

July 31, 2023

The Honorable Sandra Thompson
Federal Housing Finance Agency
Washington, DC

RE: National Housing Law Project’s Response to FHFA’s Request for Input on Multifamily Tenant Protections

Dear Director Thompson:

The National Housing Law Project (NHLP), members of the Housing Justice Network, and the undersigned organizations engaged in housing justice advocacy submit this comment letter in response to the Federal Housing Finance Agency’s (FHFA) Request for Input on Multifamily Tenant Protections.

NHLP’s mission is to advance housing justice for people living in poverty and their communities. NHLP achieves this by strengthening and enforcing the rights of tenants and increasing housing opportunities for underserved communities. Our organization also provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. NHLP hosts the national Housing Justice Network (HJN), a vast field network of over 2,000 community-level housing advocates and resident leaders. HJN member organizations are committed to protecting affordable housing and residents’ rights for low-income families across the country.

To inform this RFI response, NHLP surveyed 185 housing advocates from its Housing Justice Network (HJN) and other networks. Together, these advocates come from more than 40 states, and they have shared their experiences helping tenants navigate their state and local landlord/tenant system.¹ Their perspectives appear throughout this response in both qualitative and quantitative form.

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I. FHFA & TENANTS IN MULTIFAMILY PROPERTIES WITH FEDERALLY-BACKED MORTGAGES

A. *Strengthening tenant protections falls within FHFA's statutory mandate and the GSEs' charters.*

FHFA has a statutory mandate to ensure that the government-sponsored enterprises (GSEs) operate in a safe and sound manner and serve as a reliable source of liquidity and funding for the housing finance market.² FHFA's strategic goals also reflect this mandate: (1) to secure the GSEs' safety and soundness, and (2) to foster housing finance markets that prompt equitable access to affordable and sustainable housing.³

According to the GSEs' charters, Fannie and Freddie serve five purposes. One purpose is to:

provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on ***housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities***) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.⁴

The Housing and Economic Recovery Act of 2008 (HERA) further provides that Fannie and Freddie "have an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes, while maintaining a strong financial condition and a reasonable economic return."⁵

Taking action to protect tenants in multifamily housing backed by the GSEs furthers both FHFA's statutory mandate and the GSEs' charters. A 2022 study made several findings that connected apartment building finances and indicators of tenant stability and well-being. First, the study found that "debt is a leading indicator of poorer maintenance quality."⁶ Importantly, declining quality and poor conditions devalue the buildings that the tenants live in—buildings that are the assets underlying the loans used to finance the property. This can cause the supply of safe affordable housing to dwindle even further across the real estate market and has negative impacts on asset value, which makes it increasingly difficult to maintain stable market liquidity. Further, poor building quality harms all tenants, especially low-income families who often have

² 12 USC § 4513(a)(1)

³ <https://www.fhfa.gov/AboutUs>

⁴ 12 U.S. Code § 1716 (Fannie Mae); 12 U.S.C. § 1451 (Freddie Mac).

⁵ 12 U.S.C. § 4501(7)

⁶ David M. Greenberg, Julia Duranti Martínez, Francisa Winston, Spenser Anderson, Jacob Udell, Caroline Kirk & Richard D. Hendra, *Gambling with Homes, or Investing in Communities*, LISC (March, 2022)

(https://www.lisc.org/media/filer_public/fc/26/fc26b3d0-8d45-41d6-a90c-f3b9966b7796/032422_gambling_with_homes_or_investing_in_communities.pdf)

limited alternative options in the rental housing market. The report states that “owners who took on more debt or bought their property at steeply increased prices are more likely to evict tenants.”⁷ This is true even when controlling for the effect of location, poverty, race, and signals of gentrification such as rent changes. Finally, the same study noted that “taking on high amounts of additional debt is a leading signal of problems for tenants—more powerful even than a speculative increase in sales price.”⁸ There is a clear relationship between the risks associated with high amounts of debt held by multifamily property owners, declining building quality, and subsequent harm to tenants. Thus, FHFA and GSE action to ensure that the federal government is only doing business with lenders and borrowers of properties with strong tenant protections will help improve the safety and soundness of the multifamily housing finance market, as required by the FHFA’s statutory mandate and the GSE charters.

B. *Strengthening tenant protections falls within FHFA’s duty to affirmatively further fair housing.*

FHFA has a duty to administer their programs and activities relating to housing and urban development in a manner that affirmatively furthers fair housing (“AFFH”).⁹ This duty requires FHFA to do more than simply refrain from discrimination; it requires FHFA to take meaningful action to end discrimination and segregation.¹⁰ The duty also extends to the GSEs as entities regulated by FHFA.

Without strong tenant protections to prevent egregious rent hikes and no-cause evictions, the risk of displacement falls heavily on Black renters, who have significantly and disproportionately higher rates of eviction filings and judgments than the general population of renters.¹¹ These disparities are even higher for Black women.¹² Rising rents and the lack of affordable housing converge to reduce the likelihood that these renters will find replacement housing in the neighborhoods from which they are displaced, which threatens to re-segregate Black communities and other communities of color.¹³

To fulfill its AFFH duty and take proactive steps to reduce the fair housing impacts of weak tenant protections, FHFA could issue regulations to implement its AFFH duty and require its regulated entities to assess the fair housing implications produced by the absence of strong tenant protections. FHFA can also use the Equitable Housing Finance Plan process to require the GSEs to study how tenant protections increase sustainable equitable housing opportunities for renters of color, renters with disabilities, and renters from other protected classes. To facilitate these studies, FHFA may require the GSEs to collect the data directly from borrowers

⁷ *Id.*

⁸ *Id.*

⁹ 42 USC 3608(d); 42 U.S.C. 3601 et seq. (imposing the duty to affirmatively further fair housing to all federal agencies with regulatory or supervisory authority over financial institutions).

¹⁰ *Cf.* NAACP v. HUD, 817 F.2d 149 (1987) (describing HUD’s duty to AFFH).

¹¹ Peter Hepburn, Renee Louis, & Matthew Desmond, “Racial and Gender Disparities among Evicted Americans,” *Sociological Science* 7: 649-662 (2020).

¹² *Id.*

¹³ Anne Bellows, *The Fair Housing Imperative to Address the Displacement Crisis*, *Civil Rights Insider* 5 (2018), <https://www.fedbar.org/wp-content/uploads/2019/12/civil-rights-winter-2018-v-3-pdf.pdf>

to help provide a more robust dataset for research. Such planning and process requirements are not the end goal, but rather a stepping stone toward the ultimate goal of strong protections for tenants.

C. *Tenants, especially low-income tenants, need a federal floor of minimum protections on the private rental market.*

Tenants, especially low-income tenants, desperately need the federal government to provide a floor of minimum protections. Relying on state and local landlord-tenant law to protect tenants is unrealistic and naive given the seismic shifts in the rental housing market—especially in the aftermath of the Great Recession, through the pandemic, and into the present day. In particular, the rise of multi-state corporate landlords and institutional investors in the private rental market demands a federal response, in large part because they utilize business models that incorporate the aggressive use of evictions, predatory fees, abusive lease terms, and other exploitative business practices.¹⁴

Some states have become extremely hostile to tenants rights.¹⁵ This year alone, two states have enacted sweeping bills preempting local tenant protections that resulted largely from strong tenant organizing. The Florida legislature passed Section 83.25, which preempts local government regulations regarding residential tenants, the landlord-tenant relationship, and matters, including, but not limited to:

the screening process used by a landlord in approving tenancies; security deposits; rental agreement applications and fees associated with such applications; terms and conditions of rental agreements; the rights and responsibilities of the landlord and tenant; disclosures concerning the premises, the dwelling unit, the rental agreement, or the rights and responsibilities of the landlord and tenant; fees charged by the landlord; or notice requirements.¹⁶

This legislation went into effect on July 1, 2023. In a move out of sync with the White House’s Blueprint for Renters’ Rights, the legislation preempted ordinances that created a tenant’s bill of rights—hard-fought wins reflecting the preferences of local communities. Similarly, the Texas legislature passed legislation preempting any local ordinances “regulating evictions or otherwise prohibiting, restricting, or delaying delivery of a notice to vacate or filing a suit to recover possession of the premises.” When this legislation goes into effect on September 1, 2023, it will take away the right to cure from tenants in Austin and Dallas, recent measures that these cities deemed necessary to help prevent evictions and homelessness and reflected negotiations between landlord and tenant advocates. For tenants in states like Florida and Texas, the pathways for creating and strengthening tenants rights no longer exist at local or state

¹⁴ Kristin Capps, Corporate Landlords ‘Aggressively’ Evicted Tenants During the Pandemic, House Report Says (July 28, 2022) (<https://www.bloomberg.com/news/articles/2022-07-28/house-report-corporate-landlords-defied-cdc-evict-on-ban>).

¹⁵ See *generally* Christopher B. Goodman & Megan E. Hatch, State Preemption and Affordable Housing Policy (Apr. 29, 2022) (<https://www.cgoodman.com/files/papers/preemption-housing.pdf>).

¹⁶ Fla. Stat. § 83.425

legislatures, and yet the need for such rights has never been greater. It is critical, therefore, for the federal government to step in to help protect all tenants.

D. FHFA should ensure that existing federal tenant protections are implemented in properties with federally-backed mortgages.

FHFA has an important role to play in implementing federal and state law and creating consequences for egregious violations. By requiring the GSEs to incorporate the CARES Act 30-day eviction notice requirement into their loan agreements, FHFA demonstrated the significance of this federal tenant protection, and a number of borrower-landlords adjusted their practices accordingly.

FHFA could also play a similar role in implementing other federal laws, especially through its suspended counterparty program. When borrowers are known to be egregious or serial violators of existing federal law, the GSEs should not continue to do business with them, especially in the multifamily setting where the harm to tenants can be significant and far-reaching. FHFA could, for example, amend the Suspended Counterparty Program rule to include fair housing violations within the category of covered misconduct. Such an amendment would comport with FHFA's AFFH duty by helping to ensure that multi-family borrowers known to violate the fair housing rights of tenants are not in a position to provide federally-backed rental housing in the near future. Similarly, in the Low Income Housing Tax Credit (LIHTC) program, FHFA could take steps to ensure that its borrowers are following tenant protections embedded in that program, such as good cause requirements and a prohibition against refusing to lease a LIHTC unit to a Housing Choice Voucher holder because of their voucher status.¹⁷

II. TENANT PROTECTIONS

A. General Principles

In evaluating tenant protections for multifamily properties, FHFA should keep the following in mind:

- 1. Tenant protections are urgently needed to prevent evictions and the lasting harm they inflict.**

In 2016, 3.7 million households, or 8 out of every 100 renter households in the U.S., had evictions filed against them,¹⁸ and the subsequent COVID-19 pandemic has only exacerbated and highlighted the precarity of stable housing for millions of Americans. An eviction can have a

¹⁷ 26 U.S.C. § 42(h)(6)(B)(iv).

¹⁸ Office of Policy Development and Research, *Prevalence and Impact of Evictions*, Department of Housing and Urban Development (2021) (<https://www.huduser.gov/portal/periodicals/em/Summer21/highlight2.html>)

devastating effect on a person's housing and employment security as well as their health and educational outcomes.¹⁹

Evictions and their second order consequences have a disproportionate impact on marginalized communities, with Black women, survivors of domestic violence, and people with disabilities facing eviction at markedly higher rates than any other group.²⁰ Thus, an eviction can have a lasting impact on already disadvantaged communities as landlords have essentially unchecked power to initiate an eviction proceeding for any reason or no reason. Abuse of this power can create a vicious cycle of housing insecurity as individuals with eviction histories are forced to choose between homelessness and entering predatory housing arrangements. Allowing landlords to evict a tenant or refuse to renew a lease for any reason or no reason at all reinforces this disproportionate power imbalance between renters and housing providers.

This imbalance can manifest in formal eviction proceedings, but it also produces a reality where 30 percent of tenants move after the first sign of an impending eviction, sacrificing their housing stability because of an eviction's devastating impact on their housing prospects.²¹ For many people, the consequence is homelessness. The line between housing instability, evictions, and homelessness was clearly drawn in a recent statewide study of homelessness in California, where survey participants experiencing homelessness discussed their experiences with eviction or threatened eviction:

Many reported evictions due to falling behind in rent. Participants reported a variety of reasons for being behind in rent including job loss, personal health crises, accumulation of financial struggles, and the loss of contributing household members due to ill-health, death, or other reasons. Those who lost their housing due to evictions for non-payment of rent reported receiving "pay or quit" orders. Unable to pay the rent and fearing the impact of an eviction on their credit record, they left their housing suddenly without adequate time to make alternative arrangements. Some participants reported other non-financial reasons for eviction, including lease violations, or conflict with property owners and other household members. Others reported receiving eviction notices due to the need for property repairs. Participants regarded these eviction notices as a response to their complaints about poor housing conditions. In some cases, participants faced

¹⁹ Matthew Desmond and Carl Gershenson. 2016. *Housing and Employment Insecurity among the Working Poor*, *Social Problems* 63:1, 46–67; Hugo Vásquez-Vera, Laia Palència, Ingrid Magna, Carlos Mena, Jaime Neira, and Carme Borrell. 2017. *The threat of home eviction and its effects on health through the equity lens: A systematic review*, *Social Science and Medicine* 175, 199–208; Matthew Desmond and Rachel Tolbert Kimbro. 2015. *Eviction's Fallout: Housing, Hardship, and Health*, *Social Forces* 94:1, 295–324; Yerko Rojas and Sten-Åke Stenberg. 2016.

²⁰ See, e.g., Peter Hepburn, Renee Louis, and Matthew Desmond, *Racial and Gender Disparities among Evicted Americans*, EVICTION LAB (Dec. 16, 2020) ("property owners disproportionately threaten Black and Latinx renters—particularly women—with eviction"), <https://evictionlab.org/demographics-of-eviction/>; see Timothy A. Thomas, *The State of Evictions: Results from the University of Washington Evictions Project* (Feb. 17, 2019), (<https://evictions.study/washington/index.html>) ("Black adults are evicted 5.5 times more than Whites in King County [and] 6.8 times more in Pierce [County]").

²¹ Miriam Axel-Lute and Brandon Duong, *Fixing the Harms of Our Eviction System: An Interview with Emily Benfer*, *Shelterforce* (March 4, 2021) (<https://shelterforce.org/2021/03/04/fixing-the-harms-of-our-eviction-system-an-interview-with-emily-benfer/>)

eviction due to the owner or a family member moving in or the owners selling the property. Several survivors of interpersonal violence described facing eviction as a result of conflict-related property damage, noise disturbances, or “causing a scene” including 911 calls to the home. Others reported losing housing due to climate emergencies, such as wildfires.²²

The power imbalance is also apparent in the use of illegal “self help” evictions that take place outside of the eviction court system, as reported by HJN members in NHLP’s survey. NHLP asked how often advocates work with tenants whose landlords have engaged in illegal or “self help” evictions, and of respondents who answered, more than 70 percent said weekly or monthly. Only five percent said they had never encountered illegal or “self help” evictions working with tenants. Illegal eviction actions observed by advocates include changing the locks (85%), turning off utilities (89%), and removing tenants’ personal property from the unit (71%).

2. The potential impact of eviction records on future housing prospects creates a chilling effect on tenants enforcing their rights, undermining tenant protections.

The mere existence of an eviction filing is commonly used in tenant screenings (even if the tenant prevailed), and can effectively blacklist prospective tenants from housing opportunities. What results is a cycle of housing insecurity that is difficult to disrupt. As a legal services attorney from Louisiana explained, “our office regularly sees eviction records create barriers even where the tenant has prevailed or the case was resolved through a settlement (consent judgment).” Similarly, in Oklahoma, legal aid providers report that “private landlords won’t rent to tenants who have had evictions filed against them even if there was no final judgment for eviction.” This is especially problematic because most tenant rights and protections can only be properly vindicated through eviction proceedings. For example, most states protect tenants against retaliatory eviction suits for requesting repairs, reporting unsafe housing conditions, participating in tenant organizations, or testifying against the landlord in court or in a fair housing investigation. To enforce these rights a tenant must have the ability to appear in an eviction case and move for dismissal based on the anti-retaliation provision, rent withholding statute, eviction moratorium, or other protection. For example, in Connecticut, some advocates report that tenant protection laws are “very good but largely unenforceable because there are few ways to raise them except as eviction defenses. Eviction cases, however, are a highly unlevel playing field for tenants, since the pressure to accept an agreement and move is overwhelming.” If making such an appearance marks the tenant with an eviction record that adversely affects their future access to housing, that tenant will be incentivized simply to move out of the dwelling unit before any case is filed. This dynamic makes it difficult, if not practically impossible, for tenants to assert their rights and be confident that they will be able to secure housing in the future.²³ It is

²² Margot Kushel, MD & Tiana Moore, PhD, *California Statewide Study of People Experiencing Homelessness*, UCSF Benioff Homelessness and Housing Initiative, 34 (2023).

²³ Numerous housing advocates report having had clients with meritorious legal defenses choose to move out of rental properties rather than appear and assert those defenses due to concern over the impact of an eviction case filing on their future access to housing. An advocate from Atlanta described seeing tenants make such choices “almost every day,” while a California tenant organizer described seeing this

necessary, therefore, that the federal government generally, and FHFA specifically, put resources into policies that will help prevent evictions in the first place, as well as address the harmful impacts of using eviction records in the tenant screening process.

3. Evictions for nonpayment of rent are often weaponized against low-income tenants.

In 2017, the vast majority—77.3%—of evictions were for nonpayment of rent.²⁴ This number may be even higher because many eviction notices that are given for no cause or lease expiration are motivated by a current rental arrearage or past late payments.

The ease with which landlords can evict for nonpayment exposes tenants to abuse and mistreatment. It is not simply the power to evict for nonpayment that landlords can weaponize, but also the power to evict within a legal system that permits summary proceedings, fails to guarantee adequate representation for tenants, and sets a low threshold for displacing tenants from their home.²⁵ It is also the power to evict in a legal system that will often condition a tenant's ability to exercise their rights on their ability to pay rent.

Evictions for nonpayment of rent are about more than reconciling a housing provider's balance sheet. The threat of eviction due to rental arrearages leaves low-income tenants vulnerable and subverts many policies intended to protect them. In a study of landlords in three cities, a number of landlords noted that "when a tenant is late on their rent, even if only a small amount, they are able to use that as a pretext for an eviction motivated on grounds that would be otherwise unallowable."²⁶ One of those landlords described "several tenants with whom he moved from negotiation to an immediate eviction filing when he felt they otherwise stepped out of line."²⁷ For these landlords, tenants who "stepped out of line" included tenants who complained about the lack of shoveling after a rare snowstorm in Dallas and tenants related to, but not living with, a

phenomenon "daily in Los Angeles." HJN members from Boston, Ohio, and New Mexico similarly reported seeing tenants routinely choose to move out rather than assert claims or defenses so as to avoid acquiring eviction records. A Chicago advocate described seeing the fear of acquiring eviction records deter immigrants with limited English proficiency from enforcing that state's immigrant tenant protection law. Another advocate, a legal aid attorney in Southern California, stated "What I also hear pretty regularly from our organizing partners is that those tenants may not even be reaching us as clients because they self-evict the second they get a notice or something like that, fearing even the existence of that case." Numerous HJN members echoed the sentiment that the individuals with whom they personally interact are just the small tip of a large iceberg—with many more tenants quietly moving out to avoid eviction records without ever speaking to an attorney or other housing advocate. National Housing Law Project, *Re: FTC-2023-0024 Tenant Screening Request for Information*, 53 (May 30, 2023) (<https://www.nhlp.org/wp-content/uploads/CFPB-FTC-tenant-screening-comments.pdf>)

²⁴ Michele Lerner, *Does Your City Rank High or Low When it Comes to Evictions?* (Dec. 28, 2017) (<https://www.washingtonpost.com/news/where-we-live/wp/2017/12/28/does-your-city-rank-high-or-low-when-it-comes-to-evictions/>)

²⁵ See Kate Sablosky Elengold, *Structural Subjugation: Theorizing Racialized Sexual Harassment in Housing*, Yale L. J., & Feminism 227, 269 (2016) ("A landlord's access to his female tenants and their families is structural, not a result of deviancy.").

²⁶ Phillip ME Garboden & Eva Rosen, *Serial Filing: How Landlords Use the Threat of Eviction*, City & Community 0:0, 18.

²⁷ *Id.*

former tenant who had been evicted previously.²⁸ In light of this, FHFA should balance both the needs of borrowers to collect their rent in a timely manner and the needs of tenants made vulnerable by the threat of eviction for nonpayment of rent.

4. Tenants have varying needs that require a spectrum of tenant protections.

Tenants are not a monolithic group. There is no magic bullet to help tenants in a rental housing market facing an acute shortage of affordable housing, rising rents that outpace wage growth, and state legislatures that favor well-resourced landlords. The federal government needs to advance a multi-pronged strategy to help keep people housed, and ideally, FHFA will contribute to the federal effort by adopting a suite of tenant protections to address the varying needs of tenants. The tenant protections within NHLP's RFI response exist on a spectrum reflecting the level of protection they offer tenants as well as the level of difficulty and costs of implementation. It is critical that FHFA weigh the various options with nuance and resist reflexive objections that cannot be backed up by evidence or reality.

5. Tenant protections work best when they complement each other as part of a comprehensive plan.

When tenant protections are adopted a la carte, landlords may exploit loopholes that reduce their overall effectiveness. For example, just cause protections without rent stabilization allow landlords to turn to rent-gouging as a way of forcing a tenant out, especially in retaliation for making a conditions-related complaint, refusing sexual advances, seeking fair housing enforcement, or otherwise exercising their rights as tenants. This is especially true for low-income tenants, whose need for safe, decent, accessible and affordable housing is dire. The best way to minimize loopholes and unintended consequences is to enact a comprehensive and complementary set of tenant protections.

6. Substantive and procedural tenant protections go hand-in-hand.

Notices serve an important function because they help provide tenants with time, a necessity in a legal and economic environment where "housing too often can be lost quickly and acquired slowly."²⁹ In the absence of a corresponding substantive protection, however, a notice might reduce the harm, but it does not remove the tenant from a state of precarity. Notice of rent increases, for example, can give a tenant time to find a place to move to, but if rental housing in the same neighborhood is undergoing similar rent increases (a common feature of the rental housing market since 2022), the notice ultimately provides little by way of protection. To the extent that FHFA imposes procedural protections like notices, it should also consider whether a corresponding substantive protection could help provide overall stronger protections for tenants.

²⁸ *Id.*

²⁹ Noah M. Kazis, *Can Affordable Housing Be a Safety Net? Lessons from a Pandemic*, Yale Law Journal Forum, 32 (Nov. 7, 2022), <https://www.yalelawjournal.org/forum/can-affordable-housing-be-a-safety-net>

7. Tenants need user-friendly tools to enforce their rights.

In the context of tenant protections through the FHFA and the GSEs, tenants must have a user-friendly way of identifying whether they live in a multifamily property with a mortgage backed by the GSEs. To fully implement any tenant protection, FHFA and the GSEs must ensure that tenants can easily identify whether their properties are covered. The GSEs' look-up tools have been an important resource for tenants in multifamily properties. For tenants living in 1-4 unit properties, this information is not publicly accessible. In addition, landlords should have an affirmative duty to identify whether their properties have mortgages backed by the GSEs since this information is in the control of the landlords, not the tenants.

B. Good Cause for Evictions and Lease Non-Renewals

Good cause protections can help protect tenants of properties with federally-backed mortgages from discriminatory, retaliatory, and arbitrary evictions and their cascading consequences. Good cause protections define the reasons for which a landlord can evict a tenant or refuse to renew their lease. Examples of good cause reasons include failure to pay rent, serious or repeated lease violations, and owner's intent to move in or permanently remove the unit from the rental housing market. These laws create predictability in the eviction and renewal processes and empower tenants experiencing poor living conditions, discrimination, or other illegal landlord behavior to seek redress without fear of retaliation. They also help to recalibrate the disproportionate power imbalance that comes from allowing landlords to evict a tenant or refuse to renew a lease for any reason or no reason at all. Significantly, good cause protections "limit landlords from using a legal workaround to evict tenants for otherwise discriminatory or illegal reasons," as a Michigan legal services attorney noted. States and localities have implemented varying levels of protections since New Jersey first did so in 1974.³⁰

Most federal housing programs also incorporate good cause protections, providing potential models for FHFA to consider. Owners of properties in the Low Income Housing Tax Credit (LIHTC) program must have good cause to evict tenants. Some states, such as California, have implemented the good cause requirement by requiring all LIHTC properties to have a good cause lease rider and providing them a letter informing them of their rights. Other states, such as Massachusetts and Wisconsin, reference good cause in LIHTC regulatory agreements. Additionally, HUD-assisted housing programs have good cause requirements, though the specific details of each program vary.

1. The Urgent Need for Good Cause Protections

Tenants are vulnerable to the whims of a very tight market for safe, decent, affordable, and accessible housing. Good cause protections can help tenants stay in their homes.

- Advocates in *Colorado* and *Idaho* both reported that severe housing shortages in their states "mak[e] it difficult for tenants to find other housing when their leases are

³⁰ Legal Services Corporation, *LSC Eviction Laws Database*, (Jan. 2021) (<https://www.lsc.gov/initiatives/effect-state-local-laws-evictions/lsc-eviction-laws-database>)

terminated for no cause.” Good cause protections for both evictions and lease non-renewals would “limit these kind of displacements” and give tenants “a better chance at staying in a property.”

- A similar shortage of affordable housing units exists in *New York*, where an advocate noted that good cause would help their clients who are being evicted so that landlords can convert their affordable housing units into “luxury student housing.”
- A *Kansas* advocate discussed how some landlords simply refuse to renew a lease at the end of the term, or terminate month-to-month tenancies, without any cause. “Many of our clients don’t have the money to pay for a new security deposit, first month’s rent, and moving expenses, so they end up not moving and then getting evicted. Good cause protections could prevent that.”

Month-to-month tenants are often in a more precarious position than tenants with longer-term leases. Good cause protections can help provide stability for these tenants. For example,

- One advocate in *Maine* notes that, “outside of Portland, there are very few large property management companies. Maine probably has a higher proportion of tenants who don’t have leases than other states. [These tenants] can be evicted at any time with 30-day no-cause notice. This is one of the most common types of evictions we see (in addition to non-payment cases), and there are barely any defenses to them.”³¹
- An advocate in *Nebraska* notes that “a landlord can terminate a month-to-month with only 30 days notice, and we have observed many landlords switch to month-to-month leases for all tenants since the pandemic started. They were originally an end-run around federal eviction moratoria, but it seems it is standard practice. Tenants on month-to-month leases have little leverage against their landlord.”
- In *New Mexico*, one advocate notes that there are “wait lists for over a year in affordable housing, and prices in the private housing market are insane. Most people renting in the private market are month-to-month even if they started with a year lease, and 30 days isn’t anywhere close to enough time to find new housing. I recently negotiated an extra 8 months for a client in a no-cause eviction because we had counterclaims (not slam dunks, just viable), and despite this client having at least some savings, I don’t think she will be able to find a new place in time. The problem is exacerbated in her case, as she has a disability and can only access ground-floor apartments. We have a high population of people with disabilities in my community, and it is disgraceful how easily they can lose their homes.”

³¹ A study on evictions in Maine from 2019-2022 found that, while nonpayment was the most common reason for eviction, “no cause” evictions made up a significant percentage of evictions every year. Pine Tree Legal Assistance, *Maine Evictions 2019-2022* (May 12, 2023), (<https://www.ptla.org/sites/default/files/Eviction%20Report%20May%202023%20Final.pdf>).

- A *North Carolina* advocate shares that “a landlord can choose to not renew a tenant’s lease at any point in time once the term has expired, so often we have cases where we may win but then two months later they refuse to renew their lease. I warn all clients about filing counterclaims if their lease is close to the end of term that even if we win, they do not have to renew the lease and likely will not if we file claims against them. Tenants have no protection from eviction when a lease ends, unless the landlord continues to accept rent from them past the end of the lease term.”

Good cause protections are necessary to root out discriminatory evictions and lease non-renewals by landlords. Without these protections, landlords can evict and hide their discriminatory motives behind no-cause evictions.³² As an advocate in *Colorado* noted, “under the current schema, landlords can refuse to renew leases for unlawful and discriminatory reasons, and showing that the landlord’s stated lawful reason is pretext is often an impossible battle. Just cause would make it more difficult for landlords to engage in discriminatory and unlawful conduct, or to terminate leases in retaliation for tenants exercising their rights.”

Without good cause, tenants can be subject to arbitrary evictions.

- A *Florida* advocate observed that “many landlords use the non-renewal process as a method to cover up for unlawful or unethical activity.”
- A *Missouri* advocate states: “The vast majority of my clients are not aware of if they are involved in an ongoing lease or not. If they are aware they do not know the serious implications of being involved in a month to month tenancy and that the landlord could kick them out for no reason or a stupid reason. Good cause eviction would go a long way toward providing long term security to good tenants.”
- A *Kansas* advocate observes that landlords often try to evict their clients for “clutter, not unsanitary conditions.”
- In *Illinois*, one advocate notes that in evictions for lease violations, “the ‘lease violations’ can be listed as something vague– even just ‘tenant broke lease’ without any real accusation. Usually there is no ability to correct a lease violation.”
- In *Ohio*, “a relatively minor breach a tenant isn’t aware is a problem can lead to eviction within three days.”

The landlord’s ability to evict for arbitrary reasons exposes tenants to retaliatory evictions, thus undermining the limited rights that tenants currently have. Retaliation is very difficult to prove,³³ and without good cause protections, landlords can come up with any

³² Oksana Mironova, Samuel Stein & Gianpaolo Baiocch, *Racial Justice and the Right to Remain*, Pratt Center for Community Development (Feb. 2022) (https://prattcenter.net/uploads/0222/1645804924258026/Racial_Justice_the_Right_to_Remain_Final.pdf)

³³ The prevalence of retaliatory evictions is difficult to comprehensively measure, in large part because many tenants appear as pro se defendants in eviction courts and many choose not to fight the eviction at all. Lauren A. Lindsey, *Protecting the Good-Faith Tenant: Enforcing Retaliatory Eviction Laws by Broadening the Residential Tenant’s Options in Summary Eviction Courts*, 63 OKLA. L. REV. 101 at 106

number of plausible reasons for eviction to avoid detection. Landlords commonly retaliate against tenants for taking actions such as reporting a housing code violation, complaining to the landlord about the landlord's failure to maintain the premises, and forming or joining a tenant's union or other tenants' rights advocacy group.³⁴ Advocates reported the following:

- “Retaliation is incredibly difficult to prove, and I suspect part of why landlords have switched to month-to-month leases. Lack of good cause means a landlord retains the right to evict for no reason at all; retaliation is often the tenant's word against the landlord's. Landlords are often seen by the court as more credible.” (*Missouri*)
- “We often see landlords rely on end of lease terminations; after non-payment of rent it's probably the most common basis for eviction. It can be used to avoid retaliation claims by tenants, and it often is used to dispossess very long-term tenants (5+ years of tenancy).” (*Michigan*)
- “Clients in income-based housing who complain about non-law-abiding neighbors, even sexual assault, experience retaliatory evictions and harassment.” (*Arkansas*)
- The need for good cause protections extends to retaliatory lease non-renewals as well. A *Michigan* advocate says they have “bad case law concerning end of a lease term, stating retaliation claims cannot be raised at that time because the lease has expired. It has been a real hindrance in tenant organizing and willingness to allege retaliation.”

Good cause has been shown to reduce evictions and eviction filings. In four California cities, good cause protections reduced eviction and eviction filing rates by 0.808 percentage points and 0.780 percentage points respectively,³⁵ implying a reduction in arbitrary and no-cause evictions. While data is scarce on the impact of good cause on the 30% of tenants who voluntarily depart under the threat of a possible eviction, it logically follows that if tenants clearly know the legal grounds on which their landlord seeks to evict them, then those tenants can make informed choices about whether those evictions are legally justified.

In preventing arbitrary evictions, good cause complements habitability requirements and other measures that protect both tenants and the conditions of the buildings that they live in. The risk of retaliation is often so great that it keeps people in subpar housing situations for fear of having to search for housing in a tight rental market.

(2010), (<https://digitalcommons.law.ou.edu/olr/vol63/iss1/4>) (“[Pro se] tenants . . . are often unable to effectively present any defense, including a retaliatory eviction defense, even when such a defense might be warranted and successful. [Additionally], there is no way to account for the number of tenants who are the victims of retaliatory evictions but choose not to contest the evictions for personal or financial reasons or out of fear. As a result of both of these circumstances, very few records exist from which to determine the frequency of retaliatory evictions.”).

³⁴ *Id.* at 105.

³⁵ Julieta Cuellar, *Effect of “Just Cause” Eviction Ordinances in Four California Cities*, Princeton University Journal of Public and International Affairs (May, 2019) (<https://jpia.princeton.edu/news/effect-just-cause-eviction-ordinances-eviction-four-california-cities>). “Good cause” and “just cause” are often used interchangeably.

- “We have many ‘slumlords’ in our neighborhood who evict tenants or serve nonrenewals if they speak up about warranty of habitability concerns in their units and buildings. They kick them out and move new people in who then face the same issues. Landlords get away with this at an outrageous rate.” (*Colorado*)
- Month-to-month tenants are discouraged from enforcing their rights under the warranty of habitability, because the landlord can simply terminate the tenancy to avoid addressing the habitability issues. One advocate noted that “this problem allows an alarming percentage of our clients to not have heat in the winter (in Colorado).” Another commented: “I frequently have to have a conversation about risks with clients who are on month-to-month leases before sending their landlord any kind of communication raising a habitability issue, an inaccurate or unlawful charge, or other concern, because we need to assess the risk of the landlord potentially non-renewing the tenant’s lease because a tenant brought up those concerns.” (*Colorado*)
- “A large portion of our non-renewal evictions are due to the tenant complaining about the condition of the property.” (*Nebraska*)
- “We see nonrenewals all of the time that are really about retaliation for tenants speaking up about conditions of disrepair or organizing. Good cause would help tenants be more confident in bringing up issues of disrepair and predatory landlord conduct.” (*Maryland*)
- “Landlords will threaten and/or try to evict tenants who are using the protected repair and deduct statutes to fix or replace appliances that the landlord refuses to properly and safely maintain. For example, [tenants] can’t pay off the replacement laundry machines, because the landlord threatens to evict, so [they] have to keep the cost of the deducted rent (which was exactly the amount to pay off the laundry machines) and it adversely affects [their] credit and financial status as well as living in fear for a year and a half that the landlord will file the eviction and leave [them] homeless again” (*New Jersey*)

Good cause can also complement fair housing and other civil rights for tenants. When a tenant has good cause protections, they can defend themselves in an eviction action by raising the landlord’s fair housing or other civil rights violations in many (but not all) states. For many tenants, eviction court provides a more accessible venue for asserting these rights than filing a federal civil rights lawsuit, a time- and resource-intensive process that may or may not ultimately achieve the tenant’s ultimate goal of remaining stably housed. For tenants with disabilities, good cause can allow time to request a reasonable accommodation, as required by various federal fair housing and civil rights laws.

For survivors of gender-based violence, a good cause requirement can mitigate the harms of “crime-free” programs and nuisance ordinances, which often mandate the eviction of entire households because of one member’s contact with local law enforcement. The household may be evicted even if that contact never resulted in an arrest or conviction, consisted simply of calls for emergency services, or arose from minor ordinance violations such as noise disturbances. These “crime-free” programs and nuisance ordinances threaten the housing of the most vulnerable tenants, particularly low-income tenants of color, survivors of gender-based violence,

and tenants with disabilities. Moreover, race has been shown to be the central driver for the origination of these laws and programs.³⁶ Good cause allows tenants to vindicate their fair housing and civil rights.

Good cause confers all the benefits above to tenants without negatively impacting housing supply. Importantly, the benefits afforded to tenants in the form of predictability and stability are not outweighed by countervailing considerations about the impact of just cause protections on the construction of new housing units. Rather, a 2007 study of 76 cities that implemented good cause protections in New Jersey over a 30-year period found little to no statistically significant effect on new construction.³⁷

2. Implementation Considerations

Of the states and localities that have just cause protections, there are concerns about exemptions that landlords can exploit as loopholes. Some statutes, for example, allow evictions based on a landlord's intent to renovate, which can be used as a pretextual reason to get rid of a tenant, according to some HJN members. To address such workarounds, it may be necessary to limit the exemptions that landlords can use. Other policies could also discourage landlords from misusing exemptions. Under the California Tenant Protection Act, if the reason for an eviction is outside of the tenant's control (e.g. owner's intent to move in), the landlord must provide relocation assistance to the tenant either in the form of one month's rent or waiver of last month's rent. Such relocation requirements may help mitigate against pretextual evictions and recognize the tenant's burden of moving.

An affirmative effort to educate tenants about their rights is critical, especially if tenants do not have good cause protections for all rental housing in a given jurisdiction. The following testimonies from HJN members in states with limited good cause protections illustrates this point:

- In *Oregon*, “unrepresented tenants aren't necessarily aware of these protections, so may move out or be evicted based on unlawful terminations. Good cause only kicks in after the first year of occupancy, so it's not possible to determine simply from the face of pleadings whether the eviction is unlawful.”
- Meanwhile, In *New York*, “tenants in unregulated apartments have no protection from being evicted at the end of their lease term,” and that “many units are market (i.e. not subject to good cause or rent stabilization). Other times tenants are not aware the unit is stabilized or should be stabilized.”

³⁶ Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 Mich. L. Rev. 173 (2019); Deborah N. Archer, ‘Crime-Free’ Housing Ordinances, Explained, *The Appeal* (Feb. 17, 2021), <https://theappeal.org/the-lab/explainers/crime-free-housing-ordinances-explained/>.

³⁷ John I. Gilderbloom & Lin Ye, *Thirty Years of Rent Control: A Survey of New Jersey Cities*, 29 *Journal of Urban Affairs*, 207-220.

- Additionally, a *New Jersey* advocate reports that “the Federal Home Loan Bank Affordable Housing and other housing programs currently never mention or enforce protections or mandates against discriminating against people with disabilities or the elderly and do not otherwise ensure that accessible housing units are available.”

3. **Recommendations**

FHFA should require the GSEs to incorporate good cause protections and clearly identify the legitimate causes for evicting a tenant from a property with a federally-backed mortgage. If FHFA chooses to adopt exemptions, these exemptions should be narrowly tailored to avoid creating loopholes for landlords.

C. **Rent Stabilization**

Tenants need rent stabilization to complement the protections that come with good cause and to avoid getting displaced by egregious rent hikes. In *North Carolina*, advocates report that “[r]ents are skyrocketing, and [...] properties send notices to tenants stating the rent will increase 50-100%, essentially to force a breach,” i.e., force the tenant to move. By themselves, “just cause eviction ordinances protect residents from being evicted arbitrarily, but do not protect tenants if they are unable to afford their rent payments.”³⁸ Once tenants fall behind on their rent, landlords have cause and can easily evict for nonpayment of rent to circumvent other tenant protections. An HJN member in *North Carolina* expresses this concern: “In practice, many non-renewal evictions would continue in North Carolina even with good cause protections simply because the rate of market rent, especially in urban areas, is increasing at a rate that poor tenants cannot afford.”

Without rent stabilization, low-income tenants are deprived of additional protections other than good cause.

- For example, *Georgia*-based advocates report that the state’s newly passed anti-retaliation law does not protect tenants who are behind on rent, severely limiting its application because “most eviction cases we see have an element of a tenant being unable . . . or unwilling to pay rent in the case of serious repairs which cuts off the retaliation defense.”
- *Maryland*’s anti-retaliation statute³⁹ does not apply to renewals of a term lease and requires the tenant to be current on the rent at the time of the alleged retaliatory act: two conditions alone which advocates say “make[s] the law ineffective for a significant number of tenants.”
- In *Virginia* and other states, tenants must pay rent into escrow in order to assert habitability and repair claims

³⁸ Julietta Cuellar, *Effect of “Just Cause” Eviction Ordinances in Four California Cities*, Princeton University Journal of Public and International Affairs (May, 2019)

³⁹ Md. Code Ann., Real Prop. § 8-208.1; § 8-208.2.

- Relatedly, in *Florida*, tenants must pay rent into the court’s registry during an eviction case. For tenants who fail to pay, the court enters a default judgment, thus depriving them of protections within the eviction court system, such as their right to the 30-day notice under the federal CARES Act.
- A legal services attorney from *New York* conveys the injustice: “Any rights should NOT be contingent on showing that a tenant can pay all the money owed. Almost all of my clients are struggling through crushing poverty, and it is unrealistic to expect tenants to set aside and save up rent to possibly pay their landlord while they barely have enough for basic expenses like food. Raising legal defenses and having due process should NEVER be contingent on having money. Judges in NYC sometimes do not allow tenants to raise repair defenses unless they have all the rent saved up, and this cuts off the valid defense for many vulnerable tenants.”

Tenants are especially vulnerable to the abusive use of nonpayment evictions in today’s housing market, where rental housing costs have far outpaced wages for over two decades. Between 2001 and 2021, the median rent increased by 17.9%, while the median renter household income rose modestly by only 3.25%.⁴⁰ This gap was exacerbated by the rising rents and inflation in the latter phases of the pandemic. From 2017 to 2022, “the median rent for newly leased units rose nearly 32 percent, with nearly all of that increase occurring in 2021 and 2022.”⁴¹ Indeed, “in a context of rapidly rising housing prices, just cause eviction ordinances on their own do not fully protect a city’s most vulnerable residents.”⁴²

D. Right to Cure

Tenants should have an opportunity to cure minor lease violations before landlords can file an eviction action against them. In cases of nonpayment of rent, this right to cure means that a landlord must accept a late rental payment as long as the tenant makes the payment within a certain period of time. This allows the tenant to avoid being evicted from their home (or the less severe but still harmful consequence of having an eviction filing on their record), and it also gives the landlord the money that they need to stay financially healthy. In the vast majority of states (45), tenants have the right to cure for nonpayment of rent. Currently, in five states (Ohio, Texas, Louisiana, Missouri, New Jersey), landlords can proceed with an eviction action even if the tenant is just one day late with their rent.

1. Benefits

An opportunity to cure is necessary for security of tenure. Often, when landlords refuse late rent, they are seeking to preserve their right to evict their tenants. Some landlords are especially

⁴⁰ Center on Policy and Budget Priorities, *Addressing the Affordable Housing Crisis Requires Expanding Rental Assistance and Adding Housing Units*, Figure 2 (<https://www.cbpp.org/research/housing/addressing-the-affordable-housing-crisis-requires-expanding-rental-assistance-and>)

⁴¹ *Id.*

⁴² Julietta Cuellar, *Effect of “Just Cause” Eviction Ordinances in Four California Cities*, Princeton University Journal of Public and International Affairs (May, 2019)

motivated to evict their tenants if they think they can take advantage of the market and get higher rents from new tenants.⁴³

- One *California* advocate described how “if a tenant had a chance to understand that they had a choice between curing the breach and being evicted, most would cure.”
- A *North Carolina* advocate states: “Tenants can have all of the money but if they are late the landlord can refuse to accept the rent and still evict the tenant for breaching the lease. It is incredibly frustrating.”

An opportunity to cure is necessary to maximize the impact of emergency rental assistance, a critical eviction prevention measure. When Congress made \$46.5 billion available in emergency rental assistance to prevent evictions during the pandemic, some tenants were still at risk of eviction because of landlords who refused to accept ERAP to cover missed rental payments.⁴⁴

- In *Colorado*, advocates reported seeing “a lot of no-cause Notice to Quit evictions that displace families, or that are used as a backdoor to retaliate against tenants who previously received rental assistance.”
- An *Oregon* advocate said that “the right to cure regarding breach of lease for non-payment of rent would keep a lot of these cases out of court. It takes weeks for rental assistance to process. The landlords are filing knowing that the client is working on this issue and not allowing the rental assistance to kick in which it generally does.”

An opportunity to cure also helps tenants who might find themselves hit with a relatively small, temporary emergency expense, such as an unexpected car repair or minor medical issue. Sometimes, tenants are sued for eviction for a relatively small amount of rent. A study of evictions in Washington, D.C. for example, found that 12 percent of renters who received a summons to appear in landlord-tenant court owed less than \$600.⁴⁵ Some households may not have the budget to cover such expenses, especially considering that about 37% of adults reported that they could not cover a hypothetical \$400 emergency expense exclusively using cash or its equivalent.⁴⁶

An opportunity to cure can be cost-effective for landlords. By giving tenants the chance to make their late rental payment, the right to cure helps landlords avoid the costs associated with

⁴³ Pay to Stay Technical Guide: Statewide Edition (Ohio), 12
(<https://static1.squarespace.com/static/55dcbb61e4b04de53492b533/t/62ba505d1012732b0e581b4a/1656377448026/COHHIO+-+P2S+Tech+Guide+2.0+%281%29.pdf>)

⁴⁴ *Id.*

⁴⁵ Brian J. McCabe & Eva Rosen, *Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability* 23 (2020)
(<https://georgetown.app.box.com/s/8cq4p8ap4nq5xm75b5mct0nz5002z3ap>).

⁴⁶ Federal Reserve, *Economic Well-Being of U.S. Households in 2022: Fact Sheet* (2022),
(<https://www.federalreserve.gov/newsevents/pressreleases/files/other20230522a1.pdf>).

an eviction proceeding, as well as the costs of turning the unit over for a new tenant.⁴⁷ It can also facilitate improved communication between the landlord and the tenant.

- A *North Carolina* advocate says that “notice and an opportunity to cure would be hugely helpful. I used to practice in a jurisdiction that provided a more robust right to notice and an opportunity to cure, and it was a much better dynamic for communication.”
- In *Virginia*, one advocate reports that when it comes to “allegations of remediable violations, the opportunity to cure sometimes allows the tenant the time to go to the rental office and clarify that the problem doesn’t exist or has been fixed (or for an attorney to help with that).”
- A *Minnesota* advocate asserts that if “a tenant has notice and an opportunity to cure before an eviction is filed, it will often result in the tenant curing the problem and the landlord will not have to file an eviction. This is good for both the landlord and the tenant.”

Beyond nonpayment of rent cases, an opportunity to cure can enable tenants to remedy minor lease violations and prevent displacement.

- In *Illinois*, “notices are required for most evictions, including breach/violation of lease other than nonpayment, but no opportunity to cure is required except for nonpayment. Providing an opportunity to cure would help many tenants facing eviction for minor or curable breaches.”
- In *Maryland*, “while tenants get notice of other non-payment-related alleged breaches of the lease, there is no right to cure. A right to cure would help more tenants identify and address any problems that they may not fully understand and thereby not face an eviction.”
- A *Colorado* advocate’s “biggest concern with not allowing tenants to cure criminal activity breaches is that, in my experience, some landlords use these notices when the breach is not a criminal activity, and that courts have allowed landlords to proceed with these evictions even where the complained-of conduct is lawful and/or benign.”

To effectively protect tenants, the cure period must provide sufficient time for tenants to comply. For nonpayment cases, many states have cure periods of 3-7 days, although a few states have increased the duration with some states now requiring 10+ days. In public housing and project-based rental assistance properties, HUD provides a notice period of 30 days “to ensure tenants facing eviction for non-payment of rent are provided an adequate opportunity to access emergency funding.”⁴⁸

⁴⁷ Pay to Stay Technical Guide: Statewide Edition (Ohio), 24
<https://static1.squarespace.com/static/55dcbb61e4b04de53492b533/t/62ba505d1012732b0e581b4a/1656377448026/COHHIO+-+P2S+Tech+Guide+2.0+%281%29.pdf>

⁴⁸ Extension of Time and Required Disclosures for Notification of Nonpayment of Rent, 86 Fed. Reg. 55693, 55697 (Oct. 2021).

- In *Arkansas*, “only a 3 day notice (with opportunity to cure) is required to be given in non-payment of rent cases for unlawful detainer evictions.” One advocate observes that “this is simply unrealistic for most Americans who receive paychecks on a monthly or bi-monthly basis. The result is that a tenant may be able to cure if given a more reasonable amount of time but the current requirements do not permit sufficient notice for this.”
- In *Idaho*, “the notice and cure period is 3 days in our jurisdiction. This period includes holidays and weekends, but ensures that the last day is always a business day. This often leaves tenants without a real opportunity to cure a lease violation or to seek help from an attorney.”
- In *Ohio*, “tenants receive a three-day notice. However, the reason for the notice need not be specified, unless it is a HUD covered property. Three-day notices also tend to make tenants believe they must leave during those three days. Lastly, the three-day notices only allow a tenant three days to remedy the issue, which may not even be clearly outlined for them.”
- A *California* advocate described how “landlords often fail to serve notices correctly, but in general a right to cure is required. Our nonpayment cure deadline is only 3 days so it is very difficult to meet, and we have no right of redemption.”

2. A Texas Case Study of Right to Cure

Recognizing how an opportunity to cure can help improve security of tenure, especially at a time when rents and eviction filings were soaring, the city of Austin, Texas passed a local ordinance creating a tenant’s right to cure.⁴⁹ This ordinance was intended to help the city’s renters, which make up over 50% of its population, to avoid eviction filings, displacement, and homelessness. Dallas also created a temporary right to cure, and the city council was expected to vote on a permanent proposed ordinance.⁵⁰

Under Austin’s ordinance, before a landlord can give a tenant a notice to vacate, a landlord must file a written notice of proposed eviction. This written notice must describe the lease violations that may result in the tenant’s eviction, a description of the tenant’s right to cure those violations, and the time period that the cure must take place. At minimum, the tenant has 7 days to cure the lease violation(s). Some types of lease violations were excluded, mostly related to tenant behavior.

To stop these efforts by local governments to address the eviction crisis that their renter-constituents are facing, the Texas legislature passed legislation preempting these and other local ordinances regulating evictions in June 2023. The legislation goes into effect on September 1, 2023.

⁴⁹ Austin City Ord. No: 20221027-023 (<https://services.austintexas.gov/edims/document.cfm?id=398004>)

⁵⁰ Dallas City Prop. Ord. (Dec. 9 2022) (<https://dallascityhall.com/government/citymanager/Documents/FY%2022-23%20Memos/17.%20Friday%20Memo%20-%20Draft%20Permanent%20Eviction%20Ordinance%20120922.pdf>)

3. Recommendations

Tenants of properties with federally-backed mortgages should have the right to cure for nonpayment of rent and other lease violations.

- The cure period should be a reasonable length, such as the length of the average pay period.
- Any limit on how often a tenant can invoke their right to cure should properly balance both the landlord's interest and the tenant's interest.
- Notice should be in writing and include the following information: the lease violations that may result in the tenant's eviction, a description of the tenant's right to cure those violations, and the time period that the cure must take place. For nonpayment cases, the notice should also include the exact balance due. This information should be sufficiently detailed so that the tenant is able to respond accordingly.

E. **Notice of Eviction Actions**

The CARES Act imposes a 30-day eviction notice requirement onto landlords of covered properties.⁵¹ Compliance is inconsistent. According to NHLP's survey, 72% of advocates who have encountered enforcement barriers report that landlords refused to comply with the law. To address this, more robust implementation is needed to ensure that tenants receive the benefit of this protection. An *Ohio* advocate reported "success enforcing the 30 day notice requirement in most courts, but not without significant advocacy," and suggested that federal agencies and the GSEs "should put out something to the world that confirms the continued applicability of the 30 day notice requirement -- especially for federally backed mortgages."

In 2022, FHFA required the GSEs to incorporate the CARES Act 30-day eviction notice requirement into their loan agreements. Even in states where local courts have not consistently enforced this federal requirement, the actions of the FHFA and the GSEs have encouraged a number of borrowers to comply of their own accord. This action is especially important in states like Georgia and Maryland, where an eviction notice is not required for nonpayment of rent cases.⁵²

FHFA should provide guidance and forms to borrowers on their responsibility to adhere to the CARES Act 30 day notice requirement. An attorney in *California* describes needing to educate their local housing courts about the CARES Act notice requirement, saying, "it was new to the plaintiff's bar so I received some push back but all the landlord's attorneys understand the law now." Borrower education is not only an important step for landlord compliance, it can also

⁵¹ 15 U.S.C. § 9058(b)

⁵² Ga. Code Ann. 44-7.50 (In Georgia, a written termination notice is not required to evict a tenant who remains after the lease ends or who fails to pay rent); Md. Code Ann., Real Prop. § 8-401 ; [SI Appendix, Table S6](#)); see also Camden County, New Jersey (need citation; Gromis, A., Fellows, I., Hendrickson, J. R., Edmonds, L., Leung, L., Porton, A., & Desmond, M. (2022). Estimating eviction prevalence across the United States. *Proceedings of the National Academy of Sciences*, 119(21), <https://www.pnas.org/doi/10.1073/pnas.2116169119>).

improve outcomes for tenants whose cases end up in court. In *New Mexico*, some advocates have found that “producing guidance letters from administering agencies like HUD/USDA [in court proceedings] to be helpful in enforcing this right.” Guidance on key information that the notice should include or how landlords should deliver the notice to tenants can help ensure that tenants receive the notice they are entitled to. HJN members in *Illinois* and *California* reported, for example, that notices have been taped to doors without actually making it to the tenants. A model notice could help prevent defective notices, as reported by a *Virginia* advocate confused by a notice of 5 days to pay or 30 days to leave. It would also help alleviate the burden on tenants to prove that their unit is on a covered property.

FHFA should identify additional ways to help tenants learn whether their home is covered under the CARES Act. Of advocates who have encountered barriers to CARES Act notice enforcement, 66% say tenants are unable to determine whether their property is covered, and 36% say tenants are unable to enforce the notice requirement in federally-backed mortgage loan documents. In states where landlords have the burden of proving their CARES Act covered status, such as Vermont and California, there is increased compliance with the law. However, 60% of advocates still report facing courts that place the burden of proving CARES Act coverage on the tenant. FHFA action on this issue would go a long way for tenants in those courts.

1. Benefits

Pre-filing eviction notice requirements result in lower serial eviction filing rates against tenants. Despite the harmful effects of evictions and eviction filings on tenants, some landlords continue to use the eviction legal system as a means of collecting debt. This tactic is especially prevalent in multifamily apartments owned by larger landlords, as in *Pennsylvania*, where one advocate reported that “larger landlords are more likely to file in court without any notice.” Filing an eviction, however, should be a last resort, not a first resort. Pre-filing eviction notice periods help give tenants the time to address the lease violation, such as obtaining money to make the late rent payment, and such requirements have been shown to reduce the rates at which housing providers serially file evictions to collect unpaid rent.⁵³

Eviction notices with a reasonable time period for eviction can give individuals time to access homelessness prevention services. In a California statewide study of people experiencing homelessness, a significant number of participants entered homelessness because they fell behind on their rent.⁵⁴ Under California law, the eviction notice period is 3 days, a period so abbreviated that it becomes nearly impossible for homelessness services providers to identify the household as being at risk of losing their housing, much less take effective intervention measures.⁵⁵ A more reasonable notice period would allow people to access the services they need to avoid homelessness.

⁵³ The Network for Public Health Law, Fact Sheet: Deterring Serial Eviction Filing (Apr. 2021), <https://www.networkforphl.org/wp-content/uploads/2021/05/Fact-Sheet-Deterring-Serial-Eviction-Filing.pdf>

⁵⁴ Kushel *supra* note 22, at 34.

⁵⁵ *Id.*

2. Recommendations

FHFA should develop a model CARES Act 30-day eviction notice that includes: (i) a statement that the property has a federally-backed mortgage and is therefore subject to the CARES Act and (ii) a summary of the tenant's rights. Additionally, FHFA should indicate preferred methods of delivery to tenants (e.g., certified mail and not merely taped on a door).

FHFA should prohibit waivers of the 30-day notice requirement in borrowers' leases.

F. Upfront or Ongoing Fees

1. Charges Other Than Rent

FHFA should limit the amount in non-rent charges that borrowers can charge tenants, especially low-income tenants whose risk of eviction and precarity increases when they are saddled with unnecessary fees. FHFA should also ensure that non-rent charges do not place tenants at higher risk of eviction by taking away funds that a tenant would otherwise use to make their rental payment and meet their rent obligations. Marcos Segura of the National Housing Law Project explains how this can happen:

Most nonpayment situations start with a tenant's failure to pay a nominal fee, such as a parking fee or a laundry room fee. When this happens, a portion of the rent paid for the following month is applied to the unpaid fee, which means that the tenant is actually short on the rent for that month. The month after that, a portion of the rent that's paid is applied to the past due rent plus a late fee is assessed and now the tenant is short on the rent again and this time by an even greater amount. And this happens month after month until the tenant owes hundreds, sometimes thousands of dollars in back rent that the person cannot realistically pay.⁵⁶

This issue of "cascading late fees" is a widespread problem. 74% of advocates NHLP surveyed indicate they've seen provisions allowing rent payments to be applied to other fees and charges first and before rent, and nearly 80% have encountered provisions making non-rent charges, fees, and penalties collectable and due as "additional rent." Some state laws address this issue (Massachusetts),⁵⁷ but others do not:

- An attorney in *Georgia* notes that provisions allowing landlords to assign any payments to the earliest amount owed, rather than to the current month's rent, "has been a serious problem for my clients."
- In *Kansas*, the law defines "rent" in a way that includes non-rent charges, fees, and penalties collectable and due as "additional rent," thus enabling eviction for nonpayment of mere late fees.

⁵⁶ Justice in Aging, *Tenants' Rights in the California Low-Income Housing Tax Credit Program* (Apr. 2023), (<https://justiceinaging.org/wp-content/uploads/2023/04/Transcript-LIHTC-Webinar-4.19.23.pdf>).

⁵⁷ See, e.g., *Deep v. Tremblay*, 965 N.E.2d 227 (Mass. Ct. App. 2012) (policy of applying rent payments first to outstanding late fees violates Massachusetts law).

- In *Michigan*, an advocate reports: “nearly every single unsubsidized landlord in this area includes clauses in their leases allowing rents paid to be allocated to non-rental fees first, to add them to the rental ledger and assess late fees because of them, and to then seek eviction on that basis.”

This problem is compounded in states where landlords can charge extremely high late fees. *Kansas* has no statute or case law on what amount of late fees is unconscionable. A *Kansas* advocate notes that “one judge (now retired) had an unwritten rule that he'd allow up to 25% of the rent as late fees.” Advocates in *Ohio* report “outrageous late fees,” for example, \$50 on the 5th of the month and \$10 per day after that, or \$20 per day every day after the fifth day. One advocate notes that this “compounds pretty rapidly and seeps into the next month, which creates a perpetual cycle of late payments and astronomical fees.” These fees bear little to no relation to the landlord’s actual losses for late payment of rent and amount essentially to penalty clauses.

a. Recommendations

FHFA should require that borrowers use leases that include the following:

- A provision clarifying that rent includes all services, maintenance, and at least a reasonable quantity of utilities. Consequently, landlords should not charge fees for preparing a unit for occupancy since the landlord is responsible for physically maintaining the unit in a manner suitable for occupancy.
- An itemized list of all non-rent fees with a clear definition explaining the costs that each fee is for;
- A clear distinction between rent charges, which can factor into an eviction for nonpayment of rent, and non-rent charges, which cannot;
- A clear distinction between mandatory fees, which should be limited to cover the costs of necessary services, and non-mandatory fees, which would cover non-essential services and which a tenant could opt out of.
- If a tenant pays for an essential service directly to the service provider, the landlord should deduct this amount from the monthly rent due.

For LIHTC properties, FHFA should take steps to ensure that landlords are not charging separate fees for tenant facilities if the costs of the facilities are included in the eligible basis (e.g., laundry room, storage room, parking, garage), as required by regulations.⁵⁸

FHFA should require borrowers to first apply rental payments to rent as a way to prevent evictions for nonpayment of rent. Only when the tenant is caught up on their rent obligation can a borrower apply the rental payment to non-rent charges.

⁵⁸ See 26 CFR § 1.42-11.

2. Application fees

Application fees significantly impede access to housing for low-income tenants.

Applicants for rental housing often must pay anywhere from \$30 to over \$50 per application to have their application processed by a landlord. Some prospective tenants have to pay this fee multiple times throughout the rental application process, especially if they have a criminal or eviction history.⁵⁹ While landlords often justify these fees as tied to the cost of screening an applicant, “consumer rights abuses are common, such as imposing fees above the landlord’s actual costs or extracting fees from applicants who are never actually considered for the housing.”⁶⁰

Rental application fees represent a housing cost predicated on the mere chance of renting a home. Applicants who are denied from several properties must continue to pay these fees multiple times or forfeit their chance at finding housing. Black and Latino applicants are nearly twice as likely (38% vs. 21%) as white and Asian applicants to pay five or more screening fees during a housing search.⁶¹ This increased up-front cost inhibits efforts to promote housing accessibility and combat homelessness, as a HJN tenant organizer from *Southern California* commented: “If the tenants know they have something in their record, then they don’t even try to apply for housing.” This self-selection also extends to tenants who might want to move out of a bad situation but choose not to for fear of embarking on a fruitless and expensive chase for elusive replacement housing. Given that these records tend to be disproportionately more common among BIPOC households, this dynamic likely contributes to racial residential segregation. For applicants protected under the Fair Housing Act, application fees are especially harmful because their steering effect can keep them from accessing neighborhoods of opportunity.

Some private entities have attempted to address this issue through the provision of portable tenant screening reports which can be reused across multiple rental properties for a one-time fee. The problem is that many landlords refuse to accept these reports, which results in applicants paying multiple fees for the creation of serial reports containing largely duplicative information. Rental application fees should be prohibited in multifamily GSE-backed properties, in large part because they represent a housing barrier that disproportionately harms applicants of color by amplifying the exclusionary effects of admission barriers such as diminished credit, eviction records, and criminal history.

At a minimum, landlords should be obligated to provide applicants with a written copy of their rental admission policies prior to prospective tenants paying any application costs, and fees should be returned to applicants who are not considered. These disclosures and refund

⁵⁹ See Eric Dunn, *The Case Against Rental Application Fees*, GEORGETOWN JOURNAL ON POVERTY LAW AND POLICY at 21. (<https://www.law.georgetown.edu/poverty-journal/wp-content/uploads/sites/25/2023/01/The-Case-Against-Rental-Application-Fees.pdf>).

⁶⁰ *Id.*

⁶¹ Manny Garcia, “Renters of Color Pay Higher Security Deposits, More Application Fees,” ZILLOW (Apr. 6, 2022), (<https://www.zillow.com/research/renters-of-color-higher-fees-30922/>) (showing that Black and Latino applicants are nearly twice as likely (38% vs. 21%) as white and Asian applicants to pay five or more screening fees during a housing search).

requirements would enable an applicant to meaningfully evaluate their individual prospects for admission and if they are denied housing, to understand the specific reasons for denial. Furthermore, if a prospective tenant seeks to use a portable tenant screening report, the landlord should be required to accept this report, or if they choose not to, they should be prohibited from charging a separate application fee. Practically, shifting the cost of screening to landlords will incentivize the adoption of lower-cost solutions to tenant screening such as portable reports that will reduce the up-front barrier to housing access that is posed by repetitive, exorbitant application fees.

a. Recommendations

To stop application fees from being a barrier to access to housing, FHFA should consider taking one or a combination of the following actions:

- Prohibit borrowers from charging application fees altogether;
- Prohibit borrowers from charging application fees to applicants they do not accept; or
- Prohibit borrowers from charging application fees where portable screening reports are available.

FHFA should also require borrowers to provide applicants with a written copy of their rental admission policies before they pay any application fees.

3. Security deposits

FHFA should take action to ensure that landlords of properties with federally-backed mortgages charge no more than 1 month's rent and that leases specify the circumstances under which landlords can withhold security deposits and the process for such withholding. Such limits would help tenants in Georgia, Indiana, and Texas (among others) that permit landlords to set whatever amount they would like for security deposits.⁶²

Relatedly, in recent years, an increasing number of financial products have emerged that are designed to take the place of security deposits for rental housing. For an in-depth discussion of these products, the costs and benefits to tenants, and policy recommendations, please see National Housing Law Project, *Regarding Security Deposit Replacement Products* (Jan. 5, 2022).⁶³

4. Attorneys fees and costs

FHFA should take action to ensure that tenants are not responsible for the landlord's attorney's fees and costs, especially in nonpayment of rent cases and especially where the court did not enter an eviction judgment against the tenants. Advocates in nine states (*Kentucky, Idaho,*

⁶² Ga. Code Ann. 44-7-30- et. seq.; Ind. Code Ann. 32-31-1.1 et. seq.; Tex. Prop. Code 92.101 et. seq.

⁶³

<https://www.nhlp.org/wp-content/uploads/2023.01.05-Regarding-Security-Deposit-Replacement-Products.pdf>

Louisiana, Michigan, Wisconsin, Kansas, Ohio, Nebraska, Colorado) reported lease provisions or landlords simply requiring tenants to pay attorneys fees. In many cases, these provisions applied regardless of the outcome of the case, and in one state (*Idaho*) the tenant was required to pay attorneys fees even if the eviction case was not filed. Even in states where predatory lease provisions are illegal, such as *New York* and *New Hampshire*, advocates point out that many tenants do not know which lease provisions are unenforceable and so fail to assert their rights at the critical moment.⁶⁴

G. Tenant screening

Landlords frequently consider a prospective tenant’s criminal, eviction, and credit histories when evaluating rental housing applications. The use of such screening tools, however, is fundamentally prognostic—utilizing information about past exposure to the criminal legal system, eviction proceedings, or credit defaults to predict the likelihood that a tenancy will be successful. None are reliable predictors of future housing outcomes, rendering their use in tenant screening ineffective in light of the landlord’s goal of minimizing risk during the application process. Often the practical effect of overlapping eviction, rent debt, and criminal history screening is to trap Black renter households in low-opportunity areas of concentrated poverty, where they may have to resort to predatory housing arrangements.

1. Criminal Records Screening

A person’s prior arrest or conviction history does not reliably predict whether they will be a successful tenant and therefore should not result in an automatic denial. A study investigating possible links between criminal history and housing outcomes found that “[o]f 15 categories of criminal offenses, 11 show no evidence of a significant link to negative housing outcomes,” that having a conviction for an offense in the remaining four categories “increases the probability of a negative housing outcome by 3 to 9 percentage points at most;” and that “[c]riminal offenses that occurred more than 5 years prior to move-in have no significant effect on housing outcomes.”⁶⁵ Hardly any of the negative “housing outcomes” in the study involved new criminal activity. Despite these findings, landlords seldom limit criminal history screening in these ways. Rather, landlords often consider arrest records that do not result in a conviction or institute blanket bans on individuals with a criminal record. There are well-documented and pervasive disparate impacts on racial minorities associated with such broad-based approaches to criminal history.⁶⁶ These impacts prompted HUD to issue fair housing guidance asserting that using

⁶⁴ For an in-depth catalog and overview of junk fees in rental housing, please see National Consumer Law Center & NHLP, Comment on Unfair or Deceptive Fees ANPR R207011 (Feb. 8, 2023).

⁶⁵ Cael Warren, *Success in Housing: How Much Does Criminal Background Matter?*, WILDER RESEARCH (Jan. 2019), (https://www.wilder.org/sites/default/files/imports/AEON_HousingSuccess_CriminalBackground_Report_1-19.pdf). (defining a negative housing outcome as one in which the “resident does not maintain housing stability” and only about 8% of these negative housing outcomes resulted from lease violations for behavior; thus, even among the renters who had negative housing outcomes, very few committed criminal acts associated with the rental premises).

⁶⁶ HUD, *Implementation of the Office of General Counsel’s Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*

criminal history in screening is unjustified unless the landlord “is able to prove through reliable evidence that its policy or practice of making housing decisions based on criminal history actually assists in protecting resident safety and/or property.”⁶⁷

a. Recommendations

Criminal records screening should be narrowly tailored to a specific and demonstrable purpose of predicting the likelihood a tenancy will succeed or ensuring safety. Furthermore, landlords should only be able to consider an individual’s conviction records and not their arrest records, all categorical bans on applicants with a criminal history should be prohibited, and criminal history beyond 3 years should not be considered. If a landlord does choose to deny an applicant based on their criminal history, the applicant should be entitled to an individualized assessment wherein the landlord must affirmatively demonstrate the impact of a specific record on the viability of the tenancy.

2. Eviction Records Screening

Eviction records screening reproduces the harmful effects of a past eviction long into the future without the eviction’s context or changed present circumstances being considered. In describing how much of a barrier eviction records screening creates, a *Chicago* advocate explains: “A lot of survivors [of gender-based violence] can get DV bonus rapid rehousing—but then they can’t even use their subsidies because they might have an eviction record or something else in their background. One survivor couldn’t leave a shelter because she had an eviction record from seven years ago.”

Admissions policies that exclude applicants on the basis of prior evictions are based on two highly suspect assumptions: (i) that the applicant performed poorly in that past tenancy, and (ii) that poor performance in a past tenancy predicts poor performance in a future tenancy. A landlord can evict a tenant who performs perfectly well in a tenancy for several reasons, such as a mistake by the landlord (e.g., failing to properly calculate or post payments to the tenant’s account), the tenant’s withholding of rent due to poor conditions, or retaliation or other bad faith conduct by the landlord. Evictions for arbitrary reasons are especially prevalent in jurisdictions without good cause protection. (For a discussion of good cause and how some eviction filings are for no cause whatsoever, see *supra* Section II.B.1.)

(June. 10, 2022), (URL) (“Blacks represent roughly 13 percent of the total U.S. population but account for roughly 27 percent of all arrests. In 2019, the incarceration rate of Black males was 5.7 times that of White non-Hispanic males, while the incarceration rate of Black females was 1.7 times the rate of White non-Hispanic females. A recent study also reflects that Hispanics are incarcerated in state prisons at a rate that is 1.3 times the incarceration rate of White non-Hispanics. In addition, updated data shows that individuals with disabilities are also disproportionately impacted by the criminal justice system. Research shows that these disparities cannot be simply attributed to certain groups committing more crimes and are better explained by biases in the criminal justice system.”).

⁶⁷ HUD, 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).

Even when a prior eviction is based on a genuine lease violation, circumstances may have changed such that the prior eviction is no longer relevant. Examples include: (i) the person whose conduct violated the lease is no longer part of the household; (ii) the eviction was for nonpayment of rent or other financial reasons, and the tenant now has new financial resources that substantially improve her ability to pay; or (iii) the prior eviction was long in the past, and the applicant has since gained knowledge or skills (the lack of which caused the prior eviction).

Even in jurisdictions where eviction records are sealed in certain circumstances, landlords will request that an applicant disclose any involvement in eviction proceedings. Many applicants are not aware that their records may be sealed and so they are faced with the difficult decision of omitting information from their application or disclosing otherwise sealed records.

Landlords often disqualify applicants who have had any involvement in eviction proceedings, regardless of whether an eviction judgment was entered. An *Oklahoma* advocate notes: “Private landlords won’t rent to tenants who have had evictions filed against them, even if there was no final judgment for eviction.” What results is a cycle of housing insecurity that is difficult to disrupt.

This is especially problematic because most tenant rights and protections can only be properly vindicated through eviction proceedings. To enforce these rights a tenant must have the ability to appear in an eviction case and move for dismissal based on the anti-retaliation provision, rent withholding statute, eviction moratorium, or other protection. If making such an appearance marks the tenant with an eviction record that adversely affects their future access to housing, that tenant will be incentivized simply to move out of the dwelling unit before any case is filed. This dynamic makes it difficult, if not practically impossible, for tenants to assert their rights and be confident that they will be able to secure housing in the future.⁶⁸

The categorical use of eviction records in rental admissions decisions also raises concerns about residential racial segregation because of its disparate impact on individuals of color. Black renters are sued for eviction at grossly disproportionate rates. Black women, especially those with children, are especially harmed by evictions.⁶⁹ Thus, if eviction records are dispositive in an

⁶⁸ Numerous housing advocates report having had clients with meritorious legal defenses choose to move out of rental properties rather than appear and assert those defenses due to concern over the impact of an eviction case filing on their future access to housing. An advocate from Atlanta described seeing tenants make such choices “almost every day,” while a California tenant organizer described seeing this phenomenon “daily in Los Angeles.” HJN members from Boston, Ohio, and New Mexico similarly reported seeing tenants routinely choose to move out rather than assert claims or defenses so as to avoid acquiring eviction records. A Chicago advocate described seeing the fear of acquiring eviction records deter immigrants with limited English proficiency from enforcing that state’s immigrant tenant protection law. Another advocate, a legal aid attorney in Southern California, stated “What I also hear pretty regularly from our organizing partners is that those tenants may not even be reaching us as clients because they self-evict the second they get a notice or something like that, fearing even the existence of that case.” Numerous HJN members echoed the sentiment that the individuals with whom they personally interact are just the small tip of a large iceberg—with many more tenants quietly moving out to avoid eviction records without ever speaking to an attorney or other housing advocate.

⁶⁹ See, e.g., Peter Hepburn, Renee Louis, and Matthew Desmond, *Racial and Gender Disparities among Evicted Americans*, EVICTION LAB (Dec. 16, 2020) (“property owners disproportionately threaten Black and Latinx renters—particularly women—with eviction”), <https://evictionlab.org/demographics-of-eviction/>; see Timothy A. Thomas, *The State of Evictions: Results from the University of Washington Evictions Project* (Feb. 17, 2019),

application decision, Black renter households face greater restrictions in their rental housing opportunities.

a. Recommendations:

Multifamily landlords utilizing a GSE-backed mortgage should only be permitted to consider eviction *judgments* from the preceding two years and should not consider the mere fact that a tenant had an eviction *filed* against them.

In assessing eviction judgments, they should conduct an individualized assessment to determine whether the circumstances of the judgment or the change in circumstances since the judgment render the eviction record irrelevant to the current application process. This is possible because in practice, landlords who screen for eviction history almost always screen for income and financial resources as well.

3. Credit Screening

Many landlords run credit checks on applicants for rental properties.⁷⁰ A credit score of 620 is often the starting point that most landlords require for a tenant to qualify for an apartment.⁷¹ The use of credit scores in the rental application process has an especially negative impact on tenants applying with Housing Choice Vouchers or to subsidized housing properties, in large part because renters who qualify for such housing are low-income individuals who are more likely to have a history of financial instability. Furthermore, numerous studies have demonstrated that various forms of credit scoring and credit history-based decision-making disproportionately disadvantage people and communities of color.⁷² For example, the Urban Institute found that 50% of white households have a FICO credit score above 700 while only 20.6% of Black households reached the same threshold.⁷³ The use of credit scores in rental applications can have serious, long-term consequences for tenants, forcing them to turn to predatory landlords which can trap them in a spiral of debt and housing instability.⁷⁴ Furthermore, errors in an

<https://evictions.study/washington/index.html> (“Black adults are evicted 5.5 times more than Whites in King

County [and] 6.8 times more in Pierce [County]”).

⁷⁰ TransUnion SmartMove Landlord Survey: Optimism in Renting Your Property (claiming that 90% of landlords run credit checks)

(<https://www.mysmartmove.com/SmartMove/blog/transunion-landlord-survey-summary.page>).

⁷¹ Brian J. Roberts, *How to Get an Apartment with Bad Credit*, EXPERIAN (Oct. 22, 2019), www.experian.com/blogs/ask-experian/how-to-get-apartment-with-bad-credit/#s1.

⁷² The National Consumer Law Center collects several such studies in its issue brief, “Past Imperfect: How

Credit Scores and Other Analytics ‘Bake In’ and Perpetuate Past Discrimination” (May 2016), (https://www.nclc.org/wp-content/uploads/2022/09/Past_Imperfect.pdf).

⁷³ Jung Hyun Choi, et al., Urban Inst., *Explaining the Black-White Homeownership Gap: A Closer Look at Disparities across Local Markets* 8 (Nov. 2019), www.urban.org/research/publication/explaining-blackwhite-homeownership-gap-closer-look-disparities-across-local-markets.

⁷⁴ See Mya Frazier, *When No Landlord Will Rent to You, Where Do You Go?*, N.Y. Times (May 23, 2021) (<https://www.nytimes.com/2021/05/20/magazine/extended-stay-hotels.html?referringSource=articleShare>)

individual's credit information can be very difficult to correct. The FTC has found that 1 in 5 consumers have verified errors in their credit reports, and 1 in 20 consumers have errors so serious that they would be denied credit or need to pay more for it.⁷⁵ These errors can be very difficult to fix and judicial remedies for individuals seeking to remove inaccurate information have become increasingly difficult to access.⁷⁶ Thus, consumers with egregious errors on their reports could be denied housing with limited opportunities for redress.⁷⁷

Much like criminal history and eviction records, the predictive value of credit reports in assessing the likelihood of a successful tenancy is dubious. This is because credit reports describe an individual's past ability to meet *credit obligations* and do not provide insight into a prospective tenant's current or future ability to pay rent. As the CFPB noted, "rent eats first", as consumers point to "mortgage or rent as their top priority bill" which "calls into question the strength of the relationship between an individual's credit profile and their likelihood of paying rent."⁷⁸ Negative credit history is indicative of an applicant's inability to meet broader credit obligations at a particular moment in time and does not reflect, for example, that tenants prioritize housing when fulfilling financial obligations or that a tenant may now have access to a Housing Choice Voucher that greatly improves their ability to meet rental payment obligations.

Credit history is a poor predictor of financial ability to pay rent, and its use in rental application processes amplifies historical inequities that have disproportionately segregated and harmed individuals of color. Given this disparate impact, using standards such as credit scores in the rental application process perpetuates historic and systemic discrimination by reinforcing residential segregation based on race.

a. Recommendation

Using credit history to determine eligibility for rental housing should be prohibited in GSE-backed multifamily properties.

4. Notice of Denial

Landlords should provide applicants with a plain-language, written notice of rejection clearly stating the reason(s) for denial. These reasons should be described with enough detail that the applicant may wage a meaningful challenge to the denial.

⁷⁵ Federal Trade Comm'n Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (Dec. 2012).

⁷⁶ See CFPB, Annual report of credit and consumer reporting complaints: An analysis of complaint response by Equifax, Experian, and TransUnion, January 2022, (https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2022-01.pdf); NCLC, Fair Credit Reporting §§ 4.5.3.4.6, 6.10.2.5, 11.3, 16.10 (10th ed. 2022), updated at www.nclc.org/library.

⁷⁷ See, e.g., *Suluki v. Credit One Bank*, 2023 WL 2712441 (S.D.N.Y. Mar. 30, 2023) (identity theft victim denied rental housing; granting summary judgment to furnisher credit card lender on subsequent FCRA claim because a reasonable investigation would not have discovered the inaccuracy because it could not be determined whether the thief - victim's mother – had the victim's permission to open account).

⁷⁸ Consumer Financial Protection Bureau, Tenant Background Checks Market Report, at 39.

Additionally, landlords should provide access to their detailed rental admissions policy. The policy should include precise information regarding qualifying admissions criteria, including the screening criteria for criminal, eviction, and credit histories. These disclosures provide denied rental applicants proper recourse to amend their rental application or screening report as necessary to achieve an approval recommendation.

Landlords do not typically provide the reason(s) for denial, leaving many prospective tenants in the dark. Recent survey data on tenant screening policies from the National Consumer Law Center (NCLC) found that a very small number of the over 150 housing advocates surveyed report that landlords always disclose the reasons for a denial to their clients.⁷⁹ However, written denial notices provide numerous benefits to rental applicants.

a. Benefits

Written denial notices document the specific reasons for a denial so that prospective tenants can determine whether the denial was based on inaccurate information that can be corrected. NCLC tenant screening survey data finds that 76% of the housing advocates report that an eviction record with a missing or incorrect disposition/outcome created a significant barrier to rental housing for their clients. 62% of respondents also note that mischaracterized eviction records in screening reports presented additional barriers to entry in the rental market.⁸⁰ Unfortunately, incorrect tenant screening reports are remarkably common: of the 26,700 consumer complaints that CFPB received from January 2019 to September 2022, over 17,200 were related to incorrect information appearing on a prospective renter's tenant report.

Furthermore, written denial notices are critical for reducing the likelihood of housing discrimination. As advocates from Louisiana, California, and Washington observed, landlords using oral notices can easily produce new or different reasons for a denial when their initial reasons are deemed pretextual or discriminatory.⁸¹ A written disclosure requirement allows applicants to hold a landlord to the original reason given, thus making it more challenging to conceal discrimination. For landlords, written notices establish a transparent paper trail that can act as an important protective measure for housing providers as well.

Written denial notices are also essential for enforcing the rights of prospective tenants. Legal service attorneys representing applicants often find it challenging to identify the factor(s) contributing to their client's denial. Without a written denial, it can take several months for advocates to distinguish whether an applicant's denial was informed by a negative credit assessment, the landlord's admission policy, both or neither. Time is not on the applicant's side. The longer it takes to determine the reasons for denial, the higher the chances that the unit will

⁷⁹ National Consumer Law Center, Request for Information on Tenant Screening, P235400, 68 (May 20, 2023), <https://www.nclc.org/wp-content/uploads/2023/05/NCLC-Comments-to-FTC-CFPB-screening-RFI-no-appendices-Chi-Chi-Wu.pdf>.

⁸⁰ *Id.* at 2.

⁸¹ National Housing Law Project, *Re: FTC-2023-0024 Tenant Screening Request for Information*, 53 (May 30, 2023) (<https://www.nhlp.org/wp-content/uploads/CFPB-FTC-tenant-screening-comments.pdf>)

be leased to another applicant. Numerous HJN members reported difficulty in determining the reasons why particular clients had been denied housing based on third-party screening reports:

- A Louisiana advocate stated that figuring out the reason for a denial is “constantly” a challenge, adding: “it adds days, weeks, months to the process of getting the person housed to just get a clear answer on WHY the person was denied and whether we can get the denial reversed.”⁸²
- An Atlanta advocate added: “When companies like SafeRent provide a report, they use an opaque algorithm that makes it very hard for a tenant to challenge the conclusion/recommendation. One client (with a SafeRent report) I recently advised could not tell why she was denied or what she’d need to do to get approved.”⁸³

Some states and local jurisdictions have enacted legislation that separately requires disclosure of the reasons for the denial. Currently, written denial notices are required in Colorado, Washington State, Washington D.C., and the City of Philadelphia. Where not required by law, landlords usually do not disclose the reasons for denial to rejected applicants.

b. Implementation considerations

An issue of concern is ensuring that the notice reaches applicants that are experiencing housing instability. When notices are sent by mail, applicants may have difficulties receiving mail if they are between residences, staying in hotels or shelters, or homeless. Ideally, applicants who wish to receive the notices electronically should be given that option. Applicants who prefer to receive paper notices should either be given the notice in-person, where practical, or at a mailing address confirmed with the applicant before sending the notice.

Additionally, recipients of written denial notices may encounter language barriers if the letter is delivered without an accessible translation option. Currently, 79% of housing advocates note that landlords do not offer translation or interpretation assistance to applicants with limited English language proficiency.⁸⁴

c. Recommendations

FHFA should require borrowers to provide written denial notices that detail the landlord’s admissions policy and the information relied upon to make an admissions decision (e.g. third-party tenant screening reports). The notice may be delivered electronically, though the prospective applicant should be allowed to request a paper copy as well. The notice should be provided in a format accessible to applicants with limited English proficiency.

FHFA should provide a model denial notice form for borrowers to distribute to prospective tenants when necessary. The model form will standardize the information contained in the denial

⁸² *Id.*

⁸³ *Id.*

⁸⁴ National Consumer Law Center, Request for Information on Tenant Screening, P235400, 3 (May 20, 2023).

notice, and streamline the delivery process for landlords. The model form may be inspired by practices in jurisdictions with existing written denial notice requirements.

H. Source of Income Discrimination

Discriminating against prospective applicants based on their source of income (SOI) is a pervasive practice that reduces available housing options for those with non-traditional, lawful sources of income. Twenty-nine states currently have no statewide source of income protections for any applicants, and four have source of income laws that exclude voucher families.⁸⁵

The most common form of SOI discrimination is landlords refusing to consider applicants who intend to pay a portion of their rent with a Housing Choice Voucher (HCV). This is despite the fact that there is no evidence that voucher families pose a greater risk to property or health and safety than other tenants. In fact, voucher tenants are more likely to pay their rent because it is tied to a portion of their income. Even when the landlord does not explicitly refuse to consider voucher holders in the application process, they often make it mathematically impossible for a prospective applicant to meet the criteria by not considering the voucher as part of an applicant's income when evaluating ability to pay. The practical effect of this practice is that if a landlord requires income that is 3x the rent but refuses to consider a housing voucher that will subsidize 50% of an applicant's rent payment as income, then the applicant will be denied because they fail to meet the income threshold for accessing that rental unit.

Housing vouchers are a highly effective way to provide housing assistance to lower-income individuals and are a proven “tool for promoting economic and racial/ethnic integration” because they augment the purchasing power of tenants, enabling them to access a more expansive set of housing options.⁸⁶ Refusing to consider vouchers undermines the purpose of this program by constricting available rental housing for those that need it most. Much like the other rental admission barriers highlighted in this response, this discrimination also has a disproportionate impact on renters of color, women, and persons with disabilities. SOI discrimination denies access to certain communities for all voucher holders — perpetuating racial and economic segregation.⁸⁷

Landlords of GSE-backed properties should not be in the business of turning away applicants based on their participation in government subsidy programs. While it is true that protecting SOI alone will not immediately eliminate all the barriers facing low-income

⁸⁵ Poverty & Race Research Action Council, *Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program*, Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination (July 2023), (<http://www.prrac.org/pdf/AppendixB.pdf>).

⁸⁶ HUD, *The Impact of Source of Income Laws on Voucher Utilization and Locational Outcomes* at 33, (Feb. 2011) (https://www.huduser.gov/publications/pdf/freeman_impactlaws_assistedhousingrcr06.pdf)

⁸⁷ Antonia K. Fasanelli & Philip Tegeler, *Your Money's No Good Here: Combatting Source of Income Discrimination in Housing*, AMERICAN BAR ASSOCIATION, (Nov. 30, 2019) (https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economic-justice/your-money-s-no-good-here--combatting-source-of-income-discrimin/).

households, it will increase the likelihood that voucher holders will find housing by augmenting their income and expanding their available housing options.⁸⁸

HJN members surveyed reported numerous challenges with source of income discrimination, most often impacting voucher tenants. Of survey respondents whose jurisdictions do not protect against source of income discrimination, nearly all (96%) said meaningful protections would benefit the tenants they work with. Responses from advocates in 7 different states highlight these challenges:

- “It is exceedingly difficult for those with any type of voucher to find housing. They are openly turned away from housing.” (*Alaska*)
- “Tenants with Section 8 vouchers in my jurisdiction often have a very difficult time finding a place to use them, both initially and if they have to move, due to high housing costs and a low payment standard.” (*Idaho*)
- “Albuquerque passed a local ordinance last year. The rural areas really need this to be statewide. In San Miguel County, for example, there really aren't any landlords who will accept Section 8.” (*New Mexico*)
- “Many landlords refuse tenants because their rent is paid by subsidy programs or rental assistance programs. Further, because of the lack of low income housing in rural Oklahoma, and the small number of landlords with the housing, they all know one another and get the source of income information without requiring the information from the renter. Because the waiting list for a rental unit is very long, the discrimination can be done by skipping persons on the waiting list.” (*Oklahoma*)
- “This is the number one reason most of our clients cannot find housing. ‘NO METRO’⁸⁹ signs are everywhere.” (*Ohio*)
- “It is so so so difficult for my clients with Section 8 vouchers to find a place to rent. They inevitably end up renting somewhere in Coatesville (our poorest zipcode), and somewhere with habitability concerns. These tenants search for months under the ticking clock of their PHA ‘move voucher,’ aware that if they don't find anything by its expiration date, they can lose their subsidy altogether. Then they need to get back on a years-long waitlist, just because existing landlords think ‘Section 8’ is distasteful.” (*Pennsylvania*)
- “Right now, landlords may refuse money from any source once the payment is late. They often refuse money from third party agencies who offer to pay on behalf of the tenant, even when the payment would be in full. This is not prohibited. The need for protections against source of income discrimination are great.” (*Texas*)

⁸⁸ J. Rosie Tighe, Megan E. Hatch & Joseph Mead, *Source of Income Discrimination and Fair Housing Policy*, 32 JOURNAL OF PLANNING LITERATURE 3-15 at 8.

⁸⁹ Ohio Housing Authorities, which administer Section 8 Housing Choice Vouchers, are typically “[County] Metropolitan Housing Authority.”

a. **Recommendations**

FHFA should require the GSEs to prohibit borrowers from discriminating on the basis of source of income, especially Housing Choice Vouchers and other rental subsidies.

FHFA should also consider its role in requiring borrowers to follow the laws governing source of income discrimination in their jurisdictions, such as states and localities with such laws or LIHTC properties, which are subject to voucher nondiscrimination requirements.

I. **Habitability**

Issues around conditions and habitability of rental units should concern FHFA because of their impact on both tenants and the buildings they live in. FHFA regulation and guidance would be especially impactful because agency direction may motivate borrowers to change their practices in ways that other government agencies have not. FHFA's recent adoption of radon testing requirements for multifamily properties backed by the GSEs provides a potential blueprint from imposing similar requirements around conditions and habitability for similar properties. The following observations from NHLP's survey may help inform an FHFA effort to impose such requirements.

Delays on needed repairs – some indefinite – are common. Nearly 20 percent of respondents report that, on average, it takes 2-4 weeks for tenants to receive repairs. Advocates from *New York*, *New Mexico*, and *Nebraska* report tenants can wait years for repairs, while in *Virginia*, *Texas*, *Michigan*, *Louisiana*, *North Carolina*, and *Oklahoma*, advocates report that many tenants never receive repairs.

- “Habitability requirements in New York City are very strong, but it is extremely difficult to enforce them. Landlords know that if they keep promising to do repairs, even if they have no intention of actually doing so, judges will not impose any punishment. In reality, it takes 6 months to a year for any given tenant to get needed repairs. Heat violations are often not corrected before winter ends.” (*New York*)
- “MANY properties in Columbus have code enforcement violations on them. However, landlords are slow to correct these issues, or they attempt to shift the cost to the tenant.” (*Ohio*)
- “Arkansas has [no habitability protections], and conditions are terrible. Landlords know people are desperate and take advantage. Even health care workers suffer from moldy apartments. No recourse whatsoever. There are numerous stories of complexes not doing basic repairs, ensuring basic safety standards, etc.” (*Arkansas*)
- “Too many times people have gone without heat, ac, water or simply having locks on their doors because landlords don't want to fix them.” (*Illinois*)
- “There is no warranty of habitability in most of Kentucky and the housing conditions for many tenants are abysmal.” (*Kentucky*)

- “More than 80% of my cases involved landlords not following the law; I do not mean disputes over wear-and-tear versus damages. I mean, false charges on ledgers, multiple leaks not fixed for months, toilets starting to fall through bathroom floors, infestations.” (*Tennessee*)

Low-income tenants in unsubsidized housing, especially those without legal representation, suffer the greatest delays. More than a third of advocates whose states provide minimum habitability protections say the time it takes for tenants to receive repairs is so highly variable that it is difficult to estimate an average.

- “The timeline for repairs unfortunately varies from one property to another. For example, tenants in gentrifying neighborhoods or who are low-income often experience severe delays in receiving repairs (i.e., it takes weeks or months to receive repairs). To our understanding, tenants in wealthier, and often whiter, neighborhoods generally receive timely repairs (within a day or matter of days).” (*Washington, D.C.*)
- “Repairs in subsidized housing are usually done promptly. Repairs in low rent housing are another matter entirely. We have some landlords in our area who are quick to respond. But, most who rent at ‘low rent rates’ are fairly unresponsive, and tenants often don’t know they have habitability rights, and will live with the situation for a long time (sometimes years).” (*Michigan*)
- “The technical conditions precedent to the landlord’s duty to repair make it so that landlords often don’t repair until the tenant receives the benefit of legal advice/representation.” (*Colorado*)
- “The lack of habitability requirements is a huge problem for tenants attempting to raise repair requests. The question of how severe a repair issue is is left up to the individual judge and is usually impacted by how well a tenant can present their case. This puts the burden on pro se individuals, mainly very low-income, to know how to prove a legal case in courts. The proportion of eviction cases in Georgia to legal aid attorneys in Georgia means that free representation is only available to a very small number of people.” (*Georgia*)

In some cases, landlords neglect repairs to such a degree that the habitability issues continue through successive low-income tenancies and are likely to compromise the integrity of the building in the aggregate.

- “The majority of calls I get are about substandard housing. Landlords do not fix repairs here. If they do anything, they do a short-cut fix that they would never tolerate in their own home, and the problem comes back over and over. After a while, they will just evict the renter, cover it up or do another quick fix, then rent it to the next person without fixing it properly. I have a case right now where the renter had 15 leaks, and requested repairs for 4 months. [The landlord] refused to replace the roof and kept patching it, even when advised to do otherwise.” (*Tennessee*)

- In a similar story in *Michigan*, an advocate reports that, typically, “the case goes into nonpayment of rent and the repair issues become moot. The repairs are never made and a new low income client enters the inhospitable rental unit.”
- “The Oklahoma law allows a tenant to make repairs and withhold the amount from rent with notice to landlord if the problem being repaired makes the rental unit ‘uninhabitable’. But that is a self defeating argument when the unit was that way when the unit was accepted by the renter for move in or when the renter doesn’t have the means to make the repair, or the repair costs more than the rental amount so they can’t hire it done by saving the rent payment.” (*Oklahoma*)

Tenant options for addressing habitability and conditions issues are limited because of fear of retaliation or underenforcement of existing state or local protections.

- A Colorado advocate—who works mostly with seniors and Latino tenants, many of whom live in low-income housing tax credit properties or receive HUD vouchers—reported that “[t]enants tend to be afraid of retaliation even when their own health is at risk, like when they send a Demand Letter for Warranty of Habitability.”
- In *Connecticut*—which has a statute providing relatively strong retaliation protections⁹⁰ for tenants—advocates assert that “courts have undermined it [by] . . . appl[ying it] only to serious violations. For example, retaliation against a tenant who makes complaints about minor failures to repair has been held not to be protected by the statute, even though the statute has no such exception.”
- *Illinois* advocates providing services for 23 counties report that “a case for retaliation needs a very specific set of facts requiring an inspection of the property by a code inspector . . . and [only] one town has a municipal code inspection department. In that town, most tenants do not know the agency exists or how to engage it effectively to preserve a defense of retaliation.”

Tenants should have the right to abate their rent due to poor housing conditions where the conditions cannot be addressed within a reasonable period of time and there is no replacement housing. However, in jurisdictions where this right exists, a tenant’s ability to exercise their right may be frustrated, suggesting that FHFA action to help improve conditions for the sake of the tenants and the buildings may be necessary.

- “In NM, the only remedy for a landlord refusing to make repairs/keep the unit in a habitable condition is for the tenant to abate rent after giving the landlord written notice of the repairs needed. The statute allows a tenant to withhold 1/3 of the daily rent for each day that repairs aren’t made—a number that is frequently very confusing for tenants to calculate, meaning that they often withhold the wrong amount. Then, the landlord files for eviction based on nonpayment of rent. Often, the landlord still wins in these eviction cases.” (*New Mexico*)

⁹⁰ See C.G.S. § 47a-20

- On enforcing the warranty of habitability in New York, an advocate notes: “[O]ur city housing department has inspectors who place violations on apartments. But scheduling appointments is long. And landlords see violations as the cost of doing business. It is very difficult to get landlords to keep apartments up to code. Most of our clients are involved in nonpayment cases and we often need time to come up with the arrears and so tenants give up their right to abatements in order to negotiate for time to pay.” (*New York*)
- “There is a limited right to withhold rent, however the process is very technical and limits recovery to \$500 or half of one month's rent, whichever is lower.” (*Illinois*)
- “The courts are extremely reluctant to enter repair orders and are extremely reluctant to enter abatement of rent orders due to repair issues affecting habitability even though it's provided for in both state law and city ordinance.” (Michigan)
- “Rent abatement in this jurisdiction only applies if the tenant has actually been paying rent – in other words, tenants have to pay rent regardless of the conditions of the home and either file an affirmative claim for rent abatement (rarely occurs) or counterclaim for rent abatement once they face eviction for some other reason.” (*North Carolina*)

III. MODEL LEASE

A model lease could provide a powerful tool for FHFA and the GSEs to convey their expectations for borrowers with federally-backed mortgages. Several HJN members reported that tenants tend not to be in any real position of power when it comes to leases:

- “If you can name it, I have seen it in a lease here in Oklahoma. Because there is little to no enforcement of landlord-tenant law here in regard to lease agreements, anything goes. Leases here are contracts of adhesion— there are no negotiations.” (*Oklahoma*)
- “Tenants have 0 bargaining power to better their leases before signing, as there are usually 10 other eager families.” (*Pennsylvania*)
- In *Vermont*, since the state does not require written leases, a majority of tenants do not have a written lease and there is no “standard” lease. One advocate states: “If it were up to me to change [landlord/tenant] law, I would make a list of unlawful lease clauses.”

Examples of model leases can be found in the HUD-subsidized programs.

Short of adopting a model lease, FHFA should at the very least take action to prohibit GSE-backed borrowers from adopting lease terms that run contrary to state law, undermine tenant protections, or make tenants more vulnerable to eviction.

In NHLP’s survey, HJN members most commonly reported problematic lease provisions that related to rent and non-rent charges. Nearly 4 in 5 respondents encountered **provisions making non-rent charges, fees, and penalties collectable and due as “additional rent”** (79%); and nearly 3 out of 4 respondents encountered **provisions allowing rent payment to**

be applied to other fees and charges first and before rent (74%).⁹¹ Because these provisions can increase a tenant's exposure to eviction and accelerate the risk, FHFA should ensure that borrowers do not use these lease terms.

Nearly two-thirds of respondents (60%) encountered **lease provisions that waive tenant rights and remedies otherwise provided by statute, regulation, or case law**. Landlords have used these waivers to deprive tenants of their rights, including:

- State procedural protections, such as specifying methods of notice delivery not otherwise permitted;
- State substantive protections, such as requiring repairs to be done exclusively by tenants in violation of *New York's* warranty of habitability; and
- State constitutional rights, such as *Pennsylvania's* constitutional right to appeal a magisterial judgment.

The following list includes other harmful lease provisions and the percentage of respondents who report encountering such provisions in their practice:

- "One-way" lease terms that obligate tenants to pay rent for multiple months but allow landlords to terminate with 30 days' notice (60%)
- Denial of a right to jury otherwise provided by state law (50%)
- Indemnification clauses (41%), under which the tenant agrees to assume the landlord's liability and thus protects the landlord at the expense of the tenant.
- Penalty or "in terrorem" clauses (37%), which impose excessively high damages on the tenant for lease violations and are designed to scare a person into compliance. Examples include excessively high late fees.
- Mandatory arbitration requirements (35%)
- Provisions waiving a tenant's right to notices required under state law (30%)
- Confessions of judgment – provisions allowing a landlord to deprive a tenant of possession or property without first obtaining a valid court order (27%)
- Class action waivers (22%)

HJN members also shared their experiences with other problematic lease provisions:

- Some landlords attempt to work around state warranties of habitability, either by describing the property as "as is" in the lease (*Vermont*), or including a provision that

⁹¹ See the earlier section (Tenant Protections > Upfront or Ongoing Fees > Charges Other than Rent) for a discussion on the issues that such provisions raise.

shifts the responsibility of repairs onto the tenants, which, in at least one advocate's jurisdiction (*Georgia*), is prohibited under state law.

- Some lease provisions protect the landlord from waiving their right to evict by allowing the landlord to acknowledge alleged breaches of the lease while continuing to accept rent and subsequently filing for eviction. (*Vermont*)
- One LIHTC landlord added a lease addendum that if the property was foreclosed on, the landlord would have the right to sign for the tenant that they would have to forfeit their tenant rights to stay in their apartment. (*New Jersey*)
- In another LIHTC property, the landlord included a number of clauses in the lease, which was a "100 page lease in large print," that are contrary to state law and include terms applicable in other states because the landlord has "one lease for four different states. Many, many illegal clauses." (*New Jersey*)
- Some landlords include lease provisions that "grant the landlord an interest in the tenant's personal property, and allow entry and seizure for nonpayment of rent." (*Idaho*)
- "All of our standard leases are stacked against tenants. Most say 'without notice or demand' but state statute requires at least a demand for possession before filing for holdover or breach." (*North Carolina*)
- Landlords are offering "Resident Benefit Packages" and requiring tenants to pay for the package or pay a fee if declining the package, which is the same amount as the package itself. (*Washington*)

IV. TENANT PROTECTIONS & MARKET RISK

NHLP recognizes the important role that the GSEs play in the solvency and stability of the rental housing market. Evaluating the impact of additional tenant protections on the market for GSE loans and the entire housing market should be part of the policy analysis. However, NHLP encourages FHFA to enter into this analysis with skepticism toward the feedback it will undoubtedly receive from developers, landlords, and other real estate industry associations. In NHLP's experience advancing and enforcing tenants rights at the federal, state and local levels, these groups and their lobbyists reflexively oppose the adoption of any tenant protections, relying on a host of economic arguments that have little, if any, grounding in research, data or economic theory.

In the past, FHFA has acted boldly to strengthen tenant protections over the objections of opponents cursorily citing market risk. When FHFA sought to impose modest pad lease protections in manufactured housing communities through the Duty to Serve regulation, both the GSEs and the broader multifamily housing community considered this proposal "unworkable."⁹²

⁹² Jim Gray & George W. McCarthy, *Duty to Serve: The Purpose of Fannie Mae and Freddie Mac and Early Lessons Learned in Underserved Housing Markets* 22 (Apr. 2021),

For example, in response to FHFA's question about whether the proposed pad lease protections be required for any manufactured housing community to be eligible for Duty to Serve credit, Fannie Mae cited existing protections in California state law, referred to similar state laws without citation, and concluded:

"We see no incentive for a manufactured housing community borrower to seek financing that would call for it to incorporate pad lease protections into its leases which go beyond State and local law. Faced with such a requirement, we believe the borrower will simply seek financing elsewhere."⁹³

This prediction, however, never panned out. Instead, because of FHFA's unwillingness to accept such arguments without scrutiny, the proposal moved forward, and the GSEs ended up acquiring a significant number of Manufactured Housing Community (MHC) loans subject to the requirement to add pad lease protections within a year of origination.⁹⁴ Because of this success, FHFA then expanded the pad lease protections beyond the Duty to Serve program to all GSE multifamily business.⁹⁵

FHFA should interrogate any argument that additional protections harm tenants in the long run because landlords pass on the costs by raising rents. First, most of the recommendations outlined in this response are minimum thresholds for tenant protections that are unlikely to have any significant impact on the financial performance of multifamily properties. Requiring notices or a copy of a tenant screening report, for example, should result in negligible costs for the landlord. In fact, most of these protections are so basic that any argument that they will have a major financial impact on a property's balance sheet is essentially an admission that the proponent's business model relies on predatory practices that effectively monetize the misery of tenants. Some tenant protections, such as rent stabilization, might require a deeper cost benefit analysis and a policy decision, but industry associations and lobbyists often fail to make these distinctions and lump all tenant protections together to paint a more dire economic picture than is warranted. More nuance is in order, as Matthew Desmond and Nathan Wilmers discuss in their article, "Do The Poor Pay More for Housing? Exploitation, Profit, and Risk in Rental Markets."⁹⁶

[M]any policy analysts have simply assumed that extending tenant protections would automatically drive up rents, an assumption based on the presumption that landlords with thin profit margins would be forced to pass on additional costs to tenants. If landlords operating in low-income communities were found to have small profit margins, then tenant protections or housing regulations, from enforcing lead abatement to

https://go.lincolinst.edu/gray_wp21jg1.pdf?_ga=2.265122767.1550483848.1688748374-1744285460.1688748374

⁹³ Fannie Mae Comments on Proposed Rulemaking Enterprise Duty to Serve Underserved Markets RIN 2590-AA27, 9-10 (Mar. 17, 2016),

<https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/Comment-Detail.aspx?CommentId=14325>

⁹⁴ Gray, *supra* note 78.

⁹⁵ *Id.* at 28.

⁹⁶ Matthew Desmond & Nathan Wilmers, Do the Poor Pay More for Housing? Exploitation, Profit, and Risk in Rental Markets, 124 *Am. J. Sociology* 1090, 1120-21 (2019),

<https://dspace.mit.edu/bitstream/handle/1721.1/1135963/701697.pdf?sequence=2&isAllowed=y>

providing legal representation to tenants facing eviction, could result in property owners increasing rents, passing on additional break even. However, we found the profit margins of landlords in poor neighborhoods to be higher than those of landlords operating in more affluent communities [which ...] may leave less reason to worry that programs designed to improve housing quality or prevent eviction would automatically drive housing costs above rents, particularly if those programs were implemented in poor neighborhoods.

Second, the reality is decidedly more nuanced than opponents portray, in large part because the market plays a central role in setting rents,⁹⁷ and tenant protections rarely exist in a vacuum. Rental prices are determined, in large part, by the macroeconomic forces of supply and demand rather than individual landlord choices to pass on the perceived costs of increased tenant protections to tenants. Rental prices reflect the relationship between three market forces; the existing housing supply; changes in the demand for rental housing in that particular jurisdiction; and the responsiveness of housing supply to demand increases.⁹⁸ Whether a landlord raises the rent depends on their responsiveness to the macro changes in housing supply and demand in a particular jurisdiction; the consequence of increased rents in response to increased tenant protections, therefore, is not a foregone conclusion.

Furthermore, if tenant protections are enacted as part of a comprehensive scheme rather than on a piecemeal basis, then it mitigates the ability of landlords to pass on costs to renters. For example, implementing good cause eviction requirements without corresponding rental price regulation can lead to price gouging by landlords seeking to force a tenant out in spite of these protections, a scenario that HJN members have reported in California. Generally, asserting that tenant protections will cause landlords to simply pass on every single cost to tenants is a disingenuous argument that fails to appreciate the complexity of the rental housing market. The evidence from jurisdictions such as New Jersey that have enacted price controls and other tenant protections, is that these measures do stabilize prices and mitigate displacement if they are thoughtfully tailored.

Thirdly, research suggests that rent regulations actually improve affordability not only in the units subject to the regulation, but in proximal units as well.⁹⁹ This suggests that rental regulation puts

⁹⁷ See e.g., Raven Molloy, Charles G. Nathanson & Andrew Paciorek, *Housing Supply and Affordability: Evidence from Rents, Housing Consumption and Household Location*, (March 2020), *Finance and Economics Discussion Series Divisions of Research & Statistics and Monetary Affairs Federal Reserve Board*, Washington, D.C. (<https://www.federalreserve.gov/econres/feds/files/2020044pap.pdf>) (theorizing, in part, that findings indicating that supply constraints are not the sole driving force behind rental price increases could be because of the sharp increase in housing demand since 1980).

⁹⁸ Greg Howard & Jack Liebersohn, *Why is the Rent So Darn High? The Role of Growing Demand to Live In Housing-Supply-Inelastic Cities*, 124 *Journal of Urban Economics* (July, 2021) (<https://www.sciencedirect.com/science/article/pii/S0094119021000516#abs0001>) (finding that rental prices have risen significantly more in jurisdictions that have seen increases in housing demand and also have housing supply stocks that are unable to respond to these increases—illustrating the central role of macroeconomic demand and supply forces in setting rental prices).

⁹⁹ Manuel Pastor, Vanessa Carter, Maya Abood, *Rent Matters: What are the Impacts of Rent Stabilization Measures?*, USC Dornsife Program for Environmental and Regional Equity at 12 (Oct. 2018) (https://dornsife.usc.edu/assets/sites/242/docs/Rent_Matters_PERE_Report_Final_02.pdf)

pressure on nearby units to offer affordable rents to ensure they remain competitive. This is affirmed by other empirical research demonstrating that once rental regulation laws were repealed in Cambridge, MA, median rents rose by 40 percent in controlled units and 13 percent in unregulated units.¹⁰⁰ Resident turnover and displacement also increased substantially in the three years following the repeal of rental regulations, highlighting the combined impact these policies can have on minimizing displacement and stabilizing rental price growth.¹⁰¹

FHFA should also be skeptical about unsupported claims that rent regulation will reduce housing supply because of landlords exiting the business or developers building fewer rentals. Such arguments fail to appreciate the complexity of the housing market and increasingly lack consensus support among economists. The evolution in economists' thinking around minimum wage provides a useful analogy. Historically, economists understood minimum wage as a price control that would lead to widespread job loss. In making this argument, they used a simple abstract supply and demand model—the same model being used to support claims that rental regulation will constrict housing supply. But more rigorous empirical research over the last two years have proven that minimum wage increases are effective at increasing living standards for low-wage workers with little to no impact on the availability of jobs.¹⁰² Much as economists have now embraced minimum wage increases as a crucial policy to reduce inequality and ensure people are paid a fair wage, the increasing availability of countervailing data is causing a similar shift when it comes to rental regulation. Indeed, a 2007 study of 76 rent regulated cities in New Jersey over a 30-year period found little to no statistically significant effect of moderate rental regulation on new construction.¹⁰³ In fact, as this research demonstrates, tenant protections are a form of regulation that increases the supply of *affordable housing* without negatively impacting the supply of housing overall. To that end, this measure closely aligns with FHFA's mission to increase housing supply liquidity by increasing the supply of affordable and accessible housing while also enabling the FHFA to ensure the safety and soundness of the housing market by reducing the “top-heavy” distribution of existing housing supply.

FHFA should also consider the impacts of tenant protections on the broader U.S. economy. Rental regulation can promote broader economic well-being, with some research demonstrating that “excess spending on housing (that is, paying more than 30 percent of income for rent and utilities . . .) not only takes away from discretionary spending but also from everyday expenses, like food and childcare.”¹⁰⁴ For example, if housing burdened Bay Area renters paid what they could afford for housing, their collective spending power could grow by

¹⁰⁰ David Autor, C. Palmer, & M. Abdood. *Housing Market Spillovers: Evidence from the End of Rent Control in Cambridge, Massachusetts*, 122 (3) *Journal of Political Economy* 661 at 670 (June, 2014) (<https://economics.mit.edu/sites/default/files/publications/housing%20market%202014.pdf>)

¹⁰¹ *Id.*

¹⁰² Cengiz, Doruk, Arindrajit Dube, Attila Lindner, and Ben Zipperer. 2019. *The Effect of Minimum Wages on Low-Wage Jobs*, *Quarterly Journal of Economics*, 134 (3): 1405-1454.

¹⁰³ John I. Gilderbloom & Lin Ye, *Thirty Years of Rent Control: A Survey of New Jersey Cities*, 29 *Journal of Urban Affairs*, 207-220.

¹⁰⁴ Manuel Pastor, Vanessa Carter, Maya Abood, *Rent Matters: What are the Impacts of Rent Stabilization Measures?*, USC Dornsife Program for Environmental and Regional Equity at 19 (Oct. 2018) (https://dornsife.usc.edu/assets/sites/242/docs/Rent_Matters_PERE_Report_Final_02.pdf)

\$4.4 billion.¹⁰⁵ Moreover, housing stability is a long-established priority of the federal government, but policies have historically prioritized homeowners instead of renters through, for example, the establishment of the 30-year fixed-rate mortgage.¹⁰⁶ The positive impact of housing stability on broader economic growth has long-justified government intervention in the for-sale market and similar logic necessitates intervention in the rental market. Tenant protections promote housing stability by minimizing forced mobility, which has a disproportionate effect on the psychological, social, and physical wellness of low-income renters—especially Black women—and a generally detrimental impact on the educational attainment prospects of children who are forced to frequently move due to chronic housing stress.

V. FHFA TOOLS

FHFA has a variety of tools at its disposal for strengthening tenant protections in multifamily family housing backed by the GSEs. To ensure that borrowers adopt these protections, FHFA should impose mandatory requirements instead of relying on incentive-based programs. While the GSEs' incentive-based programs with tenant-friendly features like source-of-income protection are a step in the right direction, these programs have struggled to attract borrowers in sufficient numbers to adequately address the systemic lack of tenant protections in the private rental market. To change this dynamic, mandatory requirements are necessary.

One pathway for imposing mandatory requirements is through the Duty to Serve regulation, to the extent that FHFA wants to strengthen tenant protections in the manufactured housing market, the rural housing market, or the market for preservation of affordable housing.¹⁰⁷ Another pathway is through the Equitable Housing Finance Plan process, especially once FHFA publishes the final regulation governing that process. Robust tenant protections help ensure equitable access to rental housing and should feature regularly in the Plans.

In addition to rulemaking, FHFA could take other actions that can help shape landlord behavior in a way that protects tenants and ensures the safety and soundness of the market. A model lease or lease addendum, especially one that prohibits harmful practices, could help provide consistency that benefits both tenants and borrowers. FHFA could also require the collection of data that would help inform future policymaking, such as information about eviction filing and judgment data from properties with GSE-backed mortgages; code violations, both pending and resolved; and the overlap between properties with federally-backed mortgages and the federal housing programs by HUD, USDA, and Treasury.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 17.

¹⁰⁷ In addition to the three underserved markets, the Director of FHFA may submit recommendations for additional categories provided that: (i) the Director makes a preliminary determination that any such category is important to the mission of the enterprises, (ii) the category is an underserved market, and (iii) the establishment of such category is warranted. 12 U.S. Code § 4565(c)

VI. SUMMARY OF RESPONSES TO RFI QUESTIONS

The following is a list of the FHFA RFI questions and the relevant sections of this comment that address the questions.

A1. How should the Enterprises protect tenants in multifamily rental housing? What role should the Enterprises play in providing tenant protections at Enterprise-backed multifamily properties?

Please see sections I and V for a discussion of FHFA's authority, obligations to tenants, and potential mechanisms for policy change.

A2. What minimum tenant protections should FHFA consider at Enterprise-backed multifamily properties? What are the benefits of each tenant protection, and what associated risks or challenges might the Enterprises face during implementation? Please provide specific examples as appropriate.

Please see section II (tenant protections) and section III (model leases).

A3. Are there opportunities for improvements to current Enterprise multifamily programs or policies that would benefit tenants directly? What impact might these improvements have on the finances and operations of multifamily rental housing?

Please see section II (tenant protections) and section IV (market risk).

A4. How might requiring tenant protections at Enterprise-backed multifamily properties impact housing supply, including new construction?

Please see section IV (market risk).

A5. Describe any gaps in available data that limit the ability to measure and assess the impact of various property management policies, procedures, and practices on tenants and the operations and finances of multifamily rental properties. How could such data gaps be addressed and what role might the Enterprises play?

Gaps in publicly-available data about properties with federally-backed mortgages include information about eviction filing and judgment data; code violations, both pending and resolved; and the overlap between these properties and the federal housing programs by HUD, USDA, and Treasury. Collection of this data from the Enterprises, such as during the underwriting process, would help determine the impact of management policies and practices on tenants and their housing stability.

A6. Is adequate information available publicly to assess the performance of the overall multifamily rental market in serving tenants? If not, please explain. What are potential solutions?

Please see section IV (market risk).

A7. With respect to the foregoing questions, FHFA invites interested parties to submit any studies, research, legal analysis, reports, data, or other qualitative or quantitative information that supports a commenter’s response or is otherwise relevant.

Citations to relevant materials are included in footnotes throughout the comment. Please also refer to:

- The American Bar Association (ABA), Ten Guidelines for Residential Eviction Laws (2022) – The ABA urges all federal, state, local, territorial, and tribal legislative, and other governmental bodies to implement these guidelines.
- Eric Dunn, The Case Against Rental Application Fees, GEORGETOWN JOURNAL ON POVERTY LAW AND POLICY (2022).
- NHLP, Regarding Security Deposit Replacement Products (2022).
- NHLP’s comment on joint CFPB/FTC Request for Information on Tenant Screening (2023).
- Taking Account of Fees and Tactics Impacting Americans’ Wallets, Before the United States Senate Banking Committee, Subcommittee on Financial Institutions and Consumer Protection, 118th Cong. (2023) (statement of Lindsey Seigel, Dir. Atlanta Legal Aid Soc.) (discussing fees and corporate landlords in Atlanta, Georgia).
- Affordable Housing Alliance of Central Ohio and Coalition on Homelessness and Housing in Ohio, Statewide Edition: Pay to Stay Technical Guide (2022).

B1. How might the Enterprises address barriers to multifamily tenants’ access to housing?

Please see sections II.F.2 (application fees), II.G (criminal records screening, eviction records screening, credit screening & notice of denial), and II.H (source of income discrimination) for key requirements that the Enterprises should impose on borrowers around tenant screening and admissions.

B2. What actions should the Enterprises take, if any, to ensure universal acceptance of sources of income at Enterprise-backed multifamily properties?

Please see section II.H (source of income discrimination).

B.3 What actions should the Enterprises take in support of existing federal fair housing laws, including protections related to familial status, accessibility, and design and construction standards?

Generally, FHFA and the Enterprises should require good cause for evictions and rent stabilization. In the absence of these protections, it is easy for landlords to evict tenants for discriminatory reasons either through a no-cause eviction or under the pretext of nonpayment of rent. For a full discussion, please see sections I.A.3 (weaponization of non-payment of rent); II.B

(good cause for evictions and lease non-renewals); and II.C (rent stabilization). Also relevant are sections I.D (ensuring implementation of existing federal tenant protections) and II.G (tenant screening).

B.4 Are there areas of the lease application process or tenant documentation requirements that could be streamlined? Would those changes benefit multifamily tenants, landlords, or both? Please explain and include examples of existing best practices, if applicable.

Please see sections II.F.2 (application fees) and II.G (criminal records screening, eviction records screening, credit screening & notice of denial).

C1. What information do multifamily tenants need to make well-informed decisions about applying for and leasing apartments? Do multifamily tenants have access to the information they need to make well-informed decisions? If not, please explain and identify specific gaps. What are potential solutions for increasing access to information? What are the associated challenges? Please include any best practices for providing “all-in” rental costs, utility cost responsibilities, and tenant amenity information.

Please see sections II.F (upfront or ongoing fees) and II.G (criminal records screening, eviction records screening, credit screening & notice of denial).

For leasing, tenants would also benefit from information about the actual monthly rent and fees; information about the building, such as maintenance history, code violations, etc.; and information about environmental hazards on or near the property.

C2. What are the components of a model rental agreement? Please provide sample leases or lease forms that might be considered exemplary.

Key components include 1) prohibition of abusive lease terms, 2) limits on unreasonable lease terms, and 3) clear lease terms. Please see section III (model lease) for a full discussion.

C3. What role might the Enterprises play to enable multifamily tenants and landlords to be well-informed of their rights, to exercise their rights effectively, and fully meet their responsibilities? How could FHFA support efforts to collect, disseminate, and use this information?

The Enterprises can require borrowers to provide information about rights and responsibility during the leasing and lease renewal process. HUD, for example, requires its housing providers to give tenants a notice of occupancy rights under the Violence Against Women Act.¹⁰⁸

C4. How do you, your housing providers/property managers, or those you represent, communicate with current multifamily tenants? What types of notifications are used to communicate with tenants, and how are they delivered (e.g., email, certified letter, postings in public spaces)? Please share examples of any relevant best practices.

¹⁰⁸ https://www.hud.gov/program_offices/housing/mfh/violence_against_women_act

Please see sections II.E.4 (notice of eviction actions) and II.G.4 (notice of denial). Although the latter deals with prospective tenants, issues such as language access are relevant for current tenants as well.

C5. Do housing providers or property management companies provide multifamily tenants a point of contact and information about the property management company or housing ownership? Please share any relevant best practices.

N/A

C6. Should landlords provide a written notice to prospective tenants that their lease application has been rejected, including a description of the reasons for rejection? What are the potential benefits and challenges of delivering such notices? If a written notice is provided, what information should it include?

Yes. See section II(G)(4) (notice of denial).

D1. Have any eviction prevention programs or policies (either voluntary or required) improved the housing stability of multifamily tenants? Please describe those programs and policies, how performance was measured, and please share any data or evidence on performance, if possible.

Generally, FHFA and the Enterprises should require good cause for evictions and rent stabilization. Together, these policies help evictions and improve the housing stability of tenants. For a full discussion, please see sections I.A.3 (weaponization of non-payment of rent); II.B (good cause for evictions and lease non-renewals); and II.C (rent stabilization). In addition, other effective eviction prevention programs include mandatory pre-filing eviction diversion paired with emergency rental assistance, as well as providing a right to counsel paired with strong tenant protections.

D2. How can the owners and managers of Enterprise-backed multifamily properties reduce evictions and improve housing stability of tenants? What role can the Enterprises play in promoting housing stability of tenants at Enterprise-backed multifamily properties?

Generally, owners and managers should treat evictions as a last resort. Please see sections II.B (good cause for evictions and lease non-renewals), II.C (rent stabilization), and II.D (right to cure).

D3. Please provide recommendations on possible requirements that could apply to each of the following, and/or examples of existing policies, including an assessment of the benefits and/or drawbacks:

1. Lease renewals → Please see section II.B (good cause for evictions and lease non-renewals)
2. Timing and amount of rent increases → Please see section II.C (rent stabilization)

3. Upfront or ongoing fees → Please see section II.F (upfront or ongoing fees)
4. Causes for eviction → Please see section II.B (good cause for evictions and lease non-renewals)
5. Notification of eviction actions → Please see section II.E (notices of eviction actions)
6. Right to cure a cause for eviction → Please see section II.D (right to cure)
7. Time to vacate following eviction → N/A

D4. Are tenants provided with resources on emergency rental assistance programs, offered repayment agreements, or offered legal resources? Do housing providers' current practices differ from the legal/regulatory standards that they are required to follow?

Sometimes, tenants are provided with these resources, but not universally. Landlords frequently refuse to accept emergency rental assistance or evicted tenants after receiving such assistance. For further information, please see discussions of rental assistance from advocates in sections II.D (right to cure) and II.H (source of income).

D5. Should the Enterprises define housing safety and if so, how?

For purposes of this RFI, housing safety should be defined in terms of the physical condition of the buildings that tenants live in. FHFA should not use a broader definition of public safety.

D6. Should the Enterprises define housing habitability and if so, how?

Please see section II(I) for a discussion of habitability.

D7. Should the Enterprises require borrower compliance with ongoing property maintenance after an initial inspection? What is a reasonable timeframe to provide unit maintenance and repairs?

Yes, the Enterprises should require borrower compliance with ongoing property maintenance after an initial inspection. Habitability rights that tenants can enforce, such as the warranty of habitability and the right to rent abatement, are important and still not available in all fifty states. However, these remedies alone are insufficient to hold multifamily landlords accountable. Enterprise action would be a welcome supplement to these important tenant rights. For further discussion, please see section II.I (habitability).

E1-E5. Risk Management

For the five questions in E, please see section IV (tenant protections and market risk).

—

Thank you for taking this action to strengthen tenant protections in multi-family housing backed by the GSEs. For questions, please contact Marie Claire Tran-Leung, Evictions Initiative Project Director, National Housing Law Project, mctranleung@nhlp.org.

Sincerely,

National Housing Law Project
Atlanta Volunteer Lawyers Foundation
Ayuda Legal Puerto Rico
Connecticut Legal Services, Inc.
Everyone for Accessible Community Housing Rolls!
Florida Housing Umbrella Group
Greater Boston Legal Services
Greater Napa Valley Fair Housing Center
Housing Justice Project
Jacksonville Area Legal Aid
Justice in Aging
Legal Aid of Sonoma County
Louisiana Fair Housing Action Center
Maryland Legal Aid
Memphis Public Interest Law Center
National Low Income Housing Coalition
New Haven Legal Assistance Association, Inc.
PolicyLink
Poverty & Race Research Action Council
Public Counsel
Public Justice Center
Regional Housing Legal Services
RESULTS
Shriver Center on Poverty Law
The Legal Aid Society
The Public Interest Law Project
Three Rivers Legal Services, Inc.
Washington Lawyers' Committee for Civil Rights and Urban Affairs
Western Center on Law and Poverty
William E. Morris Institute for Justice

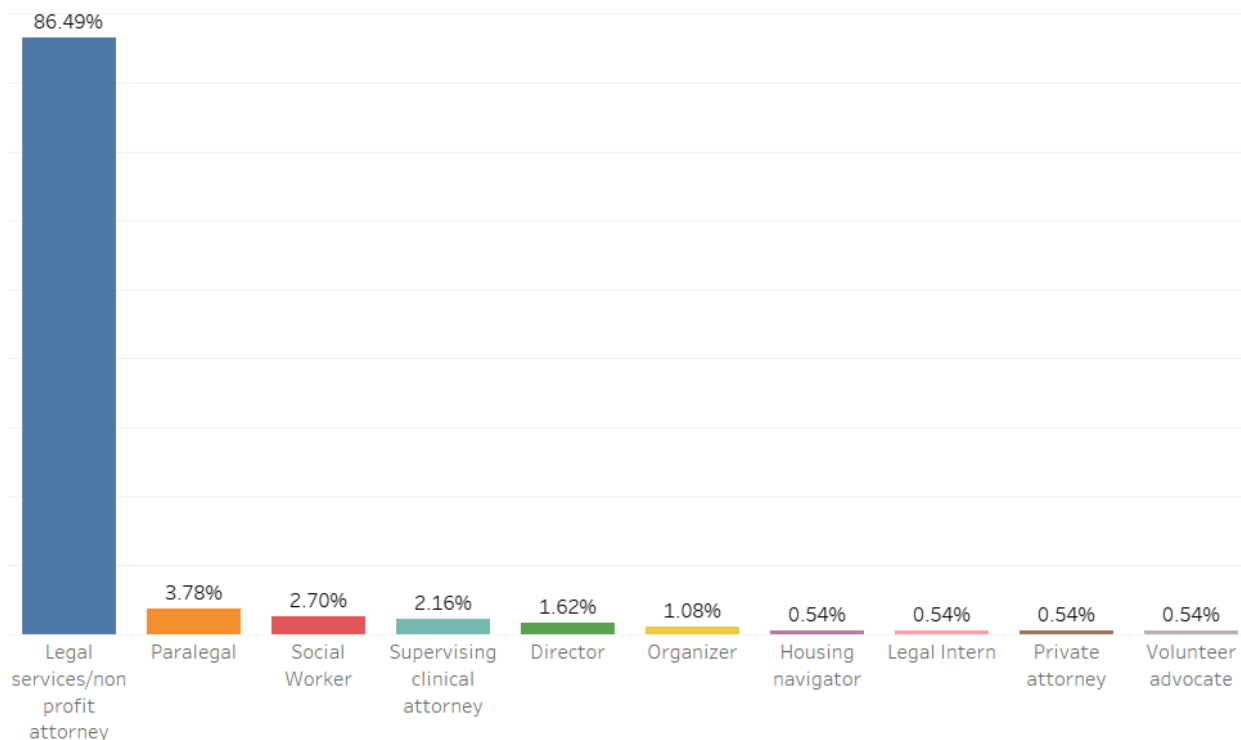
Appendix: NHLP Survey Results

Methods

NHLP used SurveyMonkey to distribute a survey to Housing Justice Network members and advocates across the country. The survey was open from June 16 - July 13, 2023. NHLP received 188 responses to the survey, but removed 3 (test, blank, and error) for a total of **185 responses**. Responses were anonymized and are attributed only to the advocate’s jurisdiction. Not every respondent answered every question in the survey, therefore sample sizes vary across questions. Percentages throughout are calculated according to the number of respondents to each question.

Results

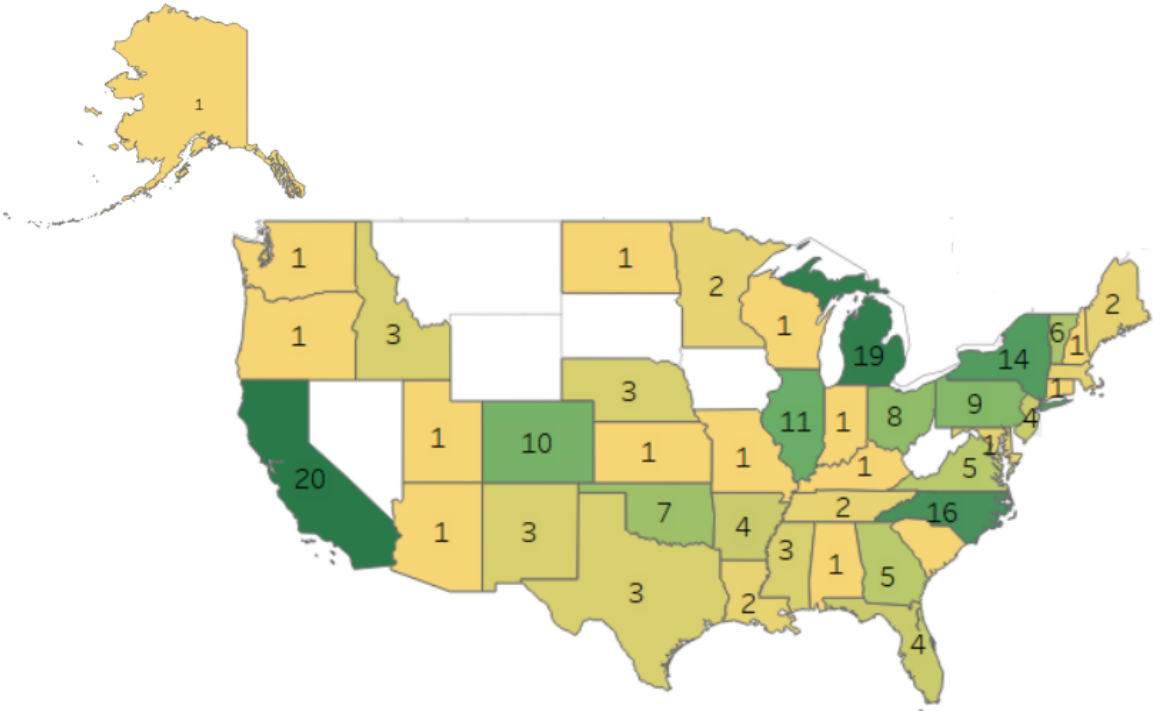
1. Role (n=185)



Legal services/non profit attorney	160
Paralegal	7
Social Worker	5
Supervising clinical attorney	4

Director	3
Organizer	2
Housing navigator	1
Legal intern	1
Private attorney	1
Volunteer advocate	1

2. Jurisdiction (n=185)

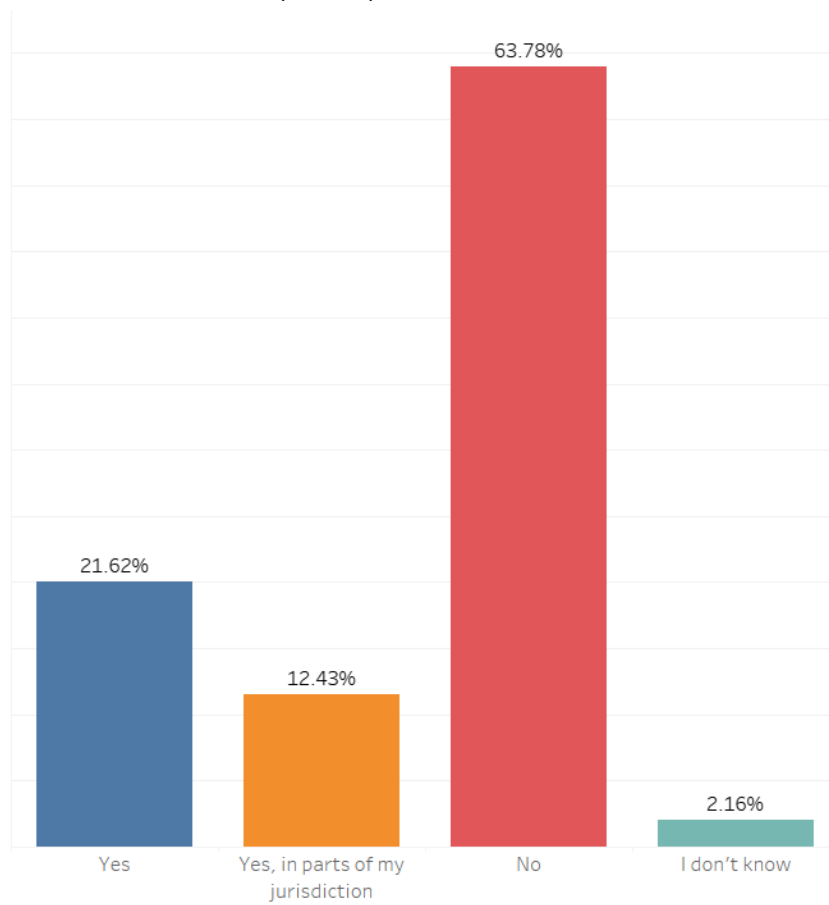


Alabama	1
Alaska	1
Arizona	1
Arkansas	4
California	20
Colorado	10

Connecticut	1
Delaware	
District of Columbia	1
Florida	4
Georgia	5
Hawaii	
Idaho	3
Illinois	11
Indiana	1
Iowa	
Kansas	1
Kentucky	1
Louisiana	2
Maine	2
Maryland	2
Massachusetts	2
Michigan	19
Minnesota	2
Mississippi	3
Missouri	1
Montana	
Nebraska	3
Nevada	
New Hampshire	1
New Jersey	4

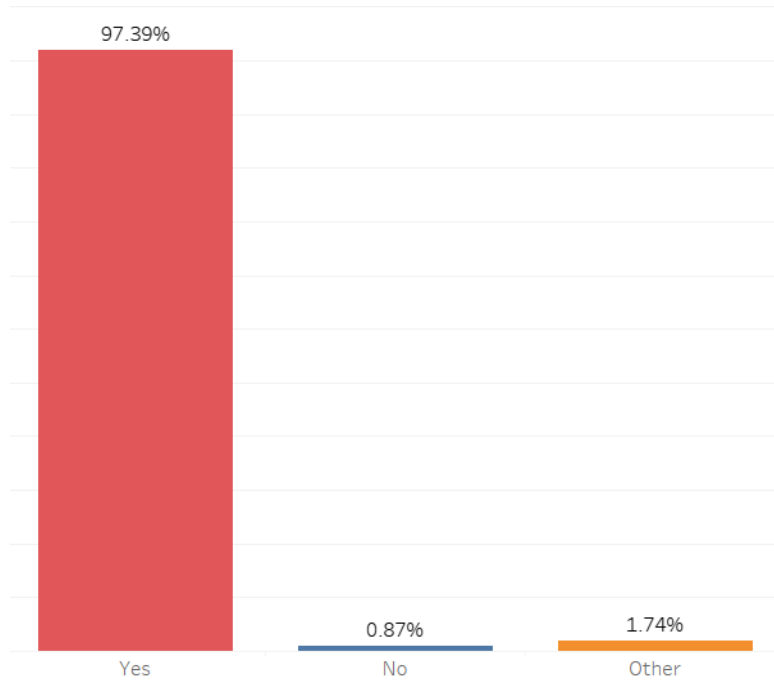
New Mexico	3
New York	14
North Carolina	16
North Dakota	1
Ohio	8
Oklahoma	7
Oregon	1
Pennsylvania	9
Rhode Island	
South Carolina	1
South Dakota	
Tennessee	2
Texas	3
Utah	1
Vermont	6
Virginia	5
Washington	1
West Virginia	
Wisconsin	1
Wyoming	

3. Does your jurisdiction limit the reasons a landlord can evict a tenant or refuse to renew a lease at the end of its term? (n=185)



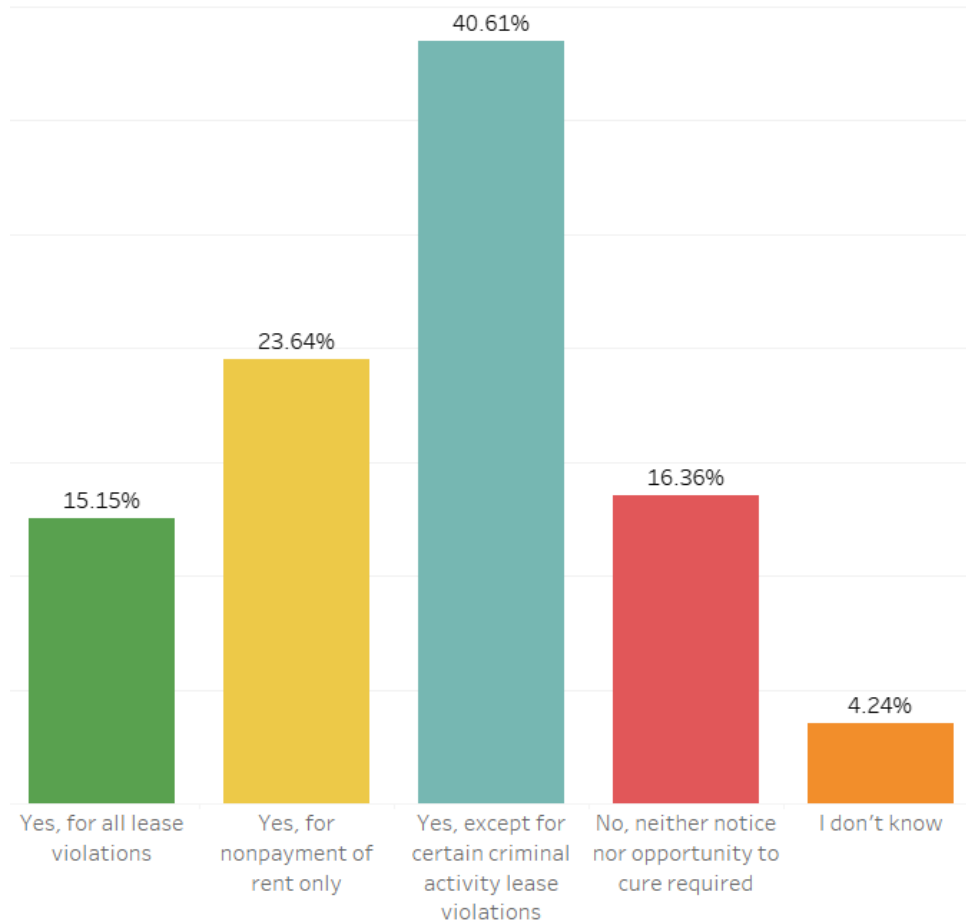
Yes	40
Yes, in parts of my jurisdiction	23
No	118
I don't know	4

3.1. [If “no” to previous question] *Would meaningful good cause protections benefit the tenants you work with?* (n=115)



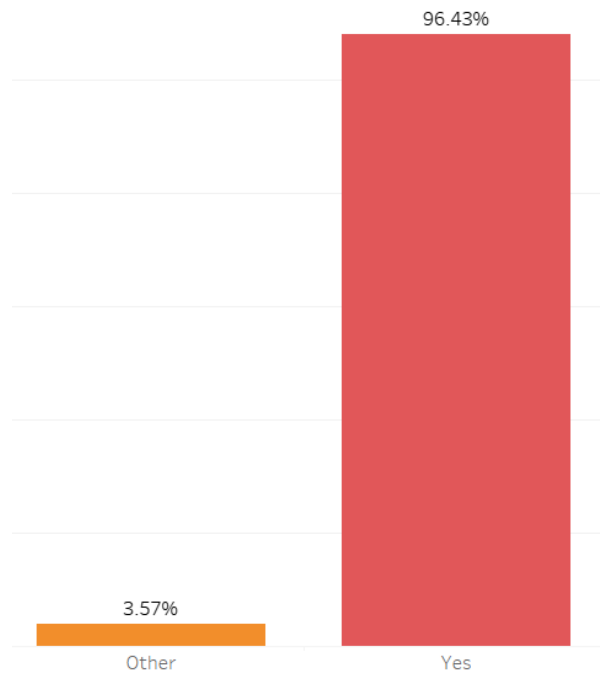
Yes	112
No	1
Other	2

4. Does your jurisdiction require the landlord to provide notice of lease violations and a right to cure before beginning the eviction process? (n=165)



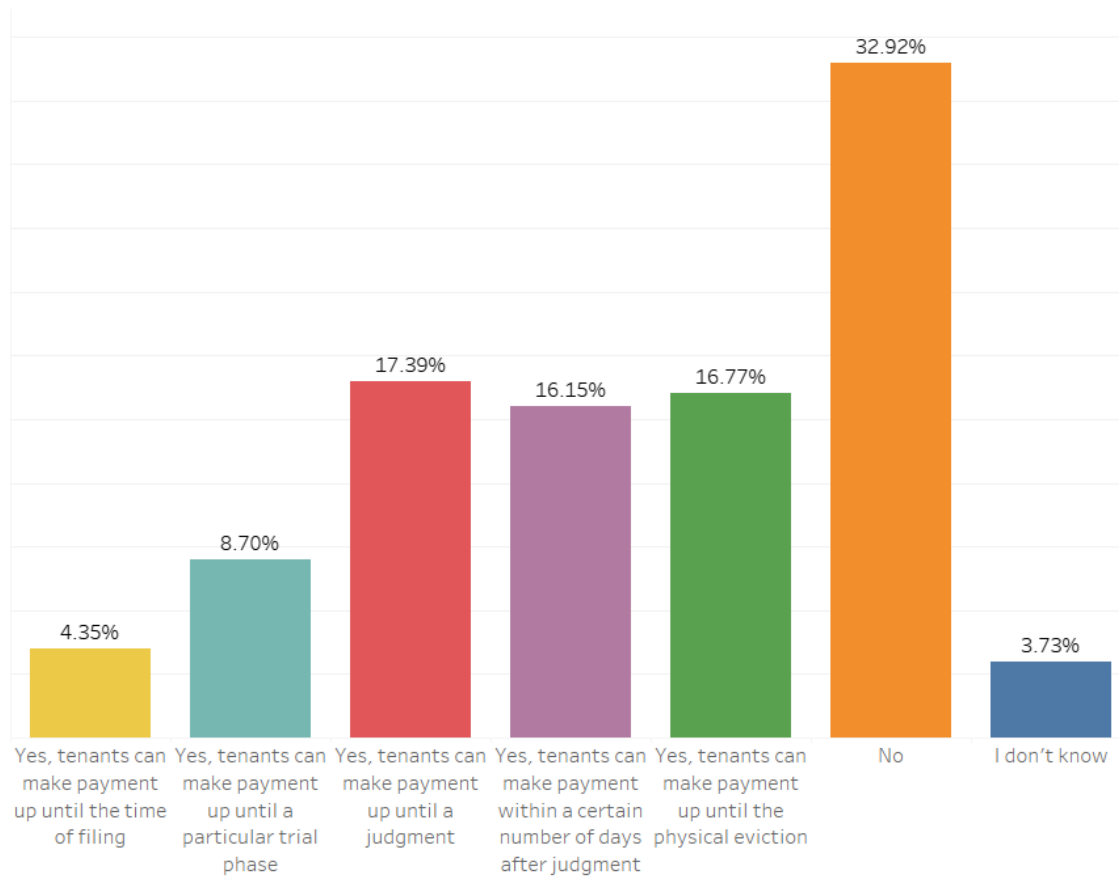
Yes, for all lease violations	25
Yes, except for certain criminal activity lease violations	67
Yes, for nonpayment of rent only	39
No, neither notice nor opportunity to cure required	27
I don't know	7

4.1. [If “no” to previous question] *Would meaningful notice and opportunity to cure requirements benefit the tenants you work with?* (n=28)



Yes	27
No	0
Other	1

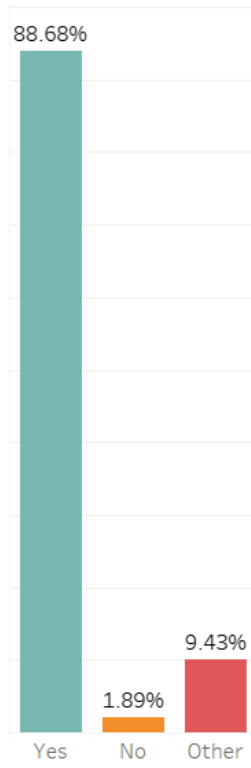
5. *Does your jurisdiction allow a tenant who has been sued for eviction based on nonpayment of rent to pay off the full amount owed and thus preserve their housing?*
(n=161)



Yes, tenants can make payment up until the time of filing	7
Yes, tenants can make payment up until a particular trial phase	14
Yes, tenants can make payment up until a judgment	28
Yes, tenants can make payment within a certain number of days after judgment	26
Yes, tenants can make payment up until the physical eviction	27
No	53

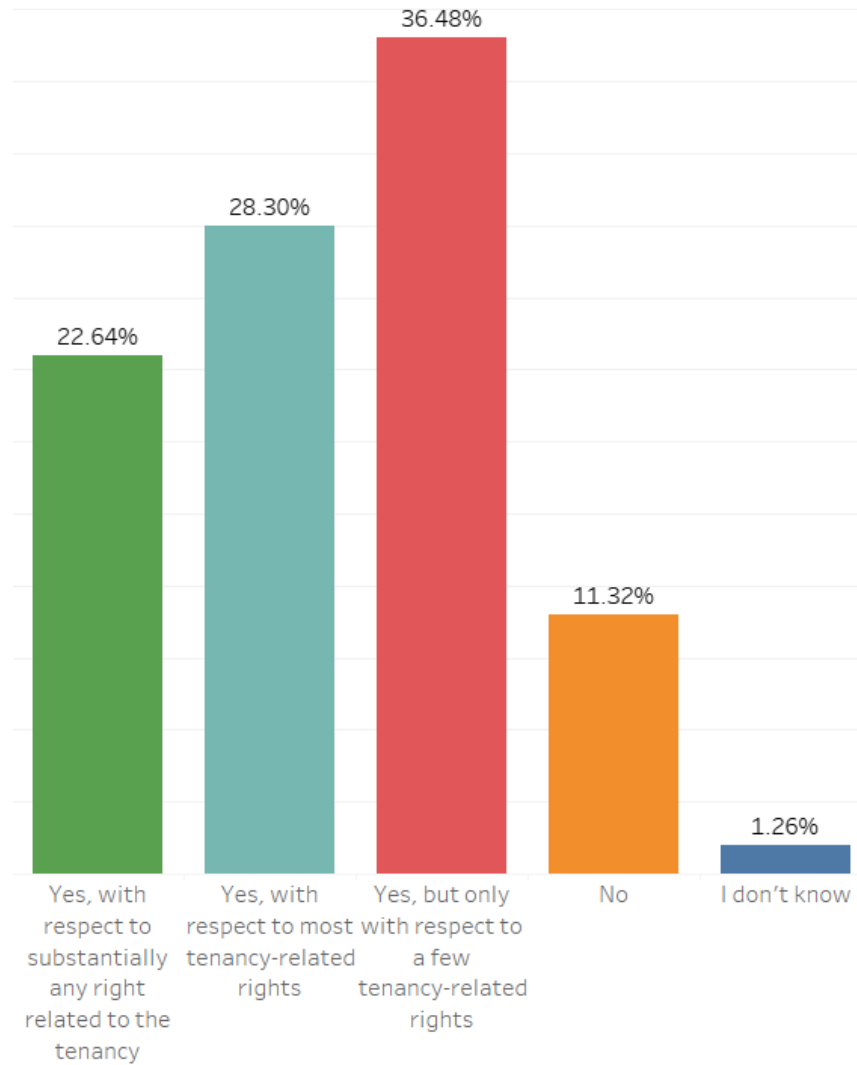
I don't know	6
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5.1. [If "no" to previous question] *Would a meaningful right of redemption benefit the tenants you work with?* (n=53)



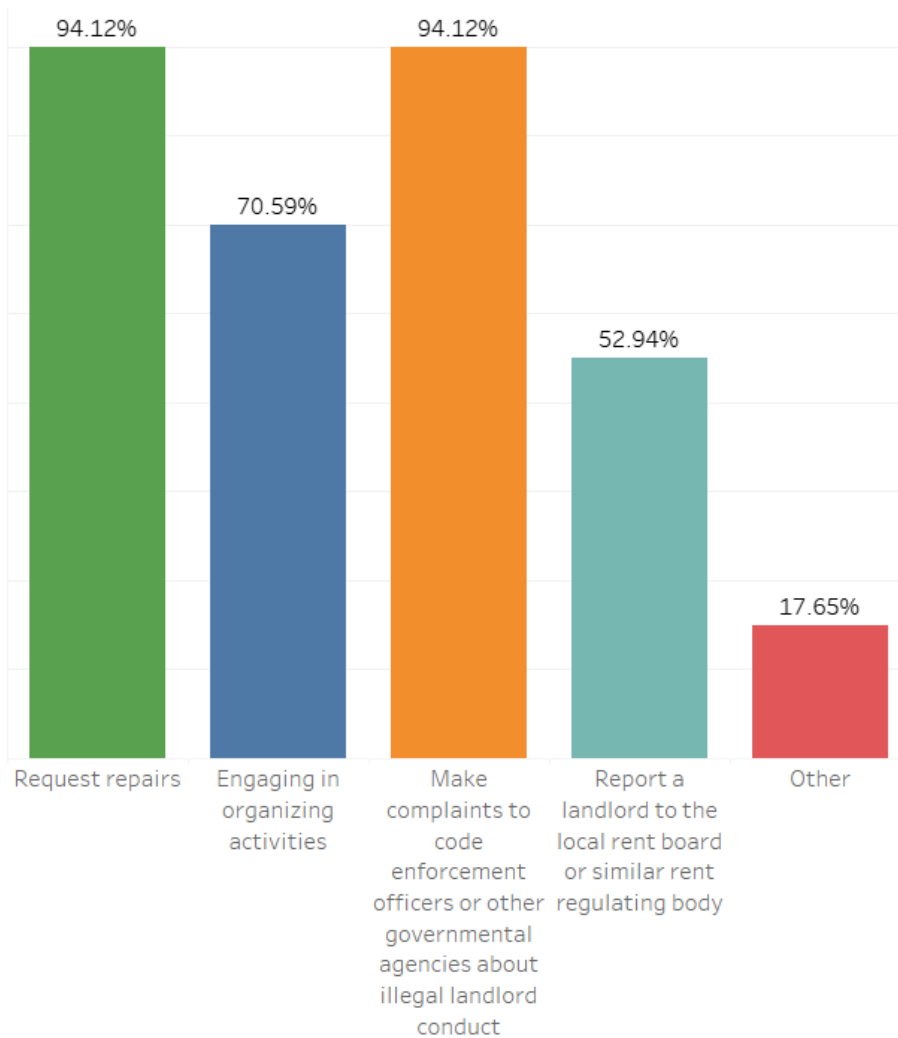
Yes	46
No	1
Other	6

6. [If yes to previous question] *Does your jurisdiction prohibit landlords from evicting tenants in retaliation for enforcing their legal rights?* (n=160)



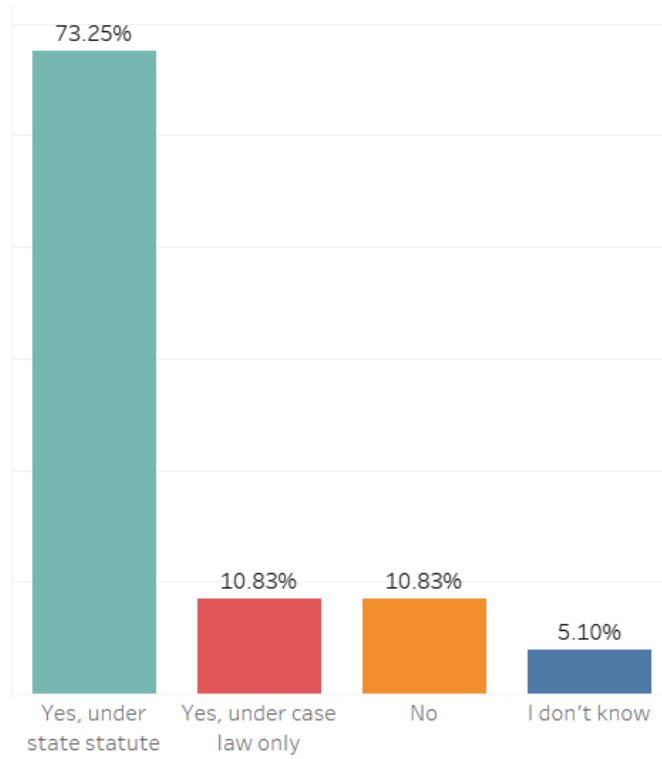
Yes, with respect to substantially any right related to tenancy	36
Yes, with respect to most tenancy-related rights	45
Yes, but only with respect to a few tenancy-related rights	58
No	18
I don't know	3

6.1. [If “no” to previous question] *In your experience, has the lack of a meaningful prohibition against retaliatory evictions had a chilling effect on tenants exercising their right to (check any that apply). (n=17)*



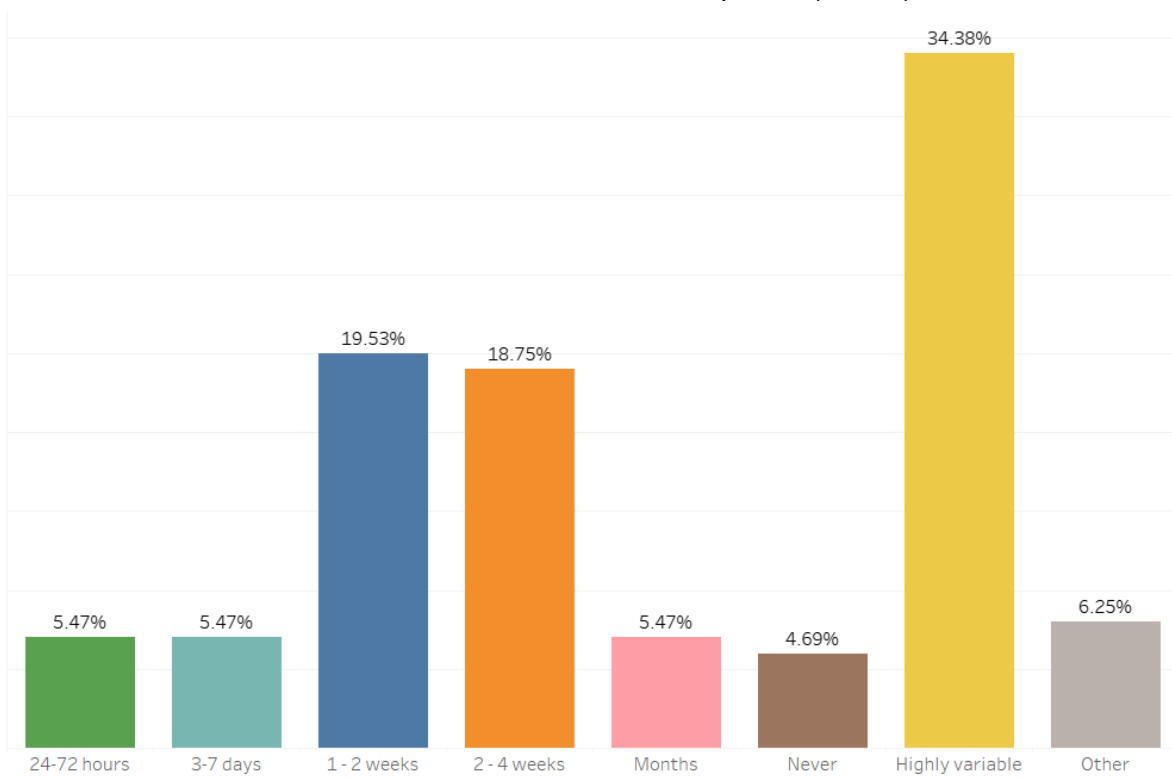
Request repairs	16
Engaging in organizing activities	12
Make complaints to code enforcement officers or other governmental agencies about illegal landlord conduct	16
Report a landlord to the local rent board or similar rent regulating body	9
Other	3

7. Does your jurisdiction impose minimum habitability (or conditions) standards in multifamily properties? (n=158)



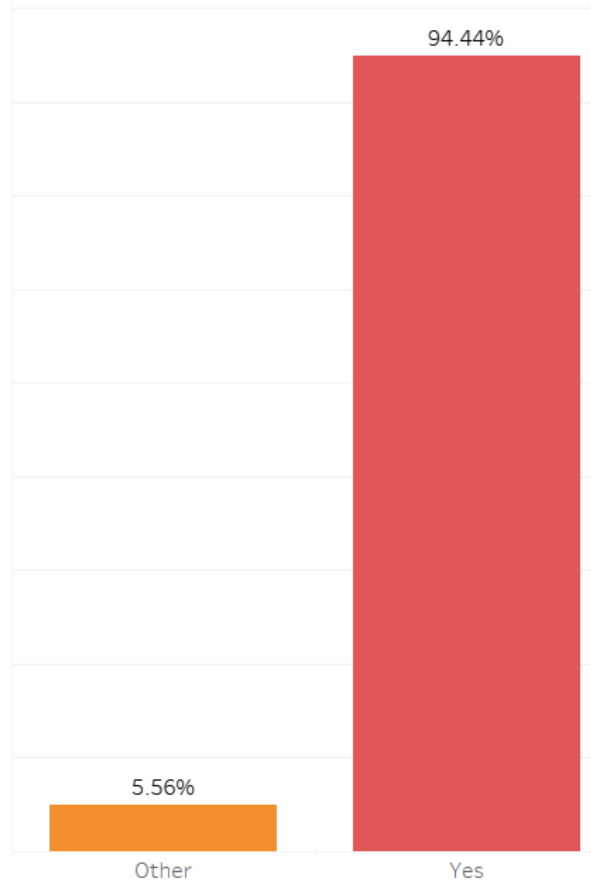
Yes, under state statute	115
Yes, under case law only	17
No	17
I don't know	9

7.1. [If “yes” to previous question] *How long on average do tenants you work with have to wait to receive maintenance and repairs?* (n=128)



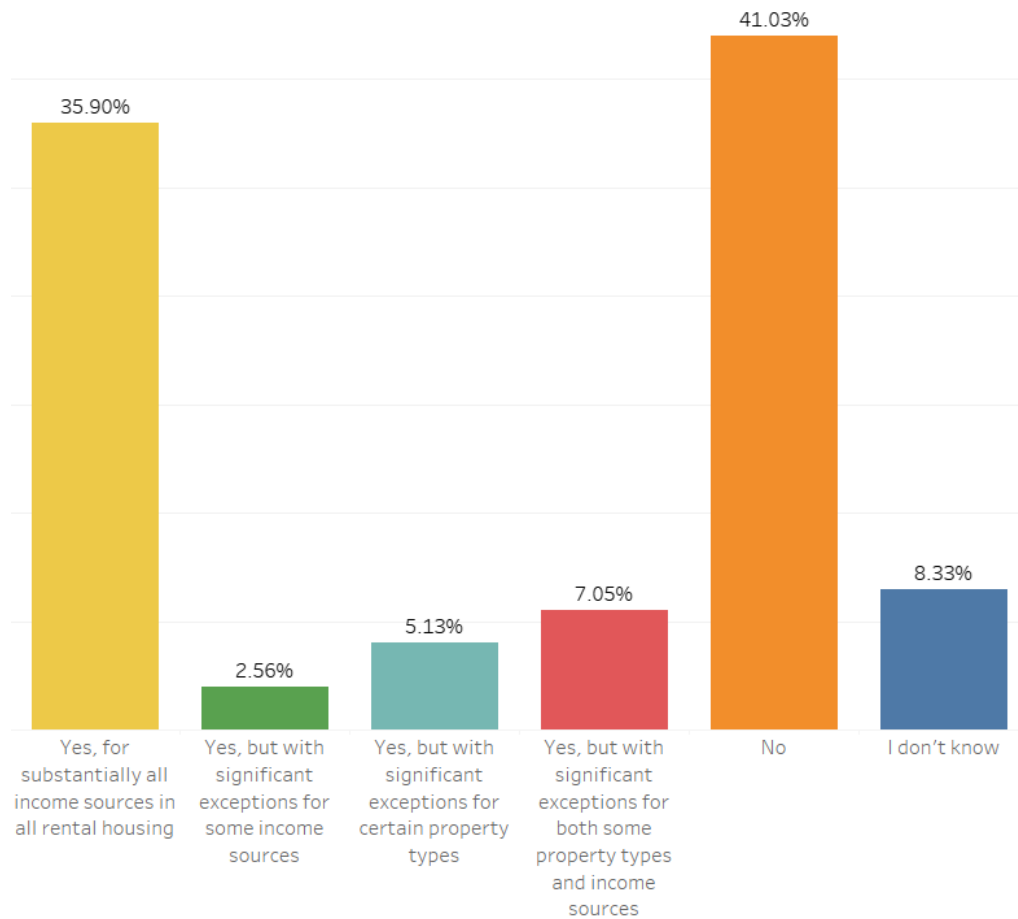
Less than 24 hours	0
24 - 72 hours	7
3 - 7 days	7
1-2 weeks	25
2 - 4 weeks	23
Months	7
Never	6
Highly variable	44
Other	8

7.2. [If “no” to previous question] *Would meaningful habitability requirements benefit the tenants you work with?* (n=18)



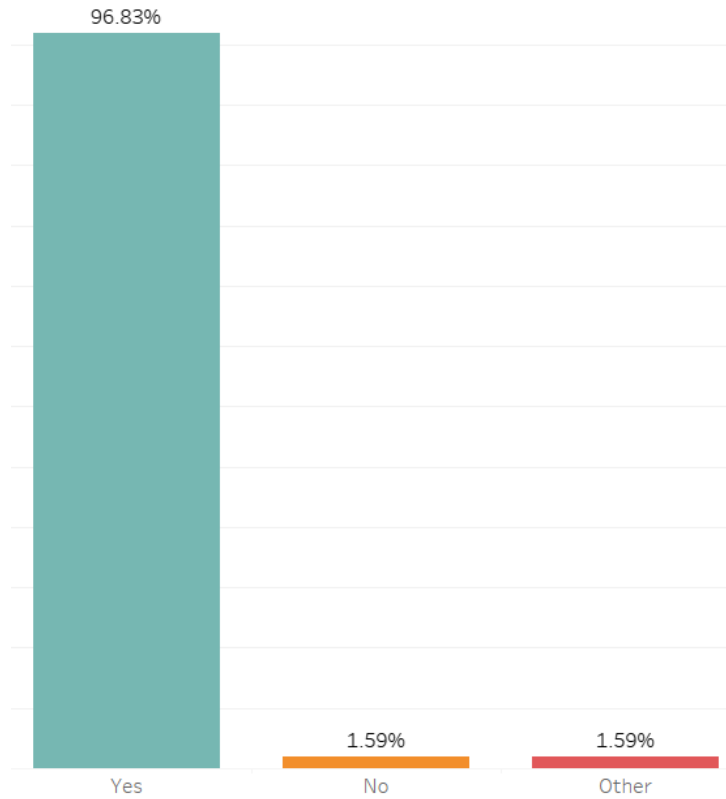
Yes	17
No	0
Other	1

8. Does your jurisdiction prohibit discrimination on the basis of source of income? (n=157)



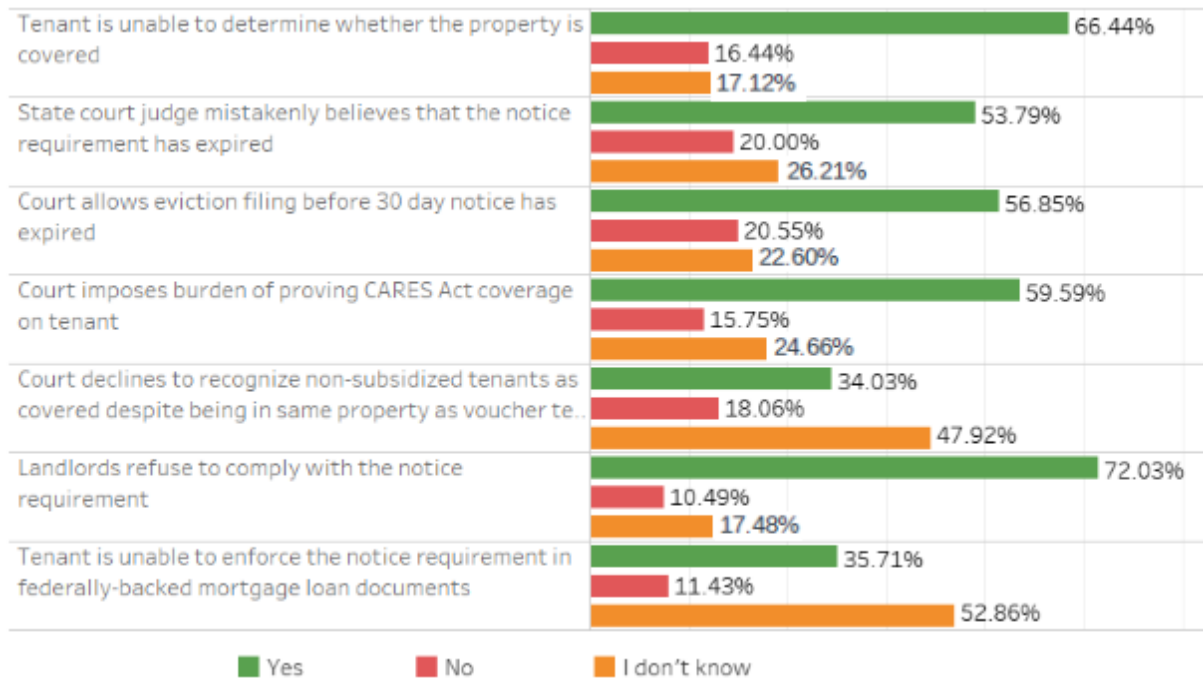
Yes, for substantially all income sources in all rental housing	56
Yes, but with significant exceptions for some income sources	4
Yes, but with significant exceptions for certain property types	8
Yes, but with significant exceptions for both some property types and income sources	11
No	64
I don't know	14

8.1. [If “no” to previous question] *Would meaningful protections against source of income discrimination benefit the tenants you work with?* (n=63)



Yes	95.3%	61
No	1.6%	1
Other	1.6%	1

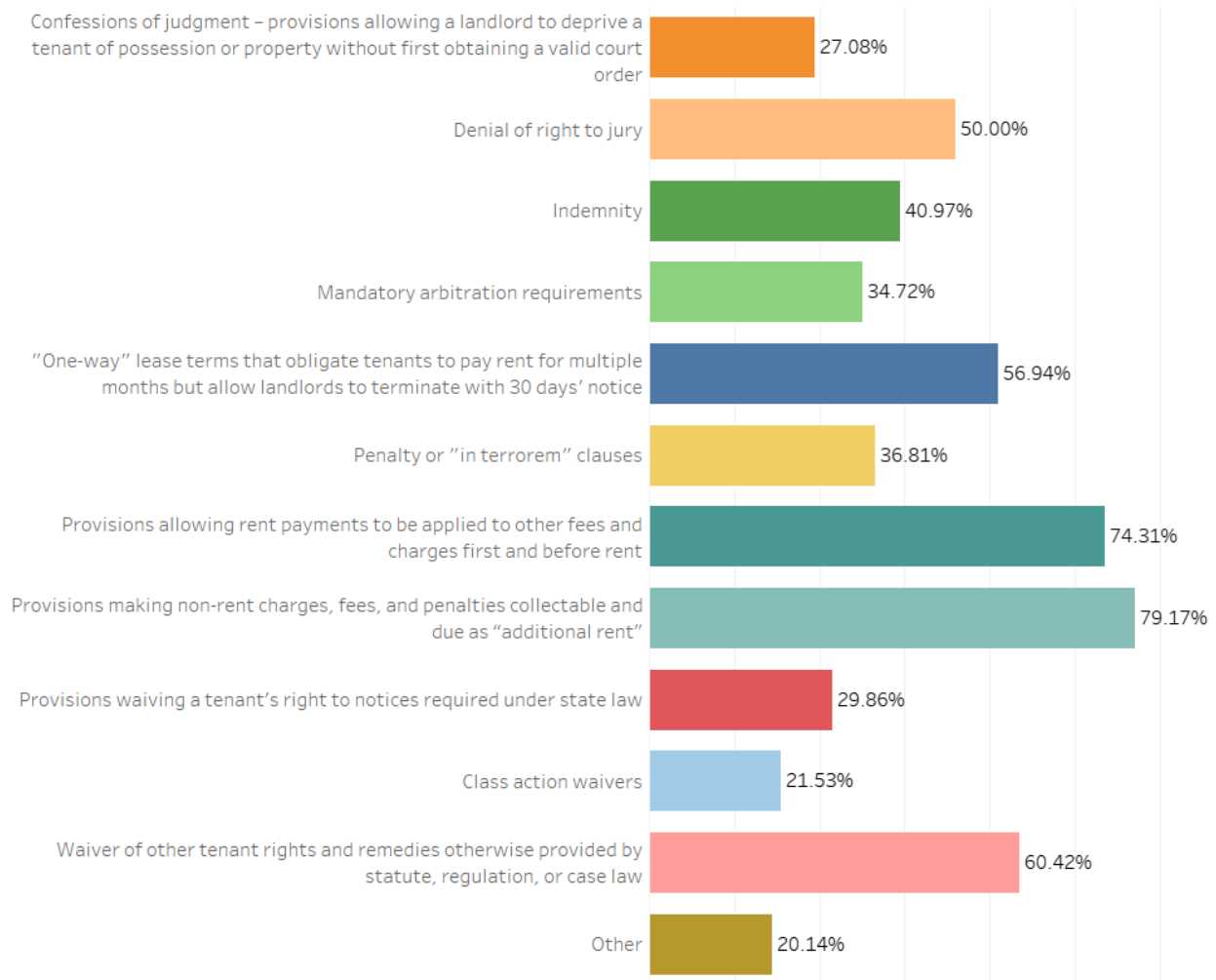
9. Which barriers to enforcing the CARES Act 30-day notice requirement have you encountered when working with tenant clients? (n=147)



Barrier	Yes	No	I don't know
Tenant is unable to determine whether their property is covered	97	24	25
State court judge mistakenly believes that the notice requirement has expired	78	29	38
Court allows eviction filing before 30 day notice has expired	83	30	33
Court imposes burden of proving CARES Act coverage on tenant	87	23	36

Court declines to recognize non-subsidized tenants as covered despite being in same property as voucher tenants	49	26	69
Landlords refuse to comply with the notice requirement	103	15	25
Tenant is unable to enforce the notice requirement in federally-backed mortgage loan documents	50	16	74

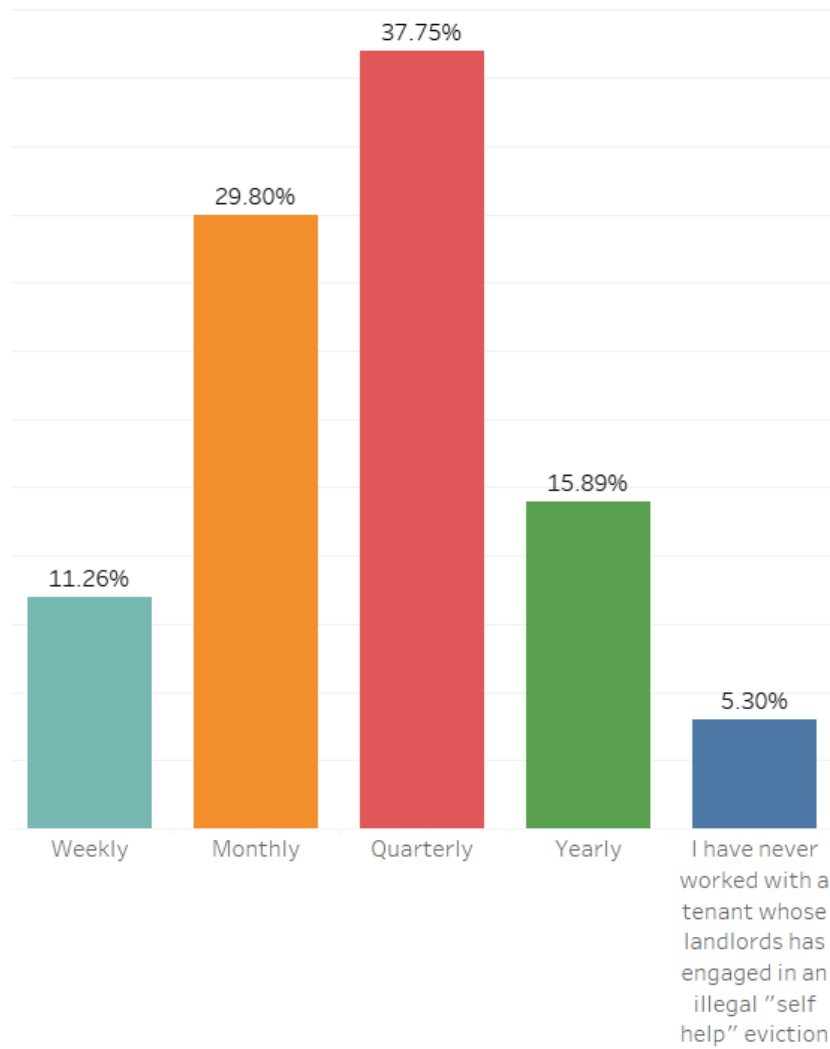
10. *In your experience working with tenants, have you encountered leases that include any of the following lease terms? Please check any that apply. (n=144)*



Confessions of judgment – provisions allowing a landlord to deprive a tenant of possession or property without first obtaining a valid court order	39
Denial of right to jury	72
Indemnity	59
Mandatory arbitration requirements	50
"One-way" lease terms that obligate tenants to pay rent for multiple months but allow landlords to terminate with 30 days' notice	82

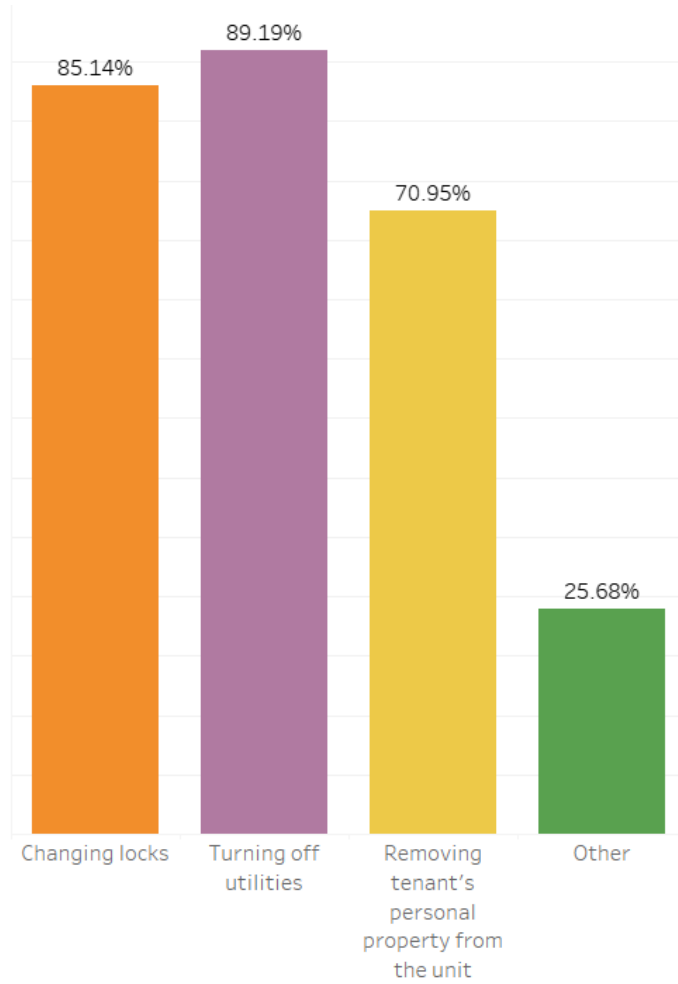
Penalty or "in terrorem" clauses	53
Provisions allowing rent payments to be applied to other fees and charges first and before rent	107
Provisions making non-rent charges, fees, and penalties collectable and due as "additional rent"	114
Provisions waiving a tenant's right to notices required under state law	43
Class action waivers	31
Waiver of other tenant rights and remedies otherwise provided by statute, regulation, or case law	87
Other	29

11. How often do you work with tenants whose landlords have engaged in illegal "self help" evictions? (n=151)



Weekly	17
Monthly	45
Quarterly	57
Yearly	24
I have never worked with a tenant whose landlord has engaged in an illegal "self help" eviction	8

12. What type of illegal "self help" eviction actions are landlords taking? Please check any that apply. (n=148)



Changing locks	126
Turning off utilities	132
Removing tenant's personal property from the unit	105
Other	38