

July 24, 2023

The Honorable Sandra Thompson  
Federal Housing Finance Agency  
Washington, DC  
*Submitted via online portal*

**RE: FHFA Request for Comment on Multifamily Tenant Protections**

Dear Director Thompson:

Thank you for the opportunity to respond to the Federal Housing Finance Agency's Request for Input on Multifamily Tenant Protections. We strongly encourage FHFA to act boldly and adopt strong protections in order to promote the health and well-being of tenant families and the communities in which they live. Implementing robust tenant protections in housing with federally-backed mortgages is consistent with FHFA's mission to "foster housing finance markets that promote equitable access to affordable and sustainable housing" and we applaud the FHFA for undertaking this process.

Through the lens of economic and racial justice, Western Center on Law & Poverty fights in courts, cities, counties, and in the California Capitol to secure housing, health care, and a strong safety net for Californians with low incomes. Western Center has advocated for stronger tenant protections in California as part of our mission to ensure that low-income people have access to safe, stable, affordable housing in the communities of their choice. A few key advocacy efforts illustrate how we work towards our mission: we co-sponsored the "Tenant Protection Act" which established statewide rent caps and just cause protections in California, as well as legislation that prohibits housing providers from discriminating against tenants with housing vouchers. In addition, Western Center co-sponsored legislation to incorporate the "affirmatively further fair housing" mandate from the Fair Housing Act into state law.

Western Center also engages in litigation to enforce tenant protections and fair housing laws, and supports the work of local legal aid providers and community organizers who defend tenants from eviction. In addition to working to keep tenants stably housed, we advocate for the development and preservation of deeply affordable housing to serve those who are currently experiencing homelessness or living in substandard or overcrowded conditions.

**Recommendations regarding FHFA's Request for Input on "Tenant Housing Stability"**

Our comments are focused on FHFA's questions regarding Tenant Housing Stability in Subsection D of the Request for Input. We primarily address question D-3 regarding tenant protections. Western Center focuses on tenant protections because stable housing is critical

to the health and well-being of low-income families and provides the foundation for thriving communities. Aside from the profound harm that flow from individual evictions, allowing low-income tenants to access and retain housing in communities of opportunity is critical to creating a more equitable and integrated society.

Absent robust tenant protections, families face displacement that disrupts children's education, removes family members from trusted health care providers and stable employment, and cuts off access to community supports. Tenant protections are also fundamentally a fair housing issue because the burdens of housing instability do not fall equally on all people. Black and Indigenous people and people with disabilities are overrepresented in the unhoused population, and disproportionately likely to face eviction.<sup>1</sup> These disproportionate harms mean that enacting and enforcing tenant protections is a critical way to affirmatively further fair housing.

Prohibiting discriminatory screening practices that make it difficult for justice-involved individuals to access housing, restrict access for people with low credit scores, or block tenants from using housing vouchers is also essential so that low-income families can access housing and avoid homelessness.

In order to be effective, tenant protections must be implemented in a coordinated way. For example, just cause for eviction protections do not work unless paired with rent stabilization; otherwise, a housing provider prohibited from evicting a tenant without cause can simply raise the rent to an unaffordable level, forcing the tenant to move. Similarly, absent strong harassment and habitability protections, housing providers can force tenants from their housing by failing to make repairs or engaging in abusive practices such as turning off electricity and water, forcing the tenant to leave to protect their family's safety.

This letter briefly lays out some of the basic tenant protections that would advance the goals of preserving Tenant Housing Stability, namely:

- Prohibitions on discriminatory rental screening policies;
- Rent caps, extended notice periods, and right to cure;
- Just cause eviction protections, including minimum thresholds for nonpayment evictions;
- Effective anti-harassment policies;
- Robust enforcement of habitability standards in a manner that protects tenants from displacement;
- Rental registries.

---

<sup>1</sup> Benioff Homelessness and Housing Initiative, University of California San Francisco, *Toward a New Understanding: the California Statewide Study of People Experiencing Homelessness* (June 2023) at p. 25, [https://homelessness.ucsf.edu/sites/default/files/2023-06/CASPEH\\_Report\\_62023.pdf](https://homelessness.ucsf.edu/sites/default/files/2023-06/CASPEH_Report_62023.pdf) ("Homelessness study"); Ashely Gromis et al., *Eviction from public housing in the United States* (August 2022), <https://www.sciencedirect.com/science/article/pii/S0264275122001883>

Without these protections, tenants can face abrupt loss of housing that leads directly to homelessness. For example, the University of California San Francisco’s Housing and Homelessness study found that tenants had a median of 10 days’ warning before losing their housing, despite California laws that require a court process before eviction.<sup>2</sup>

Each of the tenant protections listed above is briefly discussed below.

### **Prohibition on discriminatory screening policies**

Prohibitions on discriminatory screening and eligibility policies are essential to ensure access to housing. Covered housing providers should be required to accept housing vouchers, including Housing Choice Vouchers. Refusal to do so is often motivated by discrimination, and has a discriminatory effect due to the overrepresentation of tenants of color among voucher recipients.<sup>3</sup> Research has demonstrated that prohibiting this type of discrimination improves voucher holder’s ability to secure housing.<sup>4</sup> In order for this protection to be effective, housing providers must also be required to set their rents in accordance with “fair market rents” set by local housing authorities, otherwise voucher tenants will not be able to rent available units that are theoretically available to them.<sup>5</sup>

In addition, housing providers should be required to employ nondiscriminatory screening policies that avoid “blanket bans” of individuals with justice involvement or overly restrictive credit guidelines. Again, these policies are often applied in a discriminatory manner and have a discriminatory impact.<sup>6</sup> An individual’s low credit score or involvement in the criminal justice system is often a product of institutionalized racism, and has no bearing on their ability to meet the requirements of tenancy. Further, housing providers should be prohibited from using algorithm-based screening services that determine eligibility for tenancy based on records that may include errors and out-of-date information that do not accurately reflect the tenant’s eligibility.

### **Rent caps and right of redemption**

Limitations on rent increases are crucial to housing stability. While California has statewide rent cap protections that limit annual rent increases to 10% or the Consumer Price Index plus 5%, whichever is lower, these limits are not protective enough to ensure

---

<sup>2</sup> Homelessness Study at 33.

<sup>3</sup> See National Low-Income Housing Coalition, *Who Lives in Federally Assisted Housing* (Vol. 2, Issue 2, Nov. 2012) Housing Spotlight <https://nlihc.org/sites/default/files/HousingSpotlight2-2.pdf>.

<sup>4</sup> Bell, Sard, and Koepnick, *Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results* (Dec. 2018) Center on Budget and Policy Priorities, <https://www.cbpp.org/research/housing/prohibiting-discrimination-against-renters-using-housingvouchers-improves-results> (as of Apr. 5, 2019). Calculations based on Urban Institute data.

<sup>5</sup> See explanation of rents at:

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/landlord/fmr](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/landlord/fmr)

<sup>6</sup> See National Consumer Law Center, *Past Imperfect: How Credit Scores and Other Analytics “Bake In” and Perpetuate Past Discrimination* (May 2016),

[https://www.nclc.org/images/pdf/credit\\_discrimination/Past\\_Imperfect050616.pdf](https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf)

that tenants with very low fixed incomes maintain affordability.<sup>7</sup> A 10% increase creates a significant hardship for low-income families, and FHFA should cap rent increases at a fraction of the Consumer Price Index. Many California cities have enacted rent stabilization ordinances with stricter caps that more effectively maintain affordability. For example, San Francisco caps rent increases at 60% of the increase in the Consumer Price Index for All Urban Consumers in the Bay Area, making the current cap 3.6%.<sup>8</sup> Without reasonable rents, low-income tenants are constantly on the brink and are one unexpected expense away from facing eviction. The National Equity Atlas's rental debt dashboard reflects that over 5 million tenants are currently behind on rent, with the majority of those being families with children.<sup>9</sup> Again, these burdens do not fall equally on all tenants; the majority of renters who have fallen behind are Black, Latinx, Indigenous, or other people of color.<sup>10</sup>

To be effective, any rent limitation should be comprehensive, and include a prohibition on charging excess fees or shifting costs for basic services to tenants. Western Center has assisted many local legal services advocates in cases where tenants who are otherwise protected from rent increases are subject to unfair fees, or had the costs of basic services imposed on them in a way that made their rent unaffordable. Unaffordable rent is a key driver of our homelessness crisis; researchers at the University of San Francisco found that tenants who fell into homelessness after a stable lease arrangement were severely cost-burdened, such that a rent increase quickly led to eviction.<sup>11</sup>

Rent caps should also cover buildings where another subsidy is involved to avoid creating loopholes for covered property owners. California's rent cap law includes an exemption for deed-restricted subsidized housing, which some property owners have sought to exploit by asserting that an entire building is exempt from the rent cap protection as long as one unit is deed-restricted.<sup>12</sup> Western Center represented a group of tenants at a multi-family senior property where many residents lived on fixed incomes and experienced disabilities. These seniors faced rent increases of up to 70% during the initial COVID lockdown period. The property owner argued that all units in the building were exempt from the rent cap, even though a fraction of the units were subject to the deed-restriction. Had legal aid attorneys not intervened to stop the rent increases, the majority of the senior tenants would have faced eviction at the height of COVID because they could not afford the higher rent. Any rent stabilization should apply universally to FHFA's portfolio and establish a floor of protections.

For rent stabilization to be effective, it must include vacancy control, where the housing provider is still subject to the cap when the unit is rented to a new tenant. California law

---

<sup>7</sup> California Civil Code § 1947.12.

<sup>8</sup> See <https://sf.gov/information/learn-about-rent-increases>.

<sup>9</sup> PolicyLink, *Rent Debt in America, Stabilizing Renters is Key to Equitable Recovery*, <https://www.policylink.org/node/63161> (viewed on July 20, 2023).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> California Civil Code § 1947.12(d)(1).

prohibits vacancy controls, which has created a perverse incentive for landlords to unlawfully evict tenants in rent-controlled units so that they can raise the rent beyond the cap. Western Center has engaged in extensive advocacy involving these illegal evictions. Property owners engage in a range of abusive practices in order to force tenants of rent-controlled units from their homes, including falsely alleging lease violations, harassment, and lock-outs.

In addition to capping rents, an extended eviction notice period and a right to cure would assist some tenants who face an unexpected expense that left them unable to pay rent. California does not have a right to cure, and tenants can be evicted for nonpayment of rent after only 3 days' notice. While rental assistance is sometimes available in these situations, it can rarely be deployed before the 3-day notice to pay rent or quit expires. An extended notice period that provides the tenant 30 days' notice paired with a right to cure would preserve many tenancies.

### **Just cause protections, including limitations on nonpayment evictions**

Rent limitations do not effectively protect tenants unless they are paired with just cause protections that require housing providers to state a fair reason before initiating eviction. Allowing housing providers to evict tenants without stating a reason invites discriminatory conduct and creates a lack of stability for tenants. California's just cause protections include an enumerated list of at fault just cause reasons, as well as a list of no-fault bases.<sup>13</sup> Unfortunately landlords have exploited the no-fault provisions in the law, and routinely seek to evict tenants based on false allegations of owner-move in or removal from the rental market. The City of Berkeley's just cause ordinance<sup>14</sup> is a better model for just cause protections and includes a right of return for tenants.

It is critical for no-fault evictions to include relocation benefits, and a right of return for displaced tenants where feasible. Otherwise, tenants who are displaced through no fault of their own may face homelessness due to inability to pay the upfront cost of new housing and moving. California law requires payment of one month's rent, which is not enough to cover moving expenses. Relocation benefits should be set at a minimum of 3 months rent in order to cover the initial cost of lease up at new housing. California law also permits eviction for substantial renovation<sup>15</sup>, but landlords have exploited this provision to evict tenants where only minor repairs are required. FHFA should also limit evictions on this basis more strictly, such that a property owner seeking to engage in substantial renovations should be required to obtain all required permits before taking any steps to evict.

Robust just cause protections should include a prohibition on non-payment evictions where the amount of rent owed is small. For example, tenants should not face eviction if they owe less than a month's rent. The City of Los Angeles recently adopted a minimum threshold for

---

<sup>13</sup> California Civil Code § 1946.2.

<sup>14</sup> See <https://rentboard.berkeleyca.gov/rights-responsibilities/evictions/good-cause-other-local-requirements>

<sup>15</sup> California Civil Code § 1946.2(b)(2)(D).

nonpayment evictions, where tenants cannot be evicted based on less than one month's worth of fair market rent for their unit.<sup>16</sup> This protection allows tenants time to catch up when they face an unexpected expense or income reduction.

### **Habitability and harassment**

In order to achieve stable housing for tenants, property owners must be required to maintain the housing in good condition. Absent enforcement of robust habitability standards, property owners can avoid eviction protections by simply refusing to make repairs, rendering other protections ineffectual. Enforcement of habitability standards is also critical; many tenants became homeless when landlords evicted them after they complained about unsafe conditions at the property.<sup>17</sup> Covered property owners that do not maintain housing in safe condition should be subject to penalties.

### **Rental registries**

Rental registries are an important enforcement tool for holding covered property owners accountable for compliance with tenant protections. An effective registry requires owners to include basic information about rental units, including the size of the unit, the rent amount, occupancy dates and number of occupants, utilities included, and contact information for the property owner. Without a registry or similar tracking mechanism, it is difficult to enforce rent limitations and track evictions.

### **Conclusion**

Thank you for your consideration of these comments, and for taking this step towards protecting tenants and promoting equitable access to housing. Please direct any questions regarding these comments to [housing@wclp.org](mailto:housing@wclp.org).

Sincerely,

Madeline Howard  
Senior Attorney  
Western Center on Law & Poverty

---

<sup>16</sup> See <https://housing.lacity.org/highlights/renter-protections>.

<sup>17</sup> Homelessness study at 34.