



July 31, 2023

The Honorable Sandra Thompson  
Federal Housing Finance Agency  
Office of Multifamily Analytics and Policy  
400 7th Street SW  
9th Floor  
Washington, D.C. 20219

**Submitted Electronically via FHFA.gov**

**RE: FHFA Request for Input (May 2023)  
Tenant Protections for Enterprise Backed Multifamily Properties**

Dear Director Thompson:

On behalf of the New Jersey Apartment Association (“NJAA”), we appreciate the opportunity to comment on the above captioned Request for Input (“RFI”) in which the Federal Housing Finance Agency (“FHFA”) seeks public input on whether FHFA should require or encourage certain tenant protections at multifamily properties backed by Fannie Mae and Freddie Mac (“the Enterprises”).

The NJAA is an association of owners, managers, and developers of more than 230,000 apartment homes and more than 400 industry suppliers that was formed to represent the interests of the multifamily housing industry in New Jersey. NJAA advocates before lawmakers, regulators, local government officials, and in the courts on behalf of its membership in support of policies that facilitate a vibrant multifamily ecosystem.

One in three New Jersey families choose to rent their home and New Jersey's apartment industry provides quality and affordable housing to more than a million New Jersey residents. New Jersey's multifamily industry is made up of more than 44,000 professionals employed by apartment firms and vendor companies comprising 135 different industries who work tirelessly every day to maintain a high quality of living for New Jersey's apartment residents. Operating apartments contributes more than \$5.7 billion to New Jersey's economy and building new apartment communities contributes an additional \$1.9 billion to the state economy.

For reasons outlined in our comments below, NJAA believes that the proposal made in this RFI to require or encourage specific tenant protections at multifamily properties with mortgage financing backed by the Enterprises is: **(1)** wholly unnecessary as state and local governments have a long history of successfully regulating the landlord tenant relationship to ensure appropriate tenant protections; **(2)** likely to be counterproductive as property owners would



likely reject Enterprises-backed financing if it comes attached with onerous conditions; (3) exceeds the statutory mandate of the FHFA, which is focused on ensuring that the Enterprises operate in a safe and sound manner and serve as an important source of liquidity for housing finance and investment, and (4) inappropriately usurps state and local prerogatives to regulate real property and the landlord-tenant relationship.

For these reasons, NJAA respectfully encourages that FHFA to reject this misguided foray into becoming a landlord-tenant regulator, and instead focus on its core mission of regulating the Enterprises.

### General Comments

#### **Regulation of the Landlord/Tenant Relationship is Best Left to State and Local Governments; FHFA Should Not Usurp the Authority of Democratically Elected State and Local Lawmakers by Imposing Federally Mandated Tenant Protections**

For background, New Jersey has a long history of having strong tenant protections. For example, in New Jersey:

- Most residential tenancies are governed by the **New Jersey Anti-Eviction Act**, which requires landlords to renew leases at the end of the lease term if a tenant chooses to stay except for narrow reasons permitted by statute.
- There are than 100 **municipal rent control ordinances**, which limit permissible rent increases at multifamily properties. Two thirds of all multifamily units in New Jersey are located within municipalities that have enacted rent control.
- All 3+ unit properties are **inspected on a cyclical basis** by the NJ Department of Community Affairs to ensure conformity with the NJ Uniform Fire Code and the Regulations for the Maintenance of Hotels and Multiple Dwellings. All residential leases carry an **implied warranty of habitability**, which imposes a duty on all landlords to make any repairs necessary to ensure that a rental home is habitable throughout the tenancy, and allows tenants to withhold rent when repairs are not made to vital facilities in a timely manner.
- The **NJ Law Against Discrimination (“NJ LAD”)** is widely regarded as one of the most comprehensive anti-discrimination laws in the country prohibiting discrimination and bias-based harassment based on eighteen protected classes in housing, including **source of lawful income**.
- And landlord-tenant laws give tenants certain specific rights, for example, the ability to **terminate leases early without penalty for enumerated reasons**, a **grace period to pay rent before a late fee can be assessed**, the ability to request that **window guards** and/or **steam radiator covers** be installed and maintained by the landlord, **the right to**



**pay rent by credit card, the right to pay rent by a nonelectronic means**, such as check or money order, the ability to avoid eviction by paying any rent determined by the court to be due and owing up to **three days following a court ordered lockout**, regulation of **security deposits**, and procedures concerning the return and disposal of **abandoned property** when an apartment is vacated.

- The **New Jersey Truth-in-Renting Act** requires landlords to give tenants a document summarizing tenant rights in New Jersey. The document, which was first published in the newspaper in the 1970s, currently stands at 51-pages.

As New Jersey’s landlord-tenant law demonstrates, state and local governments are more than capable of enacting tenant protections that reflect the political and economic needs of the communities they govern. These landlord-tenant laws must strike a careful balance between the rights of tenants and landlords so that tenant protections do not result in discouraging investment in rental housing or driving up the cost of housing.

NJAA believes that regulation of the landlord-tenant relationship is best placed at the state and local level, as it has traditionally been. As such, FHFA should not try to usurp the role of democratically elected state and local lawmakers by bootstrapping landlord-tenant regulations on properties utilizing financing backed by the Enterprises.

### **Rent Control is a Failed Housing Policy that Should Not Be Pursued at the Federal Level**

Rent control is a failed policy that reduces the supply of rental housing, leads to less reinvestment in existing properties, lowers housing quality for existing tenants, and ultimately results in higher property taxes for homeowners as multifamily property values stagnate and single-family home values continue to rise. Economists on both sides of the political spectrum have long agreed that rent control is a failed housing policy – which is reflected in a 1993 study, which found no issue with more consensus in the entire field of economics than the principle that “a ceiling on rents reduces the quality and quantity of housing.”<sup>1</sup>

As such, it is perhaps no surprise that of 50 U.S. states, plus Washington, DC, 33 states have enacted statewide laws expressly prohibiting rent control and in 10 states not a single jurisdiction has adopted it. As a result, today, rent control exists in some form in only seven (7) states (California, Oregon, Maine, Maryland, Minnesota, New Jersey, and New York) plus Washington, DC. And the vast majority of rent controlled units are found in just three states: California, New Jersey, and New York.

---

<sup>1</sup> A 1993 study of the opinions of economists found that the greatest agreement on any issue – with 93.5 percent of surveyed economists agreeing – that “a ceiling on rents reduces the quantity and quality of housing available.” See: Alston, Richard M., J. R. Kearl, and Michael B. Vaughan, “Is There a Consensus Among Economists in the 1990’s?” *The American Economic Review* 82, no. 2 (1992): 203–9.



And even those few jurisdictions with rent control have enacted measures designed to ameliorate the market distortions and negative effects of rent control. For example, California, through the Costa-Hawkins Rental Housing Act, passed in 1995, allows units to be rented at market-rates once the current tenant moves out (a policy known as vacancy decontrol) and prohibits local rent controls from being imposed on any project developed after 1995.<sup>2</sup> New Jersey has enacted a state law to encourage new construction by exempting most new developments from rent control for 30-years following construction.<sup>3</sup> New York City exempts properties constructed after 1974 from rent control or stabilization (unless developers voluntarily opt into rent stabilization in exchange for certain subsidies) and maintained a policy of “luxury vacancy decontrol” for decades. As a result, less than half of New York City’s 2.1 million apartments are subject to price controls today.<sup>4</sup>

Given that widespread understanding that rent control reduces the quality and supply of rental housing, the limited number of jurisdictions in the United States that have adopted rent control, and the ongoing efforts of jurisdictions with rent control to ameliorate the negative impacts of rent control, we would encourage FHFA not to replicate this policy blunder at the federal level.

### **Specific Comments**

#### **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?**

It would be not only unnecessary, but counterproductive, for the FHFA to attempt to usurp the long establish role of state and local governments to regulate the landlord-tenant relationship by imposing landlord-tenant regulations on properties utilizing Enterprise-backed financing. The regulation of landlord-tenant relationship is traditionally and appropriately the purview of state and local governments. States like New Jersey have demonstrated the capacity to regulate the landlord-tenant relationship, multifamily housing, and housing development. These policies inevitably require a balance to be struck between the rights of tenants and landlords, costs and benefits, and economic growth and preservation. There are no national “one-size-fits-all” housing policies, and these housing policy decisions are best made at the state and local levels where the impacts can be more closely felt and more easily adjusted.

For example, elected officials in Bayonne, NJ, Eatontown, NJ, Hamilton Twp., NJ, and Cherry Hill, NJ, after long periods with strict rent controls, recently enacted policies to phase-out rent

---

<sup>2</sup> Costa-Hawkins Rental Housing Act (Cal. Stats. 1995, Ch. 331, Sec. 1. Effective January 1, 1996.)

<sup>3</sup> N.J.S.A. 2A:42-84.1 et seq.

<sup>4</sup> “Profile of Rent-Stabilized Units and Tenants in New York City,” NYU Furman Center, June 2014 [https://furmancenter.org/files/FurmanCenter\\_FactBrief\\_RentStabilization\\_June2014.pdf](https://furmancenter.org/files/FurmanCenter_FactBrief_RentStabilization_June2014.pdf)



control in their jurisdictions by permanently removing units from rent control when current tenants move from their apartments. In each case, local officials cited goals of encouraging owners to reinvest in their properties and growing property tax revenue from multifamily properties as reasons for phasing out rent control. Meanwhile, elected officials in Montclair, NJ, Bloomfield, NJ, and Highland Park, NJ voted to newly enact rent control in their jurisdictions.

Furthermore, a distinction is necessary between establishing tenant protections at multifamily properties and earlier efforts by FHFA and the Enterprises to establish tenant site lease protections prior to issuing a loan to a manufactured housing purchaser or owner or evaluating homeowners or condominium owners associations prior to issuing a loan to a condominium purchaser or owner. In the case of manufactured housing communities or condo associations, the protections safeguard the mortgagee, increasing the likelihood of repayment and safeguard the security interest of the mortgagor in the financed property. Conversely, imposing tenant protections on landlords obtaining Enterprise-backed financing, especially to the extent that the protections would reduce the revenue (*e.g.* limitations on rent increases, prohibitions against fees for services, or delays in removing tenants who have defaulted on their rent obligations) would increase risks for bondholders, the Enterprises, and ultimately taxpayers.

**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.**

As stated in the answer to A-1 above, it would be not only unnecessary, but counterproductive, for the FHFA to attempt to usurp the long establish role of state and local governments to regulate the landlord-tenant relationship by imposing landlord-tenant regulations on properties utilizing Enterprise-backed financing. Given the state-regulation of the landlord-tenant relationship, we can identify no protection that is better established at the federal-level than the state-level.

Moreover, FHFA's proposed regulation would not supplant existing state and local landlord-tenant laws, it would add another layer on top of them, which would result in duplicative and, at times, incompatible regulations, would add needless additional complexity to compliance efforts, and create uncertainty that would only be resolved through jurisdiction-by-jurisdiction litigation.

**A-4: How might requiring tenant protections at Enterprise-backed multifamily properties impact housing supply, including new construction?**

The Enterprises have served as a cornerstone of the housing finance system in the United States for both 1-4 family properties and multifamily (5+ unit) properties. The Enterprises have played a critical role in financing multifamily housing, a role that traditionally increases during periods



of economic stress.<sup>5</sup> And the stability that this financing has provided has helped lessen boom and bust cycles in multifamily construction – leading to much needed housing development.

We believe that any effort to impose landlord-tenant regulations on properties with Enterprise-backed loans will reduce the attractiveness of Enterprise-backed financing within the industry as market-participants will both minimize regulatory risk and regulatory cost by seeking non-Enterprise backed financing. As such, the Enterprises-backed loans could become relegated to “last resort” status – exposing bondholders and taxpayers to only the riskiest transactions.

Apartment owners and developers would be very unlikely to accept financing that would require compliance with tenant protections that limit rent revenue by restricting rent increases, limiting the ability to remove or recover rent payments from nonpaying tenants, or imposes other landlord-tenant regulations. As a general economic principle, if the anticipated cost of the proposed tenant protection exceeds the anticipated benefit of Enterprise-backed financing, property owners will simply look elsewhere.

**B-2: What actions should the Enterprises take, if any, to ensure universal acceptance of sources of income at Enterprise-backed multifamily properties?**

New Jersey has required property owners to accept rental assistance vouchers without regard to the source of income for more than two decades. Yet despite mandating participation, challenges persist for both housing providers and rental voucher holders. The goal should not be to mandate participation in voucher programs, but to make those voucher programs more attractive to market participants so that vouchers are eagerly accepted. This can be done by streamlining inspections (reducing delays), increasing payment standards (increasing the number of units that a voucher holder would be eligible to rent), limiting paperwork obligations on landlords, and limiting delays in payments. We do not believe that FHFA can take any action to mandate “source of income” protections that is not already addressed at the state and local level.

**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?**

The Department of Housing and Urban Development (HUD), through its Office of Fair Housing and Equal Opportunity, receives and investigates complaints under the Fair Housing Act and determines if there is reasonable cause to believe that discrimination has occurred or is about to occur. State and local fair housing agencies and private fair housing organizations also investigate complaints based on federal, state, and local fair housing laws. If alleged discrimination takes place in a state or locality with its own similar fair housing enforcement

---

<sup>5</sup> National Multi Housing Council, “GSE Historical Production and Performance,” June 5, 2017. <https://nmhc.org/research-insight/analysis-and-guidance/gse-historical-production-and-performance/>



agency, HUD must refer the complaint to that agency.<sup>6</sup> In New Jersey, that agency is the Division on Civil Rights, which is part of the Attorney General’s Office (New Jersey Department of Law and Public Safety).

Under New Jersey law, any person can make a complaint alleging a violation of fair housing laws (the federal Fair Housing Act or the New Jersey Law Against Discrimination) with the Division on Civil Rights (DCR). A DCR investigator will then determine whether there is jurisdiction, and if so, will prepare a “Verified Complaint” based on the information that the person supplies. Once a Verified Complaint is established, DCR begins to gather evidence while also attempting to resolve disputes by offering free dispute resolution services. If parties are unable or unwilling to resolve the dispute, based on the findings of the investigation, if DCR determines there is sufficient evidence to support a reasonable suspicion that fair housing laws were violated, it will issue a “Finding of Probable Cause.” Once DCR issues a Finding of Probable Cause, the case will go to conciliation, where the parties will have the opportunity to negotiate a voluntary resolution. If no voluntary resolution is reached, DCR will appoint a Deputy Attorney General to prosecute the case either in the Office of Administrative Law or in Court. If DCR determines that there is not sufficient evidence to support a reasonable suspicion that the law was violated, it will issue a “Finding of No Probable Cause.” Determinations made by the DCR can be appealed to the Appellate Division of the New Jersey Superior Court.

Furthermore, complainants may present their own evidence by requesting a hearing before an Administrative Law Judge, rather than going through a DCR-led investigation. Aggrieved persons also have direct legal remedies and can file a lawsuit in New Jersey Superior Court within two years of an alleged violation.

Again, given existing enforcement mechanisms of federal and state fair housing laws, which were established by Congress in the Fair Housing Act Amendments of 1988, it is unclear what role the FHFA would anticipate being necessary to assume for itself or the Enterprises in the fair housing enforcement process. Does FHFA believe that Congress erred when it crafted current enforcement procedures? Or that the HUD or its Office of Fair Housing and Equal Opportunity is unable to fulfil the mandate that Congress gave it when enacting the Fair Housing Act?

**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 information.**

---

<sup>6</sup> 43 U.S.C. sec. 3610(f)(3)



We do not believe that there is a lack of understanding of the rent, fees, or other costs associated with apartment rentals, such as utilities. Rent, fees, and which utilities are included in rent and which utilities are paid for separately are published in online and offline marketplaces, disclosed during apartment tours, and ultimately included in lease agreements written in plain language.

**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?**

As stated in our answer to question A-4, we believe that imposing onerous tenant protections on properties utilizing Enterprise-backed financing would relegate Enterprise-backed financing to financing of the last resort within the multifamily industry. As such, we believe that it runs counter to the FHFA's statutory mission to ensure that the Enterprises operate in a safe and sound manner to serve as a reliable source of liquidity and funding to support housing finance and community investment.

**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?**

As stated in our answer to questions A-1 and A-2, we do not believe that the FHFA has a role in establishing tenant protections. This role is properly reserved for state and local lawmakers. Federal regulators should not be working indirectly through bank and nonbank entities to supplant the decisions made by state and local officials through democratic processes to establish landlord-tenant protections that it deems adequate.

Since utilizing Enterprise-backed financing is voluntary, it seems more likely that attempts to impose additional tenant protections would simply have the effect of pushing those who can utilize Enterprise financing to do so. As such, we would anticipate it would have negative consequences for the quality of Enterprise backed loans and the concomitant risk to the U.S. Treasury.

**E-3: How could the quality of housing units be assessed and how could the Enterprises support the ongoing monitoring of such efforts?**

In New Jersey – and in many states – housing units are repeatedly inspected by state and local authorities. In New Jersey, almost every apartment is inspected by a local housing officer who issues a “continuing certificate of occupancy” before a tenant can move in; the New Jersey





Department of Community Affairs, Bureau of Housing Inspection conducts a cyclical inspection of units and common areas to ensure that properties continue to be well-maintained; Fire Code Officials inspect most apartment communities annually to ensure compliance with the Uniform Fire Code; elevators must be inspected by DCA-licensed inspectors to ensure compliance with the Elevator Subcode and manufacturer instructions; pre-1978 housing must be inspected by municipal or DCA-licensed inspectors to ensure that they are “lead safe;” HUD imposes inspections on federally financed properties; and public housing authorities conduct annual inspections of properties with Housing Choice Vouchers.

Given the exhaustive number of comprehensive housing inspections already on the books in New Jersey and in jurisdictions across the country, we do not believe that additional efforts to assess housing quality would be warranted. Furthermore, it is important to note that every inspection comes with a cost and an intrusion into a tenant’s home. Policymakers should look to reduce redundancy in inspections, not add additional inspections.

### **Conclusion**

We appreciate that the FHFA is soliciting public feedback through this RFI. We would strongly encourage the FHFA to avoid unnecessarily usurping state and local prerogatives to regulate the landlord-tenant relationship by imposing redundant, national tenant protections. We would encourage the FHFA, instead, to look to boost the impact of its programs to support the construction of new apartments and capital investment in existing apartments to better support the multifamily industry in meeting the nation’s housing needs.

Thank you for your consideration of our feedback.

Very truly yours,

Nicholas J. Kikis

Vice President

NJ Apartments Association