

July 31, 2023

Federal Housing Finance Agency  
Office of Multifamily Analytics and Policy  
400 Seventh Street SW  
Washington, DC 20219  
Submitted via [Provide Input | Federal Housing Finance Agency \(fhfa.gov\)](https://www.fhfa.gov/ProvideInput)

## **Request for Input (RFI) Tenant Protections for Enterprise-Backed Multifamily Properties**

Dear Sir or Madam:

The National Association of Home Builders of the United States (NAHB) appreciates the opportunity to comment on the Federal Housing Finance Agency's (FHFA) RFI, "Tenant Protections for Enterprise-Backed Multifamily Properties." NAHB is a Washington, D.C.- based trade association that includes more than 700 affiliated state and local associations across all 50 states, the District of Columbia, and Puerto Rico. NAHB's members design, supply, and construct single-family homes, build and manage multifamily projects, and remodel existing homes. Our builders are proud to construct over 80 percent of all housing units produced each year.

NAHB's multifamily members are apartment builders, owners and managers who generally operate small businesses. They strive to provide quality, well-maintained and well-managed apartment communities. Every day, NAHB's multifamily members navigate a complicated set of laws from all levels of government which regulate the physical condition of the properties, admission and occupancy policies and evictions. For these reasons, NAHB is gravely concerned that adding additional conditions, such as those included in the White House Blueprint for a Renters Bill of Rights<sup>1</sup>, to Fannie Mae and Freddie Mac (the Enterprises) multifamily loan products will add additional complexity and confusion to operations of privately-owned conventional apartments, make the Enterprises' multifamily loan products less attractive to housing providers, and reduce the supply of apartments that are affordable to low-and-moderate income families. The best way for FHFA and the Enterprises to help renters is to focus their efforts on increasing the supply of affordable multifamily housing in all geographic areas and through all economic cycles.

### **BACKGROUND**

As part of the 2023 Scorecard for Fannie Mae, Freddie Mac and Common Securitization Solutions<sup>2</sup>, FHFA instructed Fannie Mae and Freddie Mac (the Enterprises) to explore the feasibility of expanding multifamily tenant protections for properties with Enterprise loans and to identify strategies and activities that could facilitate a greater amount of affordable rental housing supply.

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<sup>1</sup> White House Domestic Policy Council and National Economic Council, "Blueprint for a Renters Bill of Rights," January 2023. [White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf \(whitehouse.gov\)](https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf) (Accessed 7/18/23.)

<sup>2</sup> Federal Housing Finance Agency, "2023 Scorecard for Fannie Mae, Freddie Mac and Common Securitization Solutions," pg. 3, December 2022. Released January 4, 2023. <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2023-Scorecard.pdf> (Accessed 7/21/23.)

On January 25, the White House announced executive actions to "protect renters and promote rental affordability."<sup>3</sup> This announcement also included the "Blueprint for a Renters Bill of Rights" (Blueprint) which is directed at the rental and management policies of privately-owned conventional apartments. Many of the Blueprint's proposals, particularly with respect to eviction diversion programs, are intended to extend temporary measures implemented during the COVID-19 pandemic. As part of the executive actions, FHFA announced it would launch a new public process to examine proposed actions promoting renter protections and limits on "egregious" rent increases for future investments. On May 30, 2023 FHFA released a Request for Input (RFI) on Tenant Protections for Enterprise-Backed Multifamily Properties.

## **SUMMARY**

FHFA published this RFI to solicit public input on opportunities and potential impacts associated with requiring or encouraging specific tenant protections at multifamily properties backed by Fannie Mae and Freddie Mac (the Enterprises). The Agency's primary goals are to:

1. Gather perspectives from tenants and tenant advocates, nonprofits, lenders, multifamily borrowers/property owners, housing providers, developers, government officials, and mortgage industry groups to explore challenges tenants face at multifamily properties, as well as opportunities to address challenges through tenant protections.
2. Improve data collection to better quantify the size and scope of challenges that tenants experience at multifamily properties.

FHFA asked 28 questions across five topics: General Questions on Tenant Protections; Access to Housing; Access to Information; Tenant Housing Stability; and Risk Management.

## **NAHB COMMENTS**

Apartment owners and managers already are subject to a myriad of tenant protection and fair housing statutes, regulations, administrative policies, and case law from all levels of government. NAHB is gravely concerned that imposing a new layer of tenant protection requirements on multifamily properties with Enterprise-backed mortgages will add further confusion to the landlord-tenant laws that apply across the nation and across jurisdictions. Likewise, we believe such policies will have negative unintended consequences for borrowers, the Enterprises, lenders and renters. New rent and management policy restrictions on private, conventional apartment operations are unnecessary, unwise, may jeopardize the financial safety and soundness of the properties, and by extension, may place the safety and soundness of the Enterprises at-risk.

The tenant protection policies that FHFA and the Enterprises are considering are well-intentioned, but the associated costs and compliance burdens must be carefully weighed against the benefits, impact on housing affordability, and feasibility of implementation.

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<sup>3</sup> "FACT SHEET: Biden-Harris Administration Announces New Actions to Protect Renters and Promote Rental Affordability," January 25, 2023. <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/25/fact-sheet-biden-harris-administration-announces-new-actions-to-protect-renters-and-promote-rental-affordability/> (Accessed 7/21/23.)

Therefore, NAHB encourages policy makers to thoroughly consider the implications for housing affordability, as well as the safety and soundness of the Enterprises, when proposing new tenant protections. If FHFA opts to pursue tenant protections as conditions of Enterprise-backed loans, the agency should initiate formal rulemaking. Similarly, any new tenant protection mandate from an Enterprise should be subject to public comment. To the extent that FHFA creates new loan products that incent borrowers to voluntarily expand tenant protections, FHFA should ensure such products are actuarially sound.

NAHB's comments represent general areas of consensus across our multifamily membership. Specific management practices vary across our members' multifamily portfolios, depending on factors such as state and local landlord/tenant and fair housing laws, size of the portfolio and whether the portfolio is managed by the owner or a third-party fee manager. To maintain consistency across our members' responses, NAHB will group our comments by topic rather than attempt to answer all of the questions and sub-questions in the RFI.

#### **A. General Questions on 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?**

**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.**

**Question A-3 Are there opportunities for improvements to current Enterprise multifamily programs or policies that would benefit tenants directly? What impact might these improvements have on the finances and operations of multifamily rental housing?**

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

**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?**

**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?**

**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.**

#### **NAHB Comments on Section A**

NAHB reiterates that the best way FHFA and the Enterprises can help tenants and prospective renters is to increase the supply of apartments that are affordable to households at all income levels and in all parts of the

nation. The most straightforward way for the FHFA and Enterprises to increase the supply of housing is by continuing to do what they've done extremely well: provide liquidity in the secondary mortgage market through all economic cycles and all geographic locations.

As noted earlier, the apartment industry is highly regulated. Apartment owners and managers are already subject to a myriad of tenant protection and fair housing statutes, regulations, administrative policies, and case law from all levels of government. It is also worth noting that the Enterprises, through their Duty-to-Serve Affordable Housing Preservation activities, are providing valuable liquidity to improve and recapitalize properties, such as project-based Section 8 apartments, that are subject to federal rent restrictions and tenant protections.

Our members are gravely concerned about proposals which would require multifamily housing providers to agree to new tenant protections and restricted rent increases as a condition of all Fannie Mae and Freddie Mac multifamily loan products. The Enterprises play a valuable role in providing liquidity which makes unsubsidized multifamily housing affordable for low-to-moderate income households in the conventional market. NAHB does not believe the important role the Enterprises play, particularly for low-to-moderate-income renters, can be easily duplicated by other financing sources. If adopted, these tenant protection policies would make Enterprise-backed loans less attractive to multifamily borrowers because of the increased compliance costs and administrative burdens. Alternative sources of financing may not be available on terms that would allow the borrower to serve low-to-moderate income residents, may not be available in all markets and may not be available during economic contractions. The likely outcome of making rent-restrictions, lease requirements, eviction restrictions or other new tenant protections conditions of Enterprise-backed multifamily mortgage loans will reduce the supply of housing available to the low-to-moderate income renters who should be served under the Enterprises' missions.

For example, rent control policies, including those that would cap the percentage of annual rent increases, create disincentives to new supply and insurmountable hurdles for housing providers to keep pace with operating and maintenance costs. With rents rising throughout the United States, some localities are turning to rent control as a solution. While it appears to be an easy solution, rent control has a detrimental effect on renters, the rental market, and housing as a whole.<sup>4</sup> Because rent control policies are so disruptive, multifamily builders often avoid working in jurisdictions with rent control policies in place.<sup>5</sup> This lack of development naturally reduces overall housing inventory, lowers property tax revenues, and lowers demand for construction and maintenance jobs. Rent control is simply bad policy that creates a housing deficit. In addition, rent control will pose serious risks to the financial viability of Enterprise-based properties since owners may not be able to cover the necessary mortgage payments and operating costs. By extension, restrictions that place the apartment communities at risk of default also jeopardizes the safety and soundness of the Enterprises.

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<sup>4</sup> Rebecca Diamond, What Does Economic Evidence Tell Us About the Effects of Rent Control (Oct. 18, 2018) (available at <https://www.brookings.edu/research/what-does-economic-evidence-tell-us-about-the-effects-of-rent-control/>).

<sup>5</sup> Paul Emrath, Ph.D., National Association of Home Builders (NAHB) Caitlin Sugrue Walter, National Multifamily Housing Council (NMHC), Regulation: 40.6 Percent of the Cost of a Multifamily Development (June 9, 2022) page 4. <https://www.nahb.org/-/media/NAHB/news-and-economics/docs/housing-economics-plus/special-studies/2022/special-study-regulation-40-percent-of-the-cost-of-multifamily-development-june-2022.pdf> (nahb.org) Accessed 7/31/23.)

**B. Access to Housing**

**Question B-1 How might the Enterprises address barriers to multifamily tenants' access to housing?**

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

**Question 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?**

**Question B-4 Are there areas of the lease application process or tenant documentation requirements that could be streamlined? Would those changes benefit multifamily tenants, landlords, or both? Please explain and include examples of existing best practices, if applicable.**

**NAHB Comments on Section B**

The affordable housing crisis is the result of insufficient housing supply. NAHB maintains that the best way for the Enterprises to help tenants is to continue providing the necessary liquidity in all economic cycles and in all geographic areas to facilitate new apartment construction, renovation and affordable housing preservation.

*Source of Income Requirements*

To help increase the supply of units available to renters using the U.S. Department of Housing and Urban Development (HUD) Section 8 Housing Choice Vouchers (HCVs), FHFA should facilitate opportunities for the Enterprises to make more equity investments in Low Income Housing Tax Credit (LIHTC) properties. LIHTC is the largest federal multifamily production program. LIHTC is an excellent example of a successful public-private partnership program that combines voluntary participation by housing providers, federal tax credits and private sector equity investment to produce affordable rental housing for low-income families.<sup>6</sup> The Internal Revenue Code (IRC) prohibits LIHTC owners from denying applicants solely because they have Housing Choice Vouchers.<sup>7</sup> Therefore, NAHB recommends that FHFA increase the cap on LIHTC equity investment and increase loan purchases for LIHTC projects.

As the RFI notes, the Enterprises offer several loan products that provide incentives for borrowers who wish to preserve affordable housing. These programs include Freddie Mac's "Tenant Advancement Commitment" and "Workforce Housing Preservation," and Fannie Mae's "Sponsor-Initiated Affordability" programs. Similarly, Fannie Mae's Expanded Housing Choice pilot program, offered a pricing incentive for borrowers who agree to accept HCVs. These loan products are voluntary, incentive-based products that include various tenant protections.

NAHB strongly supports the Section 8 HCV program. We have advocated for funding increases and program reforms to incent landlords' participation. However, NAHB strongly advises FHFA and the Enterprises against

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<sup>6</sup>The federal government allocates the LIHTC tax credits to states, state agencies award the credits to developers through competitions, developers sell the credits (usually through a syndicator to corporations) and the sale proceeds become equity that helps keep the rents affordable.

<sup>7</sup> Internal Revenue Code §42(h) (6) (B) (iv) (See [https://www.irs.gov/pub/irs-utl/IRC\\_42.pdf](https://www.irs.gov/pub/irs-utl/IRC_42.pdf) pg. 55). (Accessed 7/29/23.)

mandating property owners' participation through "source of income protection" requirements that are required conditions for all Enterprise multifamily mortgage loan products.

At the state and local levels of government, source of income laws shift financial and administrative burdens from the federal government to private housing owners. Accepting vouchers creates very real costs and administrative burdens on property managers and owners. These include, but are not limited to:

- Inspection requirements and the ensuing delays in occupancy;
- Building requirements over and above building codes;
- Payment delays and disruptions; and
- Costs assigned with the numerous forms and requirements associated with HCVs.

The administrative compliance burdens associated with the HCV program deserve further discussion. HUD's web page for property owners lists eight "Standard Forms" and seven "Other Common [public housing agency] PHA Forms" that an owner will need to fill out in order to accept a voucher.<sup>8</sup> This is 67 pages of Standard Forms, and the "Other Common PHA Forms" are specific to each PHA, so an owner will have to go find those forms and then determine where to submit them. These forms are also different for each PHA, and owners of multiple properties will have to work with the PHA in the jurisdiction in which each of their properties is located. Many owners would have to work with several PHAs, amplifying the learning curve and the ongoing compliance burden. The administrative burden becomes well over 100 pages of forms and all the regulations that inform those documents. Therefore, a source of income protection mandate relieves Congress, HUD and public housing agencies (PHAs) from the burden of attracting and retaining housing providers' HCV program participation, thus abdicating their responsibility to improve the HCV program and shifting the financial and administrative burdens from the federal government to private housing owners.

### *Accessibility*

NAHB strives to protect the American Dream of housing opportunities for all, including members of the disabled community. NAHB fully supports advances in accessibility features to improve the quality, durability, performance, and accessibility of homes.<sup>9</sup>

Accessibility requirements of the Americans with Disabilities Act (ADA) and Fair Housing Act (FHA) are included in building codes. The International Code Council (ICC) develops model building codes at the national level that state and local governments adopt in whole or in part. NAHB and its members actively participate in the code development process, along with building code officials and representatives from a variety of different stakeholder groups. As part of its involvement with the code development process, NAHB also participates on the A117 Committee, which works on the *ICC A117.1 Standard for Accessible and Usable Buildings and*

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<sup>8</sup> "HOUSING CHOICE VOUCHER PROGRAM – FORMS FOR LANDLORDS"

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/landlord/forms](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/landlord/forms) (Accessed 7/30/23.)

<sup>9</sup> Founded in 1964, the Home Innovation Research Labs ("Home Innovation") is an independent subsidiary of NAHB operating as a full-service market research, consulting, product testing, and accredited third-party certification agency dedicated exclusively to issues related to the home building industry. Home Innovation has been a leader in solving many of the home building industry's most difficult product and technological challenges and has helped introduce key accessibility innovations. See, [https://www.homeinnovation.com/about/mission\\_and\\_history](https://www.homeinnovation.com/about/mission_and_history) (last visited July 22, 2023).

*Facilities*<sup>10</sup>. The ICC A117.1 standard incorporates accessibility features from the ADA and the FHA into one document and provides better assurance of compliance by including these requirements in the building codes. The ICC A117.1 standard provides the technical requirements to make sites, facilities, buildings and elements accessible to and usable by people with physical disabilities. The intent of the standard is to allow a person with a physical disability to independently get to, enter, and use a site, facility, building, or element.

NAHB cautions FHFA and the Enterprises against adding new accessibility conditions to its multifamily mortgage products. FHFA should have a better understanding of compliance costs and the unintended consequences that new standards, if markedly different from existing ADA and FHA requirements, will have on borrowers, servicers and ultimately the individuals who rely on accessible housing. For example, NAHB's multifamily members who are subject to the Fair Housing Act (FHA) accessible design and construction provisions often report that the number of accessible units they are required to construct (100 percent of all units in elevator buildings and 100 percent of ground floor units in non-elevator buildings) far outstrips the demand. Indeed, accessible ground floor units in non-elevator buildings often go unrented or fail to sell because the disabled community is priced out. This is an unfortunate unintended consequence of a well-intended policy.

Accordingly, NAHB respectfully urges FHFA to stay out of areas of accessibility and design and construction requirements of the FHA and ADA. These areas are already well regulated by the Department of Housing and Urban Development and Department of Justice. Therefore, FHFA should focus its efforts on its own areas of expertise to better improve its programs.

### **C. Access to Information**

**Question 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.**

**Question C-2 What are the components of a model rental agreement? Please provide sample leases or lease forms that might be considered exemplary.**

**Question C-3 What role might the Enterprises play to enable multifamily tenants and landlords to be well-informed of their rights, to exercise their rights effectively, and fully meet their responsibilities? How could FHFA support efforts to collect, disseminate, and use this information?**

**Question C-4 How do you, your housing providers/property managers, or those you represent, communicate with current multifamily tenants? What types of notifications are used to communicate with tenants, and how are they delivered (e.g., email, certified letter, postings in public spaces)? Please share examples of any relevant best practices.**

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<sup>10</sup> The standard is available at <https://shop.iccsafe.org/icc-a117-1-2017-standard-and-commentary-accessible-and-usable-buildings-and-facilities-1.html>. (Accessed 7/31/23.)

**Question C-5 Do housing providers or property management companies provide multifamily tenants a point of contact and information about the property management company or housing ownership? Please share any relevant best practices.**

**Question C-6 Should landlords provide a written notice to prospective tenants that their lease application has been rejected, including a description of the reasons for rejection? What are the potential benefits and challenges of delivering such notices? If a written notice is provided, what information should it include?**

### **NAHB Comments on Section C**

Residential leases are subject to state and local landlord-tenant laws with many decades of precedent. NAHB strongly urges the FHFA and the Enterprises to not muddy these waters. The sheer volume of resources and effort it would take to develop a “model lease” for Enterprise-backed properties would be misapplied. Each lease would have to be adapted in accordance with state and local laws. Moreover, governance and enforcement of residential leases must be left to state and local governments.

FHFA and the Enterprises could play a valuable role by educating prospective renters about the importance of having good credit, how to build a strong credit history and how to dispute inaccuracies on their credit reports. NAHB also recommends that any information issued by FHFA, or the Enterprises, strongly encourages prospective tenants to settle previous debts with former landlords.

It may also be helpful for FHFA and the Enterprises to remind housing providers of all sizes about HUD’s 2016 guidance on using criminal background checks in tenant screening,<sup>11</sup> which allows the landlord to make the inquiry and to weigh all the information before making an occupancy decision. If rental property owners are not members of trade associations, they may or may not be familiar with the 2016 guidance.

### **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.**

**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?**

**Question D-3 Please provide recommendations on possible requirements that could apply to each of the following, and/or examples of existing policies, including an assessment of the benefits and/or drawbacks:**

- Lease renewals
- Timing and amount of rent increases
- Upfront or ongoing fees
- Causes for eviction
- Notification of eviction action
- Right to cure a cause for eviction, and
- Time to vacate following eviction.

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<sup>11</sup> U.S. Department of Housing and Urban Development, “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions,” April 4, 2016. (Accessed at [Office of the General Counsel \(hud.gov\)](https://www.hud.gov/officesc/gc/guidance/criminal-records) on 7/27/23.)



**Question D-4 Are tenants provided with resources on emergency rental assistance programs, offered repayment agreements, or offered legal resources? Do housing providers' current practices differ from the legal/regulatory standards that they are required to follow?**

**Question D-5 Should the Enterprises define housing safety and if so, how?**

**Question D-6 Should the Enterprises define housing habitability and if so, how? Question D-7 Should the Enterprises require borrower compliance with ongoing property maintenance after an initial inspection? What is a reasonable timeframe to provide unit maintenance and repairs?**

#### **NAHB Comments on Section D**

NAHB understands that FHFA is considering initiatives to increase renters' protections as part of the Biden-Harris Administration's whole of government effort, but we must strongly caution against creating significant disruptions in the conventional rental market through intervention in lease terms or imposing various controls on rents and/or fees, eviction proceedings and tenant screening.

FHFA should not attempt to re-create the tenant protections HUD requires of its subsidized portfolio for the Enterprise-backed multifamily properties. FHFA should not treat all Enterprise-backed multifamily properties as if they were subsidized properties subject to direct federal agency regulation of occupancy and asset management policies. These are areas outside the Enterprises' and FHFA's area of expertise. As the RFI noted, the Enterprises have no direct relationship with borrowers.

NAHB reiterates that our multifamily apartment owners and managers generally operate small businesses, and they are already subject to a myriad of tenant protection and fair housing statutes, regulations, administrative policies and case laws from all levels of government. Any attempt to federally supersede these state and local landlord-tenant laws and their many decades of legal precedent will only create confusion, litigation, and thus more costs and headaches to property owners and managers.

Housing providers try to prevent future evictions by taking reasonable measures to ensure an applicant will be able to abide by the lease terms. The most important responsibility for a renter is to comply with the terms of the lease, which is a legal contract that defines the rights and responsibilities for both apartment owners and renters. Therefore, it is necessary and appropriate for housing providers to perform due diligence by screening rental applicants to provide reasonable assurances that the applicant, if approved for tenancy, will be able to pay the rent, will respect the property, and will not threaten the safety or quality of life for other residents.

Unfortunately, the term "junk fee" has been misapplied to application and screening fees. How housing providers set these fees will vary by the jurisdiction and whether the property is conventional, federally-assisted through HUD or the U.S. Department of Agriculture (USDA), or financed through the LIHTC program, which is funded by the U.S. Treasury Department and administered by state housing finance agencies. Where permissible, housing providers will charge for the actual cost of the screening and add a factor for administrative and overhead costs for staff. One NAHB member noted, "Fees are not a profit center, counter to the conventional wisdom." Housing providers with HUD-assisted properties are limited in the types and amount of fees they can charge. Some members also reported that state agencies are very strict about fees charged in LIHTC properties as well.

NAHB strongly urges FHFA and the Enterprises to refrain from taking actions that would make it financially infeasible or more administratively burdensome to conduct tenant screening. Regulators should not restrict application fees in the conventional market.

It should go without saying that the purpose of a late rent fee is to deter late payments. Borrowers depend on timely rental payments to meet their own financial obligations.

Specific processes and procedures vary across providers, but NAHB members report that rejected applicants have the opportunity to dispute incorrect information that the housing provider considered in rejecting their applications.

Rent increases have attracted considerable media attention, along with calls for rent control. NAHB opposes rent control, including limitations on the percentage the rent may increase. Limits on rent increases are antithetical to the rights of an owner to offset very real increases in operating costs. Multifamily properties are underwritten to operate from their rental income. The properties must generate the income necessary to pay the mortgage, site staff, vendors, cover maintenance costs and meet other obligations. They must also have the flexibility to adapt to changing economic conditions without unnecessary obstacles to generating the necessary rental income.

It is essential to consider the context of rent increases. Higher rents reflect the housing shortage, substantial construction costs, and extreme operating cost increases for housing providers. Payroll, replacement equipment, contract services are all very directly impacted by inflation, but real estate taxes and insurance are perhaps the most egregious. Municipalities are maximizing property assessments and raising property taxes. For example, real estate taxes on some properties increased by as much as 90 percent in one year. Moreover, the property and casualty insurance markets are in a state of upheaval. Members have seen premiums on some properties double while deductibles have increased at the same time. Another NAHB member reported that the cost of insurance for his portfolio increased 80 percent last year, and even though he had minimal losses last year, his costs are doubling this year. He also noted that his general deductible increased from \$25,000 to \$250,000. Unfortunately, this is not an isolated example.

The costs of multifamily property, casualty and general liability insurance is an industry-wide concern for apartment owners and managers; however, the cost of new insurance policies and renewals is especially problematic for affordable housing providers who operate rent-restricted apartments because they cannot legally raise rents to cover skyrocketing costs. Apartment owners are required to have certain insurance coverage to satisfy mortgage requirements, but it is becoming harder to afford. Private insurance companies are dramatically raising insurance rates and deductibles for affordable housing. In some cases, the insurance providers are denying sales of new insurance policies or renewals. Consequently, NAHB's multifamily members are reporting that development and operation of rent-restricted affordable rental housing is becoming infeasible in many areas of the U.S. due to these high insurance costs. The cash flows on affordable properties cannot sustain these increases.

FHFA and the Enterprises must not put Enterprise-backed apartments at risk of default by imposing rent controls.

With respect to questions D-5 through D-7, NAHB notes that the Enterprise loan documents already include performance standards for financial, health and safety and property maintenance conditions. Loan servicers

monitor these conditions on behalf of the Enterprises. The assets must be maintained to certain levels or the borrower is in default. Equity investors in the properties also monitor performance standards to protect their investments, quality of the assets and residents. The market is working to provide appropriate oversight of Enterprise-backed apartments. Additional requirements would risk administrative overreach.

## **E. Risk Management**

**Question 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?**

**Question 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?**

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

**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?**

### **NAHB Comments on Section E**

The various tenant protection measures FHFA and the Enterprises are considering--specific lease terms, restrictions on rent increases and fees, eviction and tenant screening policies and "source of income protection" laws – are outside the expertise of FHFA, the Enterprises and the loan servicers. These aspects of landlord-tenant laws are appropriately and often extensively regulated at the state and local levels. NAHB strongly advises FHFA against mandating these or similar policies either directly by regulatory or administrative actions or indirectly by mandating their adoption as a condition of the Enterprises' loan products.

The enhanced tenant protections under consideration are infeasible. Non-monetary defaults present unique challenges, and they are often difficult to enforce. In this case, it is unclear who would monitor and enforce these measures. The Enterprises have no relationship with borrowers, and lenders/servicers have no relationship with the tenants. Likewise, Enterprise multifamily loans are usually short-term in nature. Borrowers often repay these loans in five years or less, so any protections that are conditional on the mortgage would expire when the borrower completes payments.

## **CONCLUSION**

FHFA and the Enterprises play extremely important roles in the secondary multifamily mortgage market. NAHB appreciates the work these entities do to increase the supply of quality rental housing. Therefore, NAHB strongly urges FHFA and the Enterprises to continue building on their strengths, focus on policies to increase the supply of quality rental housing, refrain from actions that would make the Enterprise loan products less appealing to

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borrowers—and under the worst scenario, potentially risk the safety and soundness of the Enterprises’ multifamily operations.

Thank you for considering NAHB’s comments. Please direct any questions or requests for additional information to Michelle Kitchen, Senior Director of Multifamily Finance at [mkitchen@nahb.org](mailto:mkitchen@nahb.org).

Sincerely,

A handwritten signature in cursive script that reads "Jessica R. Lynch". The signature is written in black ink and is positioned above the printed name.

Jessica R. Lynch