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July 31, 2023

Federal Housing Finance Agency  
Office of Multifamily Analytics and Policy  
400 7<sup>th</sup> Street SW, 9<sup>th</sup> Floor  
Washington, D.C. 20219

RE: RFI on Tenant Protections for Enterprise Backed Multifamily Properties

To Whom It May Concern,

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we submit the following comments in response to the Federal Housing Finance Agency’s (FHFA) Request for Information (RFI) on opportunities to require or encourage specific tenant protections at multifamily properties backed by Fannie Mae and Freddie Mac, the Government Sponsored Enterprises, (the GSEs). For decades, government policies like redlining and exclusionary zoning have deepened racial segregation and created severe barriers that often prevent Black people from finding safe, stable, affordable housing.<sup>1</sup> The barriers have only increased in recent years. As local, state and eviction moratoriums have ended after the pandemic, eviction filings have risen over 50% above pre-pandemic levels in some jurisdictions.<sup>2</sup> In 2021, nearly 50% of U.S. renters were cost-burdened (i.e., they paid more than a third of their income to rent)<sup>3</sup>—a disproportionate number of whom are people of color.<sup>4</sup> We applaud the White House for releasing its Blueprint for a Renter’s Bill of Rights, which outlined principles and best practices to ensure that tenants have access to safe, quality, accessible and affordable housing with fair leases requirements and eviction protections.<sup>5</sup> The federal government should now follow the lead of local and state jurisdictions

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<sup>1</sup> Danyelle Solomon, Connor Maxwell, & Abril Castro, *Systematic Inequality: Displacement, Exclusion, and Segregation*, Center for American Progress, August 2019, <https://www.americanprogress.org/wp-content/uploads/sites/2/2019/08/StructuralRacismHousing.pdf>; Jonathan Rothwell & Douglas S. Massey, *The Effect of Density Zoning on Racial Segregation in U.S. Urban Areas*, Princeton University, July 1, 2009, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4083588/pdf/nihms453809.pdf>

<sup>2</sup> Michael Casey & R.J. Rico, *Eviction filings soar over 50% above pre-pandemic levels in some cities as rents increase*, PBS, June 17, 2023, <https://www.pbs.org/newshour/nation/eviction-filings-soar-over-50-above-pre-pandemic-levels-in-some-cities-as-rents-increase>

<sup>3</sup> Joint Center for Housing Studies of Harvard University, *The State of the Nation’s Housing 2023*, Harvard University (last visited Jul. 24, 2023), [https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_The\\_State\\_of\\_the\\_Nations\\_Housing\\_2023.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2023.pdf).

<sup>4</sup> National Equity Atlas, “Housing burden: United States, 2020,” PolicyLink and the USC Equity Research Institute (last visited Jul. 24, 2023), [https://nationalequityatlas.org/indicators/Housing\\_burden?breakdown=by-race-ethnicity](https://nationalequityatlas.org/indicators/Housing_burden?breakdown=by-race-ethnicity).

<sup>5</sup> White House, *THE WHITE HOUSE BLUEPRINT FOR A RENTERS BILL OF RIGHTS*, January 2023, <https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf>

and take action to ensure that tenants have safe, quality, and accessible housing free from discrimination and constant fear of eviction.<sup>6</sup> We urge the FHFA to forbid GSE-backed multifamily properties from engaging in source of income discrimination and using discriminatory tenant screening practices, such as excluding renters based on prior criminal legal contact; permit only “just cause” evictions; and impose quality and safety standards and fair lease protections.

Founded in 1940 by Thurgood Marshall, LDF is the nation’s oldest civil rights law organization.<sup>7</sup> For more than 80 years, LDF has relied on the Constitution and federal and state civil rights laws to pursue equality and justice for Black Americans and other people of color. LDF’s mission has always been transformative: to achieve racial justice, equality, and an inclusive society. Since its inception, LDF has worked to increase fair housing opportunities for Black Americans. Some of LDF’s early victories in the Supreme Court came in *Shelley v. Kramer*, 334 U.S. 1 (1948), and *McGhee v. Sipes*, 334 U.S. 1 (1948), which held that the state enforcement of racially-restrictive covenants violated the Equal Protection Clause. In the decades since those victories, LDF has continued to challenge public and private policies and practices that deny Black people safe and quality housing and free from discrimination.

## **I. Tenant Protections Are Necessary to Protect Fair Housing for People of Color**

Tenant protections are a crucial part for bringing racial justice to housing, and will disproportionately benefit tenants of color, particularly Black tenants. Requiring multifamily properties backed by the GSEs to adopt tenant protections will go a long way in protecting fair housing for people of color.

For decades, the federal government perpetuated housing discrimination against communities of color through policies and practices such as redlining.<sup>8</sup> For example, the Federal Housing Administration refused to guarantee mortgages for developers who were building subdivisions unless the deeds included racially-restrictive covenants, effectively stopping development of integrated suburban communities.<sup>9</sup> At the same time, the federal government established several programs in the 20th Century that were designed to promote homeownership and provide a pathway to the middle class.<sup>10</sup> However, these programs largely benefited white

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<sup>6</sup> Nada Hussein & Sarah Gallagher, *The State of Statewide Tenant Protections*, NLIHC, May 2023, <https://nlihc.org/sites/default/files/The-State-of-Statewide-Tenant-Protections.pdf>

<sup>7</sup> LDF has been fully separate from the National Association for the Advancement of Colored People (NAACP) since 1957.

<sup>8</sup> Danyelle Solomon, et al., *Systematic Inequality: Displacement, Exclusion, and Segregation How America’s Housing System Undermines Wealth Building in Communities of Color*, CTR. FOR AM. PROGRESS (Aug. 2019), <https://www.americanprogress.org/wp-content/uploads/sites/2/2019/08/StructuralRacismHousing.pdf>; Testimony of Richard Rothstein, Distinguished Fellow of the Economic Policy Institute and Senior Fellow, Emeritus, NAACP Legal Defense and Educational Fund, Inc. on behalf of himself and Sherrilyn Ifill President and Director-Counsel NAACP Legal Defense and Educational Fund, Inc. Before the U.S. Senate Committee on Banking, Housing & Urb. Affairs, *Separate and Unequal: The Legacy of Racial Discrimination in Housing* 6 (Apr. 13, 2021), [https://www.naacpldf.org/wp-content/uploads/LDF-Testimony-Senate-Banking-Racial-Discrimination-in-Housing\\_FINAL.pdf](https://www.naacpldf.org/wp-content/uploads/LDF-Testimony-Senate-Banking-Racial-Discrimination-in-Housing_FINAL.pdf).

<sup>9</sup> HEATHER MCGEE, *THE SUM OF US* 80 (2022).

<sup>10</sup> Michela Zonta, *Racial Disparities in Home Appreciation: Implications of the Racially Segmented Housing Market for African Americans’ Equity Building and the Enforcement of Fair Housing Policies*, CTR. FOR AM. PROGRESS (July

households while excluding Black people.<sup>11</sup> This institutionalized discrimination persisted for decades, compounding and legitimizing biased practices across the industry. In its 1961 report, the U.S. Commission on Civil Rights documented numerous discriminatory housing and lending practices, from requiring Black borrowers to make higher down payments and adopt faster repayment schedules, to refusing to loan money on the basis of race.<sup>12</sup>

While the Fair Housing Act of 1968 was passed to both prevent discrimination and reverse housing segregation, Black people continue to struggle to find safe, stable, and affordable housing. Due to historical and ongoing discrimination, there is a large and growing racial homeownership gap. In 2021, Black families had a homeownership rate of 46.4% compared to 75.8% of white families.<sup>13</sup> In 2020, the Urban Institute looked at the 100 cities with the largest population of Black households and found that not one of those cities had a Black homeownership rate close to the white homeownership rate, even in places where Black households were the majority.<sup>14</sup> Because they are locked out of homeownership, most Black people rent. In 2021, about 58% of households headed by Black adults rent their homes according to national Census data.<sup>15</sup> Due to ongoing racial disparities in wages,<sup>16</sup> Black people also live more frequently in unsafe subsidized housing,<sup>17</sup> and are disproportionately likely to spend more than 30% of their income on rent.<sup>18</sup>

Decades of unjust government practices like redlining and exclusionary zoning practices have also led to persistent housing segregation and economic disinvestment<sup>19</sup> that make it harder for Black people to access and maintain safe housing. At the same time, as discussed in more detail below, Black people also face housing discrimination due to their source of income, prior criminal legal contact, eviction history, or credit score. Predatory landlords often take advantage of low-income Black tenants' precarious position, offering them subpar services, denying them basic

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15, 2019), available at <https://www.americanprogress.org/issues/economy/reports/2019/07/15/469838/racial-disparities-home-appreciation/>

<sup>11</sup> *Id.*

<sup>12</sup> U.S. COMM'N ON CIV. RTS., BOOK 4: HOUSING (1961), <https://www2.law.umaryland.edu/marshall/usccr/documents/cr11961bk4.pdf>.

<sup>13</sup> Rashawn Ray, Andre Perry, & David Harshbarger, *Homeownership, Racial Segregation, and Policy Solutions to Racial Wealth Equity*, Brookings Institute, September 1, 2021, <https://www.brookings.edu/articles/homeownership-racial-segregation-and-policies-for-racial-wealth-equity/>

<sup>14</sup> Alanna McCargo & Sarah Stochak, Mapping the Black Homeownership Gap, The Urban Institute, February 26, 2018, <https://www.urban.org/urban-wire/mapping-black-homeownership-gap>

<sup>15</sup> U.S. Census Bureau, *Demographic Characteristics for Occupied Housing Units*, American Community Survey, 2019, [https://data.census.gov/table?q=Owner/Renter+\(Householder\)+Characteristics&tid=ACSST1Y2019.S2502](https://data.census.gov/table?q=Owner/Renter+(Householder)+Characteristics&tid=ACSST1Y2019.S2502)

<sup>16</sup> <https://www.epi.org/unequalpower/publications/understanding-black-white-disparities-in-labor-market-outcomes/>

<sup>17</sup> Jill Rosen, *Study: Racial disparities in outcomes for those who grow up in subsidized housing have largely vanished*, Johns Hopkins University, May 8, 2017, <https://hub.jhu.edu/2017/05/08/black-white-kids-in-public-housing-fare-similarly/#:~:text=Black%20families%20getting%20subsidized%20housing,impoverished%20neighborhoods%2C%20the%20study%20found.>

<sup>18</sup> National Equity Atlas, *supra*.

<sup>19</sup> Margery Austin Turner & Solomon Greene, *Causes and Consequences of Separate and Unequal Neighborhoods*, URB. INST. (2020), <https://www.urban.org/racial-equity-analytics-lab/structural-racism-explainer-collection/causes-and-consequences-separate-and-unequal-neighborhoods>

repairs, and threatening them with eviction if they complain about the health and safety issues they experience.<sup>20</sup> Black individuals also experience higher rates of evictions.<sup>21</sup>

FHFA and the GSEs have an obligation to finance affordable housing and further housing opportunity for communities of color. FHFA is an independent agency of the federal government that is empowered to regulate and supervise the GSEs.<sup>22</sup> The GSEs are government-supported, privately-operated agencies that Congress created to provide liquidity and stability to the mortgage industry.<sup>23</sup> The GSEs provide financing to lenders for nearly half of current U.S. mortgages by buying the mortgages from lenders and packaging and selling them to investors.<sup>24</sup> This process is supposed to reduce borrowing costs on the consumer and ensure that home loans are available to more people. The GSEs have a statutory obligation to facilitate funding for affordable housing.<sup>25</sup> FHFA, in turn, has the duty to oversee the GSEs' efforts, as well as to affirmatively further fair housing through its programs.<sup>26</sup>

FHFA must do more to meet these dual mandates. Unfortunately, only a small percentage of the GSE home purchase loans have gone to Black homebuyers in recent years, with less than 5% of their loans going to Black families in 2019.<sup>27</sup> The GSEs have recently enacted new rule changes that help advance equity, affordability, and sustainability for more families in traditionally-underserved communities. As part of the plan one of the GSEs, Freddie Mac, added in tenant protections for renters within their financed rental communities as a goal.<sup>28</sup> However, Freddie Mac has yet to implement these protections, and Fannie Mae has yet to make similar commitments.

## **II. FHFA Should Require GSE-Backed Properties to Adopt Measures to Protect Tenant Access to Safe, Affordable Housing.**

The FHFA should use its authority to require GSE-backed multifamily properties to incorporate tenant protections in order to help keep renters stably housed and strengthen communities. These tenant protections should begin from the start of the application process when

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<sup>20</sup> Alan Judd & Willoughby Mariano, *Dangerous Dwellings: Georgia's Renter Protections, Among Nation's Weakest, let Problems Fester*, Atlanta Journal-Constitution, June 16, 2022, <https://www.ajc.com/news/investigations/dwellings/georgia-renter-protections/>

<sup>21</sup> Peter Hepburn, Renee Louis, & Matthew Desmond, *Racial and Gender Disparities among Evicted Americans*, Eviction Lab, December 16, 2020, <https://evictionlab.org/demographics-of-eviction/>

<sup>22</sup> 12 U.S.C. 1716

<sup>23</sup> FHFA, Fannie Mae & Freddie Mac, July 2023, <https://www.fhfa.gov/about-fannie-mae-freddie-mac>

<sup>24</sup> Michael Calhoun & Lewis Ranieri, Government Sponsored Enterprises at the Crossroads, Brookings Institute, February 23, 2021, <https://www.brookings.edu/articles/government-sponsored-enterprises-at-the-crossroads/>

<sup>25</sup> 12 U.S.C. § 4501(7) (GSEs have affirmative obligation to facilitate financing of affordable housing for low- and moderate-income families consistent with their public purposes)

<sup>26</sup> 42 U.S.C. §§ 3608(d), (e)(5).

<sup>27</sup> FHFA, *FHFA Annual Housing Report*, October 2020, <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/Annual-Housing-Report-2020.pdf> (noting that in 2019, 4.8% of Fannie Mae and 3.6% of Freddie Mac loan purchases were from Black borrowers)

<sup>28</sup> Freddie Mac, Equitable Housing Finance Plan (Apr. 2023), <https://www.freddiemac.com/about/pdf/Freddie-Mac-Equitable-Housing-Finance-Plan.pdf>.

tenants are being screened, including limiting discriminatory tenant screening practices and limiting fees associated with the application. Overall tenant protections should be designed to reverse housing segregation, protect tenants from discrimination, protect tenants from unwarranted and unjust evictions, help to ensure safe and sanitary living conditions for tenants. Requiring GSE-backed properties to adopt these tenant protections would help FHFA affirmatively further fair housing and ensure that the GSEs fulfill their obligation to fund affordable housing.

#### **a. Forbid Source of Income Discrimination**

FHFA should forbid GSE-backed properties from engaging in source of income (SOI) discrimination. SOI discrimination is widespread and imposes significant barriers to housing access on low-income renters who rely on government assistance, many of whom are people of color. While state and local laws prohibiting discrimination against Housing Choice Voucher (HCV) recipients currently protect around half of all renters, discrimination persists.<sup>29</sup> Though HCV recipients are the largest target of SOI discrimination, they are not the only victims. Individuals relying on Social Security, Disability, or veterans' benefits may also find themselves unable to access housing due to their source of funds.<sup>30</sup>

SOI discrimination is prevalent nationwide. A 2018 study by the Urban Institute found that in Fort Worth, TX and Los Angeles, CA, only 11.5% and 14.8% of surveyed landlords, respectively, accepted HCVs.<sup>31</sup> Similarly, a 2012 survey of the city of Richmond found only 18% of landlords accepted vouchers.<sup>32</sup> A study LDF and the National Fair Housing Alliance (NFHA) conducted in Memphis, TN and Shelby County, TN showed that 87.5% of tested landlords in nearby Memphis discriminated against HCV recipients, compared to 81.25% in the outlying county.<sup>33</sup> Even in jurisdictions where SOI discrimination has been explicitly prohibited, discrimination remains common: though illegal in Newark, NJ, Philadelphia, PA, and Washington, D.C., landlords in those cities refused HCV tenants at rates of 30.9%, 66.8%, and 14.8%, respectively.<sup>34</sup> Similarly, testing conducted by the Chicago Lawyers' Committee for Civil Rights

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<sup>29</sup> BRIAN KNUDSEN, EXPANDED PROTECTIONS FOR FAMILIES WITH HOUSING CHOICE VOUCHERS (Poverty Race Rsch. Action Council ed., 2022), <https://prrac.org/pdf/soi-voucher-data-brief.pdf>

<sup>30</sup> Steven Swann, *Protecting Renters from Income Discrimination*, ENTER. CMTY. PARTNERS (Jun. 12, 2023), <https://www.enterprisecommunity.org/blog/protecting-renters-income-discrimination>; EQUAL RIGHTS CTR., SOURCE OF INCOME DISCRIMINATION IN HOUSING 2 (2015), <https://equalrightscenter.org/wp-content/uploads/soi-toolkit.pdf>

<sup>31</sup> DEP'T HOUS. URB. DEV., A PILOT STUDY OF LANDLORD ACCEPTANCE OF HOUSING CHOICE VOUCHERS 31 (2018), <https://www.huduser.gov/portal/sites/default/files/pdf/Landlord-Acceptance-of-Housing-Choice-Vouchers.pdf>.

<sup>32</sup> HOUS. OPPORTUNITIES MADE EQUAL, CHOICE CONSTRAINED: LIMITED HOUSING OPTIONS FOR HOUSEHOLDS UTILIZING HOUSING CHOICE VOUCHERS 1 (2019), [https://homeofva.org/wp-content/uploads/2023/03/2019-Choices-Constrained\\_5-14-19.pdf](https://homeofva.org/wp-content/uploads/2023/03/2019-Choices-Constrained_5-14-19.pdf).

<sup>33</sup> NAACP LDF THURGOOD MARSHAL INST. & NAT'L FAIR HOUS. ALL., THE BAD HOUSING BLUES: DISCRIMINATION IN THE HOUSING CHOICE VOUCHER PROGRAM IN MEMPHIS, TN 77 (2023), <https://www.naacpldf.org/wpcontent/uploads/2022-11-14-Fair-Housing-2-web-1.pdf>.

<sup>34</sup> DEP'T HOUS. URB. DEV., *supra* note 31.

Under Law found that 64% of landlords in Cook County, Illinois refused tenants with vouchers outright—even though SOI discrimination is illegal in that county.<sup>35</sup>

Even when landlords profess to accept HCVs, they may adopt practices that make HCV recipients *de facto* ineligible, such as rent-income ratios that do not account for benefits. In a study conducted in Memphis and Shelby County, TN, LDF and NFHA found that landlords commonly require tenants earn between 2.5 and 4.25 times the monthly rent to qualify for an apartment.<sup>36</sup> These criteria automatically disqualify tenants relying on HCVs. In this way, landlords can, intentionally or not, skirt existing SOI discrimination laws.

SOI discrimination both disproportionately affects tenants of color and can serve as a proxy for excluding Black renters from housing opportunity.<sup>37</sup> Black households make up 48% of all HCV recipients, and 70% of all recipients being people of color.<sup>38</sup> In some cases, the racial impact of SOI discrimination can be so severe that it can amount to a Fair Housing Act violation.<sup>39</sup>

SOI discrimination ultimately reduces the impact of government-funded and -subsidized housing programs. Because they face discrimination, HCV recipients take longer to find housing, and sometimes do not secure it at all. In addition to generating housing instability and wounding the dignity of beneficiaries, this increases the operating costs of local Public Housing Authorities.<sup>40</sup> Additionally, when SOI discrimination is common, beneficiaries may gravitate towards Low-Income Housing Tax Credit (LIHTC) properties and other government-subsidized units which require SOI protections.<sup>41</sup> As a result, these landlords benefit from both a government tax credit and the tenant's rental subsidy, and fewer units are available to other low-income renters. In some cases, concentrating HCV vouchers into LIHTC units can create segregated communities that concentrate poor, Black residents in isolated parts of a jurisdiction.<sup>42</sup> By contrast, SOI protections

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<sup>35</sup> J. Rosie Tigh, Megan E. Hatch & Joseph Mead, *Source of Income Discrimination and Fair Housing Policy*, 32 J. PLAN. LITERATURE 3, 9 (2017), <https://www.nhlp.org/wp-content/uploads/Source-of-Income-Discrimination-and-Fair-Housing-Policy-by-Tighe-and.pdf>.

<sup>36</sup> NAACP LDF THURGOOD MARSHAL INST. & NAT'L FAIR HOUS. ALL., *supra* note 33, at 79.

<sup>37</sup> J. Rosie Tigh, Megan E. Hatch & Joseph Mead, *Source of Income Discrimination and Fair Housing Policy*, 32 J. PLAN. LITERATURE 3, 6 (2017), <https://www.nhlp.org/wp-content/uploads/Source-of-Income-Discrimination-and-Fair-Housing-Policy-by-Tighe-and.pdf>.

<sup>38</sup> U.S. Dep't Hous. and Urb. Dev., Assisted Housing: National and Local, <https://www.huduser.gov/portal/datasets/assthsg.html> (last visited July 21, 2023).

<sup>39</sup> *See, e.g.,* Anti-Discrimination Ctr. Of Metro N.Y. v. Westchester Cnty., 668 F. Supp. 2d 548 (S.D. N.Y. 2009).

<sup>40</sup> ALISON BELL, BARBARA SARD & BECKY KOEPNICK, PROHIBITING DISCRIMINATION AGAINST RENTERS USING HOUSING VOUCHERS IMPROVES RESULTS LESSONS FROM CITIES AND STATES THAT HAVE ENACTED SOURCE OF INCOME LAWS 2-9 (Ctr. on Budget and Pol'y Priorities ed., 2018), <https://www.cbpp.org/sites/default/files/atoms/files/10-10-18hou.pdf>.

<sup>41</sup> *E.g.,* In Arlington County, VA, prior to Virginia passing an SOI discrimination law, the overwhelming majority of both HCV and local housing voucher recipients lived in subsidized units. The percent of voucher recipients in subsidized units significantly exceeded subsidized units' share of the affordable housing market, with as many as 95% of all voucher recipients living in subsidized units in 2016. ARLINGTON CNTY., ARLINGTON COUNTY ANNUAL AFFORDABLE HOUSING REPORT FY 2018 INDICATORS 10-11 (2018), <https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/15/2018/11/FY2018-INDICATORS.pdf>.

<sup>42</sup> *See, e.g.,* Tex. Dept. of Hous. and Cmty. Affs. v. Inclusive Cmty. Project, Inc., 576 U.S. 519 (2015).

have been shown to support geographic and economic mobility for families with vouchers and reduce concentration of tenants with vouchers in low-opportunity neighborhoods.<sup>43</sup>

FHFA should follow the lead of the growing number of jurisdictions that bar SOI discrimination. By requiring that multifamily properties with GSE-backed loans accept HCVs and adopt income-verification processes, FHFA can protect low-income renters of color, improve voucher utilization rates, and ease the waitlist backlogs on subsidized properties. Requiring SOI protections for federally supported programs is already accepted practice, with LIHTC and HUD's HOME Grant funding requiring landlords accept HCVs. Furthermore, by adopting policies that stipulate that providers account for benefits when determining qualifying income ratios, FHFA can also cut down on landlords who contravene existing laws through tenant screening services.

### **b. End Discriminatory Tenant Screening Practices**

FHFA should forbid GSE-back multifamily properties from excluding tenants based on prior criminal legal contact, eviction history, and credit history. As a result of these tenant screening practices, Black and Brown renters have been denied housing opportunities more frequently than white renters,<sup>44</sup> charged increased fees,<sup>45</sup> and exposed a greater risk of housing instability.<sup>46</sup> However, tenant screening reports suffer from poor internal and external validity, as the variables they rely on are poor predictors of tenant success,<sup>47</sup> and the reports themselves commonly feature errors that tenants are unable to correct.<sup>48</sup>

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<sup>43</sup> POVERTY & RACE RESEARCH ACTION COUNCIL, CRAFTING A STRONG AND EFFECTIVE SOURCE OF INCOME DISCRIMINATION LAW (2020), <https://prrac.org/pdf/crafting-a-strong-and-effective-source-of-income-discrimination-law.pdf>.

<sup>44</sup> Data on the frequency of denials by race is not available to the public. However, the range of factors examined in typical screenings feature significant bias on the basis of race. *See, e.g.*, Maxwell Ciardullo, *Criminal background checks: A pretext for housing discrimination*, VERA (Oct. 16, 2015), <https://www.vera.org/news/criminal-background-checks-a-pretext-for-housing-discrimination>; Nichole Nelson, *Tenant Screening Systems Are Unfair to Black And Brown People. Here's What Our Government Should Do About It.*, NAT'L CMTY. REINV. COAL. (Jun. 27, 2023), <https://ncrc.org/tenant-screening-systems-are-unfair-to-black-and-brown-people-heres-what-our-government-should-do-about-it/>. This data has served as grounds for challenges against these systems for disproportionately barring rental access to Black and brown renters. Complaint at 2, *Louis v. SafeRent Solutions, LLC*, No. 1:22-cv-10800 (D. Mass. May 25, 2022).

<sup>45</sup> Adverse screenings can result in higher deposits. Erin Smith & Heather Vogel, *How Your Shadow Credit Score Could Decide Whether You Get an Apartment*, PROPUBLICA (Mar. 29, 2022 6:00 AM), <https://www.propublica.org/article/how-your-shadow-credit-score-coulddecide-whether-you-get-an-apartment>. Additionally, landlords often offset the cost of screening through application fees, which disproportionately burden Black, Latinx, and Asian renters who paid over 40% more in application fees on average. Manny Garcia and Edward Berchick, *RENTERS: RESULTS FROM THE ZILLOW CONSUMER HOUSING TRENDS REPORT 2022*, ZILLOW (July 2022), <https://www.zillow.com/research/renters-consumer-housing-trends-report-2022-31265/>.

<sup>46</sup> Lauren Kirchner & Matthew Goldstein, *How Automated Background Checks Freeze Out Renters*, N.Y. TIMES (May 28, 2020), <https://www.nytimes.com/2020/05/28/business/renters-background-checks.html>

<sup>47</sup> CONSUMER FIN. PROT. BUREAU, *TENANT BACKGROUND CHECKS MARKET* 33 (2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_tenant-background-checks-market\\_report\\_2022-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf).

<sup>48</sup> *Id.* at 34.

Landlords rely on tenant screening reports when evaluating prospective tenants, with 90 percent of providers using some type of third-party generated<sup>49</sup> tenant screening report.<sup>50</sup> Landlords themselves may only see the final product of these reports, such as an overall tenant risk score or a binary recommended/not recommended response.<sup>51</sup> Landlord’s screening criteria have become more stringent over time, with one survey finding 39 percent of landlords tightening eligibility requirements since 2020.<sup>52</sup>

By compiling data on prior criminal legal contact,<sup>53</sup> past eviction filings,<sup>54</sup> and credit history<sup>55</sup> that impact Black and Brown renters at disproportionately high rates,<sup>56</sup> these screening reports compound and perpetuate existing injustice.

- *Criminal legal contact*: Despite engaging in prohibited activities at similar rates, Black people are disproportionately impacted at every stage of the criminal legal process, even when controlling for a wide range of variables.<sup>57</sup> Rates of justice involvement appear disconnected from rates of criminal activity; though Black and Latinx people use drugs as frequently as similarly situated peers and account for a minority of the population,<sup>58</sup> the vast majority of people in state and federal prison for drug offenses are Black or Latinx.<sup>59</sup>

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<sup>49</sup> Lauren Kirchner & Matthew Goldstein, *How Automated Background Checks Freeze Out Renters*, N.Y. TIMES (May 28, 2020), <https://www.nytimes.com/2020/05/28/business/renters-background-checks.html>; CONSUMER FIN. PROT. BUREAU, TENANT BACKGROUND CHECKS MARKET 3 (2022) (“Most tenant screeners’ business models appear to rely on the low-cost automated retrieval of court records for criminal and eviction records, without the more costly manual verification needed to ensure accuracy.”).

<sup>50</sup> Jung Hyun Choi, Laurie Goodman & Daniel Pang, *The Real Rental Housing Crisis Is on the Horizon*, URB. INST. (Mar. 11, 2022), <https://www.urban.org/urban-wire/real-rental-housing-crisis-horizon>; <https://www.globenewswire.com/news-release/2017/04/19/963170/0/en/Low-Turnover-and-Higher-Rental-Prices-in-2017-Driving-Profitable-and-Attractive-Market-for-Landlords.html>

<sup>51</sup> CONSUMER FIN. PROT. BUREAU, *supra* note **Error! Bookmark not defined.** at 17.

<sup>52</sup> Jung Hyun Choi, Laurie Goodman & Daniel Pang, *The Real Rental Housing Crisis Is on the Horizon*, URB. INST. (Mar. 11, 2022), <https://www.urban.org/urban-wire/real-rental-housing-crisis-horizon>

<sup>53</sup> CONSUMER FIN. PROT. BUREAU, CONSUMER SNAPSHOT: TENANT BACKGROUND Checks 3, 9 (2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-snapshot-tenant-background-check\\_2022-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-snapshot-tenant-background-check_2022-11.pdf)

<sup>54</sup> Press Release, TransUnion, Low Turnover and Higher Rental Prices in 2017 Driving Profitable and Attractive Market for Landlords (Apr. 19, 2017 06:00 ET), <https://newsroom.transunion.com/low-turnover-and-higher-rental-prices-in-2017--driving-profitable-and-attractive-market-for-landlords/>

<sup>55</sup> Tech Equity Collaborative, *Tech, Bias, and Housing Initiative: Tenant Screening* (Feb. 23, 2022), <https://techequitycollaborative.org/2022/02/23/tech-bias-and-housing-initiative-tenant-screening/>.

<sup>56</sup> *Id.* See also, Amalea Smirniotopoulos & David Wheaton, *RE: Tenant Screening Request for Information*, NAACP LEG. DEF. EDUC. FUND (May 25, 2023).

<sup>57</sup> Tammy Rinehart Kochel, David B. Wilson & Stephen D. Mastrofski, Effect of Suspect Race on Officers’ Arrest Decisions, 49 CRIMINOLOGY 473, 490-95 (2011), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1745-9125.2011.00230.x>.

<sup>58</sup> DIANE WHITMORE SCHANZENBACH ET AL., INCARCERATION AND PRISONER REENTRY (Hamilton Project ed., 2016), [https://www.hamiltonproject.org/assets/files/12\\_facts\\_about\\_incarceration\\_prisoner\\_reentry.pdf](https://www.hamiltonproject.org/assets/files/12_facts_about_incarceration_prisoner_reentry.pdf).

<sup>59</sup> Drug Policy Alliance, *The Drug War, Mass Incarceration and Race* (Jan. 25, 2018), <https://drugpolicy.org/resource/drug-war-mass-incarceration-and-race-englishspanish>. This trend repeats across a range of activities, from traffic stops to marijuana possession. See, e.g., Emma Pierson et al., A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States, 4 NATURE HUM. BEHAV. 736, 736-45 (2020), <https://www.nature.com/articles/s41562-020-0858-1> (demonstrating that Black drivers’ vehicles are searched more frequently during traffic stops than white drivers); AM. C.L. UNION, A TALE OF TWO COUNTRIES: RACIALLY TARGETED ARRESTS IN THE ERA OF MARIJUANA REFORM (2020),



- *Eviction history*: According to an analysis by the American Civil Liberties Union, from 2012 to 2016, Black renters had evictions filed against them at nearly twice the rate of their white peers.<sup>60</sup> Research by the RVA Eviction Lab indicated that race bore a stronger relationship to eviction than poverty, property value, or a range of other factors.<sup>61</sup> These burdens fall even harder on Black women, for whom 1 in 5 will face an eviction in their lifetime.<sup>62</sup> These disparities confront Black renters at higher rates for a range of reasons, including as a secondary effect of justice involvement and the reproducing cycle of past evictions.<sup>63</sup>
- *Credit scores*: Black and Brown people have disproportionately low credit scores due to structural discrimination in banking access.<sup>64</sup> Black and Latinx adults are unbanked—that is, they do not have money in a bank account—at far higher rates than their white peers,<sup>65</sup> with nearly half of all Black households unbanked or underbanked.<sup>66</sup> As a result, nearly 1 in 3 of all Black and Latinx borrowers lack credit scores.<sup>67</sup> Echoes of prior discrimination are also “baked into the system” of credit reporting: Moreover, because credit reporting looks at past performance, a single overt act of racial discrimination in finance can lead to

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[https://www.aclu.org/sites/default/files/field\\_document/marijuanareport\\_03232021.pdf](https://www.aclu.org/sites/default/files/field_document/marijuanareport_03232021.pdf) (showing that Black Americans faces marijuana possession arrests at 3.6 times the rate of white Americans despite similar rates of marijuana usage).

<sup>60</sup> Sophie Beiers, Sandra Park & Linda Morris, *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, AM. C.L. UNION (Jan. 10, 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color>. Local data can be even more dramatic. Research by sociologist Matthew Desmond showed that residents of segregated Black neighborhoods in Milwaukee faced eviction rates that were five times higher than in segregated white neighborhoods. Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOC. 88, 88-133 (2012), <https://scholar.harvard.edu/files/mdesmond/files/desmond.evictionpoverty.ajs2012.pdf>

<sup>61</sup> Benjamin F. Teresa, *The Geography of Eviction in Richmond: Beyond Poverty*, RVA EVICTION LAB (2018), <https://cura.vcu.edu/media/cura/pdfs/cura-documents/GeographiesofEviction.pdf>

<sup>62</sup> Robert Collinson & Davin Reed, *The Effects of Evictions on Low-Income Household*, NYU L. (2018), [https://www.law.nyu.edu/sites/default/files/upload\\_documents/evictions\\_collinson\\_reed.pdf](https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf)

<sup>63</sup> Matthew Desmond, *supra* note **Error! Bookmark not defined.**, at 117

<sup>64</sup> Black and Latinx adults underutilize banks due to both qualitative factors, such as an earned mistrust of financial institutions, FED. DEPOSIT INS. CO., *supra* at 2 (“Don’t trust banks” and “avoiding a bank gives more privacy” are the second and third most common reasons cited for the decision to remain unbanked.), and quantitative factors, such as the dearth of brick-and-mortar depository institutions in minority neighborhoods due to financial redlining. Aria Florant et al., *supra* note. Though sometimes treated as a historical rather than contemporary reality, financial redlining persists through the United States. The Department of Justice currently operates an initiative combatting financial redlining, resulting in multiple actions taken against banks each year. Press Release, Kristen Clarke, Assistant Attorney General, Assistant Attorney General Kristen Clarke Delivers Remarks Announcing a New Initiative to Combat Redlining (Oct. 22, 2021), <https://www.justice.gov/opa/speech/assistant-attorney-general-kristen-clarke-delivers-remarks-announcing-new-initiative>.

<sup>65</sup> FED. DEPOSIT INS. CO., FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS 1-2 (2021) <https://www.fdic.gov/analysis/household-survey/index.html>.

<sup>66</sup> Aria Florant et al., *The case for accelerating financial inclusion in black communities*, MCKINSEY & CO. (Feb. 25, 2020), <https://www.mckinsey.com/industries/social-sector/our-insights/the-case-for-accelerating-financial-inclusion-in-black-communities>

<sup>67</sup> CONSUMER FINANCIAL PROTECTION BUREAU, WHO ARE THE CREDIT INVISIBLES? HOW TO HELP PEOPLE WITH LIMITED CREDIT HISTORIES 4 (2016), [https://files.consumerfinance.gov/f/documents/201612\\_cfpb\\_credit\\_invisible\\_policy\\_report.pdf](https://files.consumerfinance.gov/f/documents/201612_cfpb_credit_invisible_policy_report.pdf).

future negative credit decisions, trapping families under the weight reproduced injustice for decades and across generations.<sup>68</sup> Prof. Hellman illustrates this “compounding injustice” problem of credit with an example of a man whose traditionally Black name led to fewer job interviews and predatory lenders targeting him: years later, when a lender deploys algorithmic credit decisions, these past acts of discrimination impact him a second time, reinforcing the original effect.<sup>69</sup> These effects compound to create stark inequities: per a 2022 study by the Urban Institute, Black consumers’ average credit score is 113 points lower than the average white consumer, while the average credit score for Latinx consumers is 64 points lower.<sup>70</sup>

*Credit data, criminal history reports, and eviction records are inaccurate and don’t indicate tenant success*

The factors that tenant screening services evaluate suffer from both poor internal validity—they contain errors and inaccuracies in the data they purport to show—and poor external validity—the data, even if accurate, is not predictive of tenant success as claimed. Because of this, these screening techniques inflict harms that are arbitrary as well as discriminatory.

Unfortunately, tenant screening reports often rely on inaccurate data. Tenant screening companies often obtain the data they rely on by using automated systems that scrape various databases without human oversight or verification<sup>71</sup> or by buying their data from third-party aggregators without knowing its source.<sup>72</sup> The records obtained may lack essential information on the outcomes of cases: for example, they can include evictions where the tenant prevailed at trial<sup>73</sup> and arrests that did not result in conviction.<sup>74</sup> As a result, one study found that nearly 1 in 4 eviction records contained ambiguous or incorrect information, and Lexis has previously faced lawsuits over the accuracy of its records.<sup>75</sup> Tenant screening companies may also use rudimentary name searches that identify a “match” between a prospective tenant and an unrelated person because their names share enough characters.<sup>76</sup> Not only does this result in frequent false matches that lead to housing denials, but these false matches occur more commonly with Black and Latinx tenants

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<sup>68</sup> Juhohn Lee, *How structural racism plays a role in lowering credit scores*, CNBC (Oct. 11, 2022), <https://www.cnbc.com/2022/10/11/how-structural-racism-plays-a-role-in-lowering-credit-scores.html>

<sup>69</sup> Deborah Hellman, *Big Data and Compounding Injustice* 7 (Public L. and Legal Theory Rsch. Paper Series 2021-27, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3840175](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3840175) (forthcoming in J. MORAL PHIL.)

<sup>70</sup> *Credit Health During the COVID-19 Pandemic*, URB. INST. (Mar. 8, 2022), <https://apps.urban.org/features/credit-health-during-pandemic>.

<sup>71</sup> See CONSUMER FIN. PROT. BUREAU, *supra* note **Error! Bookmark not defined.**, at 12.

<sup>72</sup> CONSUMER FIN. PROT. BUREAU, MARKET SNAPSHOT: BACKGROUND SCREENING REPORTS 5-6 (2019), [https://files.consumerfinance.gov/f/documents/201909\\_cfpb\\_market-snapshot-backgroundscreening\\_report.pdf](https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-backgroundscreening_report.pdf).

<sup>73</sup> Valerie Schneider, *Locked Out by Big Data: How Big Data, Algorithms and Machine Learning May Undermine Housing Justice*, 52 COLUM. HUM. RTS. REV. 251, 279 (2020), [https://hrlr.law.columbia.edu/files/2020/11/251\\_Schneider.pdf](https://hrlr.law.columbia.edu/files/2020/11/251_Schneider.pdf).

<sup>74</sup> See, e.g., *Conn. Fair Hous. Ctr. V. Corelogic Rental Prop. Solutions*, 369 F. Supp. 3d 362, 367 (D. Conn. 2019) (wherein a parent and son were refused an apartment because of the son’s prior arrest which resulted in no conviction).

<sup>75</sup> Womble Bond Dickinson, *LexisNexis Sued for FCRA Violation for Failing to Keep Consumer Data Up-To-Date*, JD Supra (Jun. 10, 2020), <https://www.jdsupra.com/legalnews/lexisnexis-sued-for-fcra-violation-for-23702/>

<sup>76</sup> CONSUMER FIN. PROT. BUREAU, *supra* note **Error! Bookmark not defined.**, at 27-28.

due to a smaller pool of common surnames.<sup>77</sup> While the data that landlords rely on may be deeply flawed in these ways, the underlying issues may not be visible to either the landlord or the tenant, as some services provide no details on the underlying records, their data sources and matching procedures, and, absent laws to the contrary, no effective recourse for the tenant.<sup>78</sup>

Nor are these factors reliable indicators of tenant success. A wealth of research indicates that criminal legal contact poorly predicts tenant success.<sup>79</sup> Only convictions for fraud, assault, and property offenses have been shown to bear any relationship to poor tenant success, and this weak relationship disappears within two to five years.<sup>80</sup> Similarly, while eviction data is claimed to predict whether tenants will cause property damage, data refutes this: the significant majority of evictions are for nonpayment of small amounts of rent, such as caused by temporary financial hardship, rather than any damage to the home.<sup>81</sup>

FHFA should require GSE-backed multifamily properties to abstain from relying on criminal legal contact, eviction history, or credit history to exclude tenants. By implementing this rule, FHFA can significantly reduce the use of discriminatory screening practices.

### c. Permit Only “Just Cause” Evictions

FHFA should follow the lead of many state and local jurisdictions and require GSE-backed multifamily properties to adhere to just cause eviction standards. Like many of these jurisdictions, FHFA should also require these properties to limit rent increases and increase the amount of time needed for written notice requirements.

Nearly 2.7 million Americans lose their homes through eviction every year, and millions more deal with threats of housing loss.<sup>82</sup> Thousands of those evictions occur without the landlord ever giving a reason why the tenant is being evicted.<sup>83</sup> Unfortunately, as noted above, Black tenants, and particularly Black women, experience evictions at higher rates than other racial/ethnic

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<sup>77</sup> Lauren Kirchner & Matthew Goldstein, How Automated Background Checks Freeze Out Renters, N.Y. TIMES (May 28, 2020), <https://www.nytimes.com/2020/05/28/business/renters-background-checks.html>.

<sup>78</sup> CONSUMER FIN. PROT. BUREAU, *supra* note **Error! Bookmark not defined.**, at 20 (citing *Leo v. AppFolio, Inc.*, No. 17-5771 (W.D. Wash. Jan. 30, 2019) at 4).

<sup>79</sup> *See, e.g.*, Rebecca J. Walter, Jill Viglione & Marie Skubak Tillyer, *One Strike to Second Chances: Using Criminal Backgrounds in Admission Decisions for Assisted Housing*, HOUS. POL’Y DEBATE (Apr. 24, 2017), <https://www.nlihc.org/sites/default/files/One-Strike-to-Second-Chances.pdf>; Daniel K. Malone, *Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults With Behavioral Health Disorders*, 60 *Psychiatric Svcs.* 224, 227 (2015), <https://ps.psychiatryonline.org/doi/full/10.1176/ps.2009.60.2.224>.

<sup>80</sup> Cael Warren, *Success in Housing: How Much Does Criminal Background Matter?* (2019), [https://www.wilder.org/sites/default/files/imports/AEON\\_HousingSuccess\\_CriminalBackground\\_Report\\_1-19.pdf](https://www.wilder.org/sites/default/files/imports/AEON_HousingSuccess_CriminalBackground_Report_1-19.pdf).

<sup>81</sup> BRIAN J. MCCABE & EVA ROSEN, EVICTION IN WASHINGTON, DC: RACIAL AND GEOGRAPHIC DISPARITIES IN HOUSING INSTABILITY 6 (2020), <https://georgetown.app.box.com/s/8cq4p8ap4nq5xm75b5mct0nz5002z3ap>.

<sup>82</sup> Ashley Gromis, Ian Fellows, James R. Hendrickson, & Matthew Desmond, *Estimating eviction prevalence across the United States*, PNAS, May 16, 2022, <https://www.pnas.org/doi/10.1073/pnas.2116169119>

<sup>83</sup> Rachel M. Cohen, *The Fight to Make it Harder for Landlords to Evict their Tenants*, Vox, May 1, 2023, <https://www.vox.com/policy/2023/5/1/23697209/landlords-tenants-good-cause-just-cause-eviction-housing>

groups.<sup>84</sup> Moreover, while some tenants may have meritorious claims to avoid eviction, such as lawfully withholding rent because repairs on the property are needed, tenants may not be given sufficient notice to mount a defense or negotiate their departure without the need for court intervention.<sup>85</sup>

Unchecked rent increases can effectively evict tenants, further driving housing inequality. From late 2019 to the summer of 2023, median rent has gone from \$1600 to over \$2000, which represents a drastic change in rent prices year over year.<sup>86</sup> Rent increases force low-income households, which are disproportionately Black households,<sup>87</sup> to move to lower-cost neighborhoods with fewer resources.<sup>88</sup> Displaced low-income households most likely end up in new low-income neighborhoods with high unemployment rates, lower median incomes, and poor public-school performance.<sup>89</sup> Due to the high increase in rents, tenants of color are being driven from their homes into low-opportunity neighborhoods, driving further inequality.<sup>90</sup>

Just cause eviction protections are designed so that landlords can only evict renters for specific reasons. These protections are aimed at preventing retaliatory or discriminatory evictions. Numerous local jurisdictions and five states across the country have implemented just cause legislation.<sup>91</sup> A recent Princeton University study found jurisdictions that implemented just cause eviction laws experienced a lower eviction rate and lower eviction filing rates than those that did not.<sup>92</sup>

We applaud FHFA for requiring just cause eviction protections in all future manufactured housing community (MHC) transactions. Currently, FHFA requires that in future MHC

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<sup>84</sup> Peter Hepburn, Renee Louis, & Matthew Desmond, *Racial and Gender Disparities among Evicted Americans*, Eviction Lab, December 16, 2020, <https://evictionlab.org/demographics-of-eviction/>; Julieta Cuellar, *Effect of "Just Cause" Eviction Ordinances on Eviction in Four California Cities*, Princeton University: Journal of Public and International Affairs, May 21, 2019, <https://jpia.princeton.edu/news/effect-just-cause-eviction-ordinances-eviction-four-california-cities>

<sup>85</sup> Eloisa C. Rodriguez-Dod, *But My Lease Isn't Up Yet!: Finding Fault with "No-Fault" Evictions*, University of Arkansas at Little Rock Law Review Vol. 35 Issue 4, 2013, <https://lawrepository.ualr.edu/cgi/viewcontent.cgi?article=1055&context=lawreview>

<sup>86</sup> Rent Research & Market Reports, July 2023 Rent Report, July 2023, <https://www.rent.com/research/average-rent-price-report/>

<sup>87</sup> NLIHC, *The Gap Report: A shortage of Affordable Homes*, April 2022, [https://nlihc.org/sites/default/files/gap/Gap-Report\\_2022.pdf](https://nlihc.org/sites/default/files/gap/Gap-Report_2022.pdf)

<sup>88</sup> NLIHC, *Gentrification and Neighborhood Revitalization: What's the Difference?*, April 5, 2019, <https://nlihc.org/resource/gentrification-and-neighborhood-revitalization-whats-difference>

<sup>89</sup> Id.

<sup>90</sup> Id.

<sup>91</sup> Jade Vasquez & Sarah Gallagher, *Promoting Housing Stability Through Just Cause Eviction Legislation*, NLIHC, 5/17/2022, <https://nlihc.org/sites/default/files/Promoting-Housing-Stability-Through-Just-Cause-Eviction-Legislation.pdf>

<sup>92</sup> Julieta Cuellar, *Effect of "Just Cause" Eviction Ordinances on Eviction in Four California Cities*, Princeton University Journal of Public & International Affairs, May 21, 2019, <https://jpia.princeton.edu/news/effect-just-cause-eviction-ordinances-eviction-four-california-cities>

transactions there is a one-year renewable lease term, unless there is good cause for non-renewal and a 30-day written notice of rent increases.<sup>93</sup>

While these are great first steps, FHFA should go further by requiring just cause eviction protections in all existing properties backed by a GSE mortgage. FHFA should require that all multifamily properties backed by a GSE:

1. Prohibit landlords from evicting or refusing to renew the lease of a tenant who is not at fault by legal grounds on which a landlord can evict tenants as expressed in the lease. All lease holders should get a renewable one-year lease if there is no good cause to evict them;
2. Provide limits on excessive rental increases. If a landlord does want to increase rent, the landlord should give a 30-day notice of expected rent increases to the tenant; and
3. Ensure written notice documenting the cause for eviction and providing sufficient time for tenants to either dispute the cause for the eviction or fight their case in court.

#### **d. Impose Quality and Safety Standards**

All tenants deserve to enjoy a home that is safe and habitable. While HUD currently requires the Section 8 landlords follow habitability standards,<sup>94</sup> FHFA does not impose similar requirements on the owners of multifamily properties backed by the GSEs. There are state and local jurisdictions that also require habitability standards for their properties.<sup>95</sup> FHFA should require all multifamily properties backed by the GSEs to comply with quality and safety standards.

In the absence of quality and safety standards, tenants in privately-owned properties may be forced to live in substandard conditions that materially impact on their physical and mental health. In Atlanta, an investigation by the Atlanta Journal-Constitution found that several private multifamily properties had several code violations for mold, cockroach infestations, and raw sewage found seeping through a bathroom wall.<sup>96</sup> The investigation found that the vast majority of the tenants living in these conditions were Black.<sup>97</sup>

Landlords in low-income communities or developments in particular may be more likely to avoid routine maintenance on their units in order to increase their profit—a practice that can disproportionately harm renters of color. Low-income Black renters increasingly live in neighborhoods of concentrated poverty.<sup>98</sup> In areas of concentrated poverty where property values

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<sup>93</sup> Freddie Mac, *Freddie Mac Multifamily Requires Tenant Protections on All Future Manufactured Housing Community Transactions*, September 13, 2021, <https://freddiemac.gcs-web.com/node/23546/pdf>

<sup>94</sup> 24 CFR § 982

<sup>95</sup> WA. ST. § 59.060; OR. REV. ST. § 90.320; D.C. Office of the Tenant Advocate, *District of Columbia Tenant Bill of Rights*, October 27, 2009, [https://ota.dc.gov/sites/default/files/dc/sites/ota/publication/attachments/2009\\_10\\_27\\_OTA\\_DC\\_Tenant\\_Bill\\_of\\_Rights\\_FOR\\_SH\\_COMMENT.pdf](https://ota.dc.gov/sites/default/files/dc/sites/ota/publication/attachments/2009_10_27_OTA_DC_Tenant_Bill_of_Rights_FOR_SH_COMMENT.pdf)

<sup>96</sup> Alan Judd & Willoughby Mariano, *Dangerous Dwellings: Georgia's Renter Protections, Among Nation's Weakest, let Problems Fester*, Atlanta Journal-Constitution, June 16, 2022, <https://www.ajc.com/news/investigations/dwellings/georgia-renter-protections/>

<sup>97</sup> Id.

<sup>98</sup> INSTITUTE OF METROPOLITAN OPPORTUNITY, EXECUTIVE SUMMARY: AMERICAN NEIGHBORHOOD CHANGE IN THE 21ST CENTURY (Apr. 2019), <https://www.law.umn.edu/sites/law.umn.edu/files/metro->

are declining, landlords who fear that their property is depreciating in value will use various tactics to secure a higher annual rate of return to offset a potential loss when they sell their property later.<sup>99</sup> One of those tactics is to cut back on maintenance, which can lead to tenants living in unbearable conditions<sup>100</sup>

Substandard living conditions in multifamily units can expose residents to toxins like lead, asbestos, and mold, leading to physical health problems for tenants who live in these units. A study showed that blood lead levels were significantly higher among Black children and lead-contamination of dust was higher in Black children's homes.<sup>101</sup> A 2022 study in Wisconsin found that Black children under age 6 were four times more likely to test positive for lead poisoning than white children.<sup>102</sup> Moreover, studies have shown that poor housing conditions can harm tenants' mental health, which can impact a tenants' quality of life.<sup>103</sup> A 2015 study showed that poor housing conditions can lead to depression and hostility among residents.<sup>104</sup>

States like Washington<sup>105</sup> and Oregon,<sup>106</sup> which have passed express warranty of habitability laws, which require landlords to put a rental unit into habitable condition at the time of lease execution. Tenants do not have to meet certain conditions before invoking their right to a habitable unit, and may lawfully withhold rent in order to induce the landlord to correct any issue of habitability.<sup>107</sup>

FHFA should require that all GSE-backed multifamily properties are decent, safe and sanitary before being leased out to any tenant. Similar to HUD's rules on properties that house voucher holders, FHFA should require that these properties have an explicit warranty of habitability that is laid out in the lease agreement with prospective tenants. FHFA should require that if a GSE-backed mortgage landlord violated their lease's habitability standard, the owner has 30 days to correct the issue. Like Washington State and Oregon, FHFA should require that the tenant be able to withhold all rent after reporting the violation of habitability to the property owner/management company. If the issue is not corrected within 30 days, the lease should be

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[files/american\\_neighborhood\\_change\\_in\\_the\\_21st\\_century\\_-\\_executive\\_summary\\_-\\_4-2-2019.pdf](#) (explaining that low-income residents are much more likely to live in areas that are economically declining rather than areas that are economically expanding).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> Bruce Lamphear, Michael Weitzman, & Shirley Eberly, *Racial Differences in Urban Children's Environmental Exposures to Lead*, *American Journal of Public Health*, October 7, 2011, <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.86.10.1460>

<sup>102</sup> Alison Dirr & Mary Spicuzza, *Wisconsin's Black children 4 times more likely to be lead poisoned than white children in 2022*, *Milwaukee Journal-Sentinel*, April 21, 2022, <https://www.jsonline.com/story/news/politics/2023/04/21/lead-poisoning-4-times-more-likely-for-black-kids-in-wisconsin/70139003007/>

<sup>103</sup> Sarah Wolverton, *Low-income Housing: The Negative Effects on both Physical and Mental Health*, NCRC, May 29, 2019, <https://ncrc.org/low-income-housing-the-negative-effects-on-both-physical-and-mental-health/>

<sup>104</sup> Earle Chambers, Damaris Fuster, Shakira Suglia AND Emily Rosenbaum, *The Link between Housing, Neighborhood, and Mental Health*, MacArthur Foundation, May 2017, [https://www.macfound.org/media/files/hhm\\_brief\\_-\\_reverse\\_mortgages.pdf](https://www.macfound.org/media/files/hhm_brief_-_reverse_mortgages.pdf)

<sup>105</sup> WA. ST. § 59.060.

<sup>106</sup> OR. REV. ST. § 90.320.

<sup>107</sup> *Id.*

automatically voided. After that 30-day period is over, the tenant could decide to continue to live at the property without paying rent or move out during their lease term with no consequence to the tenant.

### **e. Impose Fair Lease Requirements & Additional Protections**

FHFA should require all GSE-backed multifamily properties to abstain from using abusive lease terms. These measures should include limits on junk fees and security deposits, among others. Leases should clearly lay out the rent charges and other obligations of the tenant so that those households clearly know what they are responsible for. Moreover, FHFA should ensure that tenants are not tricked into signing leases that strip away certain rights, like requiring arbitration or agreeing to indemnify a landlord.

In the current housing market, there is an extreme power imbalance between renters and landlords. Landlords set the terms of how much a tenant is expected to pay every month, who a tenant can live with, and how a tenant can enjoy the space that they live in. Having clear and fair lease terms can limit that power imbalance and give tenants a clear understanding of what they are signing and allow tenants to make better-informed decisions. Transparency and fairness is vital for the renters who are already “cost burdened” meaning they pay over 30% of their income on housing costs,<sup>108</sup> a disproportionate number of whom are renters of color.<sup>109</sup>

FHFA should also consider requiring these additional measures:

#### *1. Junk Fees*

Additional burdensome fees, which are not a part of monthly rent or utilities, are commonly referred to as “junk fees” and can be extremely harmful to tenants. Junk fees place a heavy financial burden on tenants on top of already excessive rents, and landlords are often not upfront about these fees. In South Carolina, for example, a landlord advertised rentals for \$1100, but after adding up all the junk fees, the rent wound up being up to \$1800 per month.<sup>110</sup>

The Biden-Harris administration recently announced a crackdown on junk fees in rental housing.<sup>111</sup> HUD released guidance which recommended capping or eliminating rental application fees and other junk fees.<sup>112</sup> FHFA should similarly require properties with GSE-backed mortgages

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<sup>108</sup> Press Release, *U.S. Census Bureau, More Than 19 Million Renters Burdened by Housing Costs*, Dec. 8, 2022, <https://www.census.gov/newsroom/press-releases/2022/renters-burdened-by-housingcosts.html#:~:text=DEC.,by%20the%20U.S.%20Census%20Bureau>

<sup>109</sup> Puget Sound Regional Counsel, *Black Residents Burdened by Rent Costs*, February 15, 2023, <https://www.psrc.org/about-us/media-hub/black-residents-burdened-rent-costs>

<sup>110</sup> NCLC, *NCLC comment to the FTC re: Unfair or Deceptive Fees*, February 8, 2023, <https://www.nclc.org/wp-content/uploads/2023/02/Final-NCLC-et-al.-Group-Comments-re-Rental-Housing-Junk-Fees-with-Addenda.pdf>

<sup>111</sup> The White House, *FACT SHEET: Biden-Harris Administration Takes on Junk Fees in Rental Housing to Lower Costs for Renters*, 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>112</sup> HUD, *Junk Fees Memo*, March 7, 2023, [https://www.hud.gov/sites/dfiles/PA/documents/Junk\\_Fees\\_Memo\\_SOHUD\\_signed.pdf](https://www.hud.gov/sites/dfiles/PA/documents/Junk_Fees_Memo_SOHUD_signed.pdf)

to cap the amount of application fees to be no more than \$50.<sup>113</sup> FHFA should also require multifamily properties with GSE-backed mortgages to clearly display the total monthly payment and all nonoptional fees on the first page of the lease agreement and in all advertisements. This regulation was passed in Minnesota.<sup>114</sup>

## 2. Security Deposits

Security deposits are intended to reimburse landlords for any losses caused by the tenant, such as damage to the rental property or non-payment of rent. Generally, if a tenant leaves the premises without causing loss to the landlord, then the tenant is entitled to receive their security deposit back.<sup>115</sup> Unfortunately, many landlords do not give back the security deposit to tenants or slow the return process.<sup>116</sup>

FHFA should ensure that all GSE-backed multifamily properties return a tenant's security deposit, less any damages rightfully withheld, within 30 days after the tenancy ends. FHFA should ensure that all multifamily properties backed by the GSEs that landlords can only keep any portion of a security deposit if they have a detailed accounting of why they kept the security deposit and that the deposit went to repairs caused by the tenant. FHFA should require landlords to show the tenants pictures and descriptions of the damage and a bill for how much the landlord spent to correct the problem. Finally, FHFA should ensure that, if a tenant does have to go to court to get their security deposit back the landlord, should be responsible for any court or legal costs that the tenant accrued to retrieve the security deposit as well as any costs associated with the tenant missing work to retrieve their security deposit back, and the tenant can sue the landlord for double the amount of the security deposit held.

## 3. Late Fees

When a tenant owes a late fee but is only able to pay the base rent for a given month, landlords in many states are free to apply the tenant payment to the late fee before the rent.<sup>117</sup> Then, when the rent is not paid in full, landlords can charge an additional late fee.<sup>118</sup> Suddenly, the tenant owes two fees—even though only one rent payment was late. Tenants can easily end up in

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<sup>113</sup> Connecticut has passed similar legislation. The White House, *FACT SHEET: Biden-Harris Administration Takes on Junk Fees in Rental Housing to Lower Costs for Renters*, 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>114</sup> Minnesota has passes similar legislation. *Id.*

<sup>115</sup> Justia, *Recovering a Security Deposit When Leaving a Rental Unit*, October 2022, <https://www.justia.com/real-estate/landlord-tenant/information-for-tenants/getting-back-your-security-deposit/#:~:text=In%20most%20states%2C%20this%20must,any%20deductions%20from%20the%20deposit.&text=Landlords%20generally%20must%20return%20a.30%20days%20after%20move%20out.>

<sup>116</sup> Alex Williamson, *Security Deposits Are a Barrier to Affordable Housing. What Can Be Done?*, ShelterForce, June 1, 2021, <https://shelterforce.org/2021/06/01/security-deposits-are-a-barrier-to-affordable-housing-what-can-be-done/> (in a survey of landlords 24 percent of landlords admitted they had kept part of a tenants deposit unfairly at some point)

<sup>117</sup> Wesley Janson & Randal Verbrugge, *Late Payment Fees and Nonpayment in Rental Markets, and Implications for Inflation Measurement: Theoretical Considerations and Evidence*, Federal Reserve Bank of Cleveland, April 2021, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3646336](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3646336)

<sup>118</sup> *Id.*



a vicious cycle of accumulating late fees. Research has also show that limitations on late fees have a statistically significant negative association with evictions.<sup>119</sup>

First, FHFA should require property owners with multifamily properties with GSE-backed mortgages to give tenants a 10-day grace period before imposing a late fee, and not deduct any late fees and other charges from rent payments. Second, FHFA should ensure that no late fee is larger than 3% of the total rent. Finally, FHFA should prohibit any landlord from filing an eviction for nonpayment of late fees. Currently, landlords in federally-subsidized properties are prohibited from evicting tenants for non-payment of late fees<sup>120</sup>

#### 4. *Opportunity to Cure for Non-Payment of Rent*

In many states, a landlord cannot begin the eviction process for nonpayment of rent until they allow tenants an opportunity to pay their late rent and any related fees.<sup>121</sup> The opportunity to cure nonpayment of rent offers tenants a chance to settle the amount owed without going to court. These few extra days can make the difference between staying housed and becoming homeless. Landlords may also offer payment plans or to let the tenant pay in installments and include language that prohibit eviction so long as tenants comply with the payment plan.

FHFA should require multifamily properties with a GSE backed mortgage to allow tenants an opportunity to cure for non-payment of rent. FHFA should require a 10-day period for tenants to have the opportunity to cure for nonpayment of rent. FHFA should require that landlords offer a reasonable payment plan for tenants who are behind on their rent and include language that would prohibit eviction so long as a tenant complies with the payment plan.

#### 5. *Lockouts*

A “lockout” eviction, occurs when a landlord evicts a tenant by removing a tenants belongings from their home and changing the locks without going through the required legal process. This process can lead to tenants becoming homeless.<sup>122</sup> In some cases, landlords have prevented lockout tenants from accessing their belongings, which often include their medical supplies, their children’s clothes, or work-required uniforms.<sup>123</sup> A housing coalition helping to organize tenants said that most lock out evictions target households with the lowest incomes,

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<sup>119</sup> Emily A. Benfer, Solomon Greene, & Margaret Hagan, *Approaches to Eviction Prevention*, SSRN, July 28, 2020, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3662736](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3662736)

<sup>120</sup> HUD Handbook 4350.3, Ch. 6, Para. 6-23.F, <https://www.hud.gov/sites/documents/43503C6HSGH.PDF>.

<sup>121</sup> Conn. Exec. Order No. 7X (May 10, 2020); H.B. 4213, 80th Leg. Assemb., 1st Spec. Sess. (Or. 2020); N.C. Exec. Order No. 142 (May 30, 2020).

<sup>122</sup> Robert Collinson & Davin Reed, *The Effects of Evictions on Low-Income Households*, NYU Law, December 2018, [https://www.law.nyu.edu/sites/default/files/upload\\_documents/evictions\\_collinson\\_reed.pdf](https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf)

<sup>123</sup> NLIHC, *From the Field: St. Louis City Renters Gain Expanded Legal Protections from Illegal “Lock-Out” Evictions*, November 6, 2017, <https://nlihc.org/resource/field-st-louis-city-renters-gain-expanded-legal-protections-illegal-lock-out-evictions>

women of color, families with young children, and people with disabilities are the most vulnerable to these forms of evictions.<sup>124</sup> Unfortunately, lockout evictions are still legal in some states.

FHFA should forbid multifamily properties with GSE-backed mortgages from using lockout evictions. FHFA should ensure that as a term of the lease the landlord refuses to ever do a lockout eviction and if they do a lockout eviction, the tenant has a right to sue the landlord in court.

### 6. *Notice to Vacate*

In most states, a landlord must give notice to a tenant before they file an eviction lawsuit. Meaningful notice prevents displacement by helping tenants understand why they are being evicted and giving tenants time to prepare for an eviction proceeding. In order to be meaningful, the notice to vacate (NTV) should first explain to tenants the reason for eviction, so that tenants may prepare a defense. Second, the NTV should offer tenants sufficient time to attempt to settle the dispute with their landlord before having to go to court. Finally, because tenants frequently mistake the NTV for an eviction filing or an official action for eviction,<sup>125</sup> the notice should make clear that it is not an eviction.

FHFA should require multifamily properties that have GSE backed mortgages to give a Notice to Vacate before beginning eviction proceedings. FHFA should require landlords provide tenants a 60-day notice to vacate before eviction proceedings.<sup>126</sup> FHFA should require that the NTV to be printed in English and Spanish and should let the tenant know that they have the right to consult an attorney.

## III. Conclusion

We applaud FHFA for exploring how it can use its role in the housing market to advance tenant protections. Tenant protections can limit discrimination in housing, unwarranted and unjust evictions, and unsafe and unsanitary living conditions. Because Black people are disproportionately renters, these protections are essential to uplifting Black communities. As such, these protections can help FHFA affirmatively further fair housing and ensure that the GSEs fulfill their affordable housing mandate.

Thank you for the opportunity to comment. If you have any questions, please contact David Wheaton, Economic Justice Policy Fellow, at [dwheaton@naacpldf.org](mailto:dwheaton@naacpldf.org), or Amalea Smirniotopoulos, Senior Policy Counsel, at [asmirniotopoulos@naacpldf.org](mailto:asmirniotopoulos@naacpldf.org).

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<sup>124</sup> NLIHC, *St. Louis Advocates Organize Against Illegal Lock-Outs*, September 19, 2016, <https://nlihc.org/resource/st-louis-advocates-organize-against-illegal-lock-outs>

<sup>125</sup> Mariah Medina, *There's a Freeze on Evictions, but Renters say They're Still Being Told they Need to Move Out*, CBS NEWS, April 8, 2020, <https://www.kens5.com/article/money/theres-a-freeze-on-evictions-but-renters-say-theyre-still-being-told-they-need-to-move-out/273-077ccddd-bea3-4e9c-80aa-3e36e793afcb> (explaining confusion for tenants caused by receiving a notice to vacate)

<sup>126</sup> The City of Austin had a 60 day notice during the Pandemic.

Sincerely,

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