



RESIDENT-CENTERED PRACTICES AT MULTIFAMILY PROPERTIES BACKED BY FANNIE MAE AND FREDDIE MAC

REQUEST FOR INPUT SUMMARY

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Division of Housing Mission & Goals

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Executive Summary

On May 30, 2023, the Federal Housing Finance Agency (FHFA) published a Request for Input (RFI) seeking information on tenant protections for multifamily properties backed by Fannie Mae and Freddie Mac (the Enterprises). Previously, the [White House Blueprint for a Renters Bill of Rights](#) stated that FHFA would launch a process to conduct stakeholder outreach and engagement to identify the opportunities and challenges of adopting and enforcing tenant protections. This includes policies that could limit the timing and amount of rent increases at multifamily properties with Enterprise-backed mortgages going forward.

The RFI was an opportunity for FHFA to:

- Collect information that highlights tenants’ experiences and stakeholders’ perspectives.
- Solicit ideas for improved data collection to better quantify the size and scope of the issues identified by tenants.

The purpose of this report is to provide a summary of the thousands of RFI responses FHFA received. Respondents included tenants and tenant advocates, nonprofits, lenders, multifamily borrowers/multifamily property owners/housing providers/landlords (hereinafter “multifamily property owners”), developers, government officials, elected officials, and mortgage industry groups.

The responses presented a range of views, from which several themes emerged. Many respondents commented, favorably or in opposition, on the implementation of rent regulations or caps at Enterprise-backed properties. Many respondents presented lived experiences, as both tenants and multifamily property owners, discussing habitability, property maintenance, and safety issues. Responses also addressed data gaps and questioned the efficacy of certain resident-centered management practices, encouraging FHFA and the Enterprises to conduct more research. Additionally, several responses pertained to the authority of FHFA and the Enterprises to implement and enforce certain tenant protections at Enterprise-backed properties.

Responses to the RFI are divided into the following topic areas for further summary:

1. Access/Barriers to Housing
2. Access to Information
3. Tenant Stability
4. Data & Research
5. Risk Management

This Summary of RFI Responses is for informational purposes only, to describe the opinions of others, and is not an obligation on the part of the U.S. government to provide support for any ideas identified in the summary.

Access/Barriers to Housing

In the RFI, FHFA asked several questions about access and/or barriers to housing, including how the Enterprises might support the universal acceptance of legal sources of income, how the Enterprises can support existing federal fair housing laws, and potential areas where leases or the tenant application process might be streamlined. In addition, there were questions about the Enterprises' ability to provide liquidity within the multifamily market and operate in a safe and sound manner, and questions on overall housing supply if the Enterprises were to adopt certain multifamily tenant protections.

Some respondents (predominantly tenants and tenant advocacy groups) generally supported banning source of income (SOI) discrimination on any legal source of income, such as the U.S. Department of Housing and Urban Development (HUD) Housing Choice (Section 8) Vouchers, supplemental security income, veteran benefits, and other rental housing assistance. These respondents noted that refusal to accept HUD Housing Choice Vouchers perpetuates residential segregation and isolates residents from communities of opportunity with access to healthcare, jobs, and well-resourced schools. They argued that SOI discrimination can be used as a proxy for other types of discrimination.

Some respondents commented on actions the Enterprises could take to support fair housing laws. Many believe the Enterprises should require multifamily property owners to adopt occupancy limitations less restrictive than two persons per bedroom to increase access to housing and not discriminate against familial status under the [Fair Housing Act](#). Some respondents also recommended that owners of Enterprise-backed properties be required to certify compliance with the Fair Housing Act's design and construction standards to increase housing options for people with disabilities.

Some respondents addressed the use of criminal and credit screening at Enterprise-backed multifamily properties and questioned the value of these reports in determining the likelihood of a successful tenancy. Some respondents suggested the Enterprises should require multifamily property owners to provide uniform screening criteria to every prospective tenant who applies to live in a unit.

Some respondents expressed concern that certain multifamily business models depend on raising rents at a rate that might result in the displacement of existing tenants and replacement with higher-income tenants.

Access to Information

The RFI asked questions on how to improve access to information for multifamily property owners and tenants. Some respondents provided feedback on potential challenges and solutions for increasing information to tenants, as well as best practices for helping tenants make well-informed decisions about applying for and leasing apartments. Some respondents also focused on ways to improve communication between multifamily property owners and tenants, components of a model lease agreement, and best practices for providing tenants a point of contact.

Some respondents, predominantly tenants and tenant advocates, reported their leases had mandatory arbitration clauses, unauthorized terms, hidden or illegal fees, or false representations. Some respondents suggested the Enterprises should provide model leases to convey their expectations for borrowers with Enterprise-backed mortgages. Key components of a model lease would include: 1) a prohibition on “predatory” lease terms, 2) limits on lease terms, and 3) clear lease terms. Other respondents suggested FHFA should model its lease standards on HUD’s Housing Quality Standards for the Housing Choice Voucher Program.

Some respondents indicated that FHFA should require or encourage resident-centered communication between multifamily property owners and tenants, including but not limited to mediation services. Respondents communicated their belief that the Enterprises should educate multifamily property owners, operators, lenders, and tenants on the rights and responsibilities of each stakeholder, especially under any incentivized or required tenant protections. For example, to help tenants better understand their lease rights and responsibilities, some respondents recommended that the Enterprises require multifamily property owners to provide a summary with critical information about their lease obligations in plain language and in different languages.

Some respondents suggested that FHFA develop a rental registry/database/portal where multifamily property owners would provide property ownership and contact information. Some respondents recommended that this type of online tool be publicly available and include tenant protection information for both multifamily property owners and tenants. Some respondents proposed that FHFA build off the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) look-up tool effort to help tenants know their rights under the terms of the loan on their property.

Some respondents recommended that the Enterprises could improve multifamily property owner/tenant communications by issuing guidance on:

- How criminal and eviction records are used by multifamily property owners and property managers in making rental housing decisions;
- How potential inaccuracies in criminal and other records affect rental housing decisions;
- How and whether consumers are informed about the criteria used in tenant screening and what information in a background check could lead to rejection of an application;
- How multifamily property owners and property managers set application and screening fees; and
- How algorithms, automated decision-making, artificial intelligence, or similar technologies are used in the tenant screening process.

Many respondents asked for FHFA and the Enterprises to provide guidance and forms that inform borrowers of their responsibility to adhere to the CARES Act's mandatory 30-day notice prior to any requirement to vacate for non-payment of rent. Additionally, some respondents recommended that FHFA identify ways to help multifamily tenants learn whether their home is covered under the CARES Act.

Some respondents encouraged FHFA and the Enterprises to provide a centralized, clear, and easy to understand renter resource website. This website, available to both tenants and multifamily property owners, could include information and resources about tenant rights and the support available if they need to exercise them.

Tenant Stability

The RFI asked several questions about what actions FHFA and the Enterprises could take or support to promote the housing stability of tenants. Responses addressed housing affordability, rent increases, housing conditions, and lease terms.

Several tenants experienced housing instability and evictions, which had wide-ranging impacts including homelessness, poor physical/mental health, adverse educational consequences, and economic losses. Some respondents also reported high year-over-year rent increases during the COVID-19 pandemic, which greatly exacerbated housing costs and forced households to make difficult trade-offs in their budgets on items like food, healthcare, and education.

Some respondents, typically tenants and tenant advocates, stated that multifamily property owners and managers of Enterprise-backed multifamily properties should be required to reduce evictions to improve tenant housing stability. Some respondents suggested that multifamily property owners should participate in eviction diversion programs where they exist, and emergency rental assistance programs where available. Additionally, some respondents recommended that multifamily property owners commit to finding alternatives to eviction, such

as by engaging in mediation over lease violations, offering lease modifications when they could improve stability, and offering lease rescission. Some respondents also recommended FHFA mandate that tenants have a right to counsel.

Some respondents supported “just cause evictions,” which would prohibit multifamily property owners with Enterprise-backed mortgages from pursuing evictions without “good cause,” ensuring every tenant has the right to a lease renewal. Some respondents stated that multifamily owners and managers of Enterprise-backed properties should establish a set of standard actions that property management staff are expected to follow when a lease violation occurs. For example, some respondents recommended that providers of Enterprise-backed housing be required to disclose fees in a transparent manner and enact strict limits on late rent fees and the use of fees as a primary justification for eviction.

Some respondents also addressed notifications, specifically termination notices and notices for rent increases or sales. Some respondents asserted that renters should have a right of first refusal, granting residents the first opportunity to make an offer and ultimately purchase the property of their residence if available for sale. Some respondents also suggested that notifications should coincide with the timeframe provided by HUD for Housing Choice Voucher holders, including a 60-day advance notice for rent increases. Other responses suggested the Enterprises should enact reasonable notice requirements for evictions, giving tenants adequate time to cure violations or pay back rent.

Many tenant and tenant advocate respondents stated that FHFA should take action to prevent excessive rent increases at multifamily properties with Enterprise-backed mortgages. Some examples included capping annual rents by a fixed percentage, stabilizing annual rents based on costs, inflation, and market rents and rates, defining rent gouging, or requiring that rent increases comply with a “reasonableness” standard defined by FHFA.

Some respondents suggested that FHFA and the Enterprises define a new set of housing habitability standards and incorporate language preventing multifamily property owners from issuing any type of termination notice following identification of potential health and safety issues by a tenant.

To ensure safety at Enterprise-backed properties, some respondents proposed three ways of identifying health and safety problems: 1) resident interviews, 2) visual assessments, and 3) environmental sampling. Some respondents also suggested the presence of unhealthy levels of mold and non-functioning air conditioning should be conditions that would cause a unit to fail inspection. Some respondents expressed concerns over deferred maintenance and noted that maintenance and repairs should be completed in a reasonable timeframe.

Some respondents stated that one pathway for imposing mandatory tenant protections is through the Duty to Serve regulation, to the extent that FHFA seeks to strengthen tenant protections in the manufactured housing market, the rural housing market, or the market for preservation of affordable housing. Others stated that the Equitable Housing Finance Plans could be another avenue to implement additional tenant protections.

Data & Research

In the RFI, FHFA asked stakeholders to identify opportunities for FHFA and the Enterprises to enhance data collection and research on resident-centered management policies, procedures, and practices at multifamily properties.

Several respondents noted significant data gaps pertaining to renters, evictions, and tenant protection policies. Some respondents recommended that the Enterprises maintain a public database on multifamily properties that would provide aggregated, nonidentifiable data on 1) ownership type, 2) address, 3) management company, 4) number of units, 5) whether units are subsidized and subsidy sources, 6) rent prices at time of financing, and 7) rental payments. Some respondents also suggested that multifamily owners and managers of Enterprise-backed properties publicly report eviction filings and judgments, as well as any violations of federal, state, or local laws.

Additionally, some respondents stated that the Enterprises should play a role in providing research and analysis on resident-centered management practices. Some respondents encouraged the Enterprises to analyze resident-centered practices through the implementation of pilot studies that can test tenant protections without the risk of long-term negative impacts or unintended consequences. For example, some respondents encouraged FHFA and the Enterprises to examine the impacts and lessons learned from Fannie Mae's Expanded Housing Choice Pilot and the Enterprises' voluntary rent restriction pilot programs, and to engage with the public before making any decisions about whether to expand or curtail the programs.

Another suggestion provided by some respondents is for the Enterprises to start tracking the outcomes of existing tenant protections. For example, during the COVID-19 pandemic, many jurisdictions adopted eviction diversion programs to help limit the number of evictions taking place during the crisis, and many of those programs have continued after the state of emergency was lifted. Some respondents recommended that the Enterprises conduct a study of such programs to identify model programs and best practices to incorporate into their underwriting standards as preferred practices that in turn receive incentives for voluntary program participation or enactment.

Some respondents proposed that FHFA and the Enterprises convene a working group comprised of industry representatives that includes residents, multifamily property owners and operators, investors, advocates, and other stakeholders to determine which best practices could be implemented in Enterprise-backed multifamily housing.

Risk Management

The RFI asked questions on how FHFA should approach risk mitigation from a supervisory perspective for FHFA's regulated entities. 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. As a result, each of the resident-centered management practices being considered for adoption must be evaluated in terms of legal risk, operational risk, credit risk, and market risk.

Some respondents encouraged FHFA to assess every policy or program as to whether it can advance efforts to provide stability, liquidity, and affordability to the multifamily housing sector. Some respondents expressed concern that enacting new or expanded obligations, such as rent control, could discourage participation in the Enterprises' programs and decrease overall production of affordable housing. Some respondents asked FHFA and the Enterprises to find a balance between providing resident-centered management practices and maintaining market liquidity. Some respondents were also concerned that cost increases from additional tenant protections would be passed through to renters in the form of higher rents.

Some respondents discussed the market risks associated with requiring certain tenant protections at Enterprise-backed properties, and the Enterprises' ability to operate in a safe and sound manner, fulfill their statutory mission, transfer credit risk, and foster liquid, efficient, competitive, and resilient national housing finance markets. Some respondents expressed concern that alternative sources of financing might not be available on terms that would allow the borrower to serve low-to-moderate income residents, might not be available in all markets, and might not be available during economic contractions.

Some respondents also noted that tenant protection requirements at Enterprise-backed multifamily properties could result in operational risk and complicate regulations in an industry that fundamentally operates at a local level. These respondents raised enforcement concerns, particularly for situations in which lenders and servicers do not have regular communication with tenants or the ability to monitor and report on the tenant/multifamily property owner relationship. Some respondents stated that the public mission of the Enterprises is squarely focused on the creation and sustainability of critical market liquidity. They stated that FHFA's authority is

limited, and implementation of tenant protections could jeopardize the performance of the Enterprises and might cause disinvestment or damage loan performance.

Other respondents proposed FHFA create an Office of Tenant Protections responsible for ensuring that borrowers of Enterprise-backed multifamily loans follow certain tenant protections. Some respondents suggested that FHFA utilize the suspended counterparty program for multifamily property owners who are known to be egregious or serial violators of existing federal, state, or local law. Some respondents stated that the Enterprises should not continue to do business with repeat violators of laws, especially in the multifamily market where the harm to tenants can be significant and far-reaching.

Conclusion

The responses received from the RFI represent a wide range of stakeholders, meeting FHFA's intended purpose of conducting a transparent process to collect information on the implementation of tenant protections at Enterprise-backed properties. FHFA appreciates the significant efforts that contributed to these thoughtful and well-reasoned responses and the many lived-experience testimonials provided by respondents. The responses suggest that significant work will be required to advance resident-centered practices at Enterprise-backed properties, where applicable. These responses will be foundational to FHFA's future exploration of resident-centered management practices at Enterprise-backed properties. FHFA intends to continue its public stakeholder engagement process in 2024.