

July 31, 2023

Federal Housing Finance Agency
Office of the Secretary
Constitution Center
400 7th Street, SW
Washington, D.C. 20219

Re: Request for Input on Multifamily Tenant Protections

KY Tenants is a tenant-led organization fighting for a Kentucky where everyone has safe, high quality, affordable homes. Over the past few weeks, members of KY Tenants have knocked on 377 doors in five properties with mortgages backed by Fannie Mae or Freddie Mac. Several of our members live in such properties. We have heard stories of unconscionable rent hikes, children living with mold, lack of heat in the winters, and more. As such, we support the below list of recommendations for tenant protections compiled by the Homes Guarantee campaign.

“Recommendations

The FHFA must require the following tenant protections in all Enterprise-backed multifamily properties. These protections must be implemented together, as they are interdependent: for example, for a tenant's right to organize to be effective, they also must be protected from a lease non-renewal without good cause. Similarly, good cause eviction protections are insufficient without limits on large, unreasonable rent increases, which can serve as *de facto* evictions.

1. Limit Egregious Rent Hikes

The FHFA should limit annual rent hikes at 3% annually in Enterprise-backed properties. This limit on rent hikes should be applied universally and as a requirement.

Imposing limits on rent increases is a proven policy that can immediately stabilize prices, halt rent gouging, and reduce the risk of displacement and homelessness, while increasing housing security and affordability over the long term. Limits on rent increases will protect tenants from eviction and/or homelessness by creating a schedule for reasonable and gradual rent increases.

Currently, landlords of Enterprise-backed properties face little to no federal restrictions regarding whether and how much they can increase their tenants' rents. In fact, their business model and profitability often depend on raising rents significantly higher than what existing tenants can afford.

While a restriction on rent increases in FHFA-financed multifamily buildings will not have as large of a local impact as an entire state or municipality opting into a rent stabilization regime, research on the impact of rent regulations is useful in demonstrating their positive outcomes. A 2019 review of existing academic research on the economic and social impacts of rent regulations found that rent regulations improve affordability for tenants and that, on balance, rent regulations do not increase the cost of renting non-regulated units. In localities where they do, closing policy loopholes (such as condo conversions) can help.¹ In fact, some research shows that rent regulations could help keep rent more affordable for all renters. For example, a 2007 study of rents in Boston, Cambridge, and Brookline, Massachusetts, distinguished between controlled and uncontrolled units, indicated that having 10 to 12 percent of rent-stabilized units in an area decreases the rents of non-controlled units by \$23 to \$28.² Finally, multiple studies have found that rent regulations have little impact on the construction of new housing.³

¹ Pastor, M., Carter, V., Abood, M. (2018). “Rent Matters: What Are the Impacts of Rent Stabilization Measures?” USC Dornsife Program for Environmental and Regional Equity.
https://dornsife.usc.edu/assets/sites/242/docs/Rent_Matters_PERE_Report_Final_02.pdf.

² Sims, David P. 2007. “Out of Control: What Can We Learn from the End of Massachusetts Rent Control?” *Journal of Urban Economics* 61(1):129–51.

³ See, e.g. John I. Gilderbloom and Ye Lin, “Thirty Years of Rent Control: A Survey of New Jersey Cities,” *Journal of Urban Affairs* 29, 2 (2007): 213–214; Joshua Ambrosius, John Gilderbloom, William Steele, Wesley Meares, and Dennis Keating, “Forty Years of Rent Control: Reexamining New Jersey’s Moderate Local Policies after the Great Recession,” *Cities* 49

2. Institute Good Cause Eviction Protections

The FHFA should institute good cause eviction protections in Enterprise-backed properties. Good cause (sometimes referred to as “just cause”) protections means that landlords can only evict tenants in the event of serious and repeated lease violations when the tenant has failed to cure their breach after being given notice. The purpose of good-cause evictions should be to protect the health and safety of residents and employees, to protect the premises from major damages, and to enforce the obligation to pay rent. For Enterprise-backed properties, the definition of good cause for eviction should be especially narrow. Common exceptions from other contexts – such as in the event that the landlord wishes to live in a unit as an owner-occupant – are unlikely to be relevant.

Good cause eviction policies protect the rights of tenants to seek repairs and to organize with other tenants. Lease non-renewals and evictions are often used by landlords in retaliation for maintenance requests or tenant organizing.

Good cause is a well-established protection in federally assisted housing programs such as the Low Income Housing Tax Credit (LIHTC) program and the HOME Investments Partnerships (HOME) program. Additionally, several states, including California, New Jersey, and others, have good cause protections. The FHFA itself is familiar with good cause protections, having imposed them on borrowers of Enterprise-backed mortgages for manufactured home communities through its Pad Lease protections.

3. Respect the Right to Organize

The FHFA should require landlords with Enterprise-backed mortgages respect tenants’ rights to organize, form tenant unions, and elect tenant union leadership, free from retaliation. The right to organize is required in several federal housing programs, including public housing and HUD-supported multifamily housing.⁴

4. Ban Source of Income Discrimination

The FHFA should ban source of income discrimination in Enterprise-backed properties. Bans on source of income discrimination require landlords to accept all lawful forms of payment, including Section 8 Housing Choice Vouchers. Landlords with Enterprise-backed mortgages should not be allowed to refuse to rent to participants in federal housing programs. These protections are already required for recipients of HOME and LIHTC funding.⁵

5. Enforce and Expand Protections Against Discrimination

The FHFA should enforce existing laws that prohibit landlords from denying a tenant rental housing based on race, physical or mental ability, and family make-up, and expand protections to prohibit discrimination based on sexual orientation, gender expression or identity, immigration status, conviction and/or arrest history, bankruptcy history, eviction history, or credit score in Enterprise-backed properties.

6. Require Safe, Quality Housing Standards

The FHFA should articulate a clear set of habitability standards for Enterprise-backed properties. The FHFA should model its standards on the U.S. Department of Housing and Urban Development’s Housing Quality Standards for the Housing Choice Voucher program.

(2015): 128. (finding no significant relationship between rent control and new housing development by comparing New Jersey municipalities with and without moderate rent control); and Miriam Zuk, “Rent Control: The Key to Neighborhood Stabilization?” Urban Displacement Project, September 9, 2015, <https://www.urbandisplacement.org/blog/rent-control-the-key-to-neighborhood-stabilization/> (finding that the six cities with rent control in the Bay Area produced more housing units per capita than cities without rent control between 2007 and 2013). For a more detailed examination of the literature regarding the effectiveness of rent control and its lack of impact on new construction, see the longer technical comment submitted by the Homes Guarantee Campaign.

⁴ White House Domestic Policy Council and National Economic Council, *The White House Blueprint For a Renters Bill of Rights*, accessed June 13, 2023, 14, <https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf>.

⁵ Local Housing Solutions, “Source of Income Laws,” Housing Policy Library, accessed June 13, 2023, <https://localhousingsolutions.org/housing-policy-library/source-of-income-laws/>.

7. Include Fair Lease Provisions

The FHFA should develop standard fair lease provisions for all states and territories and require landlords of properties with Enterprise-backed mortgages to use them. The FHFA and the GSEs should work to develop standard fair leases for all states and territories, as well as the District of Columbia, in recognition of the variation that exists in state landlord-tenant law and state civil procedure. In developing fair lease provisions, the FHFA should view existing state lease requirements as a floor rather than a ceiling and go further to protect tenants. In particular, fair leases should:

- Provide at least a ten-day grace period in which to pay rent before any late fee is assessed;
- Cap late fees at 5% of the amount of rent owed;
- Ban junk fees;
- Limit security deposits to one month's rent;
- Clarify the circumstances under which landlords can withhold security deposits and the procedural steps that they have to take to be authorized to do so.

8. Participate in a Rental Registry

The FHFA should require all Enterprise-backed properties to participate in a rental registry that is publicly available and accessible to tenants. The registry should include information that is key to tenants making an informed decision about leasing an apartment such as the number of code violations, evictions, and average rent hikes in a property. Tenants should also have access to contact information of the real, beneficial owner(s) of the property.

9. Create an Office of Tenant Protections with Enforcement Power

The protections outlined in this letter require diligent and proactive enforcement. Accordingly, the FHFA should create an Office of Tenant Protections that is responsible for ensuring that borrowers comply with required tenant protections. The Office of Tenant Protections would be responsible for identifying landlords (both corporate entities and the individuals behind them) who must be barred from future participation in Enterprise-backed mortgage programs in the event of serial and/or egregious violations of tenants' rights. Additionally, the Office of Tenant Protections should evaluate the effectiveness of existing tenant protections, conduct research on how market trends and emerging practices affect tenants' rights, and propose additional protections to ensure that the FHFA's tenant protections do not become outdated."

Sincerely,

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