TENANT PROTECTIONS FOR ENTERPRISE-BACKED MULTIFAMILY PROPERTIES

REQUEST FOR INPUT

May 2023

Table of Contents

Table of Contents i

Introduction 1

Public Input Instructions 1

Background 2

FHFA's Role as Supervisor & Conservator of Fannie Mae and Freddie Mac 2
Fannie Mae and Freddie Mac's Role in the Multifamily Market 3
Existing Multifamily Tenant Protections at Enterprise-Backed Properties 3

Current Efforts to Evaluate Multifamily Tenant Protections at Enterprise-Backed Properties 6

Public Input Questions 7

A. General Questions on Tenant Protections 8
B. Access to Housing 8
C. Access to Information 8
D. Tenant Housing Stability 9
E. Risk Management 9

Introduction

The Federal Housing Finance Agency (FHFA) is publishing this Request for Input (RFI) to solicit public input on issues faced by tenants in multifamily properties, and on any opportunities and potential impacts associated with requiring or encouraging specific tenant protections at multifamily properties backed by Fannie Mae and Freddie Mac (the Enterprises). FHFA seeks feedback from a diverse set of viewpoints on issues related to multifamily tenant protections. 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.

Public Input Instructions

FHFA invites interested parties to provide written input, feedback, and information on all aspects of this RFI, no later than July 31, 2023. Public input may be submitted electronically using the response form at **FHFA's website** (select "Tenant Protections" from the "Select a Topic" menu) or via mail to the Federal Housing Finance Agency, Office of Multifamily Analytics and Policy, 400 7th Street SW, 9th Floor, Washington, D.C. 20219.

FHFA encourages interested parties to provide responses to this RFI, and to make their responses public whenever possible, to inform broader public discourse on these issues. FHFA also encourages respondents to provide examples of best practices, as well as examples of practices that should be avoided or prohibited. However, respondents should avoid including personally identifiable information of anyone other than the respondent or any group that the respondent represents. Generally, all input received will be made public and posted to FHFA's website, unchanged and including any personally identifiable information it may contain (other than references to third parties whose consent to disclosure cannot be verified, which information FHFA will redact). FHFA encourages interested parties to email FHFA at Tenant_Protection_RFI@fhfa.gov if they seek to provide confidential or proprietary information as part of their responses and desire the information not be made public.

Background

FHFA's Role as Supervisor & Conservator of Fannie Mae and Freddie Mac

Congress established FHFA to oversee the safety and soundness of the Enterprises and the Federal Home Loan Banks (together, "the regulated entities") and ensure the regulated entities achieve the purposes of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act[1]), the Enterprises' statutory charters[2], and other applicable laws. In doing so, Congress recognized that the Enterprises serve important public purposes, as reflected in their statutory charters, and that they require safe and sound management to accomplish their public missions.[3]

FHFA's oversight responsibility includes financial and operational supervision and regulation, as well as oversight of the Enterprises' efforts to fulfill their statutory mission to facilitate the financing of affordable housing. Since 2008, FHFA has also acted as conservator of the Enterprises. In these roles, FHFA ensures the Enterprises operate in a safe and sound manner and promote equitable access to affordable and sustainable credit. This includes ensuring the Enterprises help meet the credit needs of all segments of their communities, including creditworthy low- and moderate-income families, by serving as a reliable source of liquidity and funding for housing finance and community investment throughout the economic cycle.

The Enterprises have a responsibility to not only ensure liquidity is available for affordable rental housing, but also to address challenges faced by tenants and property owners in the multifamily housing market. For example, the Enterprises' charter acts require the Enterprises, as part of their annual housing reports, to assess their underwriting standards, policies, and business practices that affect low- and moderate-income families or cause racial disparities, including how their activities support the objectives of comprehensive housing affordability strategies under related statutes.[4]

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[1] 12 U.S.C. § 4511(b)(1)-(2).
[2] 12 U.S.C. § 1716, *et seq.* and 12 U.S.C. § 1451, *et seq.*
[3] 12 U.S.C. § 4501(1) (Enterprises and Federal Home Loan Banks have important public missions), (2) (their continued ability to accomplish their public missions is important, and effective regulation is needed to reduce risk of failure), and (7) (Enterprises have affirmative obligation to facilitate financing of affordable housing for low- and moderate-income families consistent with their public purposes, while maintaining a strong financial condition and a reasonable economic return).
[4] 12 U.S.C. § 1723a(n) and 12 U.S.C. § 1456(f).

Fannie Mae and Freddie Mac's Role in the Multifamily Market

As secondary market institutions, the parties with whom the Enterprises engage directly are lenders, servicers, and investors. Fannie Mae and Freddie Mac purchase multifamily mortgage loans from lenders, each of which is approved to sell loans to an Enterprise based on its multifamily housing experience, financial capacity, and numerous other factors. Although the Enterprises retain some of the multifamily loans they purchase, most Enterprise-backed multifamily loans are placed in securitization trusts that use the loans and the payments they produce to fund payments to investors in securities (commonly called Commercial Mortgage-Backed Securities, or CMBS).

The Enterprises guarantee the payment of principal and interest on the securities, which are collateralized by mortgage loans, and charge lenders a guarantee fee for assuming the credit risk associated with the acquired mortgages. To reduce their credit risk exposure on guaranteed mortgages, the Enterprises routinely sell a portion of the credit risk on newly acquired mortgages to the private sector. Each Enterprise uses a different model of credit risk transfer for loan purchases.

Each Fannie Mae multifamily mortgage loan is packaged into an individual CMBS and sold in the secondary market. Freddie Mac primarily uses a "K-certificate" structure, which usually pools multiple mortgage loans into a single real estate mortgage investment conduit (REMIC) trust that issues guaranteed bonds and transfers credit risk through subordinate unguaranteed bonds. In some cases, Freddie Mac uses Participation Certificates (PCs) to package multifamily mortgage loans, in which Freddie Mac guarantees payment for the entire security.

Although the Enterprises provide liquidity to the multifamily housing market, they do not lend to multifamily property owners directly or manage multifamily housing properties directly; instead, the Enterprises purchase loans from lenders and fund them with securities, as discussed above. The Enterprises' role in the multifamily housing market limits their ability to influence tenants' housing experiences, but their mission to support the availability of safe, affordable housing encourages their exploration of policies to advance this goal.

Existing Multifamily Tenant Protections at Enterprise-Backed Properties

FHFA has taken actions to help promote multifamily tenant protections at properties with loans that have been purchased or securitized by an Enterprise. The Enterprises also developed separate offerings to promote multifamily tenant protections and create opportunities for households who have historically lacked equitable access to suitable and affordable housing.

Duty to Serve Eligible Manufactured Housing Communities

Section 1129 of the Housing and Economic Recovery Act of 2008 (HERA) amended section 1335 of the Safety and Soundness Act to establish a duty for the Enterprises to serve three specified underserved markets, increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for certain categories of borrowers in those markets.[5] Specifically, the Enterprises are required to provide leadership in developing loan products and underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families for the manufactured housing, affordable housing preservation, and rural housing markets.

FHFA's corresponding regulation on the Enterprises' Duty to Serve Underserved Markets implements the Duty to Serve statutory requirements from the Safety and Soundness Act. The regulation provides a general framework for FHFA to annually evaluate and rate the Enterprises' compliance with their Duty to Serve obligations.

In 2022, FHFA sought stakeholder feedback on tenant site lease protections for residents of Manufactured Housing Communities (MHCs). Typically, residents of MHCs own their homes and lease the pad on which the home is sited. The feedback obtained provided important input on how the Enterprises can balance providing appropriate borrower and tenant protections in a way that is operationally feasible for both the Enterprises and their counterparties.

Currently, the Enterprises finance MHCs only when the owner has agreed to implement eight tenant site lease protections related to the pad lease for the land underneath the manufactured housing unit. The protections include renewable lease terms, advance notice of rental payment increases or sale of a manufactured housing community, and rights regarding the sale of their manufactured homes.[6] FHFA has established monitoring and reporting requirements to ensure the protections have been implemented, including an annual written certification by the MHC borrower that it has applied the protections and an annual audit of executed written leases or rules and regulations by the lender or servicer.

[5] 12 U.S.C. § 4565.
[6] 12 CFR 1282.33.

COVID-19 Multifamily Tenant Protections

Another example of multifamily tenant protections required by FHFA and the Enterprises occurred during the COVID-19 pandemic, when the increased risk of tenant rent payment defaults also increased the likelihood that their landlords – borrowers of Enterprise-backed multifamily loans – might default on their mortgage payments. The Enterprises required tenants to be protected from eviction for non-payment of rent as a condition of approving any "forbearance." Forbearance is an arrangement in which the lender agrees to postpone or "forbear" taking enforcement action with respect to a loan that otherwise would be in default, in exchange for the borrower's agreement to take certain specified actions – including, during the COVID-19 pandemic, adopting specified tenant protections.

In addition, multifamily property owners with Enterprise-backed mortgages in forbearance were not permitted to charge late fees or penalties for back rent, or to require past due rent to be repaid in a lump sum. The Enterprises also required multifamily property owners with a new or modified forbearance agreement to inform tenants of their available protections during the forbearance and repayment periods. Furthermore, the Enterprises created Fannie Mae and Freddie Mac property look-up tools for multifamily tenants to access information on any Enterprise-backed multifamily property as part of their COVID-19 response.

Additionally, on July 28, 2021, FHFA announced that tenants who live in an Enterprise-backed multifamily property and become subject to eviction for nonpayment of rent have the right to receive 30 days' notice before being required to leave the occupied unit.

Enterprises' Voluntary Multifamily Tenant Protection Programs

The Enterprises each have voluntary rent restriction programs, which seek to preserve affordable housing. For example, Freddie Mac's "Tenant Advancement Commitment" and "Workforce Housing Preservation" offer flexible credit terms to borrowers who agree to preserve affordable rent levels on a portion of units at a multifamily property for a specified period of time. Similarly, in exchange for more favorable financing terms, Fannie Mae's "Sponsor-Initiated Affordability" program requires multifamily borrowers to restrict rents in 20 percent of units for tenants with incomes at or below 80 percent of area median income (AMI).

Enterprises' Expanded Housing Choice Programs

Fannie Mae launched the Expanded Housing Choice pilot program to offer a pricing incentive to multifamily property owners who agree to accept applications from tenants who want to use Department of Housing and Urban Development (HUD) Housing Choice Vouchers to pay a portion of their rent. This 12-month test-and-learn initiative started in Texas and North Carolina and will incorporate feedback from customers, key stakeholders, and market participants. Similarly, Freddie Mac has begun to examine the accessibility and efficacy of Housing Choice Vouchers and is developing strategies to increase their acceptance.

Enterprises' Credit Building Programs

Fannie Mae and Freddie Mac each have credit-building-through-rent-reporting initiatives through which multifamily borrowers can enroll properties to allow tenants' on-time rental payments to be reported to the three major credit bureaus, helping credit-invisible renters become credit visible and helping renters improve their existing credit scores.

Freddie Mac's National Survey of Multifamily Tenant Protections

Freddie Mac recently published a white paper summarizing state-level tenant statutes in all 50 states, the District of Columbia, and Guam, and focused on 18 different tenant protections. Freddie Mac grouped tenant protections into five focus areas covering different parts of the renting experience, including tenant screening, rent, late payments and security deposits, habitability and retaliation, pre-eviction protections, and certain aspects of the eviction process.

Current Efforts to Evaluate Multifamily Tenant Protections at Enterprise-Backed Properties

FHFA recognizes that tenants can be exploited by housing providers who either do not abide by the law or their lease agreements, or who take advantage of opportunities created by a lack of legal constraints. FHFA is also aware of widespread concerns about the potential harms of legal and lease-compliant practices that may lead to the exploitation of low-income tenants. If such exploitation occurs, tenants often have little recourse or ability to oppose the housing provider's action. These circumstances can result in the loss of the tenant's housing.

On January 25, 2023, the White House Domestic Policy Council and National Economic Council published a "Blueprint for a Renters Bill of Rights," which includes a variety of actions that could be taken to begin to address some of these concerns. FHFA is undertaking this public stakeholder engagement process to identify tangible solutions for mitigating the challenges tenants are facing nationwide, particularly among underserved communities. FHFA seeks to address some of the issues identified in the Blueprint for a Renters Bill of Rights, while recognizing that the Enterprises are limited in their ability to require certain changes or actions given their role as secondary market participants.

The feedback FHFA receives through this RFI will be analyzed and used to inform future decision-making. FHFA asks that respondents consider the role of the Enterprises in the multifamily market and the housing market overall, including existing Enterprise programs, when providing feedback. Please provide any additional feedback on the issues and questions raised by this RFI and related questions not asked here.

Public Input Questions

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: • 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?