

July 31, 2023

The Honorable Sandra Thompson
Federal Housing Finance Agency
Washington, D.C.
Via FHFA.gov

RE: Response to FHFA's Request For Input on Tenant Protections in Enterprise-Backed Multifamily Properties

Dear Director Thompson,

We are writing to express our recommendations for tenant protections in Enterprise-backed multifamily properties. PRRAC is an organization committed to fostering fair and accessible housing within the U.S., especially for vulnerable communities. As we will discuss below, in order to fulfill its obligation to affirmatively further fair housing (AFFH), it is critical that the FHFA establish a minimum floor of tenant protections. The FHFA cannot rely on the states alone to safeguard the rights of tenants and protect against discriminatory practices.

Obligation to Affirmatively Furthering Fair Housing and Tenant Protections

The FHFA has committed alongside HUD to enforce the Fair Housing Act, which includes an affirmative duty to further fair housing.¹ Therefore, the FHFA, along with the Enterprises, are responsible for taking tangible steps to advance fair housing. Thus, the FHFA is obligated to do more than avoid discrimination, it must take affirmative steps.

Enacting tenant protections is one important way the agency can uphold its duty to AFFH, because evictions and housing insecurity disproportionately affect people of color and other vulnerable families, including people with disabilities.² Tenant protections give existing tenants the ability to remain in their homes and avoid the trauma and insecurity that follows from displacement and eviction.³ We encourage the FHFA to support four key tenant protections that contribute to housing stability: good cause eviction requirements, rent control, right to organize, and source of income anti-discrimination protections. The Enterprises can implement programs that offer pricing or credit incentives to landlords and property owners who adopt these policies within their properties. The FHFA can also impose mandatory requirements for borrowers in all future multifamily properties supported by Fannie Mae or Freddie Mac. Lastly, the FHFA can make recommendations to Congress to codify these initiatives in federal laws.

¹ HUD and FHFA Partner to Advance Fair Housing and Fair Lending Enforcement, HUD EXCHANGE (2021) <https://www.hudexchange.info/programs/housing-counseling/the-bridge/2021-quarter-4/fair-lending/>.

² Affordable Housing, Eviction, and Health, OFFICE OF POLICY DEVELOPMENT AND RESEARCH (2021) <https://www.huduser.gov/portal/periodicals/em/Summer21/highlight1.html>.

³ Vasudha Kumar, Who Benefits from Tenant Protections, URBAN DISPLACEMENT PROJECT (Mar. 15, 2022), <https://www.urbandisplacement.org/blog/who-benefits-from-tenant-protections/>.

I. Good Cause Evictions

The FHFA should require “good cause” (also known as “just cause”) requirements for eviction in all future multifamily properties financed by Fannie Mae or Freddie Mac. Good cause guarantees a tenant’s lease will be renewed unless the landlord can show good cause such as the tenant’s breach of the lease or the landlord’s intention to take the unit off the market.⁴ Good cause does not interfere with a landlord’s ability to evict tenants in the event of serious lease violations including failure to pay rent, criminal activity, property damage, and disorderly conduct.⁵ This ensures that tenants cannot be removed from their homes based on discriminatory or unfair reasons. Good cause may also include rent control provisions, restricting the landlord’s ability to raise rent. Good cause laws afford renters a great deal of housing security, as tenants can live without fear of no-cause eviction.

Every jurisdiction varies in their good cause protections, as no federal law currently exists. Some states that have implemented this tenant protection include California, New Hampshire, New Jersey, Oregon, and Washington, along with a few local governments,⁶ but tenants in most of the country are not covered. There is no reason why federally backed multifamily housing should not include this basic protection.

II. Rent Control

The FHFA should also support rent control or stabilization, as an important way to ensure that low-income housing remains affordable. Rent control or stabilization prevents landlords from increasing rent past a certain amount and also may allow tenants the automatic right to renew their lease.⁷ Tenants with rent control are less rent burdened, and therefore are less likely to be displaced.⁸ This protection encourages agency as tenants can advocate for reform in their living conditions without fear of retaliation by their landlords.⁹ Furthermore, rent control can mitigate the effects of gentrification, by allowing low-income existing tenants to remain in their homes amidst increasing prices.¹⁰

We strongly encourage the FHFA to implement some form of rent stabilization in Enterprise-backed properties. The Enterprises can offer pricing and credit incentives to induce landlord cooperation or simply mandate limits on rent increases for new multifamily loans supported by the GSEs.

⁴ *Promoting Housing Stability Through Just Cause Eviction Legislation*, NATIONAL LOW INCOME HOUSING COALITION (May 17, 2022), <https://nlihc.org/sites/default/files/Promoting-Housing-Stability-Through-Just-Cause-Eviction-Legislation.pdf>.

⁵ *Promoting Housing Stability Through Just Cause Eviction Legislation*, *supra* note 4.

⁶ *Id.*

⁷ Cea Weaver, *The Right to a Tenant Union and the Fight for Rent Control in New York State*, POVERTY & RACE (Apr. 10, 2023), <https://www.prrac.org/the-right-to-a-tenant-union-and-the-fight-for-rent-control-in-new-york-state-jan-mar-2023-pr-issue/>.

⁸ Kumar, *supra* note 3.

⁹ Weaver, *supra* note 7.

¹⁰ Kumar, *supra* note 3.

IV. Right to Organize

Through the right to organize, tenants are able to acquire power through collective action. The right to organize includes the right to form tenant unions. Tenant unions are helpful for resolving conflicts with landlords over issues such as inadequate living conditions and discriminatory treatment. Tenant unions are not just confined to individuals within the same living community, but rather neighborhood-wide and city-wide unions can unite to demand systemic change.¹¹ The right to organize is an important democratic process that allows tenants to wield some political capital. Furthermore, it furthers the objective of community control, allowing residents to directly influence the policies of their living environment.

California, D.C., and New York have codified some protections against landlord retaliation in the event of tenant organizing.¹² D.C. has the most robust protections for the right to organize, affording tenants the right to form a tenant organization and negotiate with property owners.¹³ It is essential that the FHFA go further and ensure that every Enterprise-backed property allows their tenants to have a union and protects tenants from retaliation for organizing activities.

V. Source of Income Protections

Source of income discrimination occurs when landlords refuse to rent their properties to prospective tenants because of their lawful income.¹⁴ This type of discrimination has an disproportionate impact on people of color, women, and persons with disabilities.¹⁵ A prime example of this type of discrimination is when individuals who seek to pay rent with Housing Choice Vouchers are denied because they seek to rent with a voucher. This form of discrimination also contributes to the racial segregation and concentration of poverty.¹⁶

Currently, more than half of Housing Choice Voucher-holders live in a state or community with laws prohibiting source of income discrimination.¹⁷ Twenty-three state statutes and over a hundred local ordinances prohibit source of income discrimination.¹⁸ Voucher-holders have a federally guaranteed right to use their voucher anywhere in the country with a PHA. However, this right will continue to be infringed upon until all states include “source of income” as a protected status within their anti-discriminatory laws. The FHFA must go further and ensure that there is no source of income discrimination in Enterprise-backed multi-family properties, in order to promote integrated and diverse communities, consistent with the agency’s AFFH obligations. Prohibiting discrimination against families with Housing Choice Vouchers in GSE-

¹¹ Tara Raghuvver & John Washington, *The Case for the Tenant Union*, POVERTY & RACE (Apr. 10, 2023), <https://www.prrac.org/the-case-for-the-tenant-union-jan-mar-2023-p-r-issue/>.

¹² Hassan Kanu, D.C. Renters' Lawsuit is a Blueprint for Tenant Organizing, REUTERS (Jul. 22, 2021)

¹³ Kanu, *supra* note 12.

¹⁴ Antonia K. Fasanelli & Philip Tegeler, *Combatting Source of Income Discrimination*, GPSOLO (Jun. 14, 2021), <http://www.prrac.org/pdf/combating-source-income-discrimination-housing-2021.pdf>.

¹⁵ Fasanelli & Tegeler, *supra* note 14.

¹⁶ *Id.*

¹⁷ Knudsen, Brian, *Expanded protections for families with Housing Choice Vouchers*, PRRAC (Sep. 2022) <https://prrac.org/pdf/soi-voucher-data-brief.pdf>.

¹⁸ Only 17 of these states prohibit discrimination against families with vouchers. *APPENDIX B: State, Local, and Federal Laws Barring Source-of-Income Discrimination*, POVERTY & RACE RESEARCH ACTION COUNCIL, (last updated July 2023), <https://www.prrac.org/pdf/AppendixB.pdf>.

financed housing is consistent with similar federal requirements in the HOME and LIHTC programs¹⁹ and also supports an important federal low-income housing program.

Conclusion

PRRAC commends the efforts of the FHFA to gain insight into the perspectives of tenants in Enterprise-backed multifamily properties and support tenant protections. The FHFA must continue to honor its obligation to affirmatively further fair housing by including key tenant protections, including good cause eviction laws, rent control, right to organize, and the enforcement and implementation of anti-discrimination policies.

Sincerely,

Audrey Lynn Martin, Housing Policy Counsel
Caroline Kelly, Law & Policy Intern
Poverty & Race Research Action Council
Washington, DC
amartin@prrac.org

¹⁹ 42 USC 12745 (a)(1)(D); 26 U.S.C. § 42(h)(6)(B)(iv).