



July 31, 2023

**Re: Federal Housing Finance Agency (FHFA) Request for Input on Multifamily Tenant Protections**

The Local Progress and Local Progress Impact Lab’s<sup>1</sup> Housing Steering Committee, alongside 63 members of our network of local elected officials, write in response to the Federal Housing Finance Agency’s Request for Input on Tenant Protections for Enterprise-backed Multifamily properties. The Local Progress Housing Steering Committee comprises 11 local elected officials who are experts in advancing housing justice in their communities. We have authored ordinances and developed programs on tenant screening, rent stabilization, right to organize, right to counsel, investments in affordable housing, and more. As local elected officials who have directly worked with tenants in our communities—both prior to and throughout the COVID pandemic—to advance these renter protections, affordable housing investments and other housing justice initiatives, we see the urgent need for the Federal Housing Finance Agency (“FHFA”) to increase protections for tenants. We support the Homes Guarantee Campaign’s recommendation to apply the following nine requirements to all enterprise-backed multifamily properties:

1. Prohibit evictions without good cause
2. Ban source of income discrimination
3. Ensure tenants have the right to organize
4. Limit annual rent hikes to 1.5 times the Consumer Price Index or 3%, whichever is lower
5. Enforce and expand existing protections against discrimination
6. Require safe and accessible housing conditions
7. Create a landlord registry
8. Require fair and standardized leases
9. Create an Office of Tenant Protections to enforce these rights in all properties with federally backed mortgages

Below, we will elaborate on a number of these recommendations based on our experience as local elected officials committed to advancing housing justice. **We know our communities need**

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<sup>1</sup> Local Progress is a movement of more than 1,400 local elected officials representing over 600 jurisdictions in 48 states committed to racial and economic justice. The network includes local leaders at all positions of local governance—mayors, district attorneys, county commissioners, city councilmembers, and school board members—representing major cities, growing suburbs, and rural communities. Local Progress Impact Lab brings together these local leaders, partners, and experts to build the knowledge, skills, and leadership needed to advance racial and economic justice at the local level. Learn more here: <https://localprogress.org/>.

**more than tenant protections, including significant funding for deeply affordable housing and community ownership strategies, but we have also seen how tenant protections are fundamental to building stable communities.** For many tenants, they are on the precipice of becoming unhoused; the FHFA's adoption of tenant protections can keep millions of tenants in their homes and help millions of others find housing. We are calling on the FHFA to scale the solutions that we know work and to enforce these protections.

### **Local Ordinances Have Protected Residents and Communities from Price Increases, Discrimination, Eviction, and Retaliation**

*“My office gets calls weekly from constituents who cannot find a place to use their [housing] voucher. It came to a head last year in my District when almost 400 government-subsidized housing units were cleared at the same time. Many of these families were provided vouchers to help them relocate, but none of them were able to find commensurate relocation housing nearby, most had to move multiple miles away.” Philadelphia Councilmember Jamie Gauthier*

Many local governments have already enacted tenant protections that eliminate barriers to accessing housing and protect against displacement, including for example, anti-discrimination protections for source of income, rent stabilization, good cause eviction, and protecting the right to organize. In virtually every single local debate over these policies, some property owners and industry groups have argued that such policies would lead to harmful outcomes for our communities, such as causing higher rents or constraining housing supply. These claims are unsupported by data, case studies, and research, which instead demonstrate the significantly positive impact these protections have. We urge the FHFA to mandate landlords include these protections for any properties that leverage FHFA financing programs:

- **Rent Stabilization Ordinances (RSOs):** RSOs protect residents from egregious rent hikes and displacement. Although homeowners are typically able to lock in long-term consistency in their housing costs via fixed-rate mortgages, tenants' rents are usually left completely unprotected. Consequently, tenants are often subject to volatile rent increases as they are subject to the whims of annual pricing decisions by increasingly corporate landlords.<sup>2</sup> Rent stabilization is a high impact policy to stabilize tenant households and mitigate the loss of affordable housing.<sup>3</sup> In recent years Oregon and California and multiple localities including Antioch (CA), Cudahy (CA), Kingston (NY), Mount Rainier (MD), Montgomery County (MD), Santa Ana (CA), and St. Paul (MN) have enacted caps on rent increases. Rent stabilization policies have been shown to work in keeping tenants in their homes by maintaining affordability. While detractors may state that rent control policies

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<sup>2</sup>“Wall Street has purchased hundreds of thousands of single-family homes since the Great Recession. Here’s what that means for rental prices.” 2023. *CNBC*. <https://www.cnbc.com/2023/02/21/how-wall-street-bought-single-family-homes-and-put-them-up-for-rent.html>

<sup>3</sup> “White Paper on Anti-Displacement Strategy Effectiveness.” Karen Chapple and Anastasia Loukaitou-Sideris. 2021. *Urban Displacement Project*. <https://www.urbandisplacement.org/wp-content/uploads/2021/08/19RD018-Anti-Displacement-Strategy-Effectiveness.pdf>

constrain housing supply, there is also abundant [evidence](#) that this is not the case.<sup>4</sup> For example, two studies focused on New Jersey rent control practices found that housing supply either increased or was not impacted by the enactment of rent control policies,<sup>5</sup> and one study focused on Cambridge, Massachusetts found that the repeal of rent stabilization laws led to no additional increase in housing supply.<sup>6</sup>

- **Source of income protections:** Source of income (SOI) protections prevent property owners from discriminating against low-income tenants who use housing vouchers to pay rent. With SOI protections, low-income residents have a better chance of accessing housing, particularly housing in high-resourced communities. An Urban Institute study on voucher acceptance showed landlord refusal of vouchers is more common in jurisdictions without source of income protections.<sup>7</sup> Additionally, the same study found that because voucher programs disproportionately serve members of federally protected classes (e.g., families with children, racial and ethnic minorities, and people with disabilities), the failure to ban SOI discrimination can provide landlords with a workaround for discriminating against individuals on the basis of these federally protected classes.<sup>8</sup> In Philadelphia for example, over 80% of the Philadelphia Housing Authority’s voucher population are Black households.<sup>9</sup> Without Philadelphia’s Fair Practices Ordinance which prohibits landlords from refusing to rent to tenants with housing vouchers, Black Philadelphians would be disproportionately discriminated against. States and localities across the country are recognizing the impact of SOI protections: nationally, there are over 100 local ordinances and 22 state laws aimed at barring source of income discrimination in addition to the federal requirements associated with HOME and LIHTC funding.<sup>10</sup>
- **Good Cause Protections<sup>11</sup>:** Good cause protections entitle tenants to a right to lease renewal and limit evictions to only those with “good cause.” These ordinances also limit

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<sup>4</sup>“Rent Matters: What are the Impacts of Rent Stabilization Measures?” Manuel Pastor, Vanessa Carter, and Maya Abood. 2018. *USC Dornsife Program for Environmental and Regional Equity*. <https://dornsife.usc.edu/eri/publications/rent-matters/>

<sup>5</sup> “Thirty Years Of Rent Control: A Survey Of New Jersey Cities.” John I. Gilderbloom and Lin Ye. 2007. *Journal Of Urban Affairs*. <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-9906.2007.00334.x>. And “Forty years of rent control: Reexamining New Jersey’s moderate local policies after the great recession.” Joshua D. Ambrosius et al. 2015. *Cities*.

<https://www.sciencedirect.com/science/article/abs/pii/S0264275115001122>

<sup>6</sup> “Housing Market Spillovers: Evidence from the End of Rent Control in Cambridge, Massachusetts.” David H. Autor, Christopher J. Palmer, and Parag A. Pathak. 2014. *University of Chicago Press*. <https://economics.mit.edu/sites/default/files/publications/housing%20market%202014.pdf>

<sup>7</sup> “A Pilot Study of Landlord Acceptance of Housing Choice Vouchers.” 2018. *Urban Institute*. <https://www.urban.org/research/publication/pilot-study-landlord-acceptance-housing-choice-vouchers>

<sup>8</sup> “A Pilot Study of Landlord Acceptance of Housing Choice Vouchers.” 2018. *Urban Institute*. <https://www.urban.org/research/publication/pilot-study-landlord-acceptance-housing-choice-vouchers>

<sup>9</sup> “It shouldn’t be this hard’: Council committee explores pervasive form of housing discrimination in Philadelphia.” 2023. *WHYY-PBS*. <https://whyy.org/articles/housing-income-discrimination-philadelphia>

<sup>10</sup> “Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program.” 2023. *Poverty and Race Research Action Council*. <https://www.prrac.org/pdf/AppendixB.pdf>

<sup>11</sup> “Good cause” eviction protections are also sometimes referred to as “just cause” eviction protections or eviction “for cause,” citing “The fight to make it harder for landlords to evict their tenants.” Rachel Cohen. 2023. *Vox*.

<https://www.vox.com/policy/2023/5/1/23697209/landlords-tenants-good-cause-just-cause-eviction-housing>

“good cause” to specific reasons, such as the tenants’ non-payment of rent after notice, the tenant using the lease premises for criminal activity, or the landlord sincerely wishing to sell the property after providing the tenant with notice.<sup>12</sup> These protections promote housing stability for residents who rent their homes because residents would know that so long as they pay rent and comply with other housing regulations, they will not be subject to eviction. A recent study found cities that implemented just cause eviction laws experienced lower eviction rates.<sup>13</sup> Just cause policies exist in many communities already including Seattle, Oakland, Berkeley, Washington D.C., and the state of New Jersey.<sup>14</sup>

- **Protecting the Right to Organize:** Tenant organizing protections prohibit landlords from retaliating against tenants for organizing with their neighbors and forming tenant unions. The right to collectively organize serves as a healthy counterweight to the power that landlords tend to hold over individual tenants.<sup>15</sup> Washington D.C., San Francisco, Seattle, San Jose, and Austin have all adopted right-to-organize protections.<sup>16</sup> With the right to organize required in several federal housing programs, including public housing and HUD-supported multifamily housing,<sup>17</sup> now is the time to expand the requirement to Enterprise-backed mortgages.

### **An Office of Tenant Protection and Federal Rental Registry Would Offer a Necessary Complement to Local Enforcement Efforts**

“Having federal resources to complement our enforcement efforts would be very impactful, we don’t have the staffing to be as effective as our community deserves. Tenant protections are essential and our communities need support from each level of government.” Kingston Councilmember Michele Hirsch

Even with strong tenant protections, many tenants may not benefit from these legal protections because of insufficient enforcement. Presently, most enforcement of tenant protections relies on prospective or current tenants suing landlords in civil court or filing claims with the appropriate authorities. But the financial and logistical barriers to filing suits or complaints—especially for low-income tenants—enable many landlords to evade the consequences of violating tenants’

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<sup>12</sup>“Just Cause Eviction Ordinance.” Seattle Department of Construction and Inspections. [https://www.seattle.gov/sdci/codes/codes-we-enforce-\(a-z\)/just-cause-eviction-ordinance](https://www.seattle.gov/sdci/codes/codes-we-enforce-(a-z)/just-cause-eviction-ordinance). And “What Is ‘Good Cause Eviction,’ and What Does It Mean for Renters?” Ronda Kaysen. 2023. *New York Times*. <https://www.nytimes.com/2022/05/21/real-estate/good-cause-eviction-renters-new-york.html>

<sup>13</sup> <https://jpia.princeton.edu/news/effect-just-cause-eviction-ordinances-eviction-four-california-cities>

<sup>14</sup>“Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program.” 2023. *Poverty and Race Research Action Council*. <https://www.prrac.org/pdf/AppendixB.pdf>

<sup>15</sup>“Tenants Rail Against Inhumane Conditions, Rising Rents Outside San Jose Apartment Complex.” 2023. *CBS News*. <https://www.cbsnews.com/sanfrancisco/news/san-jose-kdf-tenants-protest-inhumane-conditions-rents-affordable-housing/>

<sup>16</sup>Heather Way, Kelly Hogue. “Six Steps To Ensuring A Strong Right To Organize For Tenants.” 2023. *Shelterforce*. <https://shelterforce.org/2023/05/04/six-steps-to-ensuring-a-strong-right-to-organize-for-tenants/>

<sup>17</sup>“The White House Blueprint For a Renters Bill of Rights.” 2023. *White House Domestic Policy Council and National Economic Council*. <https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf>

rights, reducing the efficacy of the existing tenant protections. For example, local studies in Philadelphia show that more than 65% of the city’s landlords still do not accept tenant-based vouchers citywide, and that figure goes up to 83% in low-poverty neighborhoods, despite the city’s ordinance that prohibits source of income discrimination.

The reliance on complaint-only enforcement is due in large part to the limited capacity of local governments to fund and build enforcement programs. Local governments have significant limitations to raising revenue to fund enforcement; for example, they are subject to state preemption that significantly limits their tax authority. Federal enforcement programs would be particularly meaningful for local governments that are smaller in size and ones that do not have access to a particularly robust tax base. For example, Kingston, New York recently opted into New York’s Emergency Tenant Protection Act which established a rent stabilization regime locally. However, Kingston’s Housing Initiatives Department was newly established in 2020 and only has one full-time staff member dedicated to monitoring rental housing and tenant issues. Resources such as a federal landlord registry and office of tenant protections could thus complement and strengthen existing local tracking and enforcement efforts.

Additionally, federal enforcement authorities have the authority and resources to examine practices and violators working across jurisdictions. In the housing context, without federal enforcement, it can be close to impossible for local authorities to get a complete sense of the extent of violations committed by larger landlords; the largest landlords can manage tens of thousands of properties across hundreds of jurisdictions,<sup>18</sup> and sometimes use shell corporations to obfuscate the true amount of properties they own.<sup>19</sup> For example, elderly tenants in a Meadville, PA senior living facility—which was managed by the conglomerate Calamar and owned by the even-bigger conglomerate Welltower—were told when signing their lease that they would experience rent increases of 2-5% but then were actually subject to rent increases ranging from 20% to 39%.<sup>20</sup> Having federal enforcement mechanisms in place amplifies the work done by local enforcement agencies because they can help refer and feed information to federal enforcement agencies, who then have the resources to form a more muscular response appropriate to the level of violations committed. The White House’s action plan to combat human trafficking offers one such model for how local, state, and federal authorities can work together to take on bad actors.<sup>21</sup>

Similar types of federal enforcement offices can be found in other domains. For example, the Department of Education has an Office of Enforcement within their Federal Student Aid office.

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<sup>18</sup>"Company That Makes Rent-Setting Software For Apartments Accused Of Collusion, Lawsuit Says". 2022. *ProPublica*. <https://www.propublica.org/article/realpage-accused-of-collusion-in-new-lawsuit>.

<sup>19</sup>"This Is Highway Robbery". 2023. *The Lever*. <https://www.levernews.com/this-is-highway-robbery/>

<sup>20</sup>"Local senior renters face severe rent gouging, their fight is our fight." Joe Tompkins. 2022. *GoErie*. <https://www.goerie.com/story/opinion/columns/2022/08/09/opinion-meadville-senior-renters-face-severe-rent-gouging-at-connect-55-complex/65389850007/>

<sup>21</sup>"The National Action Plan to Combat Human Trafficking." The White House. 2021. <https://www.whitehouse.gov/wp-content/uploads/2021/12/National-Action-Plan-to-Combat-Human-Trafficking.pdf>

The Office of Enforcement is responsible for strengthening oversight of and enforcement actions against postsecondary schools who receive federal support in the form of student loan, grant, and work-study programs.<sup>22</sup> The Department of Energy (DOE) also has an Office of Enforcement that conducts systematic enforcement investigations to assess whether or not DOE contractors are violating their regulations.<sup>23</sup> Federal action is needed to effectively protect tenants, and the FHFA's role can set a new standard for the enforcement of protections for tenants who live in Enterprise-backed Multifamily properties.

Lastly, to bolster enforcement efforts, the FHFA should require all Enterprise-backed properties to participate in a rental registry that is publicly available and accessible to tenants. Cities like Seattle and Denver have passed rental registry ordinances to ensure that rental housing in their communities meets basic housing requirements.<sup>24</sup> A federal registry could build on these local registries and could also include critical information, such as the number of code violations, evictions, and average rent hikes in a property. Providing tenants and the public with this information would ensure that landlords are publicly accountable.

### **FHFA Action Can Protect Residents in States Where Local Governments Are Preempted from Enacting Tenant Protections**

*“Unfortunately, not all tenants are represented by local governments that are trying to take action on housing issues. The tenants most likely to be hurt by regressive state legislatures are tenants in smaller, more rural communities since their locality is less likely to have any additional tenant protections in place aside from the floor that the state has set.”* Nashville Metro Councilmember Colby Sledge

One of the biggest barriers to protecting tenants is abusive state preemption.<sup>25,26</sup> This is especially true in the South and Midwest, where abusive state preemption proliferates and is an extension of a history of white supremacy. When many local communities step up to address the

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<sup>22</sup> “U.S. Department of Education to Establish an Enforcement Office Within Federal Student Aid.” U.S. Department of Education. 2021. <https://www.ed.gov/news/press-releases/us-department-education-establish-enforcement-office-within-federal-student-aid>

<sup>23</sup> “Office of Enforcement.” Department of Energy. <https://www.energy.gov/ea/enforcement>

<sup>24</sup> “Rental Registration & Inspection Code.” 2023. [https://www.seattle.gov/sdci/codes/codes-we-enforce-\(a-z\)/rental-registration%C2%A0and-inspection-code](https://www.seattle.gov/sdci/codes/codes-we-enforce-(a-z)/rental-registration%C2%A0and-inspection-code) and “Denver Launches Residential Rental Licensing Program.” 2022. <https://www.denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Business-Licensing/News/2020/Denver-Launches-Residential-Rental-Licensing-Program>

<sup>25</sup> “This year alone, the Local Solutions Support Center has identified over 650 abusive preemption bills moving in state legislatures” from “Republicans Are Systematically Blocking Cities’ Ability To Protect Abortion.” 2023. *The New Republic*. <https://newrepublic.com/article/173776/republicans-blocking-cities-ability-protect-abortion-preemption>.

<sup>26</sup> “This new era preemption bills are more abusive and far-reaching than they have been in the past: “particularly striking are punitive measures that do not just preempt local measures but also hit local officials or governments with criminal or civil fines, state aid cutoffs, or liability for damages, as well as broad preemption proposals that would virtually end local initiative over a wide range of subjects,” from “The Challenge of the New Preemption.” Richard Briffault. 2018. *Shelterforce*. [https://scholarship.law.columbia.edu/faculty\\_scholarship/2090/](https://scholarship.law.columbia.edu/faculty_scholarship/2090/).

housing crisis and protect our residents, they encounter hostile state legislatures. These state governments not only refuse to adopt common sense statewide tenant protections, but they also preempt existing local governments' ability to adopt and enforce tenant protections. Additionally, even if a local ordinance is not expressly preempted, the mere threat of frequent preemption can have a chilling effect on local legislators who sought to stand up for tenants' rights.<sup>27</sup>

The fight for tenants' rights in Austin, Texas between the city council and state legislature offers an example of how state legislatures are using preemption to the detriment of tenants. During the pandemic, local elected officials in Austin heard that their residents were experiencing particularly exploitative living conditions, and the Austin City Council responded by passing two ordinances in October 2022: the "right to cure"—which allows tenants to avoid eviction by paying any back-rent prior to the landlord commencing eviction proceedings— and the right for tenants to organize collectively.<sup>28</sup> Months later, despite these ordinances being direct and effective responses to the dire conditions that tenants were experiencing, the state of Texas passed House Bill 2127 on June 14th, 2023, effective September 1, 2023.<sup>29</sup> This bill represents an expansive preemption of local control and will significantly preempt local governments' ability to provide critical housing and worker protections for residents, including stripping local governments' abilities to regulate evictions.<sup>30</sup> Federal action is urgently needed to protect tenants across the country but it will especially help tenants in states where they have been left completely vulnerable.

In response to preemption constraints, some local governments have focused on how to use their budgetary authority to expand non-preempted tenant protections. For example, numerous cities, such as Nashville, have used American Rescue Plan funding to expand or create right-to-counsel programs for tenants facing eviction proceedings. However, American Rescue Plan (ARP) funding is not a long-term source of sustained funding; many local governments fear they may have to abandon groundbreaking programs they piloted during the pandemic once ARP funding is depleted. Creating federal enforcement processes for tenant protections would fill potential voids by ensuring that tenants are not dependent on the ups and downs of local budgetary processes for their rights to be enforced.

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<sup>27</sup> Mark Treskon and Benjamin Docter. "Preemption and Its Impact on Policy Responses to COVID-19." 2020. *Urban Institute*.

<https://www.urban.org/sites/default/files/publication/102879/preemption-and-its-impact-on-policy-responses-to-covid-19.pdf>.

<sup>28</sup> "Austin City Council Approves Ordinances That Strengthen Tenants' Rights." Becerra, Stephanie. 2022. *CBS News Austin*.

<https://cbsaustin.com/newsletter-daily/austin-city-council-approves-ordinances-that-strengthens-tenants-rights>

<sup>29</sup> Texas House Bill 2127. Passed June 14th, 2023. <https://legiscan.com/TX/bill/HB2127/2023>

<sup>30</sup> "Texas Wrests Power From Local Governments With Sweeping New Law." 2023. *Bloomberg*.

<https://www.bloomberg.com/news/articles/2023-06-28/texas-preemption-law-overrides-city-laws-on-workers-rights-evictions>.

## Conclusion

We thank Federal Housing Finance Agency (FHFA) Director Thompson and FHFA staff for conducting this request for input and we invite you to follow up with us for a deeper discussion on the need and opportunity for FHFA and local governments to work together to protect tenants. As local elected officials, we are intimately familiar with the challenges faced by our communities and we have learned many lessons in implementing tenant protections; we would be eager to sit down with you to share our perspectives.

Respectfully,

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