents are evicted from their homes, city budgets pay a big price due to lost tax revenue, unpaid utilities, and the costs associated with services for homeless people.⁸⁵

Model Legislation/Precedents

Across the country, five states and more than 20 cities have enacted just cause legislation.⁸⁶ At the federal level, just cause is a well-established protection in government-assisted housing programs such as the Section 8 Voucher program, Housing Choice Voucher program, and Public Housing. Landlords participating in the Housing Choice Voucher program are not allowed to terminate tenancy unless there is a significant violation of the rental agreement, failure to fulfill obligations as outlined in state landlord-tenant laws, and other good cause reasons. Public Housing Authorities (PHA) must have valid reasons to terminate a family's tenancy, both during and at the end of the lease term. The White House Blueprint for a Renters Bill of Rights also emphasizes the importance of preventing evictions by ensuring that renters have access to fair eviction protections, which require valid justifications for eviction and sufficient notice if their lease is not being renewed.

FHFA should strongly consider modeling just cause provisions that parallel or match pre-existing provisions in HUD leases. For example, HUD's [Model Lease for Subsidized Program](#) lists the following allowable reasons for termination of lease:

1. The Tenant's material noncompliance with the terms of the lease agreement;
2. The Tenant's material failure to carry out obligations under any State Landlord and Tenant Act;
3. Drug related criminal activity engaged in on or near the premises, by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control;
4. Determination made by the Landlord that a household member is illegally using a drug;

⁸³ Chapple, Karen, Jackelyn Hwang, Jae Sik Jeon, Iris Zhang, Julia Greenberg, and Bina P. Shrimali. 2022. "Housing Market Interventions and Residential Mobility in the San Francisco Bay Area." Federal Reserve Bank of San Francisco Community Development Working Paper 2022-1. doi: 10.24148/cdwp2022-01

⁸⁴Matthew Desmond, Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, Social Forces, Volume 94, Issue 1, September 2015, Pages 295–324, <https://doi.org/10.1093/sf/sov044>;

Kuechle, Kendle. (2021). "The Impact of Evictions on Preterm Births and Family Health Outcomes," UCSF Preterm Birth Initiative.

<https://pretermbirthca.ucsf.edu/sites/g/files/tkssra2851/f/wysiwyg/The%20Impact%20of%20Evictions%20on%20Pr%20term%20Births%20and%20Family%20Health%20Outcomes.pdf>.

⁸⁵ Urban Institute. "The Cost of Eviction and Unpaid Bills of Financially Insecure Families for City Budgets," accessed July 10, 2023.

<https://www.urban.org/policy-centers/cross-center-initiatives/opportunity-ownership/projects/cost-eviction-and-unpaid-bills-financially-insecure-families-city-budgets>.

⁸⁶ Vasquez, Jade and Sarah Gallagher. "Promoting Housing Stability Through Just Cause Eviction Legislation," National Low Income Housing Coalition. (May 18, 2022).

<https://nlihc.org/sites/default/files/Promoting-Housing-Stability-Through-Just-Cause-Eviction-Legislation.pdf>;

Dewey, Caitlin. "States Adopt Good Cause Policies to Block Wrongful Eviction," *Governing*. (July 6, 2023).

<https://www.governing.com/housing/states-adopt-good-cause-policies-to-block-wrongful-eviction>.

5. Determination made by the Landlord that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;
6. Criminal activity by a tenant, any member of the tenant's household, a guest or another person under the tenant's control:
 - a. that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or
 - b. that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises;
7. If the tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that in the case of the State of New Jersey, is a high misdemeanor
8. If the tenant is violating a condition of probation or parole under Federal or State law;
9. Determination made by the Landlord that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;
10. If the Landlord determines that the tenant, any member of the tenant's household, a guest or another person under the tenant's control has engaged in the criminal activity, regardless of whether the tenant, any member of the tenant's household, a guest or another person under the tenant's control has been arrested or convicted for such activity.

Various city and state just cause policies are also described below:

- Baltimore City Councilmembers passed a [lease renewal bill](#) in July 2022 in response to a rise in landlords using a loophole in the state eviction moratorium to evict tenants via lease non-renewals. Now, landlords must provide renters with the opportunity to renew their leases unless a "good cause" exception exists, such as a substantial breach of lease or the landlord wanting to recover the property for a relative as a primary residence, permanently remove the property from the rental market, or needing to conduct repairs that cannot be done in otherwise occupied properties.
- The Washington legislature passed a statewide [just cause eviction law](#) in 2021, requiring landlords to provide a valid reason - such as failure to pay rent, unlawful activity and nuisance issues, as well as cases in which a landlord intends to sell or move into a rental - for ending certain leases with tenants. The main exception is that landlords can still end a tenancy at the end of an initial lease without cause if the initial rental term is between six months and one year and the tenant is given 60 days notice. Landlords who violate the law may be subject to a penalty of up to three months' rent, attorney fees and costs.
- The City of Oakland passed its [Just Cause for Eviction Ordinance](#) in 2002, which includes 11 legally defined "just causes." Within weeks, the Rental Housing Association of Northern Alameda County filed a petition seeking to invalidate several provisions. The most significant provision, prohibiting landlords from evicting tenants without cause, was upheld. More recently, facing unprecedented displacement pressures, voters passed [Measure JJ](#) in 2016 to strengthen the city's just cause protections and expand coverage to about 12,000 more units.

Overcoming Implementation Challenges

Once again, tenant and landlord education are necessary to implement a just cause eviction policy. Echoing what has been stated in previous sections, having penalties in place for non-compliance can be helpful in deterring unfair practices by landlords. For example, in 2018, Portland, Oregon passed a [mandatory renter relocation ordinance](#) requiring that landlords pay renters' moving costs if they are evicted without cause or are forced to move because of a rent increase of 10% or more. Having a financial penalty for no-cause evictions greatly disincentivizes landlords from breaking the law. Generally, pairing just cause eviction protections with rent regulations is recommended because together, these policies prevent both no-cause evictions and economic evictions, both of which are used in discriminatory and retaliatory ways. In addition, just causes for eviction or non-renewal can be incorporated into standardized leases as a way to increase transparency and support enforcement.

As FHFA drafts its just cause regulation, it's important to consider that many of the exemptions built into local just cause ordinances will not apply to federally-backed properties. For example, local policies often include "owner or owner's relative move-in" as a just cause to accommodate small local landlords who own one or two properties. Due to the size and types of owners of federally-backed properties, this is unlikely to happen, and therefore, owner move-in should not be listed as a just cause for eviction or non-renewal. Lastly, rental registries can be a helpful complementary tool for tracking both rent hikes and evictions, to ensure that landlords are following just cause regulations.

Right to Counsel

Overview of Policy

Evictions are one of the most important fair housing issues of our time. For low-income renters facing the possibility of eviction — disproportionately renters of color and particularly Black women with children — having legal representation can mean the difference between staying in their homes and being forced out.⁸⁷ Having "right to counsel" programs in place across the country is a crucial part of the fair housing landscape, as these programs can defend protected classes from discriminatory displacement pressures and increase housing stability.

While the United States Constitution provides that all individuals facing criminal charges have a right to counsel, no such right exists in civil cases, including eviction cases. Low-income tenants are typically left to represent themselves against landlords who often have legal representation — and many are displaced from their homes. In the face of this unjust imbalance of power, a growing number of cities are passing policies that provide a right to free legal assistance to low-income renters facing eviction cases. At the federal level, HUD provided \$40 million over two years via the Eviction Protection Grant Program to jurisdictions to support and expand legal representation and right to counsel programs around the country.⁸⁸ In addition, a portion of the Emergency Rental Assistance Program's \$48 billion was used to support the right to counsel and eviction diversion strategies.⁸⁹ **FHFA should follow the federal**

⁸⁷ Hepburn, Peter, Renee Louis, and Matthew Desmond. 2020. "Racial and Gender Disparities among Evicted Americans." *Sociological Science* 7: 649-662. DOI: 10.15195/v7.a27.

⁸⁸ U.S. Department of Housing and Urban Development. "Eviction Protection Grant Program," (accessed July 25, 2023). <https://www.huduser.gov/portal/eviction-protection-grant.html>.

⁸⁹ Pollock, John. "Using Right to Counsel as an Eviction Diversion Strategy," (October 26, 2021). National League of Cities. <https://www.nlc.org/article/2021/10/26/using-right-to-counsel-as-an-eviction-diversion-strategy/>.

government’s lead and expand the tenant right to counsel to tenants of FHFA-backed homes, guaranteeing this right by providing funding to states that enact such a policy.

Research on Impact

Evictions increase individuals' and families' vulnerability to homelessness, resulting in negative consequences for their health, education, and economic mobility.⁹⁰ By providing a right to legal assistance to low-income renters facing eviction, cities and states are successfully intervening to help stabilize households at a crucial moment. The National Coalition for a Civil Right to Counsel reports on the following jurisdictions’ success with tenant right to counsel:⁹¹

- In New York City, 84% of represented tenants remained in their homes.
- In Cleveland, more than 90% of tenants with legal representation avoided eviction or an involuntary move.
- In Washington, tenants remained in their homes in more than 50% of closed cases where the result is known.
- In San Francisco, 59% of fully represented tenants have been able to remain in their homes.
- In Boulder, 63% of represented cases avoided eviction. In essence, all tenants who appeared in court and were provided an attorney avoided eviction; only the tenants who did not show up to court were given an eviction order.
- In Jackson County, the eviction rate prior to enacting tenant right to counsel was 99%, and fell to less than 20% following the first 3 months of tenant right to counsel.

Model Legislation/Precedents

As of July 7, 2023, 17 cities, 4 states and 1 county have tenant right to counsel policies.⁹² Policy and/or program language is linked below:

Washington	Maryland	Connecticut	Minnesota	New York City, NY
San Francisco, CA	Toledo, OH	Cleveland, OH	Boulder, CO	Baltimore, MD
Philadelphia, PA	Seattle, WA	Louisville, KY	Denver, CO	Minneapolis, MN
Newark, NJ	Detroit, MI	Kansas City, MO	New Orleans, LA	St. Louis, MO
Jersey City, NJ			Westchester County, PA	

Overcoming Implementation Challenges

Extending legal protections to eviction cases for low-income residents facing displacement requires dedicated funding in order to adequately meet caseloads, which is why FHFA should provide funding to

⁹⁰ Desmond, Matthew. (2015). “Unaffordable America: Poverty, Housing, and Eviction,” University of Wisconsin Institute for Research on Poverty. <https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf>.

⁹¹ National Coalition for a Civil Right to Counsel. “Intro to Tenant Right to Counsel,” (Updated July 2023). http://civilrighttocounsel.org/highlighted_work/organizing_around_right_to_counsel.

⁹² National Coalition for a Civil Right to Counsel. “Intro to Tenant Right to Counsel,” (Updated July 2023). http://civilrighttocounsel.org/highlighted_work/organizing_around_right_to_counsel.

states that enact right to counsel legislation. For states that already have right to counsel legislation, FHFA should provide funding for states to expand the right to counsel eligibility to all residents of FHFA-backed properties. In addition, FHFA should provide guidance on best practices of right to counsel programs so that states can develop the strongest possible programs. The strongest legal assistance policies guarantee a right to counsel for low-income residents facing eviction or displacement through dedicated public funding. In its guidance to states, FHFA should highlight the following legal and practical issues:

- Data analysis: FHFA should take steps to understand the scale of eviction proceedings in federally-backed homes — how many evictions are filed across properties, how many proceedings are scheduled each month, how often tenants are represented, and how likely they are to win their cases. In 2012, prior to establishing the country's first right to counsel for tenants, only 1% of New York City tenants facing eviction were represented by lawyers, compared with 90% of landlords. In addition, support should be provided to collect data through court watching similar to the work of [Texas Housers](#) to understand the nuances of eviction proceedings and the shortcomings of pre-existing programs meant to assist with reducing evictions.
- Complementary policies: To address both the immediate and long term impacts of evictions, eviction diversion and tenant screening protections – are complementary policies that work interconnectedly with tenant right to counsel to undermine the eviction system and increase access to housing opportunities. They are each important race equity tools and solutions for decreasing the racial impacts of evictions.

Other considerations for state programs are ways to prioritize equity, especially if the tenant right to counsel cannot be expanded to all tenants or if there is limited legal capacity to address the needs of all tenants facing eviction. For example, if a tenant right to counsel program must have eligibility restrictions, ensure that qualifications prioritize socioeconomic groups and protected classes that are most impacted by eviction. Geography (zip codes, neighborhoods) and income can be good proxies for racial disparities. Other factors to prioritize are age, disability status, access to the internet, immigrant and/or undocumented status, parental status, and language access.

Tenant or Community Opportunity to Purchase

Overview of Policy

Tenant Opportunity to Purchase (TOPA) policies provide tenants living in multifamily buildings with advance notice that the landlord is planning to sell their building and an opportunity for them to collectively purchase the building. TOPA is an emerging anti-displacement tool that can be used to preserve affordable rental housing stock, keep housing with community hands, and stabilize Black and Brown communities that have long faced displacement, disinvestment, and exclusion.⁹³ COPA allows a qualified nonprofit to make a first offer to purchase a building with low-income tenants if the property owner decides to sell, thus allowing for the building to be acquired (at market rate) by a preservation buyer who will commit to keeping the property affordable to tenants post-acquisition. **FHFA should incorporate a tenant and community opportunity to purchase for all buildings with FHFA-backed mortgages to create opportunities for preservation and long-term affordability.**

⁹³ Murray, Zach. “Why Tenants Should Be Given Opportunity to Purchase Their Buildings,” *Shelterforce*. (May 8, 2018). <https://shelterforce.org/2018/05/08/why-tenants-should-be-given-the-opportunity-to-purchase-their-buildings/>.

Research on Impact

As an anti-displacement tool, TOPA policies and programs stabilize households facing displacement pressures and provide an opportunity for long-time residents to stay in their neighborhood and purchase their homes. In Washington, D.C. – home to the nation's oldest and most comprehensive TOPA program – tenants organized to preserve close to 1,400 units between 2015 and 2018 alone.⁹⁴ This has significantly contributed to Washington, D.C.'s impressive total of 4,400 units of limited equity cooperative housing units across 99 cooperative buildings.⁹⁵ TOPA and COPA can also be cost-effective methods for cities to preserve their affordable housing stock since preserving existing housing costs less than building new affordable homes. While only a few cities and states have developed policies that allow for the purchase of unsubsidized housing,⁹⁶ a number of jurisdictions have provisions that allow for the purchase of subsidized affordable housing in order to preserve affordability.⁹⁷

Model Legislation/Precedents

Keys to successful TOPA and COPA policies include: 1) extending right of first purchase or right of first refusal to tenants so they have an opportunity to match an offer; and 2) requiring purchasers to preserve units as permanently affordable. These policies generally require landlords to provide an "intent to sell" notice to their tenants, along with a timeframe for the tenants to form a tenant association and express interest in purchasing the units (or for a preservation buyer to express interest), and an additional timeframe for the interested party to secure financing. By providing renters with the right to negotiate and collectively bargain to purchase their buildings – and the opportunity for local governments, non-profit organizations and values-aligned community development agencies to purchase and preserve affordability – TOPA and COPA policies level the playing field in highly speculative markets.

Jurisdictions that have enacted TOPA or COPA policies are:

- [Minnesota](#)
- [California](#)
- [San Francisco, CA](#)
- [Chicago, IL](#)
- [Philadelphia, PA](#)
- [Montgomery County, MD](#)
- [Washington, D.C. TOPA](#) and [DOPA \(District Opportunity to Purchase Act\)](#)
- [Takoma Park, MD](#)
- [Baltimore, MD](#)
- [Prince George's County, MD](#)

⁹⁴ <http://oakclt.org/wp-content/uploads/2018/12/Oakland-TOPA-Final.pdf>

⁹⁵ Pelletiere, Danilo and Erin Wilson. "Building A Local Housing Preservation Ecosystem: Tenant Opportunity to Purchase (TOPA) and Local Policy," Department of Housing and Community Development, Washington, D.C. (November 29, 2018).

https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/page_content/attachments/Final%20LEC%20Recommendations_10.21.19.pdf

⁹⁶ PolicyLink. "Tenant and Community Opportunity to Purchase Policies Are Gaining Traction," (Updated May 2023). <https://www.policylink.org/topa-copa-map>.

⁹⁷ National Housing Law Project. "A Brief Review of State and Local Preservation Purchase Laws," December 2006. *Housing Law Bulletin*. (36) 217-225.

[http://nhlp.org/files/Pres%20Purchase%20Rts%20\(Nov%20Dec%2006\).pdf](http://nhlp.org/files/Pres%20Purchase%20Rts%20(Nov%20Dec%2006).pdf)

Overcoming Implementation Challenges

The most difficult challenges in implementing TOPA and COPA policies are related to the lack of infrastructure in jurisdictions to take advantage of exercising TOPA and COPA rights – such as organizing tenant unions and finding funding (pre-development, acquisition, and permanent financing). As such, FHFA should develop a pilot program to test the viability of a federal TOPA/COPA program that includes the following:

- Objectives, scope, and key provisions of a federal TOPA/COPA policy
- Eligibility criteria
- Purchase terms
- Real estate transaction timelines for implementation
- Funding, such as down payment assistance, favorable loan terms, and innovative financing mechanisms to help eligible tenants and preservation buyers purchase the property
- Technical assistance, such as legal and organizing support for tenants throughout the purchase, ongoing guidance to ensure a smooth transition to homeownership

II. Creating A Rental Registry

This section addresses the following questions in the RFI:

A-5: Describe any gaps in available data that limit the ability to measure and assess the impact of various property management policies, procedures, and practices on tenants and the operations and finances of multifamily rental properties. How could such data gaps be addressed and what role might the Enterprises play?; A-6: Is adequate information available publicly to assess the performance of the overall multifamily rental market in serving tenants? If not, please explain. What are potential solutions?; C-5: Do housing providers or property management companies provide multifamily tenants a point of contact and information about the property management company or housing ownership? Please share any relevant best practices.; D-7: Should the Enterprises require borrower compliance with ongoing property maintenance after an initial inspection? What is a reasonable timeframe to provide unit maintenance and repairs?; E-3: How could the quality of housing units be assessed and how could the Enterprises support the ongoing monitoring of such efforts?

FHFA should create a rental registry that is publicly searchable and accessible to the public, in which all federally-backed multifamily homes are listed. A rental registry is a database of rental property that includes detailed information about the property owner and the rental property. In its most basic form, a rental registry regularly requires property owners to provide up-to-date contact information of key individuals involved with the management and maintenance of the property and an emergency contact who can be contacted 24 hours a day. Property owners may also be required to provide information and documentation regarding their last property inspection, the number of units owned, the occupation status of those units, and how much has been and is currently being charged for rent. Additional information can also be collected to track and address progress on fair housing goals.

Currently, there is little to no comprehensive, timely data available to understand the housing conditions and experiences of renters across the country – even though 36% of all US households are renting their

homes,⁹⁸ a number that has grown in the last 20 years.⁹⁹ When tenants do not know who owns their home, accountability for habitability violations decreases,¹⁰⁰ and the ability of tenants to effectively organize is also eroded. Furthermore, the lack of information on rental properties promotes a housing market of minimal oversight, creating the conditions for deferred maintenance and tenant mistreatment that can severely affect the mental, physical and financial well-being of renters, the majority of whom are Black, Latinx, and other households of color and are living on low incomes. Combined with the overall scarcity of homes affordable to low-income renters in most communities, this lack of oversight creates a housing market in which property owners have excessive power over predominantly low-income, Black and Brown communities who have very few alternative affordable housing options.

During the Covid-19 pandemic, the need for rental registries accelerated. Localities and federal agencies quickly realized that they lacked the necessary infrastructure to deliver targeted emergency rental assistance needed by the 3.6 million renters at risk of an eviction.¹⁰¹ In addition to helping distribute social services, a rental registry can provide a host of benefits, such as:

- Increase data collection and transparency in ownership and management of federally-backed homes;
- Inform housing and community development policies;
- Help regulate a rental market;
- Identify households at risk of displacement (through monitoring rent increases and evictions);
- Identify and address community health and safety concerns;
- Help facilitate community outreach;
- Provide information on the rental ownership landscape (requiring transparency regarding beneficial owners, rather than just LLCs);
- Help target community acquisition efforts (in the case of affordable housing with expiring affordability terms);
- Mitigate growing speculative practices;
- And act as a mechanism to track property inspection information.

Factors to consider when creating a rental registry are:

- **Outreach and Education:** Research of existing rental registries has [illustrated](#) higher participation among larger unit buildings (over 50 units) as opposed to buildings with 1-2 rental units. This suggests that for FHFA to have the most expansive coverage that includes single-family rental units, more outreach and education to smaller landlords will be necessary.
- **Data Collection Priorities:** FHFA must align its goals for a rental registry with the housing issues that tenants, other federal agencies, and elected leadership identify. For example, if the

⁹⁸ National Equity Atlas, “Homeownership: United States, 2020,” PolicyLink and the USC Equity Research Institute, accessed June 13, 2023, <https://nationalequityatlas.org/indicators/Homeownership#/?geo=0100000000000000>.

⁹⁹ National Equity Atlas, “Homeownership: United States, 2020,” PolicyLink and the USC Equity Research Institute, accessed July 13, 2023, <https://nationalequityatlas.org/indicators/Homeownership#/?breakdown=2&geo=0100000000000000>.

¹⁰⁰ James Horner, Note, Code Dodgers: Landlord Use of LLCs and Housing Code Enforcement, 37 Yale L. & Pol’y R. 647 (2019).

¹⁰¹ Demsas, Jerusalem. “One Way The US Could Have Prevented The Fight Over The Eviction Moratorium,” *Vox*. (August 4, 2021). <https://www.vox.com/2021/8/4/22606530/eviction-moratorium-rent-relief-rental-registry>.

House Financial Services Committee is concerned with increasing real estate speculation, FHFA can establish a rental registry that requires detailed information on ownership to understand changing rental ownership patterns. Additionally, rental registries (similar to that of [Minneapolis, MN](#) and [Buffalo, NY](#)) can help FHFA identify and contact problem property owners who have neglected maintenance on their units and either provide maintenance support or to put them in the Suspended Counterparty Program to prevent future harm to tenants.

- **Clear information gathered:** Increasing corporatization of property management has enabled property owners to hide behind untransparent limited liability corporations (LLC) to conduct their rental management practices. Requiring that owners provide contact information for beneficial owners of an LLC, a local emergency contact, and that they regularly update these points of contact is vital for creating quick lines of communication.
- **Complementary policies:** FHFA can use rental registries as an enforcement mechanism for ensuring compliance with rent stabilization ordinances or to monitor breaches to just cause eviction prevention policies. This has been done in [San Jose, CA](#), where the city utilizes their rental registry program to track and evaluate permissible rent increases in accordance with their rent stabilization ordinance.
- **Compliance incentives:** Generally, rental registrations are more effective and are utilized more often if they are mandated by regulation or have a built-in compliance mechanism. Some cities have mandated that landlords register their property by leveraging existing license requirements, inspections needed for legal occupancy, or have tied permissible eviction proceedings to [rental registrations](#). Other examples of compliance mechanisms that FHFA can consider include: mandating certificates of occupancy or occupancy licensing in accordance with local or state regulations with a registration requirement, mandating rental registration before the start of eviction proceedings, providing financial incentives, and imposing high penalty fines for noncompliance.
- **Long-term maintenance:** Maintaining a regularly used database that provides vital information on a rental market requires a modest amount of funding to establish and maintain. A rental registry can be a revenue-neutral intervention given the program design choices. For example, if FHFA chooses to pair rental registrations with inspections, more funding may be necessary to staff those inspections. Localities have leveraged or minimally increased existing licensing and registration fees to meet these funding needs that range typically from \$10 to \$100 per unit, which is something FHFA can consider.
- **Caution for information made publicly available:** FHFA will need to contemplate what information or data safety protocols it will establish to ensure that personally identifiable information for the most vulnerable groups is not readily available for potential exploitation.

Model Legislation/Precedents

Various localities across the country – both big and small cities – have aimed to close their local rental market information gap by creating rental registries, and many more are starting to establish these databases to understand the forces driving their current housing market inequities. For over 10 years, the [city of Minneapolis](#) has maintained a robust rental licensing process that requires all rental properties not occupied by the property owner to have an active license and register their property with the Department of Regulatory Services in order to be occupied. The [city requires](#) that property owners submit information such as their name, business or resident address, telephone number, and information of business partners,

and individuals involved with partnering corporations and limited liability companies. As a part of the rental licensing and registration process, rental properties are inspected and given a tier level that communicates the conditions and habitability of their property that is tied to their registration. All of the data collected is then made publicly available in an [online map](#) that allows community members to understand their local rental market, the conditions of existing housing stock and the individuals to hold accountable.

Finally, Minneapolis property owners are [charged a fee](#) that is dependent on the number of units owned and the resulting tier of the property after inspections. Overall, Minneapolis' rental licensing and registration has been able to capture information on over 90% of the city's rental properties and, even during the height of the pandemic, supported the enforcement of dwelling codes to ensure resident safety and health. The success of Minneapolis' rental licensing process and the minimal tolerance the city holds for neglectful property owners has been viewed as a model from other cities across the country, such as [Baltimore, Maryland](#), to address substandard housing conditions.

In Concord, CA, the [Residential Rent Registry Program](#) was approved and established in 2021 under the city's Residential Tenant Protection Program Ordinance. The program aims to support the city's future housing policy decisions and in [response to concerns](#) from tenants and advocate groups, such as [Monument Impact](#) and [East Bay Housing Organizations](#), regarding rising evictions and extreme rent hikes. Concord's rental registration program mandated that property owners of buildings with more than four units provide information regarding evictions, the square footage of the unit and rent costs. Less than a year later, the city was able to register [73%](#) of the jurisdiction's property owners. They have used the data to produce a preliminary analysis of the characteristics of rental properties in the city and found that the average rent is \$1,716.90 and that most lease terminations were initiated by an owner due to nonpayment of rent. Continued evaluations of the rent registry program will enable the city of Concord to [monitor fair housing or rent related issues](#).

Portland, Oregon's [Residential Rental Registration Program](#) was first created in 2018 in an effort to strengthen tenant protections and understand the rental housing stock in the city. This rental registration program requires all rental properties in the city to be registered annually and charges a [\\$60 fee](#) for the registration of market rate rentals, but waives the fee for affordable units. In addition to the costs of maintaining the registry, registration fees go towards supporting a hotline that provides various support for tenants experiencing an eviction, fair housing challenges, and substandard housing conditions to name a few. Overall, Portland's rental registration program has been successful in registering more than 75% of the city's property owners.

Starting in 2004, [Buffalo, NY](#) began its rental registration code in an attempt to identify property owners who were absent or managed properties with significant problems. An evaluation of Buffalo's rental registration code found that this intervention's ability to directly contact property owners led to a successful [reduction in the frequency](#) of absentee landlords. Ultimately, the increased communication with landlords helped the city to hold absentee property owners accountable to safe and habitable living conditions for tenants. These precedents for rental registries across the country demonstrate the many benefits of their creation for multiple purposes and to the advantage of multiple departments and agencies.

Rental registries serve as an important data collection tool that can inform future policy-making to further stabilize the housing market and tenants.

III. Addressing Myths Regarding Risk

This section addresses the following questions in the RFI:

A-4: How might requiring tenant protections at Enterprise-backed multifamily properties impact housing supply, including new construction?; E-1: What are the potential short-term and long-term financial benefits and risks associated with requiring certain tenant protections at Enterprise-backed multifamily properties, and how might such benefits and risks change over time? How might such risks, now or in the future, affect the ability of each regulated entity to operate in a safe and sound manner, fulfill its statutory mission, transfer credit risk and foster liquid, efficient, competitive, and resilient national housing finance markets, E-2: What potential benefits or risks to the Enterprises' lenders, servicers, and multifamily borrowers/property owners should the Enterprises consider when assessing each Enterprise's role in addressing tenant protections?

In recent decades, the real estate lobby has spent billions of dollars advancing misinformation regarding the impact of tenant protections, particularly rent stabilization, on the housing market. This is understandable, considering the multi-billion dollar industry is more profitable when they are able to charge unlimited. Ultimately, there is empirical evidence – not theoretical modeling or fear mongering from those who wield political influence – that disprove those myths, most of which exist only to create fear and uncertainty behind a policy that has been proven effective in advancing housing stability by decades of empirical research. Many will find parallels between rent regulation and other protections, such as minimum wage. It was long argued by economists and corporations that raising the minimum wage would deter economic development and have catastrophic consequences on our job market, and yet, that was proven to be wrong.¹⁰² In fact, 23 states and 41 cities across the country raised their minimum wage in 2022.¹⁰³ The discourse surrounding rent regulation has evolved along a parallel track, especially as more and more cities and states prove that rent regulations are a part of a strong housing strategy. Below are important areas of research demonstrating how rent stabilization will not negatively impact the housing market.

Rent Regulations Will Not Reduce Housing Construction

Multiple studies have found that rent regulations have little impact on the supply of new housing:

- **Massachusetts:** An analysis of housing supply after the repeal of rent control in three Massachusetts cities—Boston, Cambridge, and Brookline— found that the end of rent control in 1994 had a negligible effect on the construction of new housing.¹⁰⁴ In fact, this study found that

¹⁰² Lily Roberts and Ben Olinky, “Raising the Minimum Wage Would Boost an Economic Recovery – and Reduce Taxpayer Subsidization of Low-Wage Work,” Center for American Progress. January 20, 2021, <https://www.americanprogress.org/article/raising-minimum-wage-boost-economic-recovery-reduce-taxpayer-subsidization-low-wage-work/>.

¹⁰³ Jared Bernstein, “What Economists Have Gotten Wrong For Decades,” *Vox*, July 19, 2018, <https://www.vox.com/policy-and-politics/2019/7/19/20699366/interest-rates-unemployment-globalization-minimum-wage-deficit>.

Kate Gibson, “Minimum Wage About to Rise in 23 States and 41 Cities,” *CBS News*, December 27, 2022, <https://www.cbsnews.com/news/minimum-wage-41-cities-and-23-states-workers/>.

¹⁰⁴ 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.

multifamily building construction permits in these three cities reached their height in the mid to late 1980s—a time when rent stabilization policies were in full effect. This demonstrates that there are much larger forces at play that influence the ability to build, from interest rates and global supply chain to zoning regulations and labor shortages.

- **New Jersey:** Multiple longitudinal studies comparing New Jersey municipalities with and without moderate rent control found no significant relationship between rent control and new housing construction.¹⁰⁵ The most recent study covered four decades of rent control. This is especially significant given the number of jurisdictions in New Jersey that have some form of rent regulations - over 100.
- **Washington, D.C.:** The only study of rent control in the District of Columbia was published in 1990, and found no significant relationship between rent control and new housing construction.¹⁰⁶ This study noted that new rental units were built in the District and other uncontrolled cities during the 1970s and 1980s, even when the rental stock nationwide was shrinking.
- **California:** The Urban Displacement Project assessed housing production from 2007 to 2013, and found that the six cities with rent control in the Bay Area produced more housing units per capita than cities without rent control.¹⁰⁷ A comprehensive report by Berkeley’s Planning and Development Department considers the effect of rent control from 1978 to 1994 and concludes that “the best available evidence shows that rent control had little or no effect on the construction of new housing.”¹⁰⁸
- **Minneapolis, MN:** Scenario modeling in which apartment pro formas were created based on actual Minneapolis rents, then modified to illustrate how various rent caps would impact various economic measures of return, showed that even the strictest rent stabilization policies would only affect a minority of Minneapolis apartment units. The measures of return modeled included cash-on-cash return, increase in value (appreciation), and internal rate of return.^{109,110} We

¹⁰⁵ 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.

¹⁰⁶ Margery Turner, “Housing Market Impacts of Rent Control: The Washington, D.C. Experience,” Washington, DC: Urban Institute, 1990, 84-94.

¹⁰⁷ 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/>.

¹⁰⁸ Planning & Development Department, “Rent Control in the City of Berkeley, 1978 to 1994: A Background Report,” City of Berkeley, May 27, 1998, 76.

¹⁰⁹ 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>.

¹¹⁰ 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

recommend reviewing the RFI comment submitted by Dr. Edward G. Goetz, one of the lead authors of the report, for an in-depth explanation of the financial modeling.

Rent Regulations May Boost Housing Supply

If developers cannot generate extra profits through rent increases due to rent regulations, they may be incentivized to build more units. A 1998 report on the effect of rent control in Berkeley, California shows that building permits hit their highest levels in 17 years nine years after the passage of rent control.¹¹¹ Additionally, the three largest Bay Area cities with rent control (San Francisco, San Jose, and Oakland) and Los Angeles built far more multifamily rental units since 2000 than cities without rent regulations.¹¹²

Rent Regulations Lead to Increased Housing Quality

Deferred maintenance and habitability issues have existed long before, and in the absence of, rent regulations. This problem exists across public and private housing, and not just in units covered by rent regulations. Rent regulations in fact create a level of basic protection for tenants so that they feel safe enforcing their right to safe and habitable housing without fear of retaliation. A comprehensive 1990 study of the rental housing market in Washington D.C. found a positive relationship between rent control and building maintenance. The study found that the share of physically deficient units declined from 26% to 20% after the passage of rent control. Moreover, units exempt from rent control had higher rates of deficiencies than those under rent control (25% versus 20%). In a survey of 3,600 unassisted renter households in Washington D.C., 80% said that building maintenance was as good or better than it had been in the absence of rent stabilization. In fact, low-income renters, especially, said rent regulation made them more willing to insist on repairs.¹¹³

Conclusion

Through the GSEs, FHFA supports approximately one-quarter of U.S. multifamily assets¹¹⁴ and has the ability to exert significant influence over a sizable portion of the multifamily rental market. During the pandemic, FHFA utilized some measure of this authority by requiring multifamily landlords in GSE-backed properties to provide 30 days notice prior to evicting a tenant for nonpayment of rent. Additionally, the FHFA only agrees to fund Manufactured Housing Communities that abide by eight specific tenant protections. These actions demonstrate FHFA's authority to regulate the rental market through requiring federally-backed properties to abide by certain conditions.

implemented until May 1, 2022, but the 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.

¹¹¹ Gordon, "Strengthening Communities," 8-9; Planning & Development Department, "Rent Control in the City," 74.

¹¹² Nicole Montojo, Stephen Barton, and Eli Moore, "Opening the Door for Rent Control: Toward a Comprehensive Approach to Protecting California's Renters," Haas Institute for a Fair and Inclusive Society, 2018, https://belonging.berkeley.edu/sites/default/files/haasinstitute_rentcontrol.pdf.

¹¹³ Margery Turner, "Housing Market Impacts of Rent Control: The Washington, D.C. Experience," Washington, DC: Urban Institute, 1990, 84-94.

¹¹⁴ 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).

However, existing requirements for GSE-backed properties do not provide the level of protection needed to mitigate the impact of rapidly rising rents on the housing stability of millions of Americans. The GSEs have an indefensible track record of buying and providing government guarantees to overvalued loans that can only be profitable if the new owner neglects building maintenance, increases rents and fees, and seeks to evict lower-income tenants and replace them with wealthier tenants who can pay higher rents. For tenants, this translates to rapidly deteriorating building conditions that threaten their health and well-being, increasing unaffordability, displacement, housing instability and evictions.

Furthermore, the mistreatment of tenants is often in direct violation of the Fair Housing Act, which FHFA is obligated to enforce. This requires corrective action by the agency to increase regulation in order to improve tenant outcomes. Through FHFA's statutory mission to finance affordable housing, ensure stability in the market, and mitigate the displacement and segregation communities of color, it has the opportunity to exert its influence over the significant portion of the rental housing market that is backed by the GSEs. While the FHFA does not possess a magic wand that will solve the affordable housing crisis, it does have significant untapped regulatory authority to protect millions of tenants that are facing housing insecurity.

Addressing the lack of tenant protections for renters in federally-backed multifamily homes is vital for creating a more inclusive and equitable housing system. PolicyLink urges the Federal Housing Finance Agency to consider the recommendations described in this letter and take decisive action to fulfill its obligation to affirmatively further fair housing, and its mission of operating in a safe and sound manner to serve as a reliable source of liquidity and funding – not just for housing finance and community investments, but for the people live, work and play in the homes for which financing is provided.

Recommendations

The FHFA should:

- Partner with HUD to release regularly updated Fair Housing Guidance that provides GSEs with clear and timely expectations on how to fulfill their AFFH duties.
- Recommend that HUD issue a rule or guidance explicitly recognizing that a lack of tenant protection policies has a disparate impact on renters of color, thereby violating the Fair Housing Act.
- Create equitable tenant screening practices and require that landlords of properties with federally-backed mortgages adopt those tenant screening practices as a condition of agency financing.
- Require a prohibition on source of income discrimination as a condition of its financing, requiring all borrowers to accept vouchers.
- Develop standard fair lease provisions and require landlords of federally-backed homes to use them.
- Take action to prevent excessive rent increases in properties with federally-backed mortgages through rent regulation that caps rents at 3% annually.
- Impose just cause eviction protections as a condition for receiving FHFA financing.
- Expand the tenant right to counsel to tenants of federally-backed homes, guaranteeing this right by providing funding to states that enact such a policy.

- Articulate a clear set of habitability standards with which borrowers must comply through regulation that protects tenants from landlord retaliation.
- Incorporate a tenant and community opportunity to purchase for all buildings with FHFA-backed mortgages to create opportunities for preservation and long-term affordability.
- Create a rental registry that is publicly searchable and accessible to the public, in which all federally-backed multifamily homes are listed.

Thank you for your attention to this critical matter. We appreciate your consideration of the perspectives shared in this public comment as you evaluate policies and initiatives to address equity in housing. We reiterate our strong support of FHFA as the agency moves to make the necessary regulatory changes and guidance needed to implement and enforce multifamily tenant protections for renters in homes with federally-backed mortgages. Please contact me at rasheedah@policylink.org if you would like to speak with PolicyLink in more detail about our comment.

Sincerely,

A handwritten signature in cursive script that reads "Rasheedah Phillips".

Rasheedah Phillips, Director of Housing
PolicyLink