

To: Office of Multifamily Analytics and Policy
Re: Tenant Protections RFI
Date: 7/31/2023
From: Alexei Alexandrov and Laurie Goodman

Requiring landlords enjoying federal support to implement renter protections and to send data

Background and summary

We agree that more consistent protection for renters is long overdue. About one third of the households in the US rent. Renter households are disproportionately lower income, young, without college degrees, and have dramatically lower wealth and savings. Homeowners (in particular, mortgage borrowers) had federal protections for decades, and these protections rightly intensified after the financial crisis, including the creation of a new federal agency the Consumer Financial Protection Bureau (with one of its main tasks to write and enforce mortgage borrower protections) and a much improved loss mitigation waterfall minimizing the likelihood the borrower will lose their home. Renter households are more financially vulnerable than homeowners, yet there is nowhere near the level of protection that homeowners enjoyed even before the financial crisis.¹

We propose several protections, covering the various aspects of renters' experience, including evictions, approval qualifications, rent stabilization, dispute resolution, various fees, and renters with good performance getting education and credit toward future homeownership. As a part of our eviction discussion, we also propose establishing a federal database of housing units helped by federal subsidies to the landlords, with information provided directly by the landlords to a federal repository, in order to shine further light on various practices, that at least for now only federal regulators could access. We outline our proposal in detail below.

We believe that a pragmatic start of proliferating such a Federal floor on tenant protections is to attach strings to federal support for larger investors and landlords in residential real estate. Getting a multifamily mortgage (or multiple single-family mortgages simultaneously) securitized by Fannie Mae or Freddie Mac is not a right. Organizations providing this government assistance, for example, Fannie Mae and Freddie Mac, could simply include the list of tenant protections into the boilerplate mortgage contract for investors, with the threat of requiring the payment back in full immediately if the investors are not adhering to the contract.

Such a step would not be new: agencies already required much more stringent protections during the COVID-19 pandemic, and even before that GSEs required some tenant protections for manufactured home community investors. Moreover, such a step would be consistent with advancing the GSEs' charters, to the extent that the changes we are proposing would increase stability (and thus decrease risk) for the rental cashflow underlying multifamily mortgages.

¹ See, e.g., <https://mf.freddie.com/docs/tenant-protections-white-paper.pdf> for a list of current protections that varies wildly by location.

The leitmotif throughout our proposal is finding the balance between providing tenant rights, while also not increasing costs too much. Cost increases are passed through to all renters through higher rents. Without this cost constraint, there are two parts of a potential solution to this problem, both out of scope of this report: increasing housing supply and increasing government renter support programs (we discuss at the end some more steps that the GSEs could take in that direction). For this report, we find relatively lower-cost rights that could nonetheless substantially improve renters' experience.

Requiring more data reporting is key to our proposal, and the reason why we believe that our proposed provisions are a rough draft – we simply do not have data to make better choices and to quantify benefits and costs. Unlike mortgages, even various policy changes are hard or impossible to evaluate in the rental space. Accordingly, the requirement for more data could provide both the sunshine disinfectant and could guide future policy and allow us to learn from various interventions.

Our proposal is consistent with Affirmatively Furthering Fair Housing, that includes a requirement that all Federal agencies help advance its goals. Renter households are disproportionately likely to be Black and Hispanic.

Some agencies focus their actions on multifamily tenants, while many Congressional and popular press inquiries focused on recent proliferation of single-family rentals. We believe that the more appropriate lens is economies of scale for the landlord. Both landlords owning dozens of single-family properties or one multifamily building with dozens of apartments should be able to implement the processes that we are proposing. On the other hand, a mom-and-pop investor would struggle to implement them, whether they own a six-unit multifamily building or a handful of single-family buildings. Thus, we limit our proposal to larger landlords, whether they are multifamily or single family. We believe that owning more than eight units is a reasonable threshold for most of our provisions (more than two four-unit homes).² We also suggest an ownership disclosure as many properties might technically be owned by a single-property-focused Limited Liability Corporation (LLC), with multiple such LLCs owned by a single entity or a person.

Many industry participants will likely be against these proposals. Getting federal subsidies (including GSE loans) is not a right; landlords and investors can switch to private financing simply to avoid the protections we are proposing. And if some large landlords sell their rental properties as an outcome,³ there are other landlords and potential homeowners who might

² Some of our proposals might require a larger landlord size to be reasonable – for example, the proposals to require rent reporting and accepting Housing Choice Vouchers. Thus, it is possible that at least the first implementation could require a higher threshold for some of the provisions. Again, unfortunately we do not have sufficient data to be able to make a more informed choice.

³ “Rental housing policy is heavily regulated at the state and local level,” said Kenny Parcell, president of the National Association of Realtors. “Federally enacted policies can potentially drive housing providers out of the market, which will have an immediate and long-term impact of making rental housing even more competitive and, therefore, more expensive for renters.” –

<https://www.cnn.com/2023/01/25/homes/biden-tenant-protection-renters/index.html>

potentially benefit – it is unlikely that these buildings remain unoccupied, or that developers stop building due to these relatively minor changes.

[A-1, A-2, D-2, D-3] Rights related to evictions: notices, just-cause evictions, providing information to tenants at risk, and landlords paying a fee to the GSEs and HUD for evictions

Background: Who is in danger of eviction?

There are close to eight million adults living in households in the US who are behind on their rental payment as of May 2023.⁴ These households span all demographics and household compositions, but a few statistics stand out:⁵

- The modal age group is 25-39, but approximately half a million is 65 and above;
- Hispanic or Latino (of any race) are overrepresented, at 36% of the group;
- Black respondents are overrepresented as well, at 22% of the group;
- Only 13% of the respondents has a bachelor's degree or higher, while 19% have less than high school education;
- About half were never married, but about 2.5 million are married right now;
- The modal household has four people in it, most households include children, and only about 600,000 are single-person households;
- Many had experienced recent loss of employment – approximately 30%;
- More than half has household incomes below \$35,000;
- Almost three million reported borrowing from friends and family in the last seven days to make ends meet; and approximately two million relied on their SNAP benefits;
- Almost 800,000 reported a lot of difficulty seeing or not being able to see at all.
- Close to one million of these households report that it is very likely that they leave this home due to eviction in the next two months.
- The modal household is behind on their rent by a month, but almost a million are behind by four months or more.

Tenant rights that we propose: 7-day notice, just-cause evictions, right to counsel during eviction proceedings, and connecting to resources

Eviction is an ordeal that can change peoples' lives in dramatic ways, and should be avoided to the extent possible.⁶ However, landlords not being able to evict could lead to runaway costs, and eventually other renters subsidizing renters who are not getting evicted. Thus, we focus on barebone lower-cost protections.

⁴ Source: U.S. Census Bureau Household Pulse Survey, Week 57 (<https://www.census.gov/data/tables/2023/demo/hhp/hhp57.html>), Table 3b. Note that the Census samples individuals, however Census attempts to tabulate responses for households where these individuals live and answer questions about.

⁵ Ibid, authors' calculations. The eviction statistics are consistent, see e.g.: <https://sociologicalscience.com/articles-v7-27-649/>.

⁶ See, e.g., <https://evictedbook.com/#about-the-book>. See also <https://www.urban.org/sites/default/files/2023-01/Preventing%20and%20Mitigating%20Evictions%20after%20the%20COVID-19%20Crisis.pdf>, echoing at least some of our proposed provisions

The first protection that we propose is the landlord having to give a 7-day notice before filing for eviction. This protection gives at least some time for the tenant to arrange whatever is necessary before the eviction is filed – the tenant could move out (and avoid the notice filed), attempt to pay back some of the debt, attempt to get aid, or negotiate with the landlord. No eviction filing should be a surprise to the tenant. The notice should also clearly state the reason for eviction, and any potential cures. The tenant’s case is unlikely to come up immediately, so the tenant is likely to have more time to cure the issues.

The protection might simply codify existing practices for the vast majority of the landlords. Out of the households who are behind on their rent by a month or less, only 7% reported that they are “very likely” to leave this home due to eviction in the next two months.⁷ Moreover, this requirement should be combined with an expanded version of the current existing Fannie Mae and Freddie Mac requirements on 30-day notice to vacate for their multifamily properties,⁸ which should be applicable to all landlords we discuss in our report.

We also propose restricting evictions to evictions for a cause, also known as just-cause or good-cause evictions. Based on various state laws, such causes often include not paying rent, property damage, disturbance or disorderly conduct, and criminal activity in a unit.⁹ Limiting evictions to ones for cause considerably limits potential discrimination or evasion by landlords. It is also low-cost: we believe that the vast majority of landlords are delighted with tenants who are paying on time, and would renew the lease indefinitely.

We also propose requiring landlords to provide tenants with a list of resources, when the tenant might be in danger of eviction or is struggling to pay rent. Out of the eight million households behind on their rent payments, five million did not apply for any form of assistance. While many of these five million households might know all the eligibility rules and rationally determine that applying is not worth it, it is also possible that millions of households simply do not know what to do in such situations, and not have the appropriate information. Anecdotally, large landlords appeared to be in a much better position to channel their tenants to COVID-related federal protections during the pandemic – perhaps not surprisingly since the money ultimately was flowing to the landlords.

Accordingly, we propose that landlords provide information about such aid resources, with the information compiled by HUD and the GSEs. Such resources could include:

- HUD-approved counselor,

⁷ Source: U.S. Census Bureau Household Pulse Survey, Week 57 (<https://www.census.gov/data/tables/2023/demo/hhp/hhp57.html>), Table 3b, authors’ calculations. This statistic could also potentially reflect long eviction timelines, but even in that case it is unlikely that a 30-day requirement will materially change landlords’ costs.

⁸ See, e.g., <https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf>.

⁹ See, e.g., <https://nlihc.org/sites/default/files/2022-05/promoting-housing-stability-through-just-cause-eviction-legislation.pdf>.

- List of support options (including how to apply to various vouchers such as Section 8),
- List of other government assistance programs, such as Medicaid and SNAP benefits.
- List of professionals who could assist tenants navigate through evictions proceedings, including in courts;
- We discuss a few other potential programs below, to at least partially replace the pandemic-era federal rental support.¹⁰

A separate concern is legal representation during eviction proceedings. It is highly unusual to encounter tenants with legal representation in court during eviction proceedings (if tenants even know that they should come to court), and it is highly unusual to encounter landlords without legal representation in the same proceedings (likely even more to be true for large landlords).¹¹ It is hard to require legal representation before an eviction happens – lawyers might be unavailable for many reasons, or could be prohibitively expensive. However, the GSEs and HUD could do more by financing at least some of the legal help that is required and/or providing matching portals for legal professionals who could help and tenants seeking help.¹²

Finally, research shows that “\$100 increase to the filing fee would more than halve its number of eviction cases.”¹³ Such a dramatic effect requires further study, but also suggests a policy solution for the GSEs and HUD. The GSEs and the FHA should write into their mortgage contracts an additional fee that the large landlords have to pay the GSEs or the FHA for each eviction filing – for example, \$100. This fee could both incentivize landlords not to file as many evictions, but also could finance any additional interventions by the GSEs and other federal government actors. Again, more data would make it easier to set a more appropriate level (potentially higher).

[A-5, A-6, A-7] Data submission by landlords and investors: monthly monitoring and ultimate ownership

Mostly related to evictions and complying with our proposals, we propose to require data submission by landlords and investors. In particular, we are envisioning two data submissions.

The first submission would be monthly, reporting on tenants’ performance, and eviction filings, and so on. This monthly submission would allow federal agencies to monitor any trends, learn best practices, and ideally preempt at least some evictions. This submission would also serve as an advance warning system for the GSE and FHA backed loans – increasing rent nonpayment by the tenants necessarily threatens loan performance by the borrower.

¹⁰ See, e.g., <https://home.treasury.gov/system/files/136/FAQs-05102023.pdf>.

¹¹ See, e.g., <https://www.npr.org/2023/07/08/1185888943/renters-tenant-rights-eviction-lawyer-right-to-counsel-court>: “Some 80% of landlords have lawyers, but just 3% of tenants do.” See also <https://shelterforce.org/2021/07/16/right-to-counsel-movement-gains-traction/>.

¹² See also, e.g., <https://www.lsc.gov/about-lsc/what-legal-aid/get-legal-help> and <https://www.lawhelp.org/find-help>.

¹³ See <https://evictionlab.org/tenants-pay-for-cheap-evictions/>.

The second submission would be one-time for each new property, to ensure a systematic monitoring of the underlying ownership structure. For example, if a single investor owns dozens of limited liability corporations (LLCs) each owning a single-family house, the GSEs and the FHA should be aware of that and that investor should still be subject to requirements outlined in this proposal – in no sense is this investor small.

Requiring landlords to provide monthly data to central repository

We have a dearth of information on evictions – eviction filings are in not standardized formats in local courts, sometimes not even electronic.¹⁴ There is more data collection on the way, however, we will be far from an up-to-date national eviction database.¹⁵ The difference is especially stark when we compare how much information we have on mortgages – national databases that let federal agencies, consumer groups, and researchers shine light and monitor various practices and market trends, whether geographically, by lender, by servicer, etc.¹⁶

We believe that large landlords that receive federal government support, either through GSE or FHA mortgages, or who are renting in buildings supported by LIHTC credits, could provide information that they already collect during the course of business to a central federal data repository, that could be housed in HUD, and that could be modeled after Home Mortgage Disclosure Act data.

Such data would allow analysis of individual landlords and shine light on various landlord practices in different parts of the country. We already know that some landlords are responsible for a disproportionate amount of evictions, and that evictions are more prevalent in some locations rather than others. Having a stable data source for such analyses could open possibilities of advancing best practices by studying best landlord practices, ensuring fair housing, and even building predictive systems to identify tenants who are not evicted yet, but might be in danger of eviction (for example, tenants who are significantly late on their rent, even if they had not received a notice of eviction filing from their landlord).

The landlords could provide monthly unit-level filings with all the information that the landlords have in the normal course of business, for example:

- Monthly rent,
- Security deposit,
- Move-in date,
- Contract end date,
- Income stated in application (if used),
- Number of people living in the apartment,

¹⁴ See, e.g., https://evictionlab.org/docs/Eviction_Lab_Methodology_Report_2022.pdf.

¹⁵ See, e.g., <https://www.huduser.gov/portal/publications/Eviction-Database-Feasibility-Report-to-Congress-2021.html>.

See also

<https://howhousingmatters.org/feature/robust-eviction-data-can-keep-cities-designing-policy-dark>.

¹⁶ See, e.g.,

<https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/National-Mortgage-Database.aspx> and <https://www.consumerfinance.gov/data-research/hmda/>.

- Unit information – square feet, number of bedrooms, number of bathrooms,
- Unit location,
- How many months is the tenant late on their rent (with 0 indicating tenants who are current),
- Whether the tenant had received a 30-day notice on an upcoming eviction filing,
- Whether the landlord filed for an eviction already,
- Primary reason for eviction.

All the information above is already collected by the landlords, especially the larger landlords to whom this requirement would apply. And the collecting federal agency could make uploads of information straightforward by allowing CSV files or direct export from software like Excel, along with providing geolocation tools if necessary.¹⁷

Ownership tracking data

Especially with single-family properties, it might be hard to identify when the same investor effectively owns multiple properties. For example, one investor could own multiple LLCs, each owning a single-family house – something that could be prudent for investment purposes, to limit any cross-property exposure. However, such an investor is not small, and should still be compliant to the requirements in this document. The GSEs and the FHA might also want to be aware of the eventual risk, and any correlations coming from such serial investors that might not be apparent otherwise.

Practically, for each property, the owner has to submit the ultimate ownership shares by either individuals, publicly-traded corporations, or real-estate investment trusts.¹⁸ If any of the ultimate owners qualifies as large (own more than eight units enjoying federal government support), then the proposals in this document apply.

The only time the submission needs to be updated is if there is a material change in the ultimate property ownership, at any level of ownership. This is not limited to immediate ownership – for example, if the same LLC continues to own the property, but the LLC is sold, the ultimate property ownership changes.

[B-1, B-2] Rights related to qualifying for an apartment: no source of income discrimination, limits on security deposits, and using only predictive data to screen applications (once we have more data to tell what is predictive and what is discriminatory)

Many potential issues in treatment of tenants arise at the application stage, and these issues might go unnoticed especially when tenants ultimately select other landlords. In this section, we outline several proposals on ensuring equitable treatment of tenants at the application stage, again focusing on proposals that might be lower-cost for landlords, yet significantly improve the process.

¹⁷ See, e.g., <https://ffiec.cfpb.gov/tools/>.

¹⁸ Some adjustments might be warranted for very large firms that are not publicly-traded, as ultimate individual-level ownership might change frequently.

No source of income discrimination

Source of income discrimination is anecdotally common, sufficiently so that Fannie Mae launched a program to get landlords in North Carolina and Texas to accept Housing Choice Vouchers in these states.¹⁹ Fannie Mae offers lower pricing to landlords in this program for accepting these vouchers. There are of course other sources of income that require protection, including supplemental security income (SSI), various disability payments, and local rental assistance.

Like in many other cases in this document, a more straight-forward solution is a requirement to not discriminate based on income source. As Fannie Mae notes itself, there are many benefits of accepting recipients of HUD's assistance as tenants.²⁰ Another perspective is that landlords who choose to discriminate nonetheless should not be supported by federal programs. Almost by definition, such landlords are unlikely to provide affordable housing, and thus might be in limited need of government assistance.

Allowing a prorated security deposit or security deposit insurance, limiting security deposits to one-month rent

A Federal Reserve survey finds that 37% of adults would not be able to cover an emergency \$400 expense.²¹ Only somewhat coincidentally, a Consumer Financial Protection Bureau survey finds that "If they lost their main source of income, 37 percent of households could not cover their expenses for more than a month."²² Accordingly, coming up with a security deposit is a major financial strain on potential tenants. Not surprisingly, several jurisdictions have been considering various changes to help tenants.²³

We propose the following combination of restrictions related to security deposits: limiting security deposit to at most one month of rent, allowing prorated deposit (spread at least over three months or the duration of rent, whichever is shorter), and allowing security deposit insurance. Such changes allow for a much broader applicant pool, without dramatically decreasing landlord profitability.²⁴

Only using information reasonably predictive of future non-payment

¹⁹

<https://multifamily.fanniemae.com/financing-options/specialty-financing/expanded-housing-choice-initiative>

²⁰ Id.

²¹ <https://www.federalreserve.gov/newsevents/pressreleases/files/other20230522a1.pdf>.

²²

<https://www.consumerfinance.gov/data-research/research-reports/insights-from-making-ends-meet-survey-2022/>.

²³ See, e.g., <https://www.yahoo.com/lifestyle/renter-california-heres-know-tenant-120051037.html> and <https://www.stpaul.gov/sites/default/files/2021-02/Tenant%20Protections%20Flyer%20-%20English.pdf>.

²⁴ Landlords can target the housing units they rent to various potential renters. In particular, a landlord might only want to rent to extremely low-risk tenants, and thus require a very high security deposit to screen for such tenants. However, it is not obvious that such landlords and tenants need government-supported mortgages or buildings.

There is a plethora of potential information that a landlord could get on a prospective tenant, however it is not clear how much of that information is predictive of the risk of non-payment and how much of that information is accurate.²⁵ The consensus appears to be that the most predictive data might be on previous rental payment history and stability of income. However, the vast majority of credit records and off-the-shelf tenant background checks do not directly reflect either of these variables.

Accordingly, we propose for landlords to have a public list of the criteria that the landlord considers: for example, income, indicators of income stability (received that income or more for the last x years), and rental payments with previous landlords if available. Such selection criteria provide clarity to applicants, and allow landlords to clearly state reasons for rejections, minimizing future risks of fair housing concerns, and improve workflow by allowing for faster and better-documented decisions by associates.²⁶ If the landlord does not consider any of the variables above, the landlord would not have to list it.

On the other hand, there are several variables that might be less relevant, and that the GSEs and the FHA could limit landlords from using. For example, a single eviction filing that got dismissed might be more indicative of either a records error or a vindictive past landlord than of future performance. Similarly, eviction records from years ago might also not be nearly as predictive anymore, and it is hard to draw the line on when they stop being predictive. There is also a lack of sufficient information on whether credit scores are predictive, although it is possible that a more tailored score, trained on rental nonpayment data could be more predictive (however, rental nonpayment data is barely there in credit records to begin with).²⁷

It is hard to be specific about which data landlords should or should not use, due to the lack of data. A much more informed conclusion on what is predictive, and what is barely predictive but likely discriminatory, would be overcome by the data submission that we are proposing.

[C-1, D-3] Rights related to rent setting: disclosure about past rent increases and a special regime for manufactured housing communities

Disclosure of past practices

Just like with tenant payments, past landlord behavior might be predictive of the future. Thus, the landlords should disclose to their prospective tenants what happened with, for example, either the last ten renewal offers or the last six months of renewal offers in this building, whichever number is higher.

²⁵ See, e.g., https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf and <https://housingmatters.urban.org/articles/how-tenant-screening-services-disproportionately-exclude-renters-color-housing>.

²⁶ See, e.g., <https://www.naahq.org/streamlining-rental-application-process>.

²⁷ See, e.g., <https://www.mysmartmove.com/SmartMove/blog/how-qualify-deny-rental-applicants.page>.

We propose requiring the landlord for each case (in calendar order) to list the calendar quarter that a renewal offer was made, the percent of rent increase the landlord proposed, whether the tenant stayed, and if the tenant stayed, then what was the actual resulting percentage rent increase. Limiting the information to percent increases (or decreases) preserves any privacy considerations.

What we are not proposing right now: rent stabilization

When a market moves, or when a landlord decides to change their targeting or pricing strategy (or there is a new landlord), it could be disruptive for the tenant. The landlord is typically better equipped to absorb a price shock than the tenants. Accordingly, it is appealing to many to impose a limit on annual rent increases – the landlords absorb at least some of the shock, as a part of the privilege of getting government-supported loans or tax breaks supporting their buildings.

While we understand the arguments, we decided not to propose restrictions on rent increases. We believe that most landlords willingly work with their paying tenants to ensure that the tenant stays, even if it requires smoothing a market rent increase over a couple of years – a paying tenant is far from guaranteed and keeping the apartment unoccupied is expensive. And requiring limits on rent increases requires other measures as well. For example, rent caps would force the requirement of automatic rent renewals (otherwise the landlord could obtain a market rent by not renewing the lease of existing tenants). This causes a host of additional issues. For example, a tenant could be a nuisance to their neighbors, which is difficult to adequately document (ie noise). Right now, a landlord would respond to the complaints by simply not renewing the lease. If lease renewal is a “right” it would require a mechanism to be set up “for cause non-renewals”. It would also require a mechanism to deal with landlords who want to do a major remodeling or sale of the property (you might want to exempt but then what about those who say they want to do a remodeling or sale, but don’t.)²⁸

Special considerations: Manufactured Housing Communities

The concerns about moving costs and opportunistic landlords increases for manufactured housing communities where tenants often own their manufactured house, but lease the land (pad) underneath. We limit this discussion to such home only occupants.²⁹

²⁸ There may also be some short term dislocations before a rent stabilization ordinance goes into effect: landlords who are below market may do large hikes up to market, to form the base for future increases. This could be disruptive to many renters.
<https://voiceofsandiego.org/2019/11/06/uncertainty-looms-for-many-renters-before-statewide-protections-kick-in/>.

²⁹ In contrast, renters who rent both the manufactured home and the land underneath are much more similar to renters in more typical market situations.

Moving a manufactured home can cost as much as ten thousand dollars,³⁰ and manufactured home residents tend to have lower incomes to begin with.³¹ Accordingly, these tenants deserve more protection.

Some of the protections are already required by the GSEs.³² However, in addition to what we propose for all tenants in this proposal, we propose:

- Longer lead times: at least 60-day notices for rent increases or eviction filings,
- Lower limits on annual rent increases: at most CPI+15%,
- At least 6 months notice of any planned sale or closure of the MH community.
- Offering the option of either a 1-year lease and 2-year lease.

[C-3, D-2, D-3, D-6] Rights related to dispute resolution: right to habitability, HUD and GSEs establishing a portal for tenants to report landlord concerns, and encouraging mediation and allowing for class actions

With housing supply constraints across the United States, the landlords will naturally have more bargaining power than the tenants. That might be amplified for institutional landlords dealing with lower-income tenants. Accordingly, more protection is needed for tenants when various disputes arise.

Right to habitability – being able to break the lease without fees or having to sue, under certain conditions

Habitability disputes arise for various reasons – there might be multiple recorded violations of noise, issues with plumbing, electricity, broken windows, or pest control, or the housing unit might be exposed to crime. The typical process for fixes by the renter could include potentially risky steps such as fixing the issues themselves, withholding rent by putting it in an escrow account, and hoping that any eventual court proceeding resolves in the tenant’s favor. This might not even be a viable option – there could be issues affecting multiple units, such as an elevator that frequently does not work, frequent car break-ins at the apartment parking lot, plumbing problems affecting an entire multifamily building. Issues like these could cause a resident to suffer a significantly lower standard of living than expected based on when the tenant was signing the contract, and make the unit effectively inhabitable.

It is not clear where to draw the line with habitability protections, and this might be the part of our proposal that would benefit the most from a public comment period. However, some situations below might be easy decisions where the tenant should be able to move out at will without owning the rest of the rent:

³⁰ See, e.g., <https://www.forbes.com/home-improvement/moving-services/cost-to-move-mobile-home/>.

³¹ See, e.g., https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_manufactured-housing-finance-new-insights-hmda_report_2021-05.pdf.

³² See, e.g., <https://multifamily.fanniemae.com/financing-options/specialty-financing/manufactured-housing/tenant-site-lease-protections-pricing-initiative>.

- No heating with the landlord failing to fix the issue or to provide alternative accommodation for over two business days after being informed in the winter in northern states;
- No running water or no hot water with the landlord failing to fix the issue or to provide alternative accommodation for over two business days after being informed;
- No electricity with the landlord failing to fix the issue or to provide alternative accommodation for over two business days after being informed;
- Repeated documented pest control issue with the landlord failing to address the issue for over two weeks after being informed;
- Unusable accessibility accommodations (elevators or ramps) with the landlord failing to fix the issue or to provide alternative accommodation for over two business days after being informed;
- Repeated documented criminal activity on the property (including auxiliary property such as the housing unit's designated parking lot) with the landlord failing to address the issue for over two weeks after being informed.

The list above should apply only to the issues that the landlord can control. For example, if the electricity is out because the local utility company cannot fix its power lines, that would be outside the scope. Similarly, if the tenant is responsible for electric bills, fails to pay, and the local utility company shuts off the tenant's electricity due to that, the landlord would not be responsible. However, if the landlord failed to inform the local utility company or failed to pay the bills (if the landlord is responsible for them), then the list above applies. As another example, the landlord cannot typically stop criminal activity completely, but could install security cameras, file police reports, and so on.

Establishing a reporting portal

Both the Consumer Financial Protection Bureau and HUD already have portals where consumers can report issues that they encounter (HUD's phone portal is for tenants using housing choice vouchers or living in public housing).³³ The GSEs and HUD could establish similar portals to monitor any issues and allow tenants to report issues. The GSEs already have a look-up tool for whether a multifamily building is backed by a GSE loan. Even easier, the landlords should be required to inform tenants that this building either has an outstanding federal government loan or benefited from LIHTC, and thus all the issues apply.

Such a portal could allow federal authorities to monitor trends on the top issues and see the top landlords against whom complaints are filed. The portal could also encourage landlords to fix issues before a federal agency decides to dig into it further.

Encouraging mediation, but not at expense of shielding landlords from class actions

Many issues are unlikely to rise to the gravity needed for tenants to take their landlords to court. Even a small claims court is a major hassle for tenants, and is unlikely to be a realistic possibility in the vast majority of cases.

³³ See https://www.hud.gov/program_offices/housing/mfh/hc/complaint and <https://www.consumerfinance.gov/data-research/consumer-complaints/>.

However, the GSEs and HUD could encourage mediation and post-dispute arbitration as cheaper and potentially easier alternatives, as long as arbitration results are reported into national databases, for example the one by American Arbitration Association (AAA).³⁴

Pre-dispute arbitration has pros and cons, but could also be a potential solution if the landlord pays for the arbitration, results are reported to a national database, the arbitrator is neutral, and the arbitration association guarantees a prompt hearing and results. Any dispute mechanism with landlords should preserve the option of a class action by multiple tenants, which could be easier by the ultimate ownership data submission we proposed above, so that tenants or lawyers could find which other tenants might be similarly situated with respect to similar practices.³⁵

[C-1] Rights related to fees – fees should not be surprises and should not be used as a profit center

There are multiple fees that landlords charge. Moreover, landlords can change fees, start charging new fees, and rename already-existing fees adding to confusion.

Our proposal in this section rests on two simple principles: no fee should be a surprise and fees should not be used as a profit center. Fees should cover reasonable costs, and landlords can make profit through rent.³⁶ Accordingly, we propose the following:

- No fees can increase from what the contract specified or appear during the term of the contract;
- 30-day written notices of rent increases;³⁷
- All the fees should be transparently displayed in a one-page summary before the tenant signs the contract (including fees for credit or debit card payments or for using a portal);
- Non-optional fees (such as sewer and water) should be explicitly labeled as such;³⁸
- Tenants should have a feasible way to make their payments without extra charges (for example, charging for an online portal use or convenience fees);
- Landlords should not charge tenants to perform repairs (unless caused by tenants' own deliberate or highly negligent acts), or to perform repairs faster;

³⁴ See <https://www.adr.org/research>.

³⁵ See

<https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-rule-ban-companies-using-arbitration-clauses-deny-groups-people-their-day-court> and <https://www.consumerfinance.gov/data-research/research-reports/arbitration-study-report-to-congress-2015/> for more on pre-dispute arbitration and class actions in consumer finance.

³⁶ See also

<https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/19/fact-sheet-biden-harris-administration-takes-on-junk-fees-in-rental-housing-to-lower-costs-for-renters/>.

³⁷ Fannie Mae and Freddie Mac already require such a notice on manufactured home pad lease protections, see e.g.

<https://multifamily.fanniemae.com/financing-options/specialty-financing/manufactured-housing/tenant-site-lease-protections-pricing-initiative>.

³⁸ See, e.g.,

<https://www.nevadacurrent.com/2023/04/30/tenant-protections-addressing-hidden-fees-rental-applications-move-forward-at-the-legislature/>.

- Landlords should return tenant's security deposit within one week of the tenant moving out, and state explicit reasons and provide receipts if the deposit is not returned in full;
- Landlords should be prohibited from collecting multiple simultaneous application fees (or any pre-contract signing fees) for the same housing unit.

Rights related to future homeownership – providing on-time rent information to the credit bureaus and pilot on helping tenants get information and credit for paying their rent on time

Ideally, for many renters renting is a step towards eventual homeownership. This should be particularly the case for renters of GSE and FHA-backed buildings – it is a clear pipeline of future demand.

One way to help transition tenants into homeownership is by giving them credit for ontime rent payment. The GSEs and the FHA are already starting to accept past rental payments as a part of their underwriting process.³⁹ Moreover, Fannie Mae is now paying for the first year of rent reporting, if the multifamily landlords are willing to do this reporting.⁴⁰ However, much more can be done.

In particular, with our proposed data submission, the GSEs and the FHA could also ask for more identification for a sample of the renters, and match their rental payment histories to their credit records.⁴¹ After studying the predictiveness of rental payments for credit records in general, if the results are positive, the GSEs and the FHA should require large landlords to report tenants' rental history to the credit bureaus.⁴²

Second, for tenants with ontime performance, GSEs and HUD could run a pilot with the landlords providing HUD and GSE approved information on homeownership transition. The threshold could be twelve months or more of consecutive ontime rent payments, however, that could be informed more with data analyses outlined above. The information could be various brochures about homeownership, connecting with HUD counselors, and specially-prepared materials by the GSEs, FHA, HUD, or the CFPB. The brochures could walk tenants through building credit history and what scores are required, various downpayment assistance

³⁹ See., e.g., <https://www.urban.org/urban-wire/incorporating-two-alternative-types-data-mortgage-underwriting-could-make-process-more>, <https://www.urban.org/sites/default/files/2022-10/Reducing%20the%20Black-White%20Homeownership%20Gap%20through%20Underwriting%20Innovations.pdf>, and https://www.urban.org/sites/default/files/2022-06/utility-telecommunications-and-rental-data-in-underwriting-credit_0.pdf. See also <https://finreglab.org/cash-flow-data-in-underwriting-credit/> for cashflow data use for underwriting in general.

⁴⁰ <https://www.fanniemae.com/newsroom/fannie-mae-news/rent-payment-reporting-program-launch>.

⁴¹ See, e.g., <https://singlefamily.fanniemae.com/originating-underwriting/faqs-positive-rent-payment-history-desktop-underwriter>.

⁴² See, e.g., <https://www.nclc.org/resources/even-the-catch-22s-come-with-catch-22s-potential-harms-drawbacks-of-rent-reporting/> on potential drawbacks.

programs, and shopping for mortgages in general. Such a pilot could also specify bonus payments for the landlords for each successful tenant transitioning to mortgages.

Landlords are a particularly attractive channel to disseminate homeownership information, as the landlords know which tenants perform, and could easily deliver any materials. However, it is not clear whether this channel can be effective, and thus we are proposing a pilot for now.

Conclusion

We proposed multiple tenant protections for large landlords who receive federal assistance. We believe that building up data on landlord practices and household-level outcomes is crucial for any future conversation and for us to learn from past experiences, and thus a key part of this proposal is a data reporting requirement, to build a housing unit-level database reported by the landlords, that could shine light on landlord practices and could also help us analyze which interventions work and which do not.

Aside from data requirements, we proposed:

- Protections related to evictions – notices before eviction filings and before evictions, just-cause evictions, providing information to tenants at risk, and landlords paying a fee to the GSEs and HUD for eviction filings;
- Protections related to qualifying for an apartment: no source of income discrimination, limits on security deposits, and using only predictive data to screen applications (once we have more data to tell what is predictive and what is discriminatory);
- Protections related to rent setting: disclosure about past increases and a special regime for manufactured housing communities;
- Protections related to dispute resolution: right to habitability, HUD and GSEs establishing a portal for tenants to report landlord concerns, and encouraging mediation and allowing for class actions;
- Protections related to fees – fees should not be surprises and should not be used as a profit center.

We attempted to balance our proposed solutions to arrive at cost-efficient solutions: solutions that provide a lot of help to the tenants, without costing landlords too much (as that would simply be passed through in yet even higher rents to tenants). If a version of our data requirement is implemented, the next round of proposals will be much more informed.

Unfortunately, the rent will continue being too damn high even if everything we suggest is implemented. High rent is a consequence of demand for housing outstripping supply by millions of housing units.⁴³ Trying to artificially lower rents with rent control is likely to introduce dramatic distortions in the housing market, just like many other previous attempts to cure shortages by introducing price controls.⁴⁴ Instead, the goal is to increase supply, dramatically. More parity

⁴³ See CITE Home price report (if that comes out before this tenant protection report).

⁴⁴ See, e.g.,

<https://www.brookings.edu/articles/what-does-economic-evidence-tell-us-about-the-effects-of-rent-control/>

between demand and supply will naturally give tenants the power to bargain over rents, issues we described above, and more. However, the process of creating a considerable amount of new supply will take years, even if we start doing everything needed today (and so far, we have not).

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and <https://manhattan.institute/article/issues-2020-rent-control-does-not-make-housing-more-affordable>. See

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 for a slightly more optimistic take documenting mixed effects of rent control.