



RESEARCH REPORT

# Ensuring Tenant Stability in Federally Backed Rental Properties

**Charting a Path Forward**

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September 2023 (corrected November 2023)



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# Contents

<b>Acknowledgments</b>	<b>iv</b>
<b>Errata</b>	<b>v</b>
<b>Ensuring Tenant Stability</b>	<b>1</b>
A Critical First Step: More Data and Transparency in the Rental Market	2
Requiring New Tenant Protections	5
Requirements Related to Qualifying for an Apartment	8
Requirements Related to Rent Setting	9
Requirements Related to Fees	11
Requirements Related to Future Homeownership	12
Requirements Related to Dispute Resolution	12
Conclusion	14
<b>Notes</b>	<b>16</b>
<b>References</b>	<b>21</b>
<b>About the Authors</b>	<b>23</b>
<b>Statement of Independence</b>	<b>25</b>

# Acknowledgments

This report was supported by the Housing Finance Innovation Forum, a group of organizations and individuals that support high-quality independent research that informs evidence-based policy development. We are grateful to them and to all our funders, who make it possible for Urban to advance its mission.

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# Errata

This report was corrected November 14, 2023. We updated a statistic on page 9 to reflect a corrected analysis, which is that almost half of US renter households feel pressure from their landlord to leave their current home (a previous version said one in five households). We also updated the citation in endnote 37 for this statistic, to reflect that the blog post on which it was based was retracted and corrected.



# Ensuring Tenant Stability

About one-third of US households rent. Renter households, compared with homeowner households, are disproportionately lower income, are young, do not have college degrees, have dramatically lower wealth and savings, and are more likely to be Black or Hispanic.<sup>1</sup> Homeowners (particularly, mortgage borrowers) have had federal protections for decades, and these protections intensified after the financial crisis, including the creation of the Consumer Financial Protection Bureau (which writes and enforces mortgage borrower protections) and an improved loss mitigation waterfall that minimizes the likelihood the borrower will lose their home. These protections increased even further after the COVID-19 pandemic, with the Federal Housing Administration (FHA), the Veterans Administration, Fannie Mae, and Freddie Mac allowing a more streamlined forbearance process, with more generous provisions to repay the forborne payments than was previously offered (Alexandrov, Goodman, and Tozer 2022).<sup>2</sup>

Renter households are more financially vulnerable than homeowners, yet they have nowhere near the level of protection homeowners enjoyed even before the financial crisis.<sup>3</sup> Renter households, particularly those with lower incomes, are prone to housing instability and eviction. Eviction—whether because of a court order or because a household vacates a home resulting from fear, reprisal, or pressure from the landlord (i.e., informal eviction)<sup>4</sup>—comes with significant costs for renter households, the owner of the property, and the community at large. The impacts of eviction are wide ranging, including health, mental health, educational, and economic impacts on households (Hatch and Yun 2021; Hoke and Boen 2021; Jowers et al. 2021). The disruption can lead to homelessness and longer shelter stays and can have long-term impacts on education and future outcomes for children involved (Collinson et al. 2022).<sup>5</sup> Landlords must pay court fees and shoulder vacancy and turnover costs. And society at large pays a significant amount over time in public benefits to cover support needed for affected households.<sup>6</sup>

Eviction also disproportionately harms households of color, who experience eviction at a higher rate than white households. In particular, women of color and single-parent-headed households face the highest risks of eviction (Desmond and Gershenson 2017).<sup>7</sup> Because of these disparate impacts, the government has stated that eviction practices could constitute a fair housing violation under the Fair Housing Act. In fact, the proposed Affirmatively Furthering Fair Housing rule includes guidance for localities to review eviction data as part of their local fair housing analysis.<sup>8</sup>

Given these factors, it seems only logical that landlords enjoying federal support would need to abide by a minimum threshold of tenant-stabilizing practices. The White House released a *Blueprint for a Renters Bill of Rights*, encouraging federal action to standardize and advance the current patchwork of local regulations that protect tenants (DPC and NEC 2023).<sup>9</sup> This report offers a pragmatic starting point for how larger investors and landlords in residential real estate with federally backed lending products could institute basic tenant protections. We focus on landlords benefiting from single-family and multifamily mortgages from Fannie Mae and Freddie Mac (the government-sponsored enterprises, or GSEs); similar requirements should be applicable to landlords benefiting from FHA financing and other federal programs.

We propose several potential protections covering various aspects of renters' experiences, including those that address evictions, approval qualifications, dispute resolution, fee disclosures, and wealth-building opportunities, such as renters with good performance getting education and credit toward future homeownership. We focus these requirements on property owners with more than eight units (more than two four-unit homes), whether they are multifamily or single-family.<sup>10</sup> We believe landlords of this size can benefit from economies of scale, thus limiting costs. To help implement these protections and benefits, we propose establishing a federal database of housing units that receive federal subsidies, with information provided directly by landlords to a federal repository.

How could these protections be enforced? Fannie Mae and Freddie Mac could include the tenant protections into the boilerplate mortgage contract for investors and require the payment back in full immediately if the investors do not adhere to the contract.<sup>11</sup> Such contractual provisions would be consistent with practices the GSEs adopted during the pandemic and even with previous practices, such as those with respect to manufactured housing communities.

## A Critical First Step: More Data and Transparency in the Rental Market

We have a dearth of information on evictions and on renters and landlords in general. Eviction filings are not collected in standardized formats in local courts and sometimes are not even available in electronic form (Gromis et al. 2022). There are local efforts to improve eviction data, but we are far from having an up-to-date national eviction database (PD&R 2021).<sup>12</sup> The difference is especially stark when we compare how much information we have on mortgages. National databases let federal



agencies, consumer groups, and researchers monitor various practices and market trends, by location, lender, servicer, and other characteristics.<sup>13</sup>

We believe large landlords—whether multifamily or single-family—that receive federal support could provide information they already collect during their course of business. Requiring more data reporting is key. In many cases, we simply do not have data to understand the full implications of certain tenant protections on renter outcomes, such as on-time rent payment and other measures of housing stability, and to quantify benefits and costs for owners. Therefore, we believe any new tenant protection requirements should be paired with data reporting to evaluate outcomes and guide future policy.

We believe two types of data would be useful to guide future efforts. First is monthly reporting on tenant performance (e.g., on-time rent payment and eviction filings). This monthly submission would allow the GSEs to monitor trends and learn best practices. This submission would also be an advance warning system for potential GSE-backed loan default—increasing rates of tenants not paying rent necessarily threatens the investor borrower’s loan performance. Having a stable data source for such analyses could open possibilities of advancing best practices by studying landlord best practices, ensuring fair housing, and even building predictive systems to identify tenants who might be in danger of eviction (e.g., tenants who are significantly late on their rent, even if they had not received a notice of eviction filing from their landlord). Owners typically collect the following information in their normal course of business, which could be included in such reports:

- monthly rent
- security deposit
- move-in date
- contract end date
- income stated in application (if used)
- number of people living in the apartment
- unit information (e.g., square footage, number of bedrooms, number of bathrooms)
- unit location
- number of months the tenant is late on their rent (with 0 indicating tenants who are current)
- whether the tenant had received a 30-day notice on an upcoming eviction filing

- whether the landlord already filed for an eviction
- primary reason for eviction
- completed evictions

These data could be provided to a central federal data repository modeled after Home Mortgage Disclosure Act data. The GSEs could make uploads of information straightforward by allowing CSV files or direct export from software like Excel, along with providing geolocation tools if necessary.<sup>14</sup>

Second, we propose a one-time data submission for each new property to ensure a systematic monitoring of the underlying ownership structure and to determine whether they would be subject to tenant protection requirements.<sup>15</sup> For example, if a single investor owns dozens of limited liability corporations (LLCs) each owning a single-family home, the GSEs should be aware of that, and that investor should be subject to requirements—in no sense is that investor small. Practically, for each property, the owner would have to submit the ultimate ownership shares by either individuals, publicly traded corporations, or real estate investment trusts.<sup>16</sup> If any of the ultimate owners qualifies as large (i.e., owns more than eight units that receive federal support), then the proposals in this document apply. The only time the submission would need to be updated is if there is a material change in the ultimate property ownership at any level of ownership. This is not limited to immediate ownership. For example, if the same LLC continues to own the property, but the LLC is sold, the ultimate property ownership changes. The GSEs should make at least some information publicly available using, say, a lookup tool, like one that already exists for COVID-19-related purposes, that would inform a tenant whether their housing unit qualifies for the tenant protections we propose. The information also would be helpful for researchers to understand patterns of property ownership.

Finally, for research purposes, property owners backed by the GSEs could publicly disclose which information they use to qualify tenants (e.g., income, credit score, and eviction records). There is a plethora of potential information that landlords can obtain on a prospective tenant, but it is not clear how much of that information is predictive of the risk of nonpayment and how much of that information is accurate (CFPB 2022).<sup>17</sup> Making selection criteria public provides clarity to applicants; allows landlords to clearly state reasons for rejections, minimizing future risks of fair housing concerns; and improves workflow by allowing for faster and better-documented decisions by those in the organization.<sup>18</sup> The landlord could provide the list to all applicants before or when they apply or send an initial list to the relevant federal agency or central data repository and update the list whenever the landlord changes their policies.

As data are collected, some decision variables might prove to be less relevant. Given better information, federal oversight agencies could limit landlords from using less relevant variables. For example, a single eviction filing that got dismissed might be more indicative of either a records error or a vindictive past landlord than of future payment performance. Similarly, eviction records from years ago might not be as predictive anymore, and it is hard to draw the line on when they stop being predictive. There is also a lack of sufficient information on whether credit scores are predictive, and although it is possible that a more tailored score, trained on rental nonpayment data, could be more predictive, data are scarce. Few renters have rental payment history in their credit records, and only the nonpayments that go through collections are reflected. When a landlord reports payments, they often stop reporting when a borrower misses a payment.<sup>19</sup>

## Requiring New Tenant Protections

### Who Is in Danger of Eviction?

Close to 8 million adults live in households that are behind on their rental payment as of May 2023.<sup>20</sup> These households span all demographics and household compositions, but a few statistics stand out:<sup>21</sup>

- The modal age group is 25 to 39, but half a million of these 8 million adults are 65 and older.
- Hispanic or Latino adults (of any race) are overrepresented, making up 36 percent of the group.
- Black respondents are overrepresented as well, making up 22 percent of the group.
- Only 13 percent of respondents have a bachelor's degree or higher, while 19 percent did not complete high school.
- About half have never been married.
- The modal household has four people in it, most households include children, and only about 600,000 are single-person households.
- About 30 percent had experienced a recent loss of employment.
- More than half have annual household incomes below \$35,000.
- Almost 3 million reported borrowing from friends and family in the past seven days to make ends meet, and 2 million relied on their Supplemental Nutrition Assistance Program benefits.

- Almost 800,000 reported vision problems (a lot of difficulty seeing or not being able to see at all).
- Close to 1 million reported they are very likely to be evicted in the next two months. These are mostly households who are two or more months behind on their rent. But of the households who are behind on their rent by a month or less, only 7 percent reported that they are “very likely” to be evicted in the next two months.<sup>22</sup>
- The modal household is behind on their rent by a month, but almost 1 million are behind by four months or more.

Eviction can change peoples’ lives in dramatic ways. The tenant will likely experience aftershocks for years to come, including trouble securing future rentals, and thus eviction should be avoided to the extent possible.<sup>23</sup> But landlords being unable to evict tenants could lead to runaway costs and eventually higher rents, where renters who pay subsidize those who do not pay. There is a middle ground; the GSEs could require rental housing owners who accept federal financing to provide several tenant rights with limited burdens on the market. These include a minimum seven-day eviction filing notice, just cause evictions, access to renter resources, and a GSE-imposed fee on eviction filings.

### **Provide a Seven-Day Notice before an Eviction Filing**

Providing a seven-day notice before filing for eviction gives the tenant time to make necessary arrangements before the eviction is filed in court. For example, the tenant could move out voluntarily (and avoid the notice filed), attempt to pay back some of the debt, attempt to get aid, or negotiate with the landlord. The notice should also clearly state the reason for eviction and any potential cures. Moreover, this requirement should be in addition to the existing Fannie Mae and Freddie Mac requirements on 30-day notices to vacate for their multifamily properties (DPC and NEC 2023). The protection might simply codify existing practices for most landlords.

### **Implement a Just Cause Eviction Policy**

Another easily implemented protection is restricting evictions during the lease term to evictions for a cause, also known as just cause or good cause evictions. Based on various state laws, such causes often include not paying rent, property damage, disturbance or disorderly conduct, and criminal activity in a unit (Vasquez and Gallagher 2022).<sup>24</sup> Limiting evictions to those for cause allows for enhanced tenant stability and limits landlords from evicting a tenant during the term of the lease simply because they can

charge a higher rent to a new tenant. At the end of the lease term, there is no contractual responsibility to renew the lease. But most landlords will make every effort to renew the lease for a tenant who pays on time and is not a nuisance.

## **Provide Tenants with Resources**

Landlords could provide tenants a list of resources when the tenant might be in danger of eviction or is struggling to pay rent. Of the 8 million households behind on their rent payments, 5 million did not apply for assistance.<sup>25</sup> Many of these 5 million households might know all the eligibility rules and rationally determine that applying is not worth it, but it is also possible that millions of households simply do not know what to do in such situations and do not have the appropriate information. Anecdotally, large landlords appeared to be in a better position to channel their tenants to federal protections during the pandemic—perhaps because the money ultimately was flowing to the landlords. Accordingly, we propose that landlords provide information about such aid resources, with the information compiled by the US Department of Housing and Urban Development (HUD) and the GSEs. Such resources could include the following:

- a HUD-approved counselor who could help with rental issues<sup>26</sup>
- a list of national and local support options (including how to apply to various vouchers such as Section 8)
- a list of other government assistance programs, such as Medicaid and Supplemental Nutrition Assistance Program benefits
- a list of professionals who could help tenants navigate through eviction proceedings, including in courts, such as free legal assistance

## **Implement Eviction Filing Fees**

Research shows that a “\$100 increase to the filing fee would more than halve its number of eviction cases.”<sup>27</sup> Such a dramatic effect requires further study but suggests a policy solution for the GSEs. The GSEs could write into their mortgage contracts an additional fee that large landlords have to pay the GSEs for each eviction filing, such as \$100. This fee could both provide incentives for landlords not to file as many evictions and could finance any additional interventions by the GSEs and other federal actors. More data would make it easier to set a more appropriate level (potentially higher).

## Consider Alternatives to Eviction

Finally, an important protection would be commitment by the landlord to go through prespecified options as alternatives to eviction (Reynolds et al. 2023; Reynolds and Walker 2023).<sup>28</sup> At minimum, where such options are locally available, federally backed landlords should access eviction diversion options. In particular, pre-filing eviction diversion minimizes the potential impacts to the tenant of an eviction filing on their public records (Remor et al. 2023). With more data, it would be helpful to have a loss mitigation waterfall for renters similar to what servicers use to engage with homeowners behind on their payments. But we have little data to suggest which alternatives are particularly cost effective and which alternatives might work better depending on the type of delinquency and household type or other relevant factors. This lack of data makes it hard to recommend a concrete list of actions.

A separate concern is legal representation during eviction proceedings. It is unusual to encounter tenants with legal representation in court during eviction proceedings (if tenants even know they should come to court), and it is unusual to encounter landlords without legal representation in the same proceedings (likely even more true for large landlords).<sup>29</sup> It is hard to require legal representation before an eviction happens; lawyers might be unavailable for many reasons or could be prohibitively expensive. But the GSEs and HUD could do more by providing portals that match legal professionals willing to help with eviction issues to tenants seeking assistance and, after a lawyer is in place, financing at least some of the required legal help.<sup>30</sup>

## Requirements Related to Qualifying for an Apartment

Many potential issues in treatment of tenants arise at the application stage, and these issues might go unnoticed, especially when tenants ultimately select other landlords. Ensuring renters have housing stability also means opening pathways into housing during the search process. The GSEs, the FHA, and other federal sources could ensure equitable treatment of tenants at the application stage by focusing on proposals that might be less expensive for landlords, yet significantly improve the process.

## Ban Source of Income Discrimination

Source of income discrimination is anecdotally common, sufficiently so that Fannie Mae launched a program to give landlords incentives in North Carolina and Texas to accept housing choice vouchers.<sup>31</sup> Fannie Mae offers lower pricing to landlords in this program for accepting vouchers. Other sources of

income that require protection include supplemental security income, disability payments, and local rental assistance.<sup>32</sup>

A more straightforward solution is a requirement for owners with GSE or other federally backed financing to not discriminate based on income source. Fannie Mae notes there are many benefits of accepting HUD assistance recipients as tenants.<sup>33</sup> Most of the rent is essentially government guaranteed. We suggest that larger landlords who discriminate by source of income should not be supported by federal programs.<sup>34</sup>

## Allow Security Deposit Alternatives

A Federal Reserve survey finds that 37 percent of adults would not be able to cover an emergency \$400 expense (Federal Reserve, n.d.). A separate Consumer Financial Protection Bureau survey finds that “if they lost their main source of income, 37 percent of households could not cover their expenses for more than a month” (Fulford et al. 2022). Accordingly, coming up with a security deposit is a major financial strain on potential tenants. Not surprisingly, several jurisdictions have been considering changes to help tenants (City of Saint Paul 2021).<sup>35</sup>

Federally financed properties could limit security deposits to, at most, one month of rent; allow prorated deposits (spread over at least three months or the duration of rent, whichever is shorter); and allow security deposit insurance. Such changes allow for a broader applicant pool without dramatically decreasing landlord profitability.<sup>36</sup>

## Requirements Related to Rent Setting

Rent increases also affect renter stability. In fact, new data show that almost half of renters in the US feel pressure from their landlord to leave their current home, with rent increases named most often as the source of that pressure.<sup>37</sup> Despite the strong connection between rent changes and stability, it would be difficult to impose rent stabilization requirements at a national level. Housing markets are highly localized, and any rent stabilization policy would need to be structured to meet each area’s specific needs.<sup>38</sup> We further outline rent stabilization issues in the next few paragraphs. For the rest of the section, we focus on other practices that the GSEs, the FHA, and others could require.

As mentioned above, rent stabilization policies would be onerous and potentially counterproductive for the GSEs to implement. A low allowed level of rent increases (e.g., allowing

landlords to increase rents only as much as an inflation index, while in many markets, rents are likely to increase faster, on average) is likely to depress housing supply even further. In other words, we cannot fight the housing supply shortage by imposing strict rent control, leading to even less supply. A higher allowed level of rent increases (e.g., allowing landlords to increase rents by as much as 15 percent in a year or, say, 10 percent plus the inflation index) would smooth rent spikes year over year but would still allow landlords to return to market rates in less than three years following even the largest market spikes. It would be unlikely to considerably distort housing supply, as, on average, landlords would still recover market rates eventually (a process that could also involve a small jump in rents before this requirement would go into effect, with landlords compensating for upcoming uncertainty). But for the same reasons, it would also not help tenants in most cases.

In addition, any rent stabilization requirement would need to include requirements on rent contract renewals (some version of just cause nonrenewals), introducing several complications. Currently, even with just cause evictions, the landlord retains the possibility of simply not renewing a contract (e.g., if a tenant is a nuisance to other tenants, but the nuisance is hard to document or does not fit into the list of allowed causes for eviction). This possibility, however, is incompatible with rent stabilization, as landlords might use it to circumvent any rent stabilization requirements.

## **Disclosure of Past Practices**

Just like with tenant payments, past landlord behavior might be predictive of the future. Thus, landlords should disclose to their prospective tenants recent rent increases, such as the past 10 renewal offers or the past six months of renewal offers in the building, whichever number is higher.

This could be done by requiring the landlord to disclose the calendar quarter that a renewal offer was made; the percentage of rent increase the landlord proposed; whether the tenant stayed; and, if the tenant stayed, what was the actual resulting percentage rent increase. Limiting the information to percentage increases (or decreases) preserves privacy. We also propose that owners provide 30-day written notices of any rent increases for current tenants.<sup>39</sup>

## **Special Considerations for Manufactured Housing**

Concerns about moving costs and opportunistic landlords increase for manufactured housing communities where tenants often own their manufactured house but lease the land (pad) underneath. Moving a manufactured home can cost as much as \$10,000.<sup>40</sup> Accordingly, these tenants deserve more



protection than other renters.<sup>41</sup> The GSEs already require some protections.<sup>42</sup> But in addition to protections for all tenants, we believe residents of manufactured communities could benefit from the following:

- longer lead times (at least 60-day notices for rent increases or eviction filings)
- limits on annual rent increases (at most, matching the Consumer Price Index plus 15 percent)
- at least six months' notice of any planned sale or closure of the manufactured housing community
- offering the option of either a one-year lease or a two-year lease<sup>43</sup>

## Requirements Related to Fees

Landlords charge multiple fees, and fees were relatively unregulated until recently.<sup>44</sup> Moreover, landlords can change fees, start charging new fees, and rename existing fees. We believe the federal government has a role to play in ensuring that fees are disclosed to residents and that residents are notified of any fee changes. In short, we believe fees should not be a profit center for landlords but should instead be indicative of the costs landlords incur. It might be difficult to enforce such a general principle, so instead, we attempt to break it down into more detailed requirements.<sup>45</sup> Accordingly, we believe the GSEs could require the following:

- No fees can increase from what the contract specified or appear during the term of the contract.
- All fees should be transparently displayed in a one-page summary before the tenant signs the contract (including fees for credit or debit card payments or for using a portal).
- Nonoptional fees (e.g., sewer and water) should be explicitly labeled as such.<sup>46</sup>
- Tenants should have a feasible way to make their payments without extra charges (e.g., not charging for an online portal use or convenience fees to pay rent).
- Landlords should not charge tenants to perform repairs (unless the damage was caused by tenants' deliberate or highly negligent acts) or to perform repairs faster.
- Landlords should return tenants' security deposits within two weeks of the tenant moving out and state explicit reasons and provide receipts if the deposit is not returned in full.

- Landlords should be prohibited from collecting multiple simultaneous application fees (or any precontract signing fees) for the same housing unit.

## Requirements Related to Future Homeownership

For many, renting is a step toward eventual homeownership. The GSEs should regard renters in GSE-backed buildings as a pipeline of future demand. One way to help transition tenants into homeownership is by giving them credit for on-time rent payments. The GSEs and the FHA are already starting to accept past rental payments as a part of their underwriting process (Choi et al. 2022; Cochran, Stegman, and Foos 2021).<sup>47</sup> Moreover, Fannie Mae is now paying for the first year of rent reporting, if multifamily landlords are willing to do this reporting.<sup>48</sup> But more can be done.

In particular, in the aforementioned data submission, the GSEs and the FHA could also ask for more identification for a sample of the renters and match their rental payment histories to their credit records.<sup>49</sup> After studying the predictiveness of rental payments for credit records in general, and if the results are positive, the GSEs and the FHA should require large landlords to report tenants' rental payment history to the credit bureaus (NCLC 2022).

Second, for tenants with on-time performance, the GSEs could run a pilot with the landlords providing HUD- and GSE-approved information on homeownership transition. The threshold could be 12 months or more of consecutive on-time rent payments, but that could be informed more with the data analyses outlined above. The information could be various brochures about homeownership, connections with HUD counselors, and specially prepared materials developed by the GSEs, the FHA, HUD, or the Consumer Financial Protection Bureau. The brochures could walk tenants through building credit history and what credit scores are required, various down payment assistance programs, shopping for mortgages in general, and housing counselor information. Such a pilot could also specify bonus payments for landlords for each successful tenant transitioning to a mortgage.

## Requirements Related to Dispute Resolution

With housing supply constraints across the United States, landlords naturally have more bargaining power than their tenants. That advantage might be amplified for institutional landlords dealing with low-income tenants. Accordingly, more protection is needed for tenants when disputes arise.

## Right to Habitability

Habitability disputes arise for various reasons. There might be multiple recorded noise violations; there might be issues with plumbing, electricity, windows, or pest control; or the housing unit might be exposed to crime. The typical process for fixes by the renter could include potentially risky steps, such as fixing the issues themselves, withholding rent by putting it in an escrow account, and hoping that any eventual court proceeding resolves in the tenant's favor. This might not even be a viable option; issues could affect multiple units, such as an elevator that frequently does not work, frequent car break-ins at the apartment parking lot, or plumbing problems affecting an entire multifamily building. Issues like these could cause a resident to suffer a significantly lower standard of living than expected based on when the tenant was signing the contract and make the unit effectively uninhabitable.

In a federally backed property, a tenant should be able to move out at will without owing the rest of the rent in the following circumstances:

- no heating (during cold weather), no running or hot water, or no electricity or unusable accessibility accommodations (elevators or ramps), with the landlord failing to fix the issue or to provide alternative accommodation for more than two business days after being informed
- repeated documented pest control issues or repeated documented criminal activity on the property (including auxiliary property, such as the housing unit's designated parking lot), with the landlord failing to address the issue for more than two weeks after being informed

The list above should apply only to issues the landlord can control. For example, if the electricity is out because the local utility company cannot fix its power lines, that would be outside the landlord's scope of responsibility. Similarly, if the tenant is responsible for electric bills and fails to pay, and the local utility company shuts off the tenant's electricity, the landlord would not be responsible. But if the landlord is responsible for those bills and failed to inform the local utility company or failed to pay the bills, the list above applies. As another example, the landlord cannot typically stop criminal activity completely but could take reasonable steps, such as installing security cameras in public areas, filing police reports, and so on.

## Establishing a Reporting Portal

The Consumer Financial Protection Bureau and HUD already have portals where consumers can report issues they encounter (HUD's phone portal is for tenants using housing choice vouchers or living in public housing).<sup>50</sup> The GSEs and HUD could establish similar portals to monitor issues and allow tenants

to report issues. The GSEs already have a lookup tool for whether a multifamily building is backed by a GSE loan. Even easier, landlords could be required to inform tenants that a building is subject to enhanced rental protections and disclose the protections.

Such a portal could allow federal authorities to monitor trends about the most common habitability issues and see the landlords against whom the most complaints are filed. The portal could also encourage landlords to fix issues before a federal agency decides to dig into it further. The GSEs can monitor egregious cases, as it will be easier to do with a portal. Anecdotally, the GSEs are already engaging in similar practices, albeit at a small scale. For example, Freddie Mac filed a lawsuit in 2023 to foreclose on a Chicago landlord for substandard living conditions.<sup>51</sup>

### **Encouraging Mediation, but Not at the Expense of Shielding Landlords from Class Actions**

Many issues are unlikely to rise to the severity needed for tenants to take their landlords to court. Even a small claims court is a major hassle for tenants and is not a realistic possibility in most cases. But the GSEs and HUD could encourage mediation and postdispute arbitration as less expensive and potentially easier alternatives, as long as arbitration results are reported in national databases, such as the one by the American Arbitration Association.<sup>52</sup> The GSEs and HUD could launch pilots, give discounts for landlords using such mediation services, and eventually start requiring these services if sufficient evidence indicates the cost is justified.

Predispute arbitration has pros and cons but could be a potential solution if the landlord pays for the arbitration. Results are reported to a national database, the arbitrator is neutral, and the arbitration association guarantees a prompt hearing and results. Any dispute mechanism with landlords should preserve the option of a class action by multiple tenants, which could be easier by the ultimate ownership data submission we proposed above, so tenants or lawyers could find other tenants who might be experiencing similar practices.<sup>53</sup>

## **Conclusion**

There are several tenant protections that could be appropriate for larger landlords who receive federally backed mortgages. Although we believe the federal government could implement many protections now, accumulating data on landlord practices and household-level outcomes is crucial as data and evidence on the effectiveness of many policies is lacking. Data collected through a housing

unit-level database reported by federally backed landlords would allow the field to continue to understand current practices, to understand what interventions work best, and to refine requirements. Such data could also inform future requirements for housing backed by federal subsidies and federal or state government policies, as well as voluntary actions by private-sector players. For example, the tenant protections outlined in this brief could easily be incorporated into legal settlements with private actors, even if those actors do not depend on federally backed mortgages. As another example, private equity firms could adopt some of these protections voluntarily, and this could become a template for ESG (environmental, social, and governance) designations for investment properties.

Although these protections will help stabilize some renters, they cannot address current market pressures and high rent prices that have increased faster than wages. Alleviating these structural issues in the rental market will have a bigger impact on renter well-being. To do so, we need to address housing demand outstripping supply by millions of units by increasing supply dramatically. More parity between demand and supply—particularly for units affordable to those who earn below median incomes—will naturally give tenants more power to bargain over rents, the issues we described above, and more. But creating considerable new supply will take years, even if we start doing everything needed today (and so far, we have not).

In the meantime, millions of renters lack sufficient income to pay rent, and without more financial support, some will eventually face eviction or potentially homelessness. Landlords cannot take on all the burden of tenant protection. Landlords are in business, and they cannot lose money over the long term. Burdensome landlord requirements will simply be passed on to their tenants as rent increases. Instead, Congress can allocate more funding to housing support, like the Housing Choice Voucher Program. Congress can do so by directly increasing HUD's budget, adding some of the profits that the GSEs remit to the US Treasury to HUD's budget, or authorizing the GSEs to provide rental support, akin to housing choice vouchers, to the tenants living in GSE-backed properties. Authorizing more funding to HUD or encouraging the GSEs to spend their profits on similar programs could help more families stay housed (PD&R 2016).<sup>54</sup> But without addressing the current supply shortage, part of the benefit of housing choice vouchers is likely to be to the landlords and investors who are able to command higher rents (Susin 2002). Therefore, to adequately support renters and the rental market, we will need increases in tenant protections, support like housing choice vouchers, and increases in housing supply. The requirements listed here can be a first step toward solving the complicated housing puzzle.

# Notes

- <sup>1</sup> 2019 Survey of Consumer Finances and 2021 American Community Survey.
- <sup>2</sup> See also Flávia Furian Nunes, “FHFA to Expand Payment Deferrals for Borrowers Facing Hardships,” *HousingWire*, March 29, 2023, <https://www.housingwire.com/articles/fhfa-to-expand-payment-deferrals-for-borrowers-facing-hardships/>.
- <sup>3</sup> For a list of current protections, which vary by location, see Freddie Mac Multifamily (2023).
- <sup>4</sup> Kathryn Reynolds and Elizabeth Burton, “An Estimated One in Five Renters Feels Pressured to Leave Their Home,” *Urban Wire* (blog), Urban Institute, July 3, 2023, <https://www.urban.org/urban-wire/estimated-one-five-renters-feels-pressured-leave-their-home>.
- <sup>5</sup> Kamp and Najmabadi suggest that increased homelessness since the pandemic is likely driven by newly renewed evictions and rising housing costs. See Jon Kamp and Shannon Najmabadi, “More Americans Are Ending Up Homeless—at a Record Rate,” *Wall Street Journal*, August 14, 2023, <https://www.wsj.com/amp/articles/homelessness-increasing-united-states-housing-costs-e1990ac7>. See also Michael Casey and R. J. Rico, “Eviction Filings Are 50% Higher Than They Were Pre-Pandemic in Some Cities as Rents Rise,” Associated Press, June 17, 2023, <https://apnews.com/article/evictions-homelessness-affordable-housing-landlords-rental-assistance-dc4a03864011334538f82d2f404d2afb>.
- <sup>6</sup> Samantha Batko and Amy Rogin, “The End of the National Eviction Moratorium Will Be Costly for Everyone,” *Urban Wire* (blog), Urban Institute, June 24, 2021, <https://www.urban.org/urban-wire/end-national-eviction-moratorium-will-be-costly-everyone>.
- <sup>7</sup> Lundberg and Donnelly note that “more than one in four children in families living below the federal poverty line experienced an eviction by age 15,” and Blumenthal focuses on the disproportionate burden of eviction on Black women. See Ian Lundberg and Louis Donnelly, “How Many Children Experience Eviction during Childhood?” *Housing Matters*, April 17, 2019, <https://housingmatters.urban.org/research-summary/how-many-children-experience-eviction-during-childhood>; and Cleo Blumenthal, “The Disproportionate Burden of Eviction on Black Women,” Center for American Progress, August 14, 2023, <https://www.americanprogress.org/article/the-disproportionate-burden-of-eviction-on-black-women/>.
- <sup>8</sup> *Affirmatively Furthering Fair Housing*, 88 Fed. Reg. 8516 (Feb. 9, 2023).
- <sup>9</sup> See also Jamaal Bowman et al., letter to President Joe Biden, January 9, 2023, [https://bowman.house.gov/\\_cache/files/9/7/97843cbc-7540-41e1-bcb5-3f56e93b4b1b/725554DDDCB60C25457119DDEBB0328F.letter-to-biden-admin-on-rent-inflation-warren-bowman-01092023.pdf](https://bowman.house.gov/_cache/files/9/7/97843cbc-7540-41e1-bcb5-3f56e93b4b1b/725554DDDCB60C25457119DDEBB0328F.letter-to-biden-admin-on-rent-inflation-warren-bowman-01092023.pdf).
- <sup>10</sup> Some of our proposals might require a larger landlord size to be reasonable, such as proposals to require rent reporting and accepting housing choice vouchers. Thus, it is possible that at least the first implementation could require a higher threshold for some provisions. We do not have sufficient data to be able to make a more informed choice.
- <sup>11</sup> Some local jurisdictions already require many of the protections we propose. Accordingly, a national standard could make it easier for landlords to operate across jurisdictions.
- <sup>12</sup> See also Emily Peiffer, “Robust Eviction Data Can Keep Cities from ‘Designing Policies in the Dark,’” *Housing Matters*, August 15, 2018, <https://howhousingmatters.org/feature/robust-eviction-data-can-keep-cities-designing-policy-dark>.
- <sup>13</sup> “National Mortgage Database Program,” Federal Housing Finance Agency, last updated August 9, 2023, <https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/National-Mortgage-Database.aspx>; and

- "Mortgage Data (HMDA)," Consumer Financial Protection Bureau, accessed September 7, 2023, <https://www.consumerfinance.gov/data-research/hmda/>.
- <sup>14</sup> "HMDA Tools," Consumer Financial Protection Bureau, accessed September 11, 2023, <https://ffiec.cfpb.gov/tools/>.
- <sup>15</sup> Fay Walker and Owen Noble, "Understanding Who Owns Rental Stock Can Ensure Tenants and Small Landlords Get the Support They Need," *Urban Wire* (blog), Urban Institute, March 23, 2022, <https://www.urban.org/urban-wire/understanding-who-owns-rental-stock-can-ensure-tenants-and-small-landlords-get-support>.
- <sup>16</sup> Some adjustments might be warranted for large firms that are not publicly traded, as ultimate individual-level ownership might change frequently.
- <sup>17</sup> See also Abby Boshart, "How Tenant Screening Services Disproportionately Exclude Renters of Color from Housing," *Housing Matters*, December 21, 2022, <https://housingmatters.urban.org/articles/how-tenant-screening-services-disproportionately-exclude-renters-color-housing>.
- <sup>18</sup> Paul Willis, "Streamlining the Rental Application Process," National Apartment Association, last updated May 19, 2022, <https://www.naahq.org/streamlining-rental-application-process>.
- <sup>19</sup> Andrea Collatz, "How to Qualify and Deny Rental Applicants the Right Way," TransUnion SmartMove, May 27, 2019, <https://www.mysmartmove.com/SmartMove/blog/how-qualify-deny-rental-applicants.page>.
- <sup>20</sup> See table 3B at "Week 57 Household Pulse Survey: April 26–May 8," US Census Bureau, May 17, 2023, <https://www.census.gov/data/tables/2023/demo/hhp/hhp57.html>. The Census Bureau samples individuals, but the bureau attempts to tabulate responses for households where these individuals live and answer questions about.
- <sup>21</sup> Authors' calculations using table 3B at "Week 57 Household Pulse Survey: April 26–May 8," US Census Bureau, May 17, 2023, <https://www.census.gov/data/tables/2023/demo/hhp/hhp57.html>. The eviction statistics are consistent (Hepburn, Louis, and Desmond 2020).
- <sup>22</sup> Authors' calculations using table 3B at "Week 57 Household Pulse Survey: April 26–May 8," US Census Bureau, May 17, 2023, <https://www.census.gov/data/tables/2023/demo/hhp/hhp57.html>. This statistic could also reflect long eviction timelines, but even in that case, it is unlikely that a 30-day requirement will materially change landlords' costs.
- <sup>23</sup> "About the Book," EvictedBook.com, accessed September 11, 2023, <https://evictedbook.com/#about-the-book>. Reynolds et al. (2023) echoes at least some of our proposed provisions. See also Fung et al. (2023) and Danielle Kaye, "'Stain on Your Record': Evictions Follow Kentuckians for Years, Limiting Access to Housing," WEKU, June 2, 2023, <https://www.weku.org/the-commonwealth/2023-06-02/stain-on-your-record-evictions-follow-kentuckians-for-years-limiting-access-to-housing>.
- <sup>24</sup> For a list of the states and some of the municipalities that already adopted or considered adopting such provisions, see Caitlin Dewey, "Some States to Landlords: You Can't Evict Tenants without a Good Reason," *Stateline*, June 29, 2023, <https://stateline.org/2023/06/29/some-states-to-landlords-you-cant-evict-tenants-without-a-good-reason/>. A concern about eviction for criminal activity is that victims of criminal activity might suffer even more because of such evictions, such as in domestic violence cases. So any such clause should come with a clear exception for victims, without compromising the quiet enjoyment of others in the building.
- <sup>25</sup> Authors' calculations using table 3B at "Week 57 Household Pulse Survey: April 26–May 8," US Census Bureau, May 17, 2023, <https://www.census.gov/data/tables/2023/demo/hhp/hhp57.html>.
- <sup>26</sup> "Renting," US Department of Housing and Urban Development, accessed September 11, 2023, [https://www.hud.gov/program\\_offices/housing/sfh/hcc/rental](https://www.hud.gov/program_offices/housing/sfh/hcc/rental).

- <sup>27</sup> Henry Gomory, Douglas S. Massey, James R. Hendrickson, and Matthew Desmond, “When It’s Cheap to File an Eviction Case, Tenants Pay the Price,” Eviction Lab, June 6, 2023, <https://evictionlab.org/tenants-pay-for-cheap-evictions/>.
- <sup>28</sup> See also Abby Boshart and Kathryn Reynolds, “Five Principles Landlords Can Follow to Take a More Active Role in Preventing Evictions,” *Urban Wire* (blog), Urban Institute, February 1, 2023, <https://www.urban.org/urban-wire/five-principles-landlords-can-follow-take-more-active-role-preventing-evictions>.
- <sup>29</sup> Jennifer Ludden notes, “Some 80% of landlords have lawyers, but just 3% of tenants do” (see Jennifer Ludden, “More Renters Facing Eviction Have a Right to a Lawyer. Finding One Can Be Hard,” NPR, July 8, 2023, <https://www.npr.org/2023/07/08/1185888943/renters-tenant-rights-eviction-lawyer-right-to-counsel-court>). See also Shelby R. King, “Right to Counsel Movement Gains Traction,” Shelterforce, July 16, 2021, <https://shelterforce.org/2021/07/16/right-to-counsel-movement-gains-traction/>.
- <sup>30</sup> See “I Need Legal Help,” Legal Services Corporation, accessed September 11, 2023, <https://www.lsc.gov/about-lsc/what-legal-aid/i-need-legal-help>; and “Find Help by State,” LawHelp.org, accessed September 11, 2023, <https://www.lawhelp.org/find-help>. For more on Milwaukee’s successful homelessness prevention program, including preventing eviction by connecting tenants at risk with free legal aid, aiding with emergency funds when housing choice vouchers are not available, and scouring shelters for people who could use help, see Erika Olson, Krystina Kohler, and Beverley Ebersold, “Milwaukee Is Close to Ending Family Homelessness. Here’s How,” United States Interagency Council on Homelessness, July 25, 2023, <https://www.usich.gov/news/milwaukee-is-close-to-ending-family-homelessness-heres-how>.
- <sup>31</sup> “Expanded Housing Choice Initiative,” Fannie Mae, accessed September 11, 2023, <https://multifamily.fanniemae.com/financing-options/specialty-financing/expanded-housing-choice-initiative>.
- <sup>32</sup> Jessica Perez, Christopher Davis, Kathryn Reynolds, and Daniel Teles, “State and Local Antidiscrimination Laws Could Help Renters Access Emergency Rental Assistance and Keep Their Homes,” *Urban Wire* (blog), Urban Institute, September 22, 2021, <https://www.urban.org/urban-wire/state-and-local-antidiscrimination-laws-could-help-renters-access-emergency-rental-assistance-and-keep-their-homes>.
- <sup>33</sup> Perez et al., “State and Local Antidiscrimination Laws.”
- <sup>34</sup> Restrictions on GSE financing for those who discriminate based on source of income is not a novel concept. Lawmakers in Texas recently banned homeowners’ associations from banning housing choice voucher applicants. See Joshua Fechter, “Texas Bans Homeowners’ Associations from Discriminating against Renters Who Receive Federal Housing Aid,” *Texas Tribune*, July 10, 2023, <https://www.texastribune.org/2023/07/07/texas-hoas-housing-section-8/>.
- <sup>35</sup> See also Hannah Wiley, “Are You a Renter in California? Here’s What to Know about Tenant Protections Lawmakers Are Considering,” *Los Angeles Times*, June 2, 2023, <https://www.yahoo.com/lifestyle/renter-california-heres-know-tenant-120051037.html>.
- <sup>36</sup> Landlords can target the housing units they rent to various potential renters. In particular, a landlord might only want to rent to low-risk tenants and thus require a high security deposit to screen for such tenants. But it is not obvious that such landlords and tenants need government-supported mortgages or buildings.
- <sup>37</sup> Kathryn Reynolds and Elizabeth Burton, “Almost Half of Renter Households Feel Pressured to Leave Their Homes,” *Urban Wire* (blog), Urban Institute, July 3, 2023, <https://www.urban.org/urban-wire/almost-half-renter-households-feel-pressured-leave-their-homes>.
- <sup>38</sup> The only exception is manufactured housing communities with tenants owning the house but not the land, where moving is prohibitively expensive. Thus, ensuring that the rent spikes are smoothed is worth the complications such a requirement introduces.



- <sup>39</sup> Fannie Mae and Freddie Mac already require such notices on manufactured home pad lease protections. See “Tenant Site Lease Protections,” Fannie Mae, accessed September 11, 2023, <https://multifamily.fanniemae.com/financing-options/specialty-financing/manufactured-housing/tenant-site-lease-protections-pricing-initiative>.
- <sup>40</sup> Lee Wallender and Samantha Allen, “How Much Does It Cost to Move a Mobile Home in 2023?” *Forbes*, last updated November 1, 2022, <https://www.forbes.com/home-improvement/moving-services/cost-to-move-mobile-home/>.
- <sup>41</sup> In contrast, renters who rent both the manufactured home and the land underneath are more similar to renters in more typical market situations.
- <sup>42</sup> “Tenant Site Lease Protections,” Fannie Mae.
- <sup>43</sup> A two-year lease would lock in a rent payment, even when the community owner changes. A landlord could require an astronomical rent for a two-year lease (or an astronomical increase in the second year), effectively making the option irrelevant. But we hope that seeing such a potential increase in the second year would cause potential tenants to not even sign a one-year lease. A relevant conversation could be whether even longer lease terms should be required as options.
- <sup>44</sup> US Department of Housing and Urban Development, “In Case You Missed It: Biden-Harris Administration and HUD Announce Actions to Limit Junk Fees in Rental Housing,” press release, July 20, 2023, [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/hud\\_no\\_23\\_147](https://www.hud.gov/press/press_releases_media_advisories/hud_no_23_147).
- <sup>45</sup> “Fact Sheet: Biden-Harris Administration Takes on Junk Fees in Rental Housing to Lower Costs for Renters,” White House, July 19, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/19/fact-sheet-biden-harris-administration-takes-on-junk-fees-in-rental-housing-to-lower-costs-for-renters/>.
- <sup>46</sup> Michael Lyle, “Tenant Protections Addressing Hidden Fees, Rental Applications Move Forward at the Legislature,” *Nevada Current*, April 30, 2023, <https://www.nevadacurrent.com/2023/04/30/tenant-protections-addressing-hidden-fees-rental-applications-move-forward-at-the-legislature/>.
- <sup>47</sup> See also Daniel Pang, “Incorporating Two Alternative Types of Data into Mortgage Underwriting Could Make the Process More Equitable,” *Urban Wire* (blog), Urban Institute, January 4, 2023, <https://www.urban.org/urban-wire/incorporating-two-alternative-types-data-mortgage-underwriting-could-make-process-more>; and FinRegLab’s website at <https://finreglab.org/#positions>.
- <sup>48</sup> Fannie Mae, “Fannie Mae Launches Rent Payment Reporting Program to Help Renters Build Credit,” press release, September 27, 2022, <https://www.fanniemae.com/newsroom/fannie-mae-news/rent-payment-reporting-program-launch>.
- <sup>49</sup> “FAQs: Positive Rent Payment History in Desktop Underwriter,” Fannie Mae, last updated June 9, 2023, <https://singlefamily.fanniemae.com/originating-underwriting/faqs-positive-rent-payment-history-desktop-underwriter>.
- <sup>50</sup> “Consumer Complaint Database,” Consumer Financial Protection Bureau, accessed September 11, 2023, <https://www.consumerfinance.gov/data-research/consumer-complaints/>; and “Multifamily Housing Complaint Line,” US Department of Housing and Urban Development, accessed September 11, 2023, [https://www.hud.gov/program\\_offices/housing/mfh/hc/complaint](https://www.hud.gov/program_offices/housing/mfh/hc/complaint).
- <sup>51</sup> Alejandra Cancino, “In Rare Move, Freddie Mac Files Suit against South Side Landlord,” *Block Club Chicago*, August 8, 2023, <https://blockclubchicago.org/2023/08/08/in-rare-move-freddie-mac-files-suit-against-south-side-landlord/>.

<sup>52</sup> “Research, Data, and Analytics,” American Arbitration Association, accessed September 11, 2023, <https://www.adr.org/research>.

<sup>53</sup> For more on predispute arbitration and class actions in consumer finance, see CFPB (2015) and Consumer Financial Protection Bureau, “CFPB Issues Rule to Ban Companies from Using Arbitration Clauses to Deny Groups of People Their Day in Court,” news release, July 10, 2017, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-rule-ban-companies-using-arbitration-clauses-deny-groups-people-their-day-court/>.

<sup>54</sup> See also “Eviction Prevention Initiatives,” US Department of Housing and Urban Development, Office of Policy Development and Research, accessed September 11, 2023, <https://www.huduser.gov/portal/periodicals/em/Summer21/highlight3.html>.

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