

Securing Our Housing Futures: Tenant Protections for Federally-Backed Homes

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Federal Housing Finance Agency

Multifamily Tenant Protections RFI

Deadline: July 31, 2023

Agenda

1. How Did We Get Here?
2. Introduction to the Federal Housing Finance Agency (FHFA)
3. Overview of the Request for Input (RFI)
4. Tenant Protection Policies & Resources
5. Q&A





Tara Raghuv eer
Campaign Director
Homes Guarantee Campaign

Homes Guarantee Campaign





THE WHITE HOUSE BLUEPRINT FOR A RENTERS BILL OF RIGHTS

PREPARED BY THE DOMESTIC POLICY COUNCIL AND
NATIONAL ECONOMIC COUNCIL

JANUARY 2023

Marie Claire Tran-Leung

National Housing Law Project
Introduction to the FHFA

Federal Housing Finance Agency

An independent agency created in the wake of the 2008 financial crisis to oversee Fannie Mae and Freddie Mac, otherwise known as the government-sponsored enterprises (GSEs).

Fannie Mae and Freddie Mac (the GSEs)

Mortgages generally

- Landlords borrow money from the bank to buy properties.
- The landlord-borrower promises to pay back the money over time through monthly mortgage payments to the bank.
- The bank holds the mortgage.

The secondary mortgage market

- The GSEs buy mortgages from the banks. **These mortgages must meet certain criteria.**
- The GSEs pools those loans into mortgage-backed securities and sell the securities to investors.

Federal Housing Finance Agency

- FHFA oversees Fannie Mae and Freddie Mac as both a **regulator** and a **conservator**.
 - *Example:* setting criteria for mortgages that the GSEs can buy
- **FHFA's strategic goals**
 - To ensure that the GSEs operate in a safe and sound manner by preventing them from making risky investments
 - To foster housing finance markets that promote equitable access to affordable and sustainable housing

FHFA & Pandemic-Era Tenant Protections

Mortgage Forbearance

- Landlords who participated in a program to pause their mortgage payments had to, in exchange, promise not to evict their tenants for the duration of the pause.

CARES Act Eviction Moratorium

FHFA & Existing Tenant Protections

Pad Lease Protections in Manufactured Housing

- One-year renewable lease term unless good cause for non-renewal
- 30-day written notice of rent increases
- 5-day grace period for rent payments, and the right to cure defaults on rent payments; and
- Right of tenants to, among other things, receive at least 60 days advance notice of a planned sale or closure of the manufactured housing community.

FHFA & Existing Tenant Protections

CARES Act 30-day Eviction Notice Requirement

- FHFA required Freddie and Fannie to incorporate the notice requirement into their existing loan agreements.

Radon Testing Requirements

- FHFA, Freddie and Fannie increased radon testing requirements for multifamily housing.

Thomas Silverstein

Lawyer's Committee for Civil Rights Under Law
Overview of Request for Input

Request for Input

- A request for input or RFI (sometimes called a request for information) is a process through which federal agencies seek input from the public in order to guide their policymaking.
- Although all three involve providing notice and accepting public comment, RFIs are not the same as Notices of Proposed Rulemaking and Advanced Notices of Proposed Rulemaking, which, as the names reflect, are more geared to teeing up regulatory change.
- An agency may decide to engage in rulemaking based on the comments received via an RFI, but it may also implement policy changes in other ways, such as through guidance.

Request for Input

- This RFI follows up on the White House's January 2023 announcement regarding renters' rights and is part of a whole-of-government approach.
- The political impetus from the White House means that, even though the RFI process is purely advisory, the FHFA has significant incentive to take the process seriously and work to ensure that some tangible long-term outcomes result from it.
- Given the breadth of the portfolios of the FHFA's regulated entities, the range of tenant protections that could be adopted is broad.

A. General Questions on Tenant Protections

Question	
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.

B. Access to Housing

Question	
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.

C. Access to Information

Question	
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.
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?

D. Tenant Housing Stability

Question	
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: <ul style="list-style-type: none">• Lease renewals,• Timing and amount of rent increases,• Upfront or ongoing fees,• Causes for eviction,• Notification of eviction actions,• Right to cure a cause for eviction, and• Time to vacate following eviction.
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?

E. Risk Management

Question	
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?

How to Submit Your Comment

Two Options

- Comment Portal: <https://tenantcomment.org/>
- FHFA Website:
<https://www.fhfa.gov/AboutUs/Contact/Pages/Request-for-Information-Form.aspx>

SUBMIT BY MONDAY, JULY 31

Instructions for Submitting to FHFA

PROVIDE INPUT

Select a Topic:

* Tenant Protections

Select one

Social Bonds

Enterprises' Single-Family Mortgage Pricing Framework

Tenant Protections

* Email Address

1 Your Information

* First Name

Telephone Number

2 Your Organization

* Organization Name

Organization Type

* Comments

Tram Hoang

PolicyLink

Overview of Tenant Protection Policies

Freddie Mac Tenant Protections White Paper

State Findings:

- 3 states have state-wide limitations on rent increases
- 3 states grant a right to counsel in an eviction proceeding
- 7 states have laws prohibiting a landlord's use of certain information, such as a tenant's criminal history, when screening
- 44 states have laws that prohibit eviction or other forms of retaliation by a landlord in response to a tenant's exercise of their legal rights

Source: <https://mf.freddiemac.com/docs/tenant-protections-white-paper.pdf>

FHFA's Share of the Loan Market

FHFA loan count as percent of total loans originated, 2007 to 2021



- Across all loans, 35% of market share.
- Covers 12+ million rental units (28%)

Sources: Home Mortgage Disclosure Act as analyzed by Mortgage CUBE; <https://www.urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-that-s-one-four-us-rental-units>

Tenant Protections

- Changes to tenant screening practices
- Fair leases
- Ban source of income discrimination
- Rent regulations
- Just cause eviction
- Right to counsel
- Tenant right to organize
- Safe, quality housing standards
- Rental registry
- Tenant/Community opportunity to purchase
- Creation of Office of Tenant Protections

Changes to Tenant Screening Practices

- Address intentionally discriminatory practices and screening practices that disproportionately harm communities of color and other protected groups
- Limit the impact of credit history, eviction record and criminal records (ex: limited lookback period)
- Prohibit the practice of discriminating on the basis of sexual orientation, gender identity or expression, conviction or arrest records, eviction records, past bankruptcies, credit score
- Many of these are already illegal under the Fair Housing Act, but require more robust enforcement

Fair Leases

- Require standardized fair leases that:
 - Clearly communicate material lease terms and obligations
 - Do not contain any unfair, deceptive, and abusive terms
 - Have at least a 10-day grace period to pay rent before late fee
 - Do not include junk fees
 - Make clear the circumstances under which landlords can withhold security deposits
- State law should be a floor, with FHFA regulations going farther to protect tenants from exploitation

Ban Source of Income Discrimination

- Prohibit discrimination against renters based on their source of income in buildings with FHFA-backed mortgages
- SOI discrimination laws work: research shows it increases the likelihood of HCV recipients finding a place to live and moving to a higher-opportunity neighborhood
- In addition to banning SOI discrimination, prevent loopholes like the use of egregious income-to-rent ratio requirements that use the full rent for a unit
- [List of SOI Discrimination Laws](#)

Source: <https://www.nhlp.org/wp-content/uploads/Source-of-Income-Discrimination-and-Fair-Housing-Policy-by-Tighe-and.pdf>

Rent Regulations

- Prohibit landlords with FHFA-backed mortgages from imposing egregious and predatory rent increases
- Reduce cost-burden for tenants and stabilize communities
- Especially important given the evidence that nonpayment of rent cases are some of the most common reasons for eviction cases
- Retrospectively, having rent stabilization in place prior to the rent spikes experienced in 2021 would have allowed FHFA to prevent evictions and mitigate the inflation crisis
- Smaller rent increases in properties with GSE-backed mortgages would have reduced the leverage of other landlords to hike rents

Just Cause Eviction

- Require just cause eviction protections for all tenants in homes with FHFA-backed mortgages
- Protect tenants from no-cause evictions and lease non-renewals, which can be discriminatory or retaliatory
- Circumstances under which eviction are allowed should be narrow and prescriptive to avoid loopholes
- Examples include:
 - Non-payment of rent
 - Serious breach of material lease terms
 - Substantial damage to the unit

Tenant Right to Counsel

- Expand tenant right to counsel to tenants of FHFA-backed homes
- From the White House Blueprint: “If an eviction is filed, tenants should be given 30 days’ notice of an eviction action and the right to counsel during an eviction proceeding.”
- RTC works: In New York City, 84 percent of represented tenants remained in their homes and in Cleveland, more than 90 percent of tenants with legal representation avoided eviction or an involuntary move.

Source:

<https://www.policylink.org/resources-tools/tools/all-in-cities/housing-anti-displacement/right-to-counsel-for-tenants>

Tenant Right to Organize

- Guarantee tenants of homes with FHFA-backed mortgages the right to organize
- The risk of landlord retaliation prevents tenants from enforcing their individual housing rights, such as habitable housing and abusive practices
- When tenants can come together and build power to demand change, it is much more powerful and effective
- There is abundant precedent for this within federal housing programs

Safe, Quality Housing Standards

- Articulate a clear set of habitability standards to which borrowers must comply
- Work with state/local building code/inspection officials to ensure enforcement
- Ex: model the standards off HUD's Housing Quality Standards for the Housing Choice Voucher program
- GSEs should take legal action against borrowers who fail to comply with the standards pursuant to their loan agreements

Rental Registry

- All rental properties with FHFA-backed mortgages should be listed in a rental registry that is publicly searchable and accessible to the public, particularly tenants
- Registries can include:
 - Beneficial owner (not just LLC)
 - Documentation regarding history of property inspection
 - Number of units owned
 - Rental rates
- Allows for increased transparency, tracking, and tenant organizing

Tenant or Community Opportunity to Purchase

- Incorporate a tenant or community to purchase for buildings with FHFA-backed mortgages
- Creates opportunities for tenants of smaller multifamily buildings (>20 units) to access ownership and wealth-building
- Gives local or state governments and mission-oriented non-profit developers the opportunity to purchase buildings to create and preserve affordable housing opportunities
- Advance notice of sale policies are a good precursor policy that supports tenant stability even in the absence of TOPA/COPA

Creation of Office of Tenant Protections

- Increased tenant protections require diligent and proactive enforcement
- Office would be responsible for ensuring that FHFA has effective oversight systems in place for tracking borrower compliance with tenant protections
- Should have the capacity to receive complaints of violations, investigate, and compel corrective action
- Should coordinate with the offices responsible for enforcing borrowers' loan obligations

Helpful Resources

- PolicyLink Anti-Displacement Toolkit:
<https://plcylnk.org/housing-antidisplacement-tools>
- NCCRC Right to Counsel Resources:
http://civilrighttocounsel.org/highlighted_work/organizing_around_right_to_counsel
- NLIHC: <https://nlihc.org/housed/urge-federal-government-protect-renters>
- Homes Guarantee Comment Guidance: <http://ppls.ac/tenantcomment>
- PRRAC SOI Policy Scan: <http://www.prrac.org/pdf/AppendixB.pdf>
- White House Blueprint:
<https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf>

Questions?



Thank you for joining us!

Don't forget:

- Fill out our survey
- Submit your comment by July 31

