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July 25, 2023

Federal Housing Finance Agency
Office of Multifamily Analytics and Policy
400 7th Street, SW
Washington, DC

Re: Request for Input on Tenant Protections at Multifamily Properties with Mortgages Backed by Fannie Mae and Freddie Mac

To Whom It May Concern:

We write to offer public comment on the Federal Housing Finance Agency (FHFA)'s Request for Input on Tenant Protections for Enterprise-Backed Multifamily Properties published on May 31, 2023. We are employed by the Urban Institute—a nonprofit research and policy organization based in Washington, DC—but we are presenting our own views, and the views shared in this response do not reflect the views of the Urban Institute, its trustees, or its funders. This submission contains responses to select questions from FHFA's request for input on multifamily tenant protections.

Urban Institute researchers have studied tenant protections, and the issues that owners of multifamily housing face, at length. We bring to our commentary varied expertise on data sources, data quality, and evidence about effective tenant protection approaches. For questions, or to request a follow-up discussion based on this response, please contact Kathryn Reynolds, principal policy associate, at kreynolds@urban.org.

Section A. Tenant Protections

Question 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?

The Enterprises play a large role financing multifamily housing. The government-sponsored enterprises (GSEs) hold a large share of multifamily mortgage debt[1] and support approximately 8 million multifamily units—approximately 40 percent of all multifamily rental units in the US.[2] While the Enterprises have an affirmative obligation to maintain a strong financial condition and reasonable economic return in their lending portfolio, they are also tasked with facilitating financing of affordable housing for low- and moderate-income families consistent with their public purposes. This is articulated in both the Enterprises'

[1] Mortgage Bankers Association, "Commercial/Multifamily Mortgage Debt Outstanding" (Washington, DC: Mortgage Bankers Association, 2023), https://www.mba.org/docs/default-source/research-and-forecasts/cmf-mdo/1q23mortgagedebtoutstanding.pdf?sfvrsn=53ee5a06_1.

[2] Laurie Goodman, Karan Kaul, and Michael Neal, "The CARES Act Eviction Moratorium Covers All Federally Financed Rentals—That's One in Four US Rental Units," *Urban Wire* (blog), Urban Institute, April 4, 2020, https://www.urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-thats-one-four-us-rental-units.

mission statements[3] and FHFA's mission-driven requirements.[4] Given their role in the market and their missions, the GSEs can use tools at their disposal to prevent renter instability and its attendant public costs while balancing the financial soundness of its investments.

Research on the impacts of eviction shows significant health, mental health,[5] and economic[6] impacts on households that experience forced moves. The disruption can have major impacts on jobs and income for adults in the household and on education and future outcomes for children.[7] For the subset of evicted tenants who become homeless, public costs increase drastically. Emergency shelter costs an estimated $5,000 per month per family, with households receiving assistance for an average of seven months. Rehousing a family costs approximately $7,000 and varies by market.[8] Due to these impacts, eviction—whether it occurs because of a court order or because a household vacates a home due to fear, reprisal, or feeling pressure from the landlord (informal eviction)—has significant costs for the household, the owner of the property, and the community at large.[9] The GSEs need to consider these costs to the public as they weigh the soundness of their financial investments.

The GSEs, therefore have a role in ensuring that their finances are backing multifamily owners and operators with practices in place that can benefit tenant stability. We recently worked with Enterprise Community Partners, the Housing Partnership Network, and Stewards of Affordable Housing for the Future to understand the practices that multifamily owners believe have a connection to tenant stability and eviction prevention. We convened 10 large multifamily owners and property managers with property footprints across the country and worked with them to articulate five important principles and practices that owners can take to improve tenant stability:[10]

1. Remove barriers for tenants in their housing search and use transparent processes when establishing tenancy
2. Clearly and consistently communicate with tenants in a culturally appropriate way from lease-up through all stages of tenancy
3. Proactively connect tenants to resources and encourage communities of support, to help tenants stay stable throughout their tenancy

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[3] Fannie Mae's mission statement incudes that it is "committed to facilitating … quality, affordable rental housing across America." Similarly, Freddie Mac states that it serves "renters by equitably providing liquidity, stability and affordability to the housing market."

[4] FHFA, "2022 Multifamily Caps for Fannie Mae and Freddie Mac" (Washington, DC: FHFA, 2021), https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/2022-Multifamily-Caps-Factsheet.pdf.

[5] For examples, see Kay Jowers, Christopher Timmins, Nrupern Bhavsar, Qihui Hu, and Julia Marshall, "Impacts of Utility Disconnection and Eviction Moratoria on Infections and Deaths across US Counties," Working Paper 28394 (Cambridge, MA: National Bureau of Economic Research, 2021), https://www.nber.org/papers/w28394; M. K. Hoke and C. E. Boen, "The Health Impacts of Eviction: Evidence from the National Longitudinal Study of Adolescent to Adult Health," *Social Science & Medicine* (2021); and Megan Hatch and Jinhee Yun, "Losing Your Home Is Bad for Your Health: Short- and Medium-Term Health Effects of Eviction on Young Adults," *Housing Policy Debate* 31, no. 3–5 (2020): 469–89.

[6] For examples, see Matthew Desmond, "Eviction and the Reproduction of Urban Poverty," *American Journal of Sociology* 118, no. 1 (2012); and Matthew Desmond and C. Gershenson, "Housing and Employment Insecurity among the Working Poor," *Social Problems* 63, no. 1 (2016): 46–67.

[7] For example, see Claudia J. Coulton, Francisca Richter, Seok-Joo Kim, Robert Fischer, and Youngmin Cho, "Temporal Effects of Distressed Housing on Early Childhood Risk Factors and Kindergarten Readiness," *Children and Youth Services Review* 68 (2016): 59–72.

[8] Ibid.

[9] Samantha Batko and Amy Rogin, "The End of the National Eviction Moratorium Will Be Costly for Everyone," *Urban Wire* (blog), Urban Institute, June 24, 2021, https://www.urban.org/urban-wire/end-national-eviction-moratorium-will-be-costly-everyone.

[10] Kathryn Reynolds, Katie Fallon, Owen Noble, Abby Boshart, Lee Evans, and Andrew Jakabovics, *Preventing and Mitigating Evictions after the COVID-19 Crisis: Principles and Practices for Rental Housing Owners* (Washington, DC: Urban Institute, 2023).

4. Allow flexibility in terms, processes, and payments for renters to reduce the likelihood of eviction
5. Create and commit to procedures and policies that prioritize eviction diversion options in the case of nonpayment or late payment

FHFA can use this document as a guide as it develops a role for the GSEs in providing tenant protections at Enterprise-backed multifamily properties.

Question 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.

The GSEs can use their stature as a preferred investor in multifamily housing to ensure that their liquidity is benefiting lenders of multifamily owners that meet certain requirements. In fact, the GSEs have already taken an important step in improving tenant stability by requiring that all multifamily owners with GSE financing provide their tenants with 30 days' notice to vacate a unit in cases of nonpayment of rent.[11] We rely on our recent report on multifamily owner and operator tenant protections (see answer to A-1) to provide several recommendations of policies and actions multifamily owners can take to improve their residents' stability. These could be factors for review during underwriting or as requirements that the GSEs could consider implementing as a condition of future financing.

First, the GSEs can ensure that owners are using just-cause eviction policies. Just-cause eviction policies articulate the grounds by which a landlord may evict a tenant and typically constrain these reasons to non-payment of rent or material noncompliance of the lease terms.[12] Just-cause eviction policies help ensure that an eviction is not filed for retaliatory or discriminatory reasons. As part of a just-cause mandate, the GSEs could ensure, for example, that there is a minimum rent arrears standard (such as at least one month's rent) that can trigger an eviction filing, as research shows that many evictions are filed over small debts.[13]

Second, our research shows that tenants can benefit when owners have in place a set of standard actions that property management staff are expected to follow after a lease violation occurs. Such standard operating procedures should include both internal and engagement steps with residents. These procedures should be made clear to residents upon the start of tenancy and reiterated in future resident communications. The GSEs can ensure that multifamily owners have standard operating procedures in place that are clearly communicated to tenants at minimum at the start of tenancy.

Third, the GSEs can ask owners to commit to finding alternatives to eviction, such as by engaging in mediation over lease violations, offering lease modifications when it may improve stability, and offering lease rescission. Mediation—particularly when provided with other resident supports, such as financial and legal assistance—can benefit tenant stability (for more information, see evidence in answer to D-1). Lease modifications may include changing the day of the month upon which rent is due to align with a resident's pay schedule or allowing a caretaker to live in the unit temporarily to help a family member work. Mutual lease rescissions help to ensure that a resident avoids an eviction filing on their public record, which is often used by landlords in their screening of new tenants and can limit future housing options.[14]

Fourth, the GSEs could require that rent increases and fees are reasonable. The GSEs could define rent gouging and ask that owners agree to keep rents within a certain reasonableness standard, such as tying

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[11] FHFA, "FHFA Announces Multifamily Tenant Protections," news release, July 28, 2021, https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Multifamily-Tenant-Protections.aspx.

[12] Local Housing Solutions, "Just Cause Eviction Policies," accessed July 24, 2023, https://localhousingsolutions.org/housing-policy-library/just-cause-eviction-policies/.

[13] Emily Badger, "Many Renters Who Face Eviction Owe Less Than $600," *New York Times*, December 12, 2019, https://www.nytimes.com/2019/12/12/upshot/eviction-prevention-solutions-government.html.

[14] Jung Hyun Choi, Laurie Goodman, and Daniel Pang, "The Real Rental Housing Crisis Is on the Horizon," *Urban Wire* (blog), Urban Institute, March 11, 2022, https://www.urban.org/urban-wire/real-rental-housing-crisis-horizon.

rent increases to the inflation rate. Some states, such as California, have defined maximum rent increases for the bulk of their multifamily properties.[15] Several states have begun to legislate rental fees, including maximum fee amounts that rental owners can charge. For example, Colorado SB21-173 bars landlords from charging late fees until seven days after rent is due and caps late fees at $50 or 5 percent of the past-due rent, whichever is greater.[16] The GSEs can also impose certain minimum thresholds for rent increases and fees in their multifamily portfolio.

Fifth, where possible, the GSEs could review an owner's history of eviction filings during underwriting to determine their recent rate of filing, amounts filed for, and whether there are any potentially discriminatory patterns in filing practices. Owners who engage in high rates of filing, filing for small amounts, or overt discrimination should be ineligible for GSE financing until those practices are improved. Unfortunately, eviction filing data are limited in geographic availability and quality as we discuss in our answer to question A-5. For multifamily buildings already backed by the GSEs, they should require that owners report on eviction filings and completed evictions by household demographics.

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

Very little research reliably connects changes in tenant protections with changes in housing supply. The best literature is on the impact of rent control policies. A 2019 study in San Francisco found that a local rent control policy meant that renters were more likely to remain in their homes 5 and 10 years later, with large impacts for households of color. The same study found that rental housing owners subject to the regulation were more likely to convert to condos, reducing the rental housing supply.[17] Observers have noted that restrictions on condo conversions as part of the San Francisco law could have limited this effect.[18] Given the market share of GSE financing, a reasonable person would conclude that adding some tenant protection requirements to GSE financing would do little to impact future rental housing supply.

Question 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?

Understanding rental property policies, procedures, and practices requires, at minimum, data on rental ownership, rent prices, management practices, and eviction practices. The quality of data on rental property ownership varies from municipality to municipality. Tracing rental ownership first means identifying rental properties, which requires either a rental registry or public tax data with information on unit numbers. Then, once rentals are identified, it requires further tax data on ownership. Few cities make all these data public.[19] Minneapolis, Philadelphia, and New York are three exceptions. Ensuring that property ownership can be easily traced is important both so cities can understand their landlord profiles and needs, and so tenants can better hold their landlords accountable by tracing their property ownership to a person rather than a shell entity.

Data on rent prices and rent payments are also extremely limited. Multiple data sources, including Black Knight, Mortgage Bankers Association, and the three credit bureaus allow us to draw inferences about on-

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[15] "Landlord-Tenant Issues," State of California Department of Justice, Office of the Attorney General, accessed July 24, 2023, https://oag.ca.gov/consumers/general/landlord-tenant-issues#protections.

[16] The text of the bill is available at https://leg.colorado.gov/bills/sb21-173.

[17] Rebecca Diamond, Tim McQuade, and Franklin Qian, "The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco," *American Economic Review* 109, no. 9 (2019): 3365–94.

[18] Katie Wilson, "Do Renter Protections Reduce the Rental Housing Supply?" op-ed, *Crosscut*, June 23, 2021, https://crosscut.com/opinion/2021/06/do-renter-protections-reduce-rental-housing-supply.

[19] Fay Walker and Owen Noble, "Understanding Who Owns Rental Stock Can Ensure Tenants and Small Landlord Get the Support They Need," *Urban Wire* (blog), Urban Institute, March 23, 2022, https://www.urban.org/urban-wire/understanding-who-owns-rental-stock-can-ensure-tenants-and-small-landlords-get-support.

time mortgage payment by household type for most US homeowners, but there is no equivalent dataset in the rental market. This makes it very difficult to understand trends in renter instability by market or household type.[20] At the onset of the pandemic, the National Multifamily Housing Council published a tracker showing the percentage of on-time rent payments collected by their members, but these data only ran through 2021.[21] Urban has been tracking payments made to mom-and-pop landlords since January 2020.[22] The data are available at the state and metro level where sample sizes are large enough, but the data cover fewer than 50,000 renter households and cannot be broken down by household characteristics, including income and race.

On the whole, rent price data are often aggregated and difficult to find on an individual level. In some cities with rent stabilization laws, a renter can request data on a unit's rent history to see whether they are being overcharged,[23] but even data that are supposed to be easily accessible for rent stabilized units can be difficult to access. While there is research[24] on whether the cost of homeownership varies by households (e.g., by race and ethnic groups), because of data unavailability research has yet to examine whether certain groups of renters are overcharged.

When it comes to eviction data, no national data source is available to understand trends in court-ordered and administrative eviction.[25] Eviction Lab's Eviction Tracking System[26] and Legal Services Corporation's (LSC's) Civil Court Data Initiative[27] are two of the most comprehensive sources of data on eviction filing, but both are constrained by where they can obtain data-sharing agreements or scrape data from public court records. While Eviction Lab imputes data nationally at the county level, it collects administrative data directly for only 10 states and 34 localities. LSC's data covers 30 states and 1,250 counties across the country, but with variations in data available by place. In some cities, local advocates or researchers have scraped court dockets to create their own datasets.[28] Rural counties are often missing from existing data.

For the places where eviction data exist, there are no national data quality standards, and the quality of recordkeeping varies from court to court. Often data entries don't include unique identifiers, and many courts don't even include address information. Researchers must rely on other information, such as first and last name of the defendant, to connect eviction filing data with other datasets, making accuracy difficult.

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[20] Jung Hyun Choi, Laurie Goodman, and Daniel Pang, "Navigating Rental Payment and Eviction Data during the Pandemic" (Washington, DC: Urban Institute, 2022).

[21] National Multifamily Housing Council, "Rent Payment Tracker," accessed July 24, 2023, https://www.nmhc.org/research-insight/nmhc-rent-payment-tracker/.

[22] Jung Hyun Choi, Daniel Pang, and Laurie Goodman, "Tracking Rent Payments to Mom-and-Pop Landlords," Urban Institute, last updated April 17, 2023, https://www.urban.org/data-tools/tracking-rent-payments-mom-and-pop-landlords.

[23] JustFix created a tool for renters to request their apartment's rent history from the New York State Division of Housing and Community Renewal: https://app.justfix.org/en/rh/splash?_ga=2.171660521.855767681.1688046456-1821440259.1688046456

[24] Michelle Aronowitz, Edward L. Golding, and Jung Hyun Choi, "The Unequal Costs of Black Homeownership" (Cambridge, MA: MIT Golub Center for Finance and Policy, 2020), https://mitsloan.mit.edu/centers-initiatives/mit-gcfp/unequal-costs-black-homeownership.

[25] Office of Policy Development and Research, *Report to Congress on the Feasibility of Creating a National Evictions Database* (Washington, DC: US Department of Housing and Urban Development, Office of Policy Development and Research, 2021), https://www.huduser.gov/portal/publications/Eviction-Database-Feasibility-Report-to-Congress-2021.html.

[26] The Eviction Tracking System is available at https://evictionlab.org/map/?m=modeled&c=p&b=efr&s=all&r=states&y=2018&z=2.44&lat=38.14&lon=-97.50&lang=en.

[27] The Eviction Tracker is available at https://civilcourtdata.lsc.gov/data/eviction.

[28] Rebecca L. Cowin, Hal Martin, and Clare Stevens, "Measuring Evictions during the COVID-19 Crisis" (Cleveland: Federal Reserve Bank of Cleveland, 2020), https://doi.org/10.26509/frbc-cd-20200717.

Finally, while eviction filing data can hint at housing instability, court filings undercount the incidence of involuntary moves resulting from extralegal eviction or a renter moving before an eviction is filed. Recently, the US Census began asking about involuntary moves in its Pulse Household Survey, providing additional insight into the types of pressure that renters are facing and the incidence of involuntary moves.[29]

More data on on-time rent payment and evictions would enable better tracking of tenant outcomes, particularly the impact on tenants of changes to owner management practices. A growing body of research is investigating the impact of owner management practices on tenant stability (see the five principles mentioned under our response to question A-1). Fully understanding the impact of management practices on tenant outcomes requires data on practices as well as tenant-level outcomes.

The Enterprises could improve public data by making information about the units they finance available. For example, the GSEs have started to facilitate positive rent reporting to the credit bureaus as part of their equitable housing finance plans. They could provide aggregated, nonidentifiable data on rental payments, both positive and negative, by building type and tenant demographic. The GSEs could also provide data for all units they finance, such as natural owner, property address, property management company, number of units, whether units are subsidized and subsidy sources, and rent prices at time of financing. Finally, as a condition of financing, the GSEs could require reporting of eviction filings and judgments as well as any violations of local rental laws.

Question 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?

Please see our answer to question A-5. More reliable information on management practices, including tenant protections, rent prices, on-time rent payments, and ownership of multifamily buildings would help connect owner practices with tenant outcomes. Further, more reliable and public data on eviction filings across geographies would help researchers link those data to ownership records.

Question 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.

See our footnote citations for full relevant bibliography, particularly the following documents:

1. *Information on multifamily owner practices that can improve tenant stability*: Kathryn Reynolds, Katie Fallon, Eleanor Noble, Abby Boshart, Lee Evans, and Andrew Jakabovics, *Preventing and Mitigating Evictions after the COVID-19 Crisis: Principles and Practices for Rental Housing Owners* (Washington, DC: Urban Institute, 2023).
2. *Information on data gaps that limit the ability to assess the impact of property management practices on tenants and multifamily rental properties:* Jung Choi, Laurie Goodman, and Daniel Pang, "Navigating Rental Payment and Eviction Data during the Pandemic" (Washington, DC: Urban Institute, 2022).

Section D. Tenant Housing Stability

Question 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.

The best evidence on eviction prevention programs or policies (either voluntary or required) that improve the housing stability of multifamily tenants is on the impact of local laws or policies and legal or court

[29] Kate Reynolds and Elizabeth Burton, "An Estimated One in Five Renters Feels Pressured to Leave Their Home," *Urban Wire* (blog), Urban Institute, July 3, 2023, https://www.urban.org/urban-wire/estimated-one-five-renters-feels-pressured-leave-their-home.

interventions. There is less research on owner and property management practices and their impacts on tenant stability or eviction prevention. As described in our answers to questions A-1 and A-2, Urban's recent research on the practices of mission-driven landlords and property managers provides emerging information on the link between owner practices and preventing eviction.

With regard to local and court policies, the evidence on the effectiveness of right to counsel on preventing eviction is relatively strong. Most notably, a study in Boston used randomized controlled trials to identify the impacts for tenants who had full legal representation compared with those that did not. The study found that renters receiving legal representation were twice as likely to remain in their homes than those without representation.[30]

Literature is also emerging on positive eviction-prevention impacts for tenants who are protected by just-cause eviction policies. As noted in our answer to question A-1, just-cause policies articulate the grounds by which a landlord may evict a tenant and typically constrain these reasons to nonpayment of rent or material noncompliance of the lease terms. A 2019 study comparing California cities that had passed just-cause eviction policies with cities that had not—matched on several local characteristics such as population and renter share of population, median gross rent and property value—found significantly fewer eviction filings and completed evictions in cities that had implemented just-cause ordinances.[31] A 2022 research study in the San Francisco Bay area showed that just-cause eviction policies helped stabilize renters in gentrifying neighborhoods. The researchers found that just-cause policies seemed to help decrease displacement for the lowest socioeconomic status residents in gentrifying neighborhoods.[32]

Other studies show positive outcomes for tenants who have the option for coordinated social service provision, including access to mediation, legal, and financial assistance services. The EPIC program in Toronto provides wraparound services to tenants facing eviction, including case management, mediation services, referrals to legal supports, assistance in securing financial support, and rehousing when eviction diversion isn't possible. An evaluation of the program found that of 97 participants discharged from the program, 90 percent stabilized their housing, 8 percent found new housing, and 2 percent entered into homelessness.[33] There are several nonexperimental case studies of similar programs in the US, including Philadelphia's eviction diversion program and the Ramsey County Housing Court Clinic model in Minnesota.[34]

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[30] Boston Bar Association Taskforce on the Civil Right to Counsel, "The Importance of Representation in Eviction Cases and Homelessness Prevention" (Boston: Boston Bar Association, 2012), https://www.bostonbar.org/app/uploads/2022/06/bba-crtc-final-3-1-12.pdf.

[31] Julieta Cuellar, "Effect of 'Just Cause' Eviction Ordinances on Eviction in Four California Cities," *Journal of Public and International Affairs*, 2019, https://jpia.princeton.edu/news/effect-just-cause-eviction-ordinances-eviction-four-california-cities

[32] Karen Chapple, Jackelyn Hwang, Jae Sik Jeon, Iris Zhang, Julia Greenberg, and Bina Patel Shrimali, "Housing Market Interventions and Residential Mobility in the San Francisco Bay Area," working paper (San Francisco: Federal Reserve Bank of San Francisco, 2022), https://www.frbsf.org/community-development/publications/working-papers/2022/march/housing-market-interventions-and-residential-mobility-san-francisco-bay-area/?utm_source=referral&utm_medium=partnerreport&utm_campaign=regionalequity.

[33] John Ecker, Sarah Holden, and Kaitlin Schwan. 2018. *An Evaluation of the Eviction Prevention in the Community (EPIC) Program*. Toronto, ON: Canadian Observatory on Homelessness Press. Available at https://www.researchgate.net/publication/331044328_An_Evaluation_of_the_Eviction_Prevention_in_the_Community_EPIC_Program.

[34] Kimberly Burrowes, Maya Brennan, Colleen Ebinger, and Ellen Sahli, "Crisis Coordination and Eviction Prevention" (Washington, DC: Urban Institute, 2020), https://www.urban.org/research/publication/crisis-coordination-and-eviction-prevention.

Finally, new research on other local policies, such as the impact of eviction filing fees on landlords' tendency to file, shows how changes in local administrative policies affect eviction prevention.[35]

Question 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?

See our answer to question A-2.

Section E. Risk Management

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?

While there is no doubt that requiring certain tenant protections at Enterprise-backed multifamily properties will add some level of new burden to owners, lenders, and the GSEs, it will help minimize public costs that land elsewhere. As explained in our answer to A-1, housing instability comes with high costs to families, owners, and communities. These costs impact society not just now, but also in the future as the impacts on children can follow them into adulthood.

Second, as environmental, social, and governance considerations become more important to regulators and investors, the negative externalities associated with housing instability could become a liability to the GSEs. The GSEs have an important role in providing housing to low- and moderate-income households using the backing and creditworthiness of public dollars. The negative externalities that become liabilities for other parts of the government sector in the form of health, mental health, unemployment, education, and homelessness services costs could be avoided by better integrating the GSEs' fiduciary duties with their social duties. Because tenant housing outcomes are so directly linked to the business of the GSEs, environmental, social, and governance considerations should be woven into underwriting and other risk management processes rather than their own set of activities.[36]

Question E-4: How should the Enterprises evaluate the impacts of multifamily tenant protections on their portfolios, on the supply of housing, and on renters?

Understanding the impacts of multifamily tenant protections would first require creating outcome indicators of interest, establishing a baseline of tenant outcomes for the GSE's existing multifamily rental portfolio, and then ensuring data collection practices continue to track outcomes after the implementation of tenant protections. While this data collection would entail up-front investment for owners and lenders and place an increased burden on GSEs to ensure data collection practices and quality, it would better enable GSEs to understand the impacts of tenant protections on landlords, tenants, and housing supply overall. In their data collection efforts, the GSEs should consider any potential unintended consequences of new regulation and aim to collect data that could capture such effects. As an example, rent caps for lease renewals without similar caps for new tenants could lead to the unintended consequence of landlords refusing to renew leases, thus driving tenant turnover. The GSEs should be aware of any such risks when designing data collection and evaluation of their efforts.

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[35] Henry Gomory, Douglas S. Massey, James R. Hendrickson, and Matthew Desmond, "The Racially Disparate Influence of Filing Fees on Eviction Rates," *Housing Policy Debate* (2023), doi: 10.1080/10511482.2023.2212662.

[36] James Woolery and Tim Martin, "ESG and Fiduciaries: A New Dawn," Harvard Law School Forum on Corporate Governance blog, June 15, 2023, https://corpgov.law.harvard.edu/2023/06/15/esg-and-fiduciaries-a-new-age-dawns/.

Kathryn Reynolds
Principal Policy Associate, Research to Action Lab
Urban Institute

Fay Walker
Research Associate, Metropolitan Housing and Communities Policy Center
Urban Institute