

To: The Honorable Sandra Thompson
Federal Housing Finance Agency
Office of Multifamily Analytics and Policy,
400 7th Street, S.W.,
Washington, D.C. 20219

Re: Multi-family Tenant Protections

Dear Director Thompson:

Thank you for the opportunity to provide feedback on the Federal Housing Finance Agency (FHFA) Request for Information on tenant protections.

For more than 50 years, the Southern Poverty Law Center has been a catalyst for social change in the South. We partner with impacted communities to challenge discriminatory actions and advance policies aimed at improving the lives of people in the South. We have offices in five states in the Deep South: Alabama, Georgia, Mississippi, Louisiana, and Florida. Our core impact issues include eradicating poverty; decriminalizing and decarcerating Black and Brown people; protecting voting rights and civic engagement; and dismantling white nationalism and extremism.

We aim to eradicate poverty by expanding access to opportunity and eliminating racial economic inequality in all facets of life including education, employment, and public infrastructure and supports. We believe housing is a human right, and housing stability is fundamental to economic well-being. Our deep expertise on the root causes of poverty in the South drives our work to advance the human right to housing across the Deep South with a focus on rooting out race discrimination that is entrenched at all levels of our housing laws and policies.

Our Deep South states have some of the most tenant unfriendly laws, highest rates of poverty, and highest need for affordable housing.¹ Several of our states have problematic laws that would undercut tenant right protections. For example, in Florida, the government just signed two laws that would preempt many local laws designed to protect tenants. Some of these laws include the screening process used by a landlord in approving tenancies, security deposits, terms and conditions of rental agreements, associated fees and notice requirements during the eviction

¹ FRIENDS COMMITTEE ON NATIONAL LEGISLATION, 10 Poorest States in the U.S.

<https://www.fcni.org/updates/2022-10/top-10-poorest-states-us>; U.S. Department of Housing and Urban Development, Worst Case Housing Needs 2021 Report to Congress, 14,

<https://www.huduser.gov/portal/sites/default/files/pdf/Worst-Case-Housing-Needs-2021.pdf>; *see i.e.* The Most Landlord-Friendly States in 2023, Leaders.com, <https://leaders.com/articles/wealth/landlord-friendly-states/>;

Jemima McEvoy, “Here’s Where Renters Appear Suddenly Most At Risk for Eviction (Some Southern States Are Especially Vulnerable,” FORBES, Aug. 2, 2021, <https://www.forbes.com/sites/jemimamcevoy/2021/08/02/heres-where-renters-appear-suddenly-most-at-risk-for-eviction-some-southern-states-are-especially-vulnerable/?sh=1e555d3969d6>

process, and source of income discrimination.² The prevalence of preemption, where state lawmakers block or dismantle local ordinances, in the South is embedded in anti-Black racism and the desire of majority-white legislatures to create barriers to economic security and prosperity for people of color, as well as women and low-income workers.³ Having robust federal tenant right protections will help prevent against the further deterioration of state and local safeguards.

We write to urge FHFA to create clear and strong renter protections for individuals and families living in rental properties that not only complies with nondiscrimination protections, but affirmatively furthers the purpose of the Fair Housing Act.⁴ Below are the issues we believe the FHFA can address:

1. Prohibit landlords from discriminating against households and discourage landlords from screening tenants based on criminal and eviction records.

Tenant screening is a common practice that often perpetuates disparate impacts on Black Americans. Landlords are over-reliant on these tools, even though screening practices frequently oversimplify an applicant's background and can even provide inaccurate information. For example, applicants have been denied housing due to screening reports pulling up criminal records which belonged to another person.⁵

Black Americans are overrepresented in the criminal justice system, due to structural racism in policing, court systems, sentencing, and the legal system.⁶ Black Americans also face a disproportionate number of evictions in comparison to white Americans, even in comparison to white households with the same rental histories (e.g., non-payment of rent).

As many as 100 million Americans – nearly one-third of the U.S. population – have a criminal record.⁷ In Georgia, over one-third of the state's population has a criminal record, or 4.2 million Georgians, 40% of which are female heads of household.⁸ The National Institute of Corrections reports that in 2019, 54,000 Georgians were incarcerated, and over 430,000 were serving probation or parole after exiting the carceral system. The impact of structural racism in policing

² Gabriella Paul, "Florida bills awaiting approval would repeal local tenant laws and allow monthly fees for renters," WUSF Public Media, May 9, 2023, <https://wusfnews.wusf.usf.edu/politics-issues/2023-05-09/florida-bills-awaiting-final-approval-repeal-local-tenant-laws-allow-monthly-fees-renters>

³ EPI, "Preempting progress: State interference in local policymaking prevents people of color, women, and low-income workers from making ends meet in the South," Sept. 30, 2020, <https://www.epi.org/publication/preemption-in-the-south/>

⁴ Federal Housing Finance Agency, Advisory Bulletin: Enterprise Fair Lending and Fair Housing Compliance, Dec. 20, 2021, <https://www.fhfa.gov/SupervisionRegulation/AdvisoryBulletins/Pages/Enterprise-Fair-Lending-and-Fair-Housing-Compliance.aspx>

⁵ See *Ivey v. Appfolio*, No. 1:2015cv03541 (2015); *Woolridge v. RealPage, Inc.*, No. 1:2019cv02378 (2019).

⁶ Waddell, K. (2021). How Tenant Screening Reports Make It Hard for People to Bounce Back From Tough Times. www.consumerreports.org/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times-a2331058426/

⁷ Aumand, F. and Came, S. (2014). *Survey of State Criminal History Information Systems, 2012*. Office of Justice Programs. www.ojp.gov/pdffiles1/bjs/grants/244563.pdf.

⁸ Georgia Justice Project. *Criminal Records Approach*. www.gjp.org/programs/criminal-records/.

and the criminal legal system has led to disproportionate rates of incarceration for Black and Hispanic individuals. According to the Bureau of Justice Statistics, African American adults nationwide were 5.9 times as likely to be incarcerated than whites in 2016, and Hispanics were 3.1 times as likely.⁹

Approximately 20% of metro Atlanta renter households receive an eviction notice each year.¹⁰ Having an eviction record makes it challenging to qualify to rent an apartment in the future. Currently, thousands of extended stay hotel rooms in the metro Atlanta area are occupied for months at a time by previously evicted families who cannot afford the high entry costs for the rental housing market.¹¹ And these individuals and families are not readily visible to the public and are on the brink of homelessness because they can be evicted without tenant protections or procedures.¹² Moreover, working-class Georgians face a steep shortage of affordable housing. There are only about 48,000 affordable homes available for the roughly 165,000 extremely low-income households in the metro Atlanta area.¹³

In areas with shortages of affordable rental income, which can be a barrier to safe, stable, and healthy housing, automated tenant screening reports exclude individuals from an already limited pool of affordable housing options. Given the disparate impact that screening policies can have on people of color, HUD (Housing and Urban Development) has addressed the use of criminal records in tenant background checks.¹⁴ Given that the FHFA has an obligation to affirmatively further the purposes of the Fair Housing Act, discouraging landlords from automatically screening out individuals with criminal or eviction records would help reduce disparities in housing opportunities and foster more inclusive communities.¹⁵

2. Require landlords to meet due process requirements during the eviction process.

⁹ National Institute of Corrections. (2019). *Georgia 2019*. National Institute of Corrections. www.nicic.gov/state-statistics/2019/georgia-2019.

¹⁰ Raymond, E. L., Duckworth, R., Miller, B., Lucas, M., & Pokharel, S. (2016). Corporate landlords, institutional investors, and displacement: Eviction rates in single family rentals. *FRB Atlanta community and economic development discussion paper*, (2016-4).

¹¹ Kanell, M. (2021, August 13). Between apartments and street: Motels may not have room for evicted. Atlanta Journal Constitution. www.ajc.com/ajcjobs/between-apartments-and-street-motels-may-not-have-room-for-evicted/PCIYR5KU2ZG5ZMKCQDSNZ3J3DE/

¹² See SPLC's amicus in support of tenant rights for efficiency lodge residents, <https://www.splcenter.org/presscenter/southern-poverty-law-center-and-community-partners-file-amicus-brief-support-tenant>

¹³ Kanell, M. (2021, August 13). Between apartments and street: Motels may not have room for evicted. Atlanta Journal Constitution. www.ajc.com/ajcjobs/between-apartments-and-street-motels-may-not-have-room-for-evicted/PCIYR5KU2ZG5ZMKCQDSNZ3J3DE/

¹⁴ U.S. Department of Housing and Urban Development, Office of General Counsel Guidance on Application of Fair Housing Act Standards to the use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, Apr. 4, 2016, https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF

¹⁵ U.S. Department of Housing and Urban Development, Affirmatively Furthering Fair Housing, <https://www.hud.gov/AFFH>

We request that the FHFA ensure tenants have due process rights by clarifying what procedures the landlord must follow during the eviction process. Specifically, we recommend the FHFA propose enforceable policies that:

- 1) Require landlords provide adequate notice, at least 30 days, to the tenant for the grounds of terminating lease and for the eviction,
- 2) Guarantee the right of tenants to be represented by an attorney,
- 3) Provide the opportunity for the tenant to provide and confront witnesses and present evidence, and
- 4) Ensure eviction and lease termination decisions are made on the merits.

Additionally, FHFA should consider addressing the way federally backed properties can limit the impact of landlords using rent deposit statutes in eviction decisions. For example, Florida statute § 83.60 requires that tenants file the entire amount of rent owed to obtain a court hearing (or even docket an answer or participate in mediation programs) in eviction proceedings. If the tenant does not deposit the full amount of rent owed, a default judgment for possession is entered even if the basis for the eviction is not based on allegations of nonpayment. Without a hearing, the tenant has no opportunity to raise defenses without first paying the full amount owed. This law was in effect throughout the COVID pandemic, causing unnecessary displacements and evictions. There are extremely high rates of default judgments entered in Florida housing courts as a result.

In 2016, HUD issued a due process determination letter finding that Florida's rent deposit statute did not provide due process. HUD notified Public Housing Agencies (PHAs) that they must provide public housing tenants with an opportunity for an administrative hearing prior to evicting them under Florida statutory processes. As HUD considers additional action to prohibit its properties from using Florida's rent deposit statute altogether in evictions, it would be helpful for the FHFA properties to take a stance against this problematic law and provide guidance to landlords regarding due process considerations.

The Florida rent deposit statute puts communities at risk, especially communities of color, for evictions without due process. This is a positive step FHFA can take consistent with its obligations to affirmatively further fair housing as it is a meaningful action that will foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.

3. Impose rent protections and fee limitations to stop landlords from dramatically and unreasonably raising rents and pushing out tenants.

Nationwide, rents are doubling, with 51% of Americans spending 30% or more of their income on rent, every single month.¹⁶ For renter-occupied households, those with the lowest incomes

¹⁶ Luke Williams, "The States and Cities Where Rent Will Cost You the Highest Percentage of Your Income, MyEListing, Nov. 14, 2022, <https://myelisting.com/commercial-real-estate-news/1334/most-and-least-expensive-cities-states-to-rent-compared-to-income/>

(less than \$27,457 per year) had a median cost ratio of 62.7% in 2021.¹⁷ These issues are exacerbated by the limited supply of rental housing and rising interest rates and increased foreclosures pushing more people into the rental market. Many landlords are attempting to recoup pandemic-era rent freezes and passing along inflation cost increases onto tenants.¹⁸

The Department of Housing and Urban Development found the incidence of renters defined as worst case needs to be most concentrated in southern cities.¹⁹ Our focus states, Alabama, Mississippi, Louisiana, Georgia, and Florida have some of the highest poverty rates, highest hunger rates, lowest literacy rate, and worst health outcomes in the country.²⁰ Alabama, Louisiana, and Mississippi are among the states with the highest percentage of hourly paid workers earning below minimum wage.²¹ For low-income households, even a small change in rent could have significant impacts on the burdens. In many states, there is simply not enough affordable housing for low-income families. According to a recent report by the National Low Income Housing Coalition, roughly 165,000 extremely low-income households rent in the metro Atlanta area, but only about 48,000 affordable homes are available.²² Many households spend more than half of their monthly income on rent, leaving little room for savings or insurance.

One of the other states we work in, Florida, is the “least affordable state in the US” and has “the highest inflation rate in the country.”²³ In Florida, Sebastian-Vero Beach, Port St. Luce, Miami-Fort Lauderdale, are the top cities with the highest percent of income. Hammond, LA is the second most unaffordable city, and Auburn, Opelika, LA is fourth most unaffordable.²⁴

Some of our states have laws aimed at extracting additional monies from tenants. For example, Florida recently passed a bill that would allow landlords to collect a monthly non-refundable fee

¹⁷ U.S. Census, “Low Income Renters Spent Larger Share of Income on Rent in 2021,” Mar. 2, 2023, <https://www.census.gov/library/stories/2023/03/low-income-renters-spent-larger-share-of-income-on-rent.html>

¹⁸ Katie Wilson, “Big Rent Increases Are Coming For Some Affordable Housing Residents,” Publicola, Jul. 29, 2022, <https://publicola.com/2022/07/29/big-rent-increases-are-coming-for-some-affordable-housing-residents/>

¹⁹ The Department of Housing and Urban Development defines “worse case needs” as very low-income renters with incomes below 50% of the area median income who do not receive government housing assistance and who either paid more than 1/2 of their income for rent or lived in severely inadequate condition. U.S. Department of Housing and Urban Development, *Worse Case Housing Needs 2021 Report to Congress*, 14, <https://www.huduser.gov/portal/sites/default/files/pdf/Worst-Case-Housing-Needs-2021.pdf>

²⁰ FRIENDS COMMITTEE ON NATIONAL LEGISLATION, *10 Poorest States in the U.S.* <https://www.fcni.org/updates/2022-10/top-10-poorest-states-us>; INSTITUTE OF EDUCATION SCIENCES, *Comparison Charts of State and County Estimates*, <https://nces.ed.gov/surveys/piaac/skillsmap/src/PDF/STATE.pdf>.

²¹ BLS Report, *Characteristics of minimum wage workers*, Feb. 2021, <https://www.bls.gov/opub/reports/minimum-wage/2020/home.htm#:~:text=The%20states%20with%20the%20highest,Louisiana%2C%20Mississippi%2C%20and%20Virginia.>

²² National Low Income Housing Coalition, *Georgia Gap Report*, <https://reports.nlihc.org/gap/2019/ga>

²³ Irina Ivanova, “Florida is the least affordable place to live in the U.S.” May 2, 2022, <https://www.cbsnews.com/news/florida-least-affordable-state-us-miami-tampa-orlando-naples-rent/>; Kaitlyn Schwanemann, “Florida now the highest inflation rate in the U.S.,” NBC Miami, Jul. 12, 2023, <https://www.nbcmiami.com/news/local/florida-now-has-the-highest-inflation-rate-in-the-us-heres-why/3070165/>

²⁴ Luke Williams, “The States and Cities Where Rent Will Cost You the Highest Percentage of Your Income,” MyEListing, Nov. 14, 2022, <https://myelisting.com/commercial-real-estate-news/1334/most-and-least-expensive-cities-states-to-rent-compared-to-income/>

as an alternative to a security deposit.²⁵ Georgia is considering a bill, among other things would prohibit a landlord from requiring a security deposit that exceeds two months' rent.²⁶

The FHFA should limit how much a landlord can raise rents or charge additional fees onto tenants. The FHFA should provide guideline on how much rent can be raised based on costs, inflation, and market rents and rates. They should also consider limiting the amount of the security deposit and the ability to charge other non-refundable fees.

4. Require housing to be safe, decent, accessible, and healthy.

We urge the FHFA to require multifamily landlords to provide safe, decent, accessible, and healthy housing. Lack of access to water, sanitation, and trash pickup is an essential fair housing issue requiring critical attention across the South due to its disproportionate impact on Black residents who cannot access habitable housing. SPLC is currently working on these issues in Alabama, Mississippi, and Louisiana. Our attorneys have identified rampant and systemic discrimination in funding for the infrastructure and the provision of these life-saving utilities.

For example, in New Orleans, our attorneys provided support to a decade-long partner-led campaign to pass a "Healthy Homes" ordinance. The proposed law aimed to create new renter protections, including minimum housing habitability standards and a public database of rental properties with information on past inspections and violations, and anti-retaliation laws for renters who report issues.²⁷ Natural disasters, a shortage of affordable housing, absentee landlords, and a lack of legal protections have pushed individuals and families into deplorable sub-standard housing situations. Often, these housing options have black mold, pests, collapsing ceilings, and other dangerous conditions. This ordinance would help protect renters and hold landlords accountable and could serve as a model standard for healthy housing.

In addition to requirements that landlords keep their rental properties fit for human habitation, the FHFA should clarify that landlords must maintain essential utility services such as heat, cooling, water, gas, electricity, or other utilities included in landlord's duties per the rental agreement or lease. Landlord must continue to provide these utilities and cannot purposefully or negligently shut off essential services to push out or punish tenants, especially during periods of intense heat or cold weather.

The FHFA should include strong habitability standards to ensure that housing is free of health and safety hazards such as mold or lead. Rent should include services, amenities, utilities, functioning appliances, and well-maintained common areas.

²⁵ Gabriella Paul, "Florida bills awaiting approval would repeal local tenant laws and allow monthly fees for renters," WUSF Public Media, May 9, 2023, <https://wusfnews.wusf.usf.edu/politics-issues/2023-05-09/florida-bills-awaiting-final-approval-repeal-local-tenant-laws-allow-monthly-fees-renters>

²⁶ Georgia HB 404, Safe at Home Act, <https://www.legis.ga.gov/legislation/64363>

²⁷ New Orleans Code of Ordinances, Article XIII Health Homes Program, https://library.municode.com/la/new_orleans/codes/code_of_ordinances?nodeId=PTIICO_CH26BUBUREHOST_ARTXIIIHEHOPR

5. Impose strong anti-retaliation rules to prohibit landlords from retaliating against a tenant that raises a habitability claim and provide clear guidance on the rights for tenants to organize.

FHFA should impose anti-retaliation rules to prohibit landlords from terminating a lease, raising rents, not renewing a lease, decreasing services, or threatening a lawsuit if tenant complains about conditions of the home. Even if renters have a right to report habitability issues to enforcement agencies or landlords, and landlords have a legal duty to repair, oftentimes tenants may not choose to report because they fear they may be evicted for reporting poor living conditions or don't have the financial or emotional bandwidth to deal with consequences from the report and potential eviction.²⁸ Eviction imposes serious cost and harms to individuals and families as it can disrupt education, job security, and social connection.²⁹ Additionally, if a tenant reports a code violation to an enforcement agency, and is subsequently evicted, the investigation is usually suspended, and another family can move into the space without any necessary repairs made.³⁰

There is an ongoing trend in our states where property managers and companies are attempting to quell tenant organizing efforts around their housing rights. For example, our attorneys are working with organizers in New Orleans who have been accused of trespassing while distributing fliers, a clear retaliatory action for informing tenants of their rights to habitable property.

For federal assisted housing, some properties are provided explicit rights to organize and address “terms and conditions of their tenancy” and activities related to housing and community development.”³¹

The FHFA should provide clear guidance to all properties with clear information about a tenant's rights, including:

- 1) The right to organize (join a tenant organization, meet with other tenants about living conditions, and advocate for change)
- 2) The right to collaborate with nonresident organizations to canvass and disseminate information
- 3) The right to file collective complaints to the landlord related to code enforcement
- 4) The right to testify against the landlord in court or file an action.

²⁸ Joseph Guardino and Megan Kirk, HB 346 Tenant Retaliation Protection, Georgia State University Law, Dec. 1, 2019, <https://readingroom.law.gsu.edu/cgi/viewcontent.cgi?article=2999&context=gsulr>

²⁹ Nicole Hammett, “An Eye for an Eye and a Tooth for a Tooth: An Analysis of Georgia’s Landlord Retaliation Law, University of Georgia School of Law, 2021, <https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1259&context=glr>

³⁰ *Id.*

³¹ 24 CFR §245, Tenant Participation in Multifamily Housing Projects, <https://www.ecfr.gov/current/title-24/subtitle-B/chapter-II/subchapter-B/part-245>



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This guidance should also explicitly prohibit landlords from retaliation (raising rents, cutting services, terminating the lease, eviction, etc.) or otherwise curtailing these rights.

Thank you for your consideration of our suggestions for renter protections for individuals and families living in multi-family rental properties. Please feel free to reach out to Theresa Lau, Senior Policy Counsel, Eradicating Poverty if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Theresa Lau'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Theresa Lau
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