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July 31, 2023

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### RE: Tenant Protections for Enterprise-Backed Multifamily Properties

The National Low Income Housing Coalition (NLIHC) welcomes the opportunity to submit comments to the Federal Housing Finance Agency (FHFA) on ways Fannie Mae and Freddie Mac (the Enterprises) should create protections for residents of Enterprise-backed multifamily properties. FHFA should take bold action to create clear, strong, and enforceable renter protections for households living in rental properties with federally backed mortgages. Given FHFA's broad reach, renter protections tied to federally backed mortgages would have a significant positive impact, covering one in four<sup>1</sup> renters across the nation and putting the country on a path towards stronger protections for all renters.

NLIHC is dedicated to achieving racially and socially equitable public policy that ensures people with the lowest incomes have quality homes that are accessible and affordable in communities of their choice. Our members include state and local housing coalitions, residents of public and assisted housing and other impacted people, nonprofit housing providers, homeless service providers, fair housing organizations, public housing agencies, private developers and property owners, local and state government agencies, faith-based organizations, researchers, and concerned citizens. While our members are drawn from the entire spectrum of housing interests, we do not represent any one segment of the housing industry. Rather, we focus on advocating for policy and funding improvements for those extremely low-income people who receive or need federal housing assistance.

#### A. General Questions on Tenant Protections

As the affordable housing and homelessness crises worsen, bold policies and actions are needed to ensure people with the lowest incomes and those who are most marginalized have stable, accessible, affordable homes. Nationwide,

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<sup>1</sup> Goodman, L. Kaul, K., & Neal, M. (2020). *The CARES Act Eviction Moratorium Covers All Federally Financed Rentals—That's One in Four US Rental Units*. Retrieved from <https://www.urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-thats-one-four-us-rental-units>

there is a shortage of 7.3 million rental homes affordable and available to the nation’s extremely low-income renter households – those with incomes at or below either the federal poverty line or 30% of the area median income, whichever is greater.<sup>2</sup> The COVID-19 pandemic underscored and exacerbated the financial precarity of the nation’s lowest-income renters: by August 2020, according to the best available data, up to 12 million renters households – disproportionately Black, Latino, and Native people – were at risk of losing their homes if the government did not act.<sup>3</sup>

In response to this acute threat and at the urging of advocates and impacted people, federal, state, and local governments provided historic resources and protections to keep people in their homes, including over \$46 billion for emergency rental assistance and a national moratorium on evictions for nonpayment of rent. These actions cut eviction filing rates in half, bringing them to their lowest levels on record.<sup>4</sup>

Federal policymakers allowed these programs and policies to expire, despite their clear effectiveness, and today renters are once again in crisis: high rents, low wages, and a severe shortage of deeply affordable housing are pushing eviction filing rates to historic highs, putting more of America’s lowest-income and most marginalized renters at risk of losing their homes and, in the worst cases, being pushed into homelessness.<sup>5</sup> Without intervention, evictions and homelessness will continue to increase. Federal policymakers, including FHFA, must use every tool available to provide housing stability and prevent this emerging crisis.

While only Congress can provide the large-scale, long-term federal investments and policy changes required to end the affordable housing and homelessness crisis, the FHFA has an important opportunity to fill the gap in federal renter protections. The power imbalance in our housing system between renters and landlords tilts heavily in favor of landlords, and low-income and marginalized tenants suffer without needed protections. Historic and ongoing racism embedded in the country’s housing and other systems means this imbalance both harms renters and fuels racial inequities.

Recognizing these disparities and harms, state and local governments across the country have enacted new laws providing tenants with additional protections against eviction, including right-to-counsel measures, source-of-income discrimination prohibitions, anti-rent gouging protections, and eviction record sealing or expungement laws.<sup>6</sup> NLIHC’s partners and allies have advanced and enacted over 200 new state and local tenant protections since 2021.<sup>7</sup>

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<sup>2</sup> Aurand, A. et al. (2023). *The Gap: A Shortage of Affordable Homes*. National Low Income Housing Coalition. Retrieved from <https://nlihc.org/gap>

<sup>3</sup> Benfer, E. et al. (2020). *The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America Are at Risk*. [https://nlihc.org/sites/default/files/The\\_Eviction\\_Crisis\\_080720.pdf](https://nlihc.org/sites/default/files/The_Eviction_Crisis_080720.pdf)

<sup>4</sup> Hepburn, P. et al. (2023). Eviction Lab. *COVID-era policies cut eviction filings by more than half*. Retrieved from <https://evictionlab.org/covid-era-policies-cut-eviction-filings-by-more-than-half/>

<sup>5</sup> U.S. Department of Housing and Urban Development. (2022). *The 2022 Annual Homelessness Assessment Report (AHAR) to Congress: Part 1: Point-in-Time Estimates of Homelessness*. Retrieved from <https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf>

<sup>6</sup> Hussein, N. and Gallagher, S. (2023). *The State of Statewide Tenant Protections*. Retrieved from <https://nlihc.org/sites/default/files/The-State-of-Statewide-Tenant-Protections.pdf>

<sup>7</sup> National Low Income Housing Coalition. (2023). *ERASE State and Local Tenant Protections Database*. Retrieved from <https://nlihc.org/tenant-protections>

Early evidence makes clear that increased tenant protections such as just cause eviction standards and rent stabilization measures can help reduce eviction,<sup>8</sup> displacement,<sup>9</sup> and homelessness.<sup>10</sup> Housing stability, in turn, provides the foundation needed to thrive in countless other ways. From improved education outcomes<sup>11</sup> and economic advancement,<sup>12</sup> to better health<sup>13</sup> and greater food security,<sup>14</sup> to less frequent interactions with the criminal-legal system,<sup>15</sup> the benefits of housing stability are widespread and lasting.

The Biden-Harris administration broadly, and FHFA specifically, have not only an opportunity but an obligation to follow through on the administration’s commitment to developing a national “Renters Bill of Rights” by tying robust and enforceable renter protections to federally backed mortgages. At minimum, FHFA should establish racial and social equity as an explicit goal of new renter protections; create mandatory and enforceable habitability requirements for all rental properties with federally backed mortgages; and pair any new renter protections with strong enforcement mechanisms. But FHFA should also tie all federally backed mortgages to meaningful new tenant protections, including:

- **Source-of-income protections** to prohibit landlords of properties with federally backed mortgages from discriminating against households utilizing rental assistance, such as Housing Choice Vouchers (HCVs), Supplemental Security Income (SSI), or local rental assistance, to pay the rent.
- **“Just cause” eviction standards** to provide housing stability for tenants by limiting the causes for which a landlord can evict a tenant or refuse to renew a tenant’s lease when the tenant is not at fault or in violation of any law.
- **Prohibitions on rent gouging** to prevent landlords from dramatically and unreasonably raising rents.
- **Requirements to ensure housing is safe, decent, accessible, and healthy** for renters and their families.

FHFA’s decisions on renter protections should be informed by continued engagement with renters and other directly impacted people. Impacted people – including extremely low-income renters, people experiencing homelessness or eviction, and residents of properties with FHFA-backed mortgages – are best situated to understand the challenges they face and are therefore best positioned to provide solutions. NLIHC consulted extensively with impacted people, including members of its [Tenant Leader Cohort](#), when developing these recommendations.

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<sup>8</sup> U.S. Department of Housing and Urban Development. (2022). *Eviction Prevention Strategies to Promote Housing Stability*. Retrieved from <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-020822.html>

<sup>9</sup> Changing Cities Research Lab. (2022). *Who Benefits from Tenant Protections?* Retrieved from <https://ccrl.stanford.edu/blog/housing-interventions-tenant-protections>

<sup>10</sup> National Law Center on Homelessness & Poverty. (2018). *Protect Tenants, Prevent Homelessness*. Retrieved from <https://homelesslaw.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf>

<sup>11</sup> Opportunity Starts at Home. (2018). *Education Advocates are Housing Advocates*. Retrieved from <https://www.opportunityhome.org/resources/stable-affordable-housing-drives-stronger-student-outcomes/>

<sup>12</sup> Opportunity Starts at Home. (2018). *Affordable Housing Enables Moving to Opportunity*. Retrieved from <https://www.opportunityhome.org/resources/affordable-housing-enables-moving-opportunity/>

<sup>13</sup> Opportunity Starts at Home. (2018). *Good Housing Is Good Health*. Retrieved from <https://www.opportunityhome.org/resources/good-housing-good-health/>

<sup>14</sup> Opportunity Starts at Home. (2018). *Anti-Hunger Advocates Are Housing Advocates*. Retrieved from <https://www.opportunityhome.org/resources/2893/>

<sup>15</sup> Opportunity Starts at Home. (2018). *Criminal Justice and Housing Fact Sheet* <https://www.opportunityhome.org/resources/people-prior-records-encounter-many-housing-obstacles/>

## Rental Registry of Enterprise-Backed Properties

FHFA should maintain on its website a regularly updated list of housing units in its portfolio, including information about property ownership, management, and contact details. Tenants often do not know who owns their property or how the property is financed. Ensuring tenants know whether they live in an Enterprise-backed property will be crucial to the successful implementation and enforcement of any FHFA protections.

In response to the COVID-19 pandemic, Congress enacted the “Coronavirus Aid, Relief, and Economic Security (CARES) Act” which, among other provisions, requires landlords to provide a 30-day notice to tenants prior to eviction for properties supported by HUD, USDA, or Treasury, and for properties with federally backed mortgages, including those with mortgages backed by the Enterprises. While the legislation made permanent this important protection, implementation of the provision has been flawed, in part because tenants often have no way of knowing whether their rental home is financed by a federally backed mortgage. NLIHC created a [searchable CARES Act database](#) to help some renters identify whether their home is covered by CARES Act protections, but the publicly available data used in the database are incomplete. Implementation and enforcement of this protection is impeded by the Enterprises’ unwillingness to make all such data publicly available. Making data transparent would help renters be able to quickly determine whether they are living in a unit covered by FHFA protections and would help identify housing providers with patterns of frequent eviction filings, hazardous living conditions, or discriminatory practices.<sup>16</sup>

## Enforce FHFA Tenant Protections

Clear, effective enforcement mechanisms will be crucial for operationalizing any protections FHFA puts forward. When the federal eviction moratorium was in place, it was not uniformly enforced by courts. Without clear accountability and enforcement mechanisms from FHFA, individual property owners may not abide by new requirements. FHFA must make clear to tenants the ways to report negligent or abusive landlord practices and make clear to property owners and operators the consequences of violating FHFA protections.

## **B. Access to Housing**

### Source-of-Income Protections

Many low-income tenants who use housing subsidies, such as HCVs, emergency rental assistance, and other forms of housing assistance, struggle to find or maintain safe, quality, affordable housing due to source-of-income discrimination – the practice of denying an individual full and equal access to housing due to their lawful source of income. Research reveals patterns of landlords denying housing to renters with federal rental assistance, particularly in markets without source-of-income protections.<sup>17</sup>

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<sup>16</sup> Walker, F. & Noble, E. (2022). *Understanding Who Owns Rental Stock Can Ensure Tenants and Small Landlords Get the Support They Need*. Retrieved from <https://www.urban.org/urban-wire/understanding-who-owns-rental-stock-can-ensure-tenants-and-small-landlords-get-support>

<sup>17</sup> Cunningham, M. (2018). *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers*. Retrieved from <https://www.huduser.gov/portal/pilot-study-landlord-acceptance-hcv.html>

Discrimination against households receiving rental assistance prevents housing stability for tenants, makes assistance programs less effective, and wastes time, money, and resources. Moreover, discrimination against households receiving rental assistance often serves as a proxy for racial discrimination, leaving many Black, Latino, and Indigenous households with few options for where to live while also reinforcing historic patterns of housing discrimination.<sup>18</sup>

FHFA should prohibit source-of-income discrimination in all properties in its portfolio. Banning landlords from denying housing to a prospective tenant because of their lawful source of income would give households that rely on rental assistance greater choice in where they live and increase the effectiveness of rental assistance programs. While several states and localities have passed source-of-income protection laws,<sup>19</sup> federal law does not protect against this type of discrimination, leading to a patchwork of protections covering only one in three voucher-holding households.<sup>20</sup> Implementing source-of-income discrimination protections across FHFA's portfolio would help standardize protections and increase housing choice among households using rental assistance.

In addition to explicit discrimination based on source of income, landlords can create additional fees or implement prohibitive time limits that effectively discriminate based on source of income. For example, if a tenant trying to utilize an HCV finds an apartment that meets the HCV rent requirements, the landlord may add additional fees that push up the monthly cost of rent and make the unit unaffordable. FHFA should explicitly prohibit owners and operators of FHFA-backed properties from burdening renters with hidden fees that inflate the cost of housing and make it more difficult for tenants to utilize housing assistance.

### Ban or Limit Application Fees

It is critical to place limits on how much – if anything – landlords and property managers can charge in application fees for prospective tenants. The nation's severe shortage of affordable housing<sup>21</sup> has placed tremendous pressure on rental housing markets across the country, with in many cases dozens of households applying to rent the same unit.<sup>22</sup> Landlords and property managers can profit immensely from charging non-refundable rental application and screening fees to prospective tenants, even while knowing that only one applicant will ultimately be selected.

For individuals and families with extremely low incomes, application fees can be an insurmountable barrier to affordable housing. Extremely low-income households have limited money to spend on repeated application fees, which can quickly add up and drain any available

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<sup>18</sup> Vesoulis, A. (2020). 'A Mask for Racial Discrimination.' *How Housing Voucher Programs Can Hurt the Low-Income Families They're Designed to Help*. Retrieved from <https://time.com/5783945/housing-vouchers-discrimination/>

<sup>19</sup> Poverty & Race Research Action Council. (2023). *Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program APPENDIX B: State, Local, and Federal Laws Barring Source-of-Income Discrimination*. Retrieved from <https://prarc.org/pdf/AppendixB.pdf>

<sup>20</sup> Bell, A., Sard, B., & Koepnick, B. (2018). *Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results*. Retrieved from <https://www.cbpp.org/research/housing/prohibiting-discrimination-against-renters-using-housing-vouchers-improves-results>

<sup>21</sup> Aurand, A. et al. (2023). *The Gap: A Shortage of Affordable Homes*. National Low Income Housing Coalition. Retrieved from <https://nlihc.org/gap>

<sup>22</sup> Ludden, J. (2023). "Rental Application Fees Add Up Fast in a Tight Market. But Limiting Them Is Tough." National Public Radio. Retrieved from: <https://www.npr.org/2023/01/13/1148426491/rental-application-feeshousing-affordable-market-states-laws>



savings.<sup>23</sup> Tenants with HCVs looking to rent a unit in the private market can find themselves unsuccessful because HCVs do not cover the cost of application fees. People of color, members of the LGBTQ+ community, and people with disabilities are disproportionately represented among extremely low-income and voucher-holding households and are therefore disproportionately likely to be adversely impacted by these fees.

### Limit Credit Checks for Applicants

Rental and credit card debt can damage an individual's credit report, which in turn harms their ability to find safe, stable housing in the future. By late 2021, the Federal Reserve estimated that renters owed between \$9.3 billion and \$10.9 billion in total back rent. Rental debt, or rental arrears, include not only back rent for a current or prior tenancy, but also fees related to breaking a lease or alleged damages.<sup>24</sup> Landlords' tenant screening reports often include a credit report, which can reflect rental debt for up to seven years.<sup>25</sup> In one survey, nearly half of legal aid clients reported trouble finding housing due to alleged rental debt on credit reports.<sup>26</sup>

Landlords often reject applicants automatically if they have rental debt on their credit reports. Black and Latino renters are disproportionately impacted by these blanket denials: more than one in five Black and Latino renters were behind in rent as of 2021, compared to only 13% of white households.<sup>27</sup> The FHFA should prohibit landlords from using credit checks for federally backed properties, as such reports are not appropriately reflective of a tenant's ability to pay; rather, they more often reflect discriminatory practices and an inaccurate credit reporting system.<sup>28</sup>

### Transparent Screening Criteria

Tenants need to know what criteria are being used by a landlord or property owner when they conduct screenings so that tenants do not waste time, money, and effort applying for an apartment they ultimately will not be able to rent. Landlords and owners of FHFA-backed properties should be required to provide a comprehensive, transparent list of screening criteria that will be included in a background check. This information should be available in plain language and in the preferred language of the prospective tenant.

Tenants must also be guaranteed the opportunity to view their screening report and to correct, refute, or provide additional context for missing, incomplete, or inaccurate information. Landlords and property managers should provide applicants with plain-language information detailing their rights under the "Fair Credit Reporting Act," the process by which tenants can

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<sup>23</sup> Ibid.

<sup>24</sup> National Consumer Law Center. (2022). *Unfair Debts with No Way Out: Consumers Share Their Experiences with Rental Debt Collectors*. Retrieved from <https://www.nclc.org/wp-content/uploads/2022/10/UnfairDebts-Rpt.pdf>

<sup>25</sup> Nelson, A. (2019). National Consumer Law Center. *Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing*. Retrieved from <https://www.nclc.org/resources/report-broken-records-redux/>

<sup>26</sup> Nelson, A. (2020). National Consumer Law Center. *Salt in the Wound: How Eviction Records and Back Rent Haunt Tenant Screening Reports and Credit Scores*. Retrieved from <https://www.nclc.org/resources/salt-in-the-wound-how-eviction-records-and-back-rent-haunt-tenant-screening-reports-and-credit-scores/>

<sup>27</sup> Wu, C. et al. (2021). *Assisting Consumers with Rental Debt during COVID-19: Legal Aid and Non-Profit Attorneys Share Their Experiences*. National Consumer Law Center. Retrieved from <https://www.nclc.org/resources/assisting-consumers-with-rental-debt-during-covid-19-legal-aid-and-non-profit-attorneys-share-their-experiences/>

<sup>28</sup> Federal Trade Commission. (2012) *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003*. Retrieved from <https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf>

refute inaccurate information, and contact information for legal aid, housing counselors, and other advocates who can help guide a prospective tenant through the process of correcting information.

FHFA should also develop guidance and protections to rein in the discretion owners and operators of Enterprise-backed properties have in screening out applicants with conviction or arrest histories. Despite the fact there is no evidence suggesting previous involvement with the criminal-legal system impacts an individual's success as a tenant,<sup>29</sup> property owners and landlords frequently deny otherwise qualified individuals housing if they have a criminal record. These exclusions make it more difficult for people exiting incarceration and those with conviction histories to find housing, which increases the likelihood that they will experience homelessness or have future contact with the criminal-legal system.

Overly broad exclusions of individuals with conviction histories trap people in cycles of poverty and incarceration and do nothing to improve public safety. At minimum, FHFA should ban blanket exclusions, as well as the use of arrest records, juvenile records, and other records that have been sealed, expunged, or that did not result in a conviction in tenant screenings for Enterprise-backed properties.

FHFA should also limit the lookback period for criminal background screenings to no more than three years from the time of the offense and reduce the scope of convictions on which reporting entities can base denials to only those that may impact the applicant's success as a tenant. Owners and operators should also be required to conduct an individualized assessment of applicants with conviction histories and allow applicants the opportunity to review information on their screening reports so they can correct any inaccurate, incomplete, or misleading information.

### Portable Screening Reports

Portable screening reports allow applicants to pay a one-time cost for a report they can use to apply to multiple housing providers,<sup>30</sup> allowing tenants with low incomes the ability to apply for housing repeatedly. However, many housing providers refuse to accept these reports and require applicants to instead pay an application fee to apply, even if the tenant has a portable screening report available.

While housing providers with FHFA-backed properties should be able to use the tenant screening report of their choice, charging an application fee to a tenant who can readily provide a recent and complete portable report is unjustifiable. This practice can frustrate tenants who are proactively trying to provide required background information and can cost tenants hundreds of dollars in repeated application and screening fees. Owners and operators of Enterprise-backed multifamily properties should be either required to accept portable tenant screening reports or, absent a requirement, barred from charging screening fees to tenants who supply their own screening reports.

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<sup>29</sup> Sirota, E, and Johnson, K. (2022). "Evidence Regarding the Link Between Conviction Records and Housing Outcomes." Shriver Center on Poverty Law and NLIHC. <https://tinyurl.com/nz339454>

<sup>30</sup> Scott, M. (2023). Avail. *How to Avoid Hidden Rental and Application Fees as a Renter*. Retrieved from <https://www.avail.co/education/articles/how-to-avoid-hidden-rental-fees-and-application-fees-as-a-renter>

## C. Access to Information

### Language Accessibility

FHFA should provide culturally competent language access for all applicants to, and tenants in, its properties. Leases, application materials, and other documents should be translated into accessible languages, particularly in areas with high populations of certain immigrant communities. The “Fair Housing Act” (Title VI of the “Civil Rights Act of 1968”), in conjunction with U.S. Supreme Court precedent established in *Lau v. Nichols*, affirm that federally assisted housing providers must afford meaningful access to persons with limited English proficiency and that denial of language access constitutes national origin discrimination.<sup>31</sup>

FHFA released in 2018 a Language Access Multi-Year Plan to improve the ability of mortgage-ready limited English proficiency (LEP) borrowers to understand and participate in all facets of the mortgage life cycle. FHFA should create similar resources for renters and applicants seeking access to FHFA rental properties. Additionally, FHFA should work with HUD’s Fair Housing and Equal Opportunity (FHEO) office to align FHFA actions with HUD’s Language Access Plan.<sup>32</sup>

FHFA should also provide accessible communication services for people with disabilities. A person with vision and reading disabilities or who is blind must receive reasonable accommodations, including receiving materials in alternative formats, such as large print, an accessible digital document, Braille, a screen-reader accessible website, on tape, or through a trained reader who can read documents to them.<sup>33</sup> All communications between tenants and landlords, property managers, and FHFA should be accessible, and FHFA staff should be trained on reasonable accommodation procedures to ensure accessibility for people with disabilities.

### Plain Language

To promote accessibility in Enterprise-backed properties, FHFA should provide guidance to landlords and property managers on how to make leases, eviction notices, and all communications with tenants accessible and stated in plain language. These plain language documents should include information for tenants on their rights in Enterprise-backed properties. FHFA already has Plain Language Guidelines in place as part of the “Plain Writing Act of 2010” and should work to ensure these guidelines are followed uniformly across all properties in its portfolio.

Relatedly, a landlord should give prospective tenants adequate time to review the lease before signing. As tenants navigate the cumbersome rental application process, they are often provided

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<sup>31</sup> National Housing Law Project. (2017). *Language Access*. Retrieved from <https://www.nhlp.org/initiatives/fair-housing-housing-for-people-with-disabilities/language-access/>

<sup>32</sup> U.S. Department of Housing and Urban Development. *Language Access Plan 2021-2026*. Retrieved from <https://www.hud.gov/sites/dfiles/FHEO/documents/HUD%20Language%20Access%20Plan.pdf>

<sup>33</sup> Ramos, L. (2023). National Low Income Housing Coalition. *14-1 Advancing Tenant Protections: Fair Housing for People with Communications Disabilities*. <https://nlihc.org/resource/14-1-advancing-tenant-protections-fair-housing-people-communications-disabilities>



a final lease with only hours to sign, putting unnecessary pressure on the tenant to agree to terms with which they may be unfamiliar.

### Model Leases

FHFA should create model leases for property managers that include clearly stated rights and responsibilities for both landlord and tenant, including tenants' right to report violations and be free of retaliation. Model leases should also provide clear, actionable steps tenants can take if they feel their rights have been violated by a landlord, property manager, or property owner to hold them accountable.

Additionally, model leases should include a detailed, transparent list of fees and recurring charges. Tenants of Enterprise-backed properties who are selected from a waitlist for housing assistance – like an HCV or public housing support, for example – should be able to apply their assistance to their current unit or be allowed to break their current lease in the Enterprise-backed property without penalty to move into assisted housing.

### Minimum Notice Period and Communications for Evictions

Written notices are typically provided by landlords to tenants to communicate that, with or without cause, a landlord does not wish to maintain a lease and that the tenant should vacate the property by a specified date. The requirements of the notice, such as the timeframe a tenant has for vacating and the cited cause for the eviction, vary by jurisdiction. Oregon, Washington State, and New Hampshire, for example, include enhanced written notice requirements as part of their just cause eviction laws.<sup>34</sup> Knowing and understanding the reason for an eviction can help a tenant collect required documentation and prepare for their court hearing and also provides crucial time for tenants to secure legal assistance or find new housing.

FHFA should establish a minimum notice period for evictions from Enterprise-backed properties. The CARES Act included a permanent requirement that landlords of federally supported rental properties give tenants a 30-day notice to vacate prior to eviction. This notification time is longer than most state and local requirements and gives tenants more time to prevent their evictions and remain stably housed. HUD recently announced proposed rulemaking to address the notification requirement for evictions due to nonpayment of rent.<sup>35</sup> FHFA should work with HUD to align notification requirements and ensure that such protections are applied to tenants residing in all federally backed properties.

## **D. Tenant Housing Stability**

### “Just Cause” Eviction Standards

The end of a lease term is a particularly vulnerable time for low-income tenants. In many states and localities around the country, landlords are not required to provide a reason for evicting a

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<sup>34</sup> Vasquez, J. & Gallagher, S. (2022). *Promoting Housing Stability through Just Cause Eviction Legislation*. Retrieved from <https://nlihc.org/sites/default/files/Promoting-Housing-Stability-Through-Just-Cause-Eviction-Legislation.pdf>

<sup>35</sup> U.S. Department of Housing and Urban Development. (2023). “HUD Affirms Renter Protections and Releases \$10 Million Funding Opportunity for Tenant Education and Outreach.” Retrieved from [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_23\\_150](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_23_150)

tenant at the end of a lease term or for evicting a tenant without a lease (for example, a resident with a month-to-month tenancy). Moreover, landlords who are unable to evict a tenant during their lease term may choose not to renew the tenant's lease and use the lease holdover as grounds for eviction. A tenant at the end of their lease is also at risk of unreasonable rental increases.

When a tenant receives an eviction notice, faces rent hikes, or fears displacement, they may choose to leave their unit – or “self-evict” – rather than go to court. Those who pursue legal action often find that no laws exist to protect them from eviction at the end of a lease term and that having an eviction judgment on their record creates further barriers to obtaining and maintaining future housing. To support renters at risk of housing instability, a growing number of states and localities across the country have passed “just cause” eviction legislation.

“Just cause” eviction laws aim to prevent the unjustified, unreasonable eviction of tenants by defining the legal grounds on which a landlord can evict tenants or refuse to renew a lease, including failure to pay rent, property damage, disturbance or disorderly conduct, or other lease violations.<sup>36</sup> Currently, while 25 states and localities have enacted “just cause” eviction standards, no such federal protections exist. FHFA should require Enterprise-backed properties to provide just cause eviction standards, setting a model for other properties that receive federal funding to do the same.

### Protection from Rent Gouging

Renters across the country have been facing skyrocketing rent costs. The median rent nationwide for a two-bedroom unit increased by an average of 18% between the first quarter of 2021 and the first quarter of 2022, for example, and in a number of larger cities, like New York, Austin, and Miami, rent increased by as much as 40% during this period.<sup>37</sup> The dramatic increase in the cost of rents across the country can be attributed to many factors, including a largely unregulated rental market that permits landlords to raise rents as high as the market will allow. Large, well-financed private equity institutions have increasingly been purchasing and renting out single-family homes, and investor purchases of rental housing have been associated with increased displacement, gentrification, and evictions.<sup>38</sup> Institutional investors often push significant rent increases on tenants and are less likely to perform basic property maintenance and significantly more likely to evict tenants than smaller landlords.<sup>39</sup>

While several states have in place laws to prevent price or rent gouging after natural disasters, few of these laws are enforced, and most states have few protections against exorbitant rent increases, placing tenants at risk of unjust treatment, housing instability, evictions, and, in the worst cases, homelessness.

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<sup>36</sup> Local Housing Solutions. (n.d.). “Just cause eviction policies.” Retrieved from <https://localhousingsolutions.org/housing-policy-library/just-cause-eviction-policies/>

<sup>37</sup> Aurand, A. et al. (2023). National Low Income Housing Coalition. *Out of Reach 2023*. Retrieved from <https://nlihc.org/oor>

<sup>38</sup> Raymond, E., Miller, B., McKinney, M., & Braun, J. (2021). “Gentrifying Atlanta: Investor Purchases of Rental Housing, Evictions, and the Displacement of Black Residents.” *Housing Policy Debate*. Retrieved from <https://nlihc.org/sites/default/files/Gentrifying-Atlanta-Investor-Purchases-of-Rental-Housing-Evictions-and-the-Displacement-of-Black-Residents.pdf>

<sup>39</sup> U.S. House of Representatives Committee on Financial Services. (2022). “Memorandum: June 28, 2022, Subcommittee on Oversight & Investigations hearing entitled, ‘Where Have All the Houses Gone? Private Equity, Single Family Rentals, and America’s Neighborhoods.’” Retrieved from <https://www.congress.gov/117/meeting/house/114969/documents/HHRG-117-BA09-20220628-SD002.pdf>

Rent stabilization laws place limits on the amount that can be charged for rent, the amount rent can increase, or the frequency of rent increases in privately owned rental units. Rent stabilization laws, when implemented, prohibit excessive rent increases that make an individual's residence unaffordable and difficult to maintain.<sup>40</sup> Evidence shows that rent stabilization can increase housing stability and affordability for renters, reduce the risk of displacement and homelessness, and – by creating a schedule for reasonable rent increases – ensure that landlords receive a fair return.<sup>41</sup> As of July 2023, California, Oregon, and the District of Columbia have enacted anti-rent gouging or rent stabilization laws,<sup>42</sup> and many more localities are considering such protections.

FHFA should put in place measures to prevent rent gouging and untenable rent increases in Enterprise-backed properties. These measures should include a reasonable limit on the percentage that rent can be raised annually and should limit the frequency with which rent can increase to no more than once per year. Such measures would help improve housing stability for renters by limiting the amount and frequency of rent increases and protecting tenants from unexpected rent hikes.

### Safe, Decent, Healthy Housing

Housing is a social determinant of health and as such has an enormous impact on health and wellbeing, particularly for young children. Too often, however, low-income housing is plagued with issues related to air quality, pests, flooding, mold, lead, and water quality, leaving families with low incomes few options for housing that is both affordable and safe. In the absence of safe, decent, healthy housing, children from low-income families who live in substandard housing are more likely to develop asthma and experience hospitalization, and adults are more likely to report poor mental health, including depression and anxiety.<sup>43</sup>

Children spend as much as 90% of their time indoors, and toxic substances can reach more concentrated levels indoors than they do outside.<sup>44</sup> Because of longstanding federal disinvestment in the nation's public housing stock, many older assisted units – those typically most affordable to tenants with the lowest incomes – are in a state of disrepair. These units can present a combination of health dangers, including dust mites, mold, and pests, which can trigger asthma; carcinogens, such as asbestos, radon, and pesticides; and other deadly toxins, such as carbon monoxide. Older, dilapidated housing with lead-based paint, and the settled interior dust and exterior bare soil it generates, are the biggest sources of lead exposure for children.<sup>45</sup>

The burden of housing-related health hazards falls disproportionately on the most vulnerable children and communities, contributing greatly to health disparities and furthering racial inequity

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<sup>40</sup> Diamond, R. (2018). *What Does Economic Evidence Tell Us About the Effects of Rent Control?* Brookings Institution. Retrieved from <https://www.brookings.edu/articles/what-does-economic-evidence-tell-us-about-the-effects-of-rent-control/>

<sup>41</sup> Chew, A. & Treuhhaft, S. (2019). *Our Homes, Our Future: How Rent control Can Build Stable, Healthy Communities*. Retrieved from [https://www.policylink.org/sites/default/files/OurHomesOurFuture\\_Web\\_08-02-19.pdf](https://www.policylink.org/sites/default/files/OurHomesOurFuture_Web_08-02-19.pdf)

<sup>42</sup> National Low Income Housing Coalition. (2023). *ERASE State and Local Tenant Protections Database*. Retrieved from <https://nlihc.org/tenant-protections>

<sup>43</sup> Opportunity Starts at Home. (2018). *Health Care Advocates Are Housing Advocates*. Retrieved from <https://www.opportunityhome.org/related-sectors/health/>

<sup>44</sup> Goodwin, S. & Jacobs, D. (2023). *Advocate's Guide 2023*. "Lead Hazard Control and Healthy Homes." Retrieved from [https://nlihc.org/sites/default/files/2023-03/2023AG6-01\\_Lead-Hazard-Control.pdf](https://nlihc.org/sites/default/files/2023-03/2023AG6-01_Lead-Hazard-Control.pdf)

<sup>45</sup> Goodwin, S. & Jacobs, D. (2023). *Advocate's Guide 2023*. "Lead Hazard Control and Healthy Homes." Retrieved from [https://nlihc.org/sites/default/files/2023-03/2023AG6-01\\_Lead-Hazard-Control.pdf](https://nlihc.org/sites/default/files/2023-03/2023AG6-01_Lead-Hazard-Control.pdf)

in the United States. Black children are twice as likely to have asthma and are six times more likely to die from it than white children.<sup>46</sup> Households with annual incomes less than \$30,000 and children of low-income families are much more likely to be lead-poisoned than those of higher-income families.<sup>47</sup> Children poisoned by lead are seven times more likely to drop out of school and six times more likely to end up in the juvenile justice system than their peers who are not exposed to lead.<sup>48</sup>

FHFA should work with federal agencies such as HUD, the Centers for Disease Control and Prevention, and the Department of Energy to ensure housing is healthy and safe for all families in FHFA properties.<sup>49</sup> Rental registries can help identify and hold accountable those FHFA properties with a pattern of providing unsafe, uninhabitable rental units and ensure bad actors are not receiving federal funds.<sup>50</sup>

### Accessible Housing

In addition to finding safe, affordable housing, people with disabilities struggle to find homes that are accessible. The Fair Housing Act (FHA) and “Americans with Disabilities Act” (ADA) mandated accessibility standards in the construction of housing financed by the federal government; still, and despite tremendous need, less than 5% of housing nationwide is accessible for people with moderate mobility difficulties, and less than 1% is accessible for wheelchair users.<sup>51</sup> The lack of accessible homes harms millions of renters and their families.

The housing affordability crisis impacts people with disabilities who rely on Supplemental Security Income (SSI) even more severely – there is no housing market where a person relying solely on SSI can afford a safe, decent apartment without additional rental assistance.<sup>52</sup>

FHFA should work with disability advocates to ensure FHFA-backed properties are in compliance with the accessibility needs of tenants, including in the construction and maintenance of properties and in the creation of leases and other tenant-facing documents. Additionally, FHFA should clarify that “no pet” policies are discriminatory against people with service animals, including emotional support service animals, per the “Fair Housing Amendments Act of 1988.”<sup>53</sup>

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<sup>46</sup> Goodwin, S. & Jacobs, D. (2023). *Advocate’s Guide 2023*. “Lead Hazard Control and Healthy Homes.” Retrieved from [https://nlihc.org/sites/default/files/2023-03/2023AG6-01\\_Lead-Hazard-Control.pdf](https://nlihc.org/sites/default/files/2023-03/2023AG6-01_Lead-Hazard-Control.pdf)

<sup>47</sup> Goodwin, S. & Jacobs, D. (2023). *Advocate’s Guide 2023*. “Lead Hazard Control and Healthy Homes.” Retrieved from [https://nlihc.org/sites/default/files/2023-03/2023AG6-01\\_Lead-Hazard-Control.pdf](https://nlihc.org/sites/default/files/2023-03/2023AG6-01_Lead-Hazard-Control.pdf)

<sup>48</sup> Goodwin, S. & Jacobs, D. (2023). *Advocate’s Guide 2023*. “Lead Hazard Control and Healthy Homes.” Retrieved from [https://nlihc.org/sites/default/files/2023-03/2023AG6-01\\_Lead-Hazard-Control.pdf](https://nlihc.org/sites/default/files/2023-03/2023AG6-01_Lead-Hazard-Control.pdf)

<sup>49</sup> National Center for Healthy Housing. (n.d.). “Healthy Housing Agency Fact Sheets. Retrieved from <https://nchh.org/who-we-are/nchh-publications/fact-sheets/agency-fact-sheets/>

<sup>50</sup> Cleveland.com. (2021). “Federally subsidized properties owned by Millennia of Cleveland plagued with problems, report says.” Retrieved from <https://www.cleveland.com/realestate-news/2021/03/federally-subsidized-properties-owned-by-millennia-of-cleveland-plagued-with-problems-report-says.html>

<sup>51</sup> Lake, J., Novack, V., & Ives-Ruble, M. (2021). *Recognizing and Addressing Housing Insecurity for Disabled Renters*. Retrieved from <https://www.americanprogress.org/article/recognizing-addressing-housing-insecurity-disabled-renters/>

<sup>52</sup> Technical Assistance Collaborative. (n.d.). *Priced Out: The Housing Crisis for People with Disabilities* Retrieved from <https://www.tacinc.org/resources/priced-out/>

<sup>53</sup> Bazelon Center for Mental Health Law. (n.d.). *Fair Housing Information Sheet # 6: Right to Emotional Support Animals in “No Pet” Housing*. Retrieved from [https://www.in.gov/ihcda/files/Emotional\\_Support\\_Animal.pdf](https://www.in.gov/ihcda/files/Emotional_Support_Animal.pdf)

## Right to Organize

The right to organize is an important tool in holding landlords and property management companies accountable for upholding their responsibilities, including maintaining safe, decent, and sanitary living conditions. Tenants' right to organize is foundational to righting the power imbalance between renters and landlords, and FHFA should affirm the right of tenants in Enterprise-backed properties to organize without obstruction, fear of harassment, or retaliation.

## Landlord-Tenant Mediation

Landlord-tenant mediation, combined with emergency rental assistance and additional tenant protections, can be an important tool for reducing the prevalence and harmful consequences of eviction.<sup>54</sup> Mediation policies, including voluntary or mandatory participation, vary by state and locality. Most policies require landlords to provide notice of available mediation services prior to filing an eviction and to delay filing if a tenant agrees within a certain number of days to participate; landlords in Philadelphia are required by law to participate in mediation before filing an eviction for nonpayment of rent.

While mediation can be a useful tool, its effectiveness largely depends on whether additional renter protections are in place. Research indicates mediation works best with a combination of financial assistance, access to legal aid, and additional tenant protections and resources. FHFA should require landlords to engage in mediation prior to filing an eviction in order to reduce evictions and their devastating, enduring consequences.

## **Conclusion**

We urge FHFA to take bold action to implement these protections for all households living in properties with federally backed mortgages. These protections are necessary – along with congressional action in support of large-scale, sustained investments and anti-racist reforms – to ensure that the lowest-income and most marginalized renters have an affordable place to call home.

Thank you for your time and consideration, and we look forward to continuing to engage with FHFA throughout the guidance and rulemaking process. Any questions about this response can be directed to Kim Johnson, policy manager, at [kjohnson@nlihc.org](mailto:kjohnson@nlihc.org), and Kayla Laywell, housing policy analyst, at [klaywell@nlihc.org](mailto:klaywell@nlihc.org).

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<sup>54</sup> Vasquez, J., Calabro, A., Johnson, K., & Gallagher, S. (2022). *Tenant Protections and Emergency Rental Assistance During and Beyond the COVID-19 Pandemic*. Retrieved from [https://nlihc.org/sites/default/files/Tenant-Protections\\_Emergency-Rental-Assistance-during\\_beyond\\_COVID-19\\_Pandemic.pdf](https://nlihc.org/sites/default/files/Tenant-Protections_Emergency-Rental-Assistance-during_beyond_COVID-19_Pandemic.pdf)