

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

July 31, 2023

Submitted via fhfa.gov

The Federal Housing Finance Agency
Office of Multifamily Analytics and Policy
400 7th Street SW, 9th Floor
Washington, D.C., 20219

Re: Request for Input on Tenant Protections for Enterprise-Backed Multifamily Properties

Justice in Aging appreciates the opportunity to provide comments on the Federal Housing Finance Agency (FHFA)'s Request for Input on tenant protections for enterprise-backed multifamily properties. Justice in Aging is a national legal advocacy organization with the mission of improving the lives of low-income older adults. We use the power of law to fight senior poverty by securing access to affordable housing, health care, economic security, and the courts for older adults with limited resources. We focus on the needs of low-income populations who have traditionally lacked legal protections, such as women, people of color, LGBTQI+ individuals, and people with limited English proficiency.

We urge FHFA to enact robust federal renter protections for tenants living in multifamily properties with federally-backed mortgages. FHFA must use its authority to create and enforce a federal floor of tenant protections in the private rental market. Justice in Aging strongly supports, at minimum, the following actions:

- Implementing source-of-income protections to prohibit landlords from discriminating against low-income households who receive vouchers and other public benefits;
- Implementing “just cause” protections to prevent discriminatory, retaliatory, or arbitrary evictions;
- Ensuring tenants have a right to cure nonpayment of rent and other alleged lease violations;
- Implementing anti-rent gouging protections to prevent unreasonable rent increases;
- Limiting application and other non-rent fees, which pose barriers to housing for low-income households and increase the risk of evictions for nonpayment;
- Prohibiting abusive lease terms, including lease terms waiving tenant rights under state law;
- Implementing requirements to ensure safe, accessible housing; and
- Developing protections to prevent the overly broad exclusion of tenants based on criminal history.

These measures will reduce common barriers to housing for low-income older adults and promote housing stability among seniors during a time of rapidly rising older adult homelessness. When older adults become homeless, they generally face more hurdles to regaining housing than younger individuals due to issues such as age-related disabilities and limited options for increasing income. Tenant protections that prevent homelessness are therefore critical for low-income older adults.

Washington, DC



Los Angeles, CA



Oakland, CA

Rental Cost Burdens Among Older Adults

Older adult renters are more likely to spend a large share of their income on rent than the population as a whole, and these rental cost burdens place them at increased risk of housing instability and homelessness. While 47% of all renters are cost-burdened, 53% of older renter households are housing cost-burdened, and almost one in three experience a severe cost burden, spending more than 50% of their income on rent and utilities. Further, older adults and people with disabilities comprise almost half (46%) of all extremely low-income (ELI) renter households, who are often most at risk of housing insecurity and homelessness. Older Black, Latino, Asian, and Native American households are about three times more likely to be ELI renters than older white households, which likely reflects inequities in employment and wages, housing, and wealth accumulation that have compounded over time.¹

To afford housing, many low-income older adults need supports such as housing vouchers that provide a deep subsidy for rent, along with Supplemental Security Income (SSI) and Social Security benefits. However, landlords often refuse to accept vouchers due to negative stereotypes about low-income renters being more likely to damage property, engage in crime, or not pay rent. Voucher discrimination can also serve as a proxy for racial discrimination. Approximately 76% of participants in the federal Housing Choice Voucher (HCV) program are people of color.² Some landlords also choose not to rent to applicants on public benefits like SSI or Social Security because receipt of these benefits can render these tenants “judgment proof,” and their income cannot be garnished to satisfy court judgments. To counter these harmful practices, FHFA should implement source-of-income protections that prohibit landlords from discriminating against households receiving vouchers and public benefits.

Evictions and Older Adults

The rental burdens faced by low-income older adults, who often live on fixed incomes that fail to keep pace with rents, put them at high risk of eviction. These older adult renters often forgo necessities like food and medication to afford their housing costs, and many will end up experiencing homelessness, especially as COVID eviction moratoriums and emergency rental assistance end. Housing discrimination, especially based on disability, also contributes to housing instability among low-income older adults. About 60% of older adult renter households include at least one member with a disability affecting the ability to complete household tasks, 45% have a mobility disability, and 30% have a self-care disability. These rates also rise with age.³ Many older adults find themselves vulnerable to evictions for reasons related to their disabilities.

Housing precarity among low-income seniors is evident in data showing that older adults are likely the fastest growing group among people experiencing homelessness. Researchers estimate that

¹ Justice in Aging, “Low-Income Older Adults Face Unaffordable Rents, Driving Housing Instability and Homelessness” (February 2021), available at <https://justiceinaging.org/wp-content/uploads/2021/02/Older-Adults-Rental-Housing-Burdens.pdf>.

² Center on Budget and Policy Priorities, “Policy Basics: The Housing Choice Voucher Program” (April 2021), available at <https://www.cbpp.org/research/housing/the-housing-choice-voucher-program>.

³ Joint Center for Housing Studies of Harvard University, “Projections & Implications for Housing a Growing Population: Older Households 2015-2035” (2016), available at https://www.jchs.harvard.edu/sites/default/files/media/imp/harvard_jchs_housing_growing_population_2016_1.pdf.

the number of older adults who are unhoused will triple over the next decade.⁴ The recently released California Statewide Study of People Experiencing Homelessness, the largest representative study of homelessness in the U.S. since the mid-1990s, found that nearly half of the single adult homeless population was age 50 and older, with 41% experiencing homelessness for the first time after age 50. About 47% of study participants cited economic reasons for losing housing, and 63% noted at least one social reason, such as discrimination and conflicts with property owners, for housing loss.⁵

We urge FHFA to pursue measures that will minimize evictions and housing loss among older adult renters. FHFA should: 1) implement “just cause” protections that prevent discriminatory and retaliatory evictions by limiting the legal grounds for which a landlord can evict a tenant or refuse to renew a lease; 2) ensure tenants have a reasonable period of time to cure nonpayment of rent or other alleged lease violations before facing eviction; 3) implement anti-rent gouging protections to prevent unreasonable rent increases that exploit low-income households; 4) limit application and other non-rent fees, which can impose burdensome costs and raise the risk that a household will be evicted for nonpayment; and 5) prohibit abusive lease terms that attempt to waive or limit tenant rights and remedies under state law. These protections are important individually, but more importantly they work holistically to prevent landlord exploitation and unnecessary evictions. For example, rent control measures without other protections sometimes have the unintended effect of encouraging landlords to evict long-time, older renters in order to re-lease units to new tenants at higher rates. “Just cause” requirements, however, mitigate the risk of such actions by limiting the reasons for which a tenant can be evicted.

Older Adults’ Need for Safe and Accessible Housing

Older adults overwhelmingly desire to age in their own homes, but doing so requires safe and decent housing that is accessible. Yet many landlords fail to properly maintain accessibility features, such as elevators, in their properties. For older adults with disabilities, this problem creates safety risks and social isolation. The lack of elevator service traps these older adults in their apartments, preventing them from attending doctor’s appointments, evacuating a building in an emergency, and seeing family and friends in the community.⁶ Many properties subject to the federal Fair Housing Act (FHA) and Section 504 also fail to construct accessible units and/or provide reasonable accommodations and home modifications as required under those laws. Older adults may need units with a variety of accessibility features, such as no-step entrances, taller toilets, and lower kitchen cabinets in order to continue living in their units and avoid institutionalization in places like nursing homes.

Given the increasing aging population and growing need for accessible housing,⁷ we recommend that FHFA identify ways to hold property owners accountable for maintenance of their properties and adherence to FHA and Section 504 requirements. Landlords must ensure safe and habitable housing with timely repairs, and (where applicable) properties must comply with the FHA’s design and

⁴ Dennis Culhane et al., AISP, “The Emerging Crisis of Aged Homelessness: Could Housing Solutions be Funded by Avoidance of Excess Shelter, Emergency Room and Nursing Home Costs?” (2019), available at <https://www.aisp.upenn.edu/aginghomelessness/>.

⁵ Benioff Homelessness and Housing Initiative, “Toward a New Understanding: The California Statewide Study of People Experiencing Homelessness” (June 2023), available at https://homelessness.ucsf.edu/sites/default/files/2023-06/CASPEH_Report_62023.pdf.

⁶ See, e.g., New Haven Independent, “Broken Elevator Leaves Seniors to Stairs” (Dec. 2022), available at https://www.newhavenindependent.org/article/broken_bella_vista_elevator_leaves_drivers_to_stairs.

⁷ See U.S. Census Bureau, “Old Housing, New Needs: Are U.S. Homes Ready for an Aging Population?” (May 2020), available at <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p23-217.pdf>.

construction standards, Section 504's requirements on accessible units, and obligations under these laws to provide reasonable accommodations and modifications for people with disabilities.

Barriers for Older Adults With Criminal Records

Another group of older adults who face high risks of housing insecurity include older adults leaving incarceration. Like the general population, the prison population is also aging. Older adults released from prison or jail face steep barriers to securing housing, in large part due to their criminal records. Formerly incarcerated individuals are ten times more likely to experience homelessness upon their release than the general population, and older adults experience an even higher risk of homelessness upon release than their younger counterparts. The lack of a home jeopardizes older adults' safety, access to health care and other social services, and increases their likelihood of reincarceration.⁸

Many landlords automatically screen out applicants with criminal records and fail to do an individualized review of mitigating factors. HUD has explained this practice may violate the FHA by having a disparate impact on people of color and other protected classes who are incarcerated at disproportionate rates.⁹ Further, studies have shown that criminal history is not a reliable predictor of future success as a tenant.¹⁰ FHFA should therefore prohibit the overly broad exclusion of applicants based on criminal records and require individualized assessments of criminal history and mitigating information, such as the length of time that has passed since the criminal conduct occurred and evidence of rehabilitation efforts. These measures are consistent with the FHA and would help increase housing opportunities for people with criminal records.

Conclusion

Finally, we note that the housing barriers and problematic landlord practices described above also occur in senior independent and assisted living properties, which can also be Enterprise-backed multifamily properties. FHFA must ensure that any tenant protections it enacts for multifamily properties are extended to these settings as well.

Thank you for your consideration of Justice in Aging's comments. If you have any questions about this submission, please contact Jennifer Kye, Senior Attorney, at jkye@justiceinaging.org.

Sincerely,



Tracey Gronniger
Managing Director, Housing and Economic Security

⁸ Justice in Aging, "Reducing Barriers to Reentry for Older Adults Leaving Incarceration" (May 2022), available at <https://justiceinaging.org/wp-content/uploads/2022/05/Reducing-Barriers-to-Reentry-for-Older-Adults-Leaving-Incarceration.pdf>.

⁹ HUD, "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 2016), available at https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.

¹⁰ HUD, "Tenant Screening With Criminal Background Checks: Predictions and Perceptions Are Not Causality" (May 2022), available at <https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-051722.html>.