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Re: Tenant Protections for Enterprise-Backed Multifamily Properties Request For Input

To Whom It May Concern:

We write to you on behalf of the American Civil Liberties Union (“ACLU”) in response to the Request for Input on Tenant Protections for Enterprise-Backed Multifamily Properties published by the Federal Housing Finance Agency (“FHFA”) in May 2023.

For over 100 years, the ACLU has been our nation’s guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the law of the United States guarantee to everyone in the country. With more than three million members, activists, and supporters, the ACLU is a non-profit, non-partisan, nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C. for the right of every individual to access housing free of discrimination on the basis of race, color, religion, gender, sexual orientation, gender identity or expression, national origin, familial or marital status, status as a recipient of public assistance, or record of arrest or conviction.

For the last several years, the ACLU has engaged in a range of advocacy to end discriminatory tenant screening practices, particularly related to criminal and eviction record screening. The ACLU Racial Justice Program has challenged criminal record screening policies, which disproportionately lock out people of color from housing, in lawsuits resulting in significant settlements.¹ The ACLU Women’s Rights Project has advocated to end unfair eviction record screening policies, because of their disparate impact on Black women and their families, through

¹ See, e.g., *Jones v. City of Faribault*, No. 18-1643, 2021 WL 1192466, at *24 (D. Minn. Feb. 18, 2021) (denying the city’s motion for summary judgment on all claims save for one theory in an action challenging the city’s rental licensing ordinance, including its crime-free housing program); *ACLU Wins Settlement to End Housing Discrimination Case*, ACLU (June 15, 2022, 1:15 PM), <https://www.aclu.org/press-releases/aclu-wins-settlement->

litigation and policy advocacy.² Additionally, the ACLU and its state affiliates have engaged in advocacy regarding source of income discrimination.³ These comments draw from these experiences to urge the FHFA to use its authority as supervisor and conservator of government sponsored enterprises (“GSEs”) to address the following unfair and discriminatory practices by housing providers that particularly impact Black and Latine families, including those headed by women:

- Prohibit GSE-backed properties from engaging in tenant screening practices that unfairly and discriminatorily exclude people from housing, including by prohibiting such properties from relying on criminal and eviction history records and algorithmically generated eligibility determinations by tenant screening companies. *See infra* [Section I\(a\)](#).
- Prohibit GSE-backed properties from discriminating against potential and current tenants based on source of income. *See infra* [Section I\(b\)](#).
- Require GSE-backed properties to provide written notice of their tenant screening criteria before requiring an applicant to submit any fees. *See infra* [Section II](#).
- Require GSE-backed properties to provide written notice to an applicant in the event that their lease application has been rejected, the reason(s) for rejection, all of the underlying records and reports on which the determination was based so that the applicant has the opportunity to explain or correct that information, and a description of how to correct or explain any information and how to timely appeal a rejection. *See infra* [Section II](#).
- Discourage GSE-backed properties from voluntarily participating in or cooperating with so-called “crime-free housing” and similar programs. *See infra* [Section III\(a\)](#).
- Require GSE-backed properties to provide notices of rights and responsibilities to landlords and tenants regarding sexual harassment, including model lease terms. *See infra* [Section III\(b\)](#).

[end-housing-discrimination-case](#); Rachel Goodman, *Savannah Police Suspend Its Discriminatory ‘Crime Free Housing Program,’* ACLU (Feb. 1, 2018), <https://www.aclu.org/news/racial-justice/savannah-police-suspend-its-discriminatory-crime-free>; *HOME Settles Race Discrimination Lawsuit Against Sterling Glen Apartments: Settlement Includes New Application Policy Regarding Criminal History*, ACLU OF VIRGINIA & ACLU (Aug. 6, 2019), <https://www.acluva.org/en/press-releases/home-settles-race-discrimination-lawsuit-against-sterling-glen-apartments-settlement>.

² *Legal Aid Chicago v. Hunter Properties LLC*, No. 23-CV-04809 (N.D. Ill. filed July 25, 2023), <https://wp.api.aclu.org/wp-content/uploads/2023/07/23-CV-4809-1-Complaint.pdf>; *HOPE Fair Housing Center v. Oak Park Apartments* (HUD complaint filed July 20, 2023), <https://wp.api.aclu.org/wp-content/uploads/2023/07/2023.07.25-HOPE-complaint-.pdf>; *Smith v. Wasatch*, No. 2:17-cv-00501 (W.D. Wash. Mar. 30, 2017), <https://www.aclu.org/cases/nikita-smith-v-wasatch-property-management-inc-et-al?document=smith-v-wasatch-property-management-complaint>; *Support for Legislation Promoting Housing Opportunity and Mobility Through Eviction Sealing: Hearing on H. 16090 and S. 956 (“HOMES Act”) Before the Mass. Joint Comm. on the Judiciary* (May 9, 2023) (testimony of the ACLU and the ACLU of Massachusetts), https://www.aclum.org/sites/default/files/aclu_aclum_joint_testimony_-_ma_homes_act_-_5.9.23-3.pdf; *N.Y. Advisory Comm. to the U.S. Comm’n on C.R.* (July 23, 2021) (testimony of the ACLU Women’s Rights Project), <https://www.aclu.org/how-evictions-result-intersectional-racial-and-gender-discrimination-testimony-sandra-s-park-senior>.

³ *See, e.g.*, Ryan Vortisch, *Advocates Push for Housing Justice at the Capitol*, ACLU OF NEVADA (Apr. 14, 2023, 6:15 PM), <https://www.aclunv.org/en/news/advocates-push-housing-justice-capitol>; Tanesha Hunter, *‘No Section 8’ Means No Opportunities*, ACLU OF OHIO (Oct. 7, 2016, 9:21 AM), <https://www.acluohio.org/en/news/no-section-8-means-no-opportunities>.

I. Access to Housing

The FHFA should ensure that tenants and potential tenants at GSE-backed properties are not unfairly and discriminatorily denied access to housing, including based on criminal history, eviction history, and other discriminatory tenant screening policies and practices. Moreover, the FHFA should ensure that owners, landlords, and property managers do not discriminate based on source of income, which disproportionately excludes families of color from housing.

a. Response to Questions B-1 and B-3

i. Criminal record screening harms potential tenants, and these harms disproportionately affect Black and Latine potential renters.

Landlords and property managers obtain and use criminal records in a variety of ways to unfairly screen out potential tenants. The data that they rely on may contain records that are decades old, and include arrest records, juvenile records, and sealed and expunged records that should not serve as a basis to disqualify tenants.

For example, in Faribault, Minnesota, as part of its so called “crime-free” housing ordinance, the Faribault Police Department encouraged landlords to screen tenants by using information from Minnesota’s Bureau of Criminal Apprehension (“MBCA”), which contained data on criminal convictions for 15 years following completion of a sentence, and did not allow sorting for recent criminal history.⁴ A “full” criminal history report from MBCA included not only public information regarding convictions but also all arrest records and juvenile records.⁵ Furthermore, Faribault instructed landlords to ask potential tenants about whether they had ever been convicted of a crime regardless of the age or nature of the offense.⁶ Accordingly, Faribault’s crime-free housing ordinance resulted in the unjust denial of housing to numerous potential tenants, including by encouraging landlords to deny housing based on alleged conduct that had no connection whatsoever to housing success (i.e., the ability to maintain housing stability and achieve positive housing outcomes⁷), conduct that occurred many years ago, and/or conduct that never resulted in a conviction.

Increasingly, landlords obtain criminal records data from tenant screening services.⁸ These screening companies generally rely on databases of aggregated criminal record data, which are often plagued with various errors. For instance, reports may mistakenly retrieve criminal records from people with similar names, improperly include sealed or expunged records, omit critical information about how a case was disposed of or resolved, contain misleading or inaccurate

⁴ Decl. of Alejandro Ortiz, *Faribault*, No. 18-1643 (D. Minn. Sept. 3, 2020), ECF No. 216: Ex. BH ¶¶ 7–8, *Faribault*, No. 18-1643 (D. Minn. Sept. 3, 2020), ECF No. 219-7.

⁵ *Id.*, Ex. BJ/P810 at 4, *Faribault*, No. 18-1643 (D. Minn. Sept. 3, 2020), ECF No. 219-9.

⁶ *Id.*, Ex. BK/P655, *Faribault*, No. 18-1643 (D. Minn. Sept. 3, 2020), ECF No. 219-10.

⁷ Cael Warren, *Success in Housing: How Much Does Criminal Background Matter?*, WILDER RSCH. (Jan. 2019), https://www.wilder.org/sites/default/files/imports/AEON_HousingSuccess_CriminalBackground_Report_1-19.pdf.

⁸ See Abby Boshart, *How Tenant Screening Services Disproportionately Exclude Renters of Color from Housing*, HOUS. MATTERS: URB. INST. (Dec. 21, 2022), <https://housingmatters.urban.org/articles/how-tenant-screening-services-disproportionately-exclude-renters-color-housing>.

information, and misclassify the offense reported.⁹ These errors are often impossible to correct, including because some screening companies fail to provide the underlying records to landlords, and some only produce a “risk” score, or overall recommendation.¹⁰ Rather than making individualized assessments on an applicant’s criminal history and considering any mitigating circumstances, as a commitment to fair housing requires, landlords often use criminal record information to deny housing to potential tenants based on *any* criminal history, including arrests, old convictions, and low-level crimes.¹¹ As explained below, however, criminal history is not a predictor of housing success, and blanket exclusions of people with criminal histories are unjustified and discriminatory.

Criminal records screening disproportionately harms people of color, especially Black and Latine renters, including because of the stark racial disparities that exist in the United States criminal legal system due to over-policing and systemic bias.¹² For example, “Black people represent roughly 13 percent of the US population but account for roughly 27 percent of arrests.”¹³ Moreover, police are more likely to arrest Black people than white people for engaging in the same conduct, including for low-level offenses, like trespassing, disorderly conduct, consuming alcohol in public, lurking, and marijuana use.¹⁴

These harms exist despite the fact that criminal history is not a predictor of housing success, and there is no empirical evidence that justifies broad exclusions of people with criminal histories from housing.¹⁵ For example, a study including data from more than 10,500 households found that, at minimum, 11 of 15 criminal offense categories have no negative effect on housing

⁹ Ariel Nelson, *Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing*, NAT’L CONSUMER L. CTR. 3 (Dec. 2019), <https://www.nclc.org/wp-content/uploads/2022/09/report-broken-records-redux.pdf>; see also Lauren Kirchner & Matthew Goldstein, *Access Denied: Faulty Automated Background Checks Freeze Out Renters*, THE MARKUP (May 28, 2020), <https://themarkup.org/locked-out/2020/05/28/access-denied-faulty-automated-background-checks-freeze-out-renters>.

¹⁰ Kirchner & Goldstein, *supra* note 9.

¹¹ Ortiz Decl., *supra* note 4, at Ex. BK/P655, ECF No. 219-10 (suggesting landlords deny applicants who have a criminal history).

¹² See, e.g., Susan Nembhard & Lily Robin, *Racial and Ethnic Disparities Throughout the Criminal Legal System: A Result of Racist Policies and Discretionary Practices*, URB. INST. (Aug. 2021), <https://www.urban.org/sites/default/files/publication/104687/racial-and-ethnic-disparities-throughout-the-criminal-legal-system.pdf>.

¹³ *Id.* at 4.

¹⁴ See, e.g., *Picking up the Pieces: A Minneapolis Case Study*, ACLU, <https://www.aclu.org/issues/racial-justice/race-and-criminal-justice/picking-pieces> (last visited Apr. 20, 2023); Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NATURE HUMAN BEHAVIOUR 736 (2020), <https://www.nature.com/articles/s41562-020-0858-1> (analyzing racial disparities in nearly 100 million traffic stops conducted across the country and finding that police stops and search decisions suffer from racial bias); Ezekiel Edwards et al., *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform*, ACLU (2020), https://www.aclu.org/sites/default/files/field_document/marijuanareport_03232021.pdf.

¹⁵ See, e.g., Calvin Johnson, *Tenant Screening with Criminal Background Checks: Predictions and Perceptions Are Not Causality*, HUD OFF. OF POL’Y DEV. AND RSCH. (May 17, 2022), <https://www.huduser.gov/portal/pdredge/pdredge-firm-asst-sec-051722.html>.

outcomes (i.e. on the resident’s reason for move-out), and the effect of a prior criminal offense on a resident’s housing outcome declines over time and becomes insignificant.¹⁶

Indeed, with respect to criminal records screening, the U.S. Department of Housing and Urban Development (“HUD”) has explained that “[h]ousing providers frequently employ policies or practices that exclude individuals with criminal involvement from housing,” which often result in discrimination against protected class groups, including Black communities, Latine communities, and individuals with disabilities because of persistent disparities throughout the United States criminal legal system.¹⁷ Accordingly, “[u]sing criminal history to screen, deny lease renewal, evict, or otherwise exclude individuals from housing” may be illegal under the FHA.¹⁸ In particular, HUD’s guidance on criminal records screening makes clear that “where a policy or practice that restricts access to housing on the basis of criminal history has a disparate impact on individuals of a particular race, national origin, or other protected class,” such policy is “unlawful under the [FHA] if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest. . . .”¹⁹

HUD has also made clear that a policy or practice of exclusion based on prior arrests, or “a blanket prohibition on any person with any conviction record” without accounting for “when the conviction occurred, what the underlying conduct entailed,” or what the person has since done can *never* be necessary to serve a substantial interest.²⁰ Instead, HUD instructs that any policy or practice with respect to criminal records screening should at the very least consider the nature, severity, and recency of a conviction, and provide for an individualized assessment of relevant mitigating information.²¹ Yet, as explained above, many landlords and property managers exclude prospective tenants based on arrest records, dated convictions, and low-level offenses, and fail to provide an individualized assessment of criminal records.

ii. Eviction record screening harms potential tenants, and these harms disproportionately affect families with children and Black and Latine women and their families.

Landlords and property managers unjustly screen out people with prior eviction records in myriad ways. They often communicate upfront that they will not rent to people with prior

¹⁶ Warren, *supra* note 7, at 15, 23.

¹⁷ Memorandum from Demetria L. McCain, Principal Deputy Assistant Sec’y for Fair Hous. and Equal Opportunity to Off. of Fair Hous. & Equal Opportunity et al., *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*, HUD 2–3 (June 10, 2022), <https://www.hud.gov/sites/dfiles/FHEO/documents/Implementation%20of%20OGC%20Guidance%20on%20Application%20of%20FHA%20Standards%20to%20the%20Use%20of%20Criminal%20Records%20-%20June%2010%202022.pdf> [hereinafter HUD June 10, 2022 Memo]; Helen R. Kanovsky, *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*, HUD 3–4, 10 (Apr. 4, 2016), https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF [hereinafter HUD Criminal Record Screening Guidance].

¹⁸ HUD June 10, 2022 Memo, *supra* note 17, at 3; HUD Criminal Record Screening Guidance, *supra* note 17, at 10.

¹⁹ HUD Criminal Record Screening Guidance, *supra* note 17, at 2.

²⁰ *Id.* at 5–6.

²¹ *See id.* at 6–7.

evictions. They may state they will not rent to people with evictions in their advertising and postings, and they may also include such statements when asking about eviction records in the application process.

Eviction record screening policies are frequently vague and broad, discouraging applications from many otherwise qualified applicants and rejecting many others. In our experience, landlords routinely use generic phrases like “no evictions,” which signal that they will reject any applicant who has previously faced eviction, regardless of whether the case was dismissed, occurred many years or even decades ago, or has since been sealed or expunged. These policies often make no distinctions between eviction filings, eviction judgments, different types of judgments, and sealed cases. Given the expense of submitting an application,²² applicants who see such a statement and had some prior involvement in an eviction case will rationally decide not to apply, even if there was no eviction judgment entered against them, their circumstances have changed, or their case was sealed.

In 2012, for example, N. Smith’s landlord filed an eviction action against her.²³ Fortunately, Ms. Smith and her landlord worked out an agreement, and Ms. Smith was never evicted from her home. However, when Ms. Smith applied for another apartment three years later, she was denied housing based on the property management company’s blanket ban on prior eviction records. The ACLU, ACLU of Washington, Northwest Justice Project, and Virginia Poverty Law Center filed a federal lawsuit challenging this blanket screening policy on the grounds that it violated the Fair Housing Act’s prohibition against race, gender, and race/gender discrimination. In doing so, the ACLU highlighted research showing that, in King County, Black tenants are nearly four times more likely to have an eviction case filed against them compared to white tenants, and households headed by Black women are more than five times as likely to have an eviction case filed against them as their white counterparts. The case eventually settled in Ms. Smith’s favor.

Landlords who have “no eviction records” policies generally do not engage in any individualized assessment of the applicant. While HUD has instructed that “in evaluating rental history, housing providers should consider the accuracy, nature, relevance, and recency of negative information rather than having any negative information trigger an automatic denial[.]” as well as extenuating or mitigating circumstances like whether “an eviction was due to unexpected medical or emergency expenses, or a negative reference reflected bias[.]”²⁴ we have not seen this type of assessment applied in the overall housing market.

For example, we have not seen an eviction records screening policy where a landlord affirmatively states that they will consider mitigating circumstances when evaluating an application. This type of affirmative statement is important, as it signals to potential applicants that they should consider applying despite a prior eviction record because the landlord will

²² Wesley Masters, *Apartment Application Fees: Why You Pay Them and What They Cover*, RENT (July 27, 2021), <https://www.rent.com/blog/apartment-application-fees/>; see also Luis Ferré-Sadurní, *\$500 to Apply for an Apartment? So Much for the \$20 Cap*, N.Y. TIMES (Sept. 3, 2019), <https://www.nytimes.com/2019/09/03/nyregion/apartment-rental-application-fees.html>.

²³ *Smith v. Wasatch*, No. 2:17-cv-00501 (W.D. Wash. Mar. 30, 2017).

²⁴ *Office of Fair Housing and Equal Opportunity (FHEO) Guidance on Compliance with Title VI of the Civil Rights Act in Marketing and Application Processing at Subsidized Multifamily Properties*, HUD 6 (Apr. 21, 2022), <https://www.hud.gov/sites/dfiles/FHEO/documents/HUD%20Title%20VI%20Guidance%20Multifamily%20Marketing%20and%20Application%20Processing.pdf> [hereinafter HUD Multifamily Guidance].

examine their application. Second, it is rare that a landlord will consider mitigating circumstances even where applicants affirmatively advocate for themselves by attempting to explain the circumstances of the eviction record or how it should not be considered relevant to their current application. Research bears this out, as a recent study established that landlords assess harshly applicants with any sort of eviction record, failing to distinguish between those with prior eviction filings and those whose cases resulted in judgments.²⁵

There are substantial harms from considering eviction records in making housing decisions, particularly for communities of color, families with children, and Black and Latine women and their families.

Evictions are a racial and gender justice issue. Millions of tenants across the country have faced, and will face, the threat of eviction. Because of longstanding systemic income and wealth inequality in this country, Black households are more than twice as likely as white households to report that they are not currently caught up on rent payments.²⁶ Rent insecurity overwhelmingly burdens communities of color and women—and, in particular, women of color, who are overrepresented in low-wage jobs and shoulder the majority of caregiving responsibilities.²⁷

With respect to eviction record screening, HUD has acknowledged that “non-white households may be more likely to face eviction actions, even for the same housing history as white counterparts.”²⁸ Indeed, Black and Latine households are more likely than white households to rent their homes,²⁹ and they are consistently over-represented in households facing eviction.³⁰ The Eviction Lab, a team of researchers committed to understanding the racial and gender disparities among evicted Americans, found that, based on data from 2012 to 2016, “[n]early one in four black renters lived in a county in which the black eviction rate was more than double the white eviction rate.”³¹ They also found that, among renters, women—especially Black and Latine women—faced higher eviction rates than men. The ACLU Data Analytics team analyzed the Eviction Lab’s national eviction data from 2012 to 2016 and found that, on average, Black women renters had evictions filed against them by landlords at double the rate of white renters (or higher) in 17 of 36 states, and they were more likely to have cases filed against them that are later

²⁵ Wonyoung So, *Which Information Matters? Measuring Landlord Assessment of Tenant Screening Reports*, HOUS. POL’Y DEBATE (Aug. 30, 2022), <https://www.tandfonline.com/doi/full/10.1080/10511482.2022.2113815>.

²⁶ See U.S. Census Bureau, *Week 54 Household Pulse Survey: February 1 – February 13, 2023: Table 1b. Last Month’s Payment Status for Renter-Occupied Housing Units, by Select Characteristics* (Feb. 22, 2023), <https://www.census.gov/data/tables/2023/demo/hhp/hhp54.html>.

²⁷ *6 Ways States’ Response to COVID-19 Centers Gender and Racial Justice*, NAT’L WOMEN’S L. CTR. (Aug. 4, 2020), <https://nwlc.org/blog/6-ways-states-response-to-covid-19-centers-gender-and-racial-justice/>.

²⁸ HUD Multifamily Guidance, *supra* note 24, at 7.

²⁹ See Anthony Cilluffo et al., *More U.S. Households Are Renting Than at Any Point in 50 Years*, PEW RSCH. CTR. (July 19, 2017), <https://www.pewresearch.org/fact-tank/2017/07/19/more-u-s-households-are-renting-than-at-any-point-in-50-years/>.

³⁰ See Jaboa Lake, *The Pandemic Has Exacerbated Housing Instability for Renters of Color*, CTR. FOR AM. PROGRESS (Oct. 30, 2020), <https://www.americanprogress.org/article/pandemic-exacerbated-housing-instability-renters-color/>; Timothy A. Thomas et al., *The State of Evictions: Results from the University of Washington Evictions Project*, U.C. BERKELEY EVICTION RSCH. NETWORK, <https://evictionresearch.net/washington/> (last updated Jan. 6, 2020); *Evictions in Philadelphia: A Data & Policy Update*, REINVESTMENT FUND (Oct. 2019), <https://www.reinvestment.com/insights/evictions-in-philadelphia-a-data-policy-update/>.

³¹ Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, EVICTION LAB (Dec. 16, 2020), <https://evictionlab.org/demographics-of-eviction/>.

dismissed.³² Other research has shown that having children is the single greatest predictor of whether someone will face eviction.³³ Data released by the Urban Displacement Project at UC Berkeley—a group aiming to identify neighborhoods with the highest risk of displacement and eviction across 53 metropolitan areas with populations larger than one million people—reveals that 73% of Black renters live in neighborhoods with a high risk of eviction.³⁴

The filing of an eviction action triggers a cascading sequence of harmful events. Multiple studies have shown that Black, Latine, and women renters are disproportionately exposed to the many documented negative consequences of eviction, from job loss, mental and physical health issues, material hardship, and even homelessness.³⁵ The use of eviction record screening policies only exacerbate these harms, by making families more vulnerable to homelessness and to landlords who might take advantage of a desperate situation to charge more for rent, leave tenants in sub-standard housing conditions, or force tenants to endure sexual harassment or demands for sexual activity.³⁶ For domestic violence survivors, eviction record screening policies heighten their insecurity, as it may be difficult for them to obtain housing independent of abusive partners.³⁷ Low-income, single mothers and families are at particular risk of eviction and most likely to then be locked out of future housing, as well as the opportunities that accompany it, due to their eviction records.³⁸

Because eviction records can follow people for years, many tenants will avoid a case at all costs.³⁹ Rather than exercising their legal rights, many tenants endure horrible and unlawful living conditions to avoid bearing the effects of a scarlet “E.” Others choose to comply with unlawful lease termination notices and leave their home, rather than have an eviction filed against them, even when they have legal defenses or counterclaims they could bring.

Thus, eviction record screening policies contribute to growing racial, gender, income, and social inequality.

³² Sophie Beiers, Linda Morris & Sandra Park, *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, ACLU (Jan. 10, 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color>.

³³ See Bryce Covert, *Why Landlords Target Mothers for Eviction*, NEW REPUBLIC (Mar. 16, 2021), <https://newrepublic.com/article/161578/landlords-target-mothers-eviction-crisis-covid>.

³⁴ See *Housing Precarity Risk Model*, U.C. BERKELEY URB. DISPLACEMENT PROJECT, <https://www.urbandisplacement.org/maps/housing-precarity-risk-model/> (last updated July 13, 2021).

³⁵ See Matthew Desmond et al., *Evicting Children*, 92 SOC. FORCES 303 (2013), <https://academic.oup.com/sf/article-abstract/92/1/303/2235762?redirectedFrom=fulltext>.

³⁶ See, e.g., Rigel C. Oliveri, *Sexual Harassment of Low-Income Women in Housing: Pilot Study Results*, 83 MO. L. REV. 598 (2018), <https://scholarship.law.missouri.edu/mlr/vol83/iss3/6/>.

³⁷ *Indigo Real Estate Servs. v. Rousey*, 151 Wn. App. 941, 151 Wash. App. 941, 215 P.3d 977 (Wash. Ct. App. 2009); see also Cydney Gillis, *Renter Wins Right to Edit Unlawful Eviction Record*, REAL CHANGE (Sept. 10, 2009), <https://www.realchangenews.org/news/2009/09/10/renter-wins-right-edit-unlawful-eviction-record>; Jenny Kutner, *Domestic Violence Victims Can Be Evicted for Calling Police*, MIC, <https://www.aol.com/2016-07-14-domestic-violence-victims-can-be-evicted-for-calling-police-21432355.html> (last updated July 14, 2016, 10:57 PM).

³⁸ Matthew Desmond, *Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship*, MACARTHUR FOUND. (Mar. 2014), https://www.macfound.org/media/files/hhm_-_poor_black_women_are_evicted_at_alarming_rates.pdf.

³⁹ Sandra Park, *Unfair Eviction Screening Policies Are Disproportionately Blacklisting Black Women*, ACLU (Mar. 30, 2017), <https://www.aclu.org/blog/womens-rights/violence-against-women/unfair-eviction-screening-policies-are-disproportionately>.

iii. The use of algorithms in tenant screening amplify and exacerbate existing racial, gender, disability, economic, and intersectional inequities in access to housing.

Housing discrimination has evolved along with new and expanding uses of technology,⁴⁰ including tenant screening algorithms.⁴¹ These systems purport to make predictions about who will be a successful tenant by analyzing large amounts of data. To evaluate tenants, these systems pull in credit scores, legal records, previous housing history, and other information from data brokers, traditional credit agencies, people search databases, and other sources. Too often, these technologies amplify and exacerbate existing racial, gender, disability, economic, and intersectional inequities in accessing housing. As highlighted in a recent report by the Consumer Financial Protection Bureau (“CFPB”) these systems are prone to algorithmic errors and discrimination, which disproportionately impact Black and Latine applicants, with devastating effects for consumers’ ability to access housing.⁴² Indeed, bias is often baked into the outcomes the algorithms are asked to predict. For example, algorithms that attempt to predict risk often use “arrest” as a proxy for “likelihood to compromise safety in housing.” Given the realities of disproportionate and unjust policing of communities of color, as discussed above, the idea that an arrest can indicate a future housing safety risk, is inherently biased, and indeed violates HUD’s guidance that consideration of arrest records can never serve a substantial interest in this context.

Likewise, bias exists in the data used to train the AI—data that is often discriminatory or unrepresentative for people of color, women, or other marginalized groups—and can rear its head throughout the AI’s design, development, implementation, and use. For example, if an algorithm is given “successful tenant” profiles comprised entirely of men within a particular income bracket with the goal of having the algorithm learn to evaluate future tenants, it will learn to look for characteristics common to that demographic when evaluating new tenants and potentially exclude people who fall into other demographic categories, or who have other life experiences, possibly including protected classes. And because of the black box nature of these systems and insufficient notice to impacted people when they are utilized, it is often difficult or impossible for people to learn about housing discrimination in these systems.⁴³ This is particularly true with respect to tenant screening companies that generate a “score” or recommendation for an applicant.

⁴⁰ See, e.g., Patrick Sisson, *Housing Discrimination Goes High Tech: How Algorithms, Ad Targeting, and Other New Technologies Threaten Fair Housing Laws*, CURBED (Dec. 17, 2019, 6:12 PM), <https://archive.curbed.com/2019/12/17/21026311/mortgage-apartment-housing-algorithm-discrimination>; Robert Bartlett et al., *Consumer-Lending Discrimination in the FinTech Era*, U.C. BERKELEY (Nov. 2019), <https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf>.

⁴¹ See, e.g., Kaveh Waddell, *How Tenant Screening Reports Make It Hard for People to Bounce Back from Tough Times*, CONSUMER REPS. (Mar. 11, 2021), <https://www.consumerreports.org/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times/>.

⁴² *Consumer Snapshot: Tenant Background Checks*, CFPB 21 (Nov. 2022), https://files.consumerfinance.gov/f/documents/cfpb_consumer-snapshot-tenant-background-check_2022-11.pdf.

⁴³ See, e.g., *Conn. Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC*, No. 3:18-cv-705, 2023 WL 4669482 (D. Conn. July 20, 2023) at *9–10, *23–25 (describing adverse action letter provided to applicant that does not disclose the basis for the applicant’s denial except to inform that the denial is based on the relevant company’s screening report and holding screening company liable under the Fair Credit Reporting Act for willfully failing to make it possible to request a consumer report).

As the CFPB has found, some tenant screening companies use a proprietary scoring model or algorithm to classify a renter as more or less “risky”; landlords often receive these scores with limited access to the underlying records or information on which an assessment is based; and applicants rarely receive their scores and are not informed about how they are calculated or used in making housing decisions.⁴⁴ Accordingly, landlords often fail to provide individualized assessment of potential tenants and instead rely on these algorithmically generated scores or recommendations, and applicants do not have access to underlying negative information to explain or correct the rampant errors described above.

iv. The FHFA should ensure that GSE-backed multifamily properties remove unfair and discriminatory barriers in tenant screening policies and practices.

As supervisor and conservator of GSEs, the FHFA has a critical role to play in ensuring that GSE-backed multifamily properties remove barriers that discriminatorily and unnecessarily prevent potential tenants from accessing affordable housing. As part of its obligation to assess underwriting standards, policies, and business practices that cause racial disparities or affect low- and moderate-income families,⁴⁵ the FHFA should prohibit multifamily properties financed by GSEs from relying on criminal history and eviction records to unjustly exclude people from housing. As described above, the use of these records causes substantial injury to applicants and society as a whole and has no basis in predicting negative housing outcomes. As such, the FHFA should prohibit GSE-backed multifamily properties from using any policies or practices—including by tenant screening companies and their algorithms—that consider arrest records, eviction filings, or sealed and expunged records in evaluating applicants for housing.⁴⁶ Similarly, any policies or practices that fail to consider the nature, recency, severity, and circumstances of a conviction or eviction judgment must be prohibited.⁴⁷ At minimum, landlords must substantiate a significant link between any factors they consider in screening an applicant and the likelihood of a negative housing outcome (*e.g.*, leaving without notice, non-payment of rent), and provide for individualized assessment of any factor they consider. The burden of assessment and substantiation of the connection between screening criteria and negative housing outcomes must be on housing providers rather than on housing applicants and their families.

Moreover, housing providers should not deny applicants based on algorithmically generated scores or other eligibility determinations by tenant screening companies. Instead, the FHFA should require landlords to request and obtain sufficiently detailed information to independently assess whether applicants for housing will be good tenants.

⁴⁴ *Consumer Snapshot: Tenant Background Checks*, *supra* note 42.

⁴⁵ 12 U.S.C. § 1723a(n)(2)(G); 12 U.S.C. § 1456(f)(2)(G).

⁴⁶ *See, e.g.*, HUD Criminal Record Screening Guidance, *supra* note 17, at 5 (explaining why consideration of arrest records can never serve a substantial, legitimate, nondiscriminatory interest).

⁴⁷ *See id.* at 6 (explaining that a blanket prohibition on any person with a conviction record cannot prove that such a policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest).

b. Response to Question B-2

As a result of a combination of factors, including decades of racial and gender discrimination in housing and lending practices, Black, Indigenous, and Latine households are much more likely than white households to rent with incomes at or below the poverty level.⁴⁸ Accordingly, forms of housing assistance, particularly housing vouchers, are critical in advancing equity for families of color. Based on recent data collected in 2019, housing assistance helped lift about three million people out of poverty.⁴⁹ The Housing Choice Voucher (“HCV”) program, the largest federal housing assistance program, expands access to affordable housing to more than two million households, more than two-thirds of which have a head of household who identifies as a person of color, and nearly four-fifths of which are headed by women.⁵⁰ When people in poverty receive housing subsidies, it expands the quality of their housing options. That opportunity, in turn, increases access to more resourced communities, which is particularly impactful for Black families, who disproportionately live in low-resource neighborhoods.

The HCV program can only be effective and provide rental assistance to more families if landlords and private rental agencies accept income subsidies and rent to voucher holders. Rental discrimination against voucher holders perpetuates systemic racism and denies equal opportunity in the housing market to renters of color, particularly Black women and their families. Currently, source of income discrimination is not an explicit protected class under federal law. Accordingly, such discrimination continues to serve as a highly problematic barrier to housing stability for Black people, women, people with disabilities, and cost-burdened households, especially in jurisdictions without source of income discrimination protections.

Source of income anti-discrimination laws exist in nineteen states, the District of Columbia, and several localities.⁵¹ These laws are critical in increasing the success and utilization rates of HCVs, supporting geographic mobility for families with vouchers, and reducing the concentration of vouchers in under-resourced neighborhoods. In particular, “[p]ublic housing agencies in jurisdictions with laws banning source of income discrimination had voucher utilization rates five to 12 percentage points higher than those without the laws[.]”⁵² Although

⁴⁸ *Racial Disparities Among Extremely Low-Income Renters*, NAT’L LOW INCOME HOUS. COAL. (Apr. 15, 2019), <https://nlihc.org/resource/racial-disparities-among-extremely-low-income-renters>.

⁴⁹ See Danilo Trisi, *Programs Targeted for Cuts Keep Millions From Poverty, New Census Data Show*, CTR. ON BUDGET & POL’Y PRIORITIES (Sept. 10, 2019, 11:30 AM), <https://www.cbpp.org/blog/programs-targeted-for-cuts-keep-millions-from-poverty-new-census-data-show>.

⁵⁰ See Will Fischer, Sonya Acosta & Erik Gartland, *More Housing Vouchers: Most Important Step to Help More People Afford Stable Homes*, CTR. ON BUDGET & POL’Y PRIORITIES, <https://www.cbpp.org/research/housing/more-housing-vouchers-most-important-step-to-help-more-people-afford-stable-homes> (last updated May 13, 2021); Laurie Goodman, Karan Kaul & Michael Stegman, *Leveraging Financing to Encourage Landlords to Accept Housing Choice Vouchers*, URB. INST. (Sept. 2022), <https://www.urban.org/sites/default/files/2022-09/Leveraging%20Financing%20to%20Encourage%20Landlords%20to%20Accept%20Housing%20Choice%20Vouchers.pdf>.

⁵¹ See Source of Income Laws, LOCAL HOUS. SOLUTIONS, <https://localhousingsolutions.org/housing-policy-library/source-of-income-laws/> (last visited Apr. 3, 2023).

⁵² Alison Bell, Barbara Sard & Becky Koepnick, *Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results*, CTR. ON BUDGET & POL’Y PRIORITIES, <https://www.cbpp.org/research/housing/prohibiting-discrimination-against-renters-using-housing-vouchers-improves-results#:~:text=Voucher%20non->

these laws are critical, they only protect an estimated 57% of voucher holders.⁵³ Additionally, even though these laws have been increasingly adopted throughout the country, inconsistent or lax enforcement dampens their impact. Moreover, housing providers often discriminate against voucher holders by making it impossible for them to secure housing because of minimum income requirements that are incorrectly or otherwise discriminatorily applied or calculated, including based on the entire amount of rent for a unit rather than the amount of rent that a voucher holder must cover.⁵⁴

The FHFA should ensure that all GSE-backed multifamily properties end discrimination against potential or current tenants based on source of income, including by ensuring that housing providers do not discriminate against potential tenants by refusing to accept vouchers or other housing subsidies. Additionally, the FHFA should mandate that, at minimum, any income requirements are proportional to the portion of rent that a voucher holder is obligated to cover. In instances in which a voucher covers the entire cost of rent, minimum income requirements should not apply.

II. Access to Information: Response to Questions C-1 and C-6

Unfortunately, tenants are often unable to vindicate their rights under the FHA and state and local laws because of the black box nature of the information that landlords consider, including the information that tenant screening companies use. Tenants often have no visibility into whether housing providers rely on inaccurate, incomplete, or otherwise flawed information from tenant screening companies to make a recommendation about their application.⁵⁵ As noted above, when reports are scored and adjudicated, oftentimes a housing provider never reviews, or even receives, the underlying report. Instead, they simply receive a notification about whether the applicant meets the eligibility criteria. This means that a tenant might be denied housing due to an inaccuracy, without their potential landlord even seeing the inaccuracy and having an opportunity to recognize it as such.

Applicants, in turn, generally have very little insight into why they were rejected.⁵⁶ Accordingly, tenants are often unable to correct errors in a report, explain to the landlord how a record is inaccurate and why, or challenge the use of improper information.⁵⁷ Indeed, in a survey, only about four in ten landlords indicated that they allowed applicants to explain any negative

[discrimination%20laws%20appear%20to%20be%20associated%20with.%28HUD%29%20study%20has%20found%2C%20consistent%20with%20earlier%20analyses.org](#) (last updated Dec. 20, 2018).

⁵³ See *Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program*, POVERTY & RACE RSCH. ACTION COUNCIL 1 n.1, <https://www.prrac.org/pdf/AppendixB.pdf> (last updated July 2023).

⁵⁴ See, e.g., Aastha Uprety, *Impossible Minimum Income Requirements Prevent Voucher Holders from Finding Housing*, EQUAL RTS. CTR. (July 18, 2019), <https://equalrightscenter.org/income-requirements-voucher-discrimination/>.

⁵⁵ See Nisha Shetty & Jay Young, *The Problem with Tenant Screening Reports*, THE REAL DEAL (Sept. 12, 2022, 7:00 AM), <https://therealdeal.com/new-york/2022/09/12/the-problem-with-tenant-screening-reports/>; Boshart, *supra* note 8.

⁵⁶ Nelson, *supra* note 9, at 14.

⁵⁷ See *id.*

information in their tenant screening report.⁵⁸ Even if a tenant is able to obtain their own score, recommendation, or underlying information from a tenant screening company upon request, because of the sheer number of companies and opaque market in which they operate, it is nearly impossible for a consumer to verify that their information will be accurate before a report is furnished to a potential landlord.⁵⁹ As discussed above, this inaccurate, incomplete, or otherwise erroneous information disproportionately affects Black and Latine potential renters.

The FHFA should require GSE-backed properties to provide notice of their screening criteria to applicants prior to charging any application fees. Moreover, the FHFA should mandate that its housing providers give written notice to an applicant in the event that their lease application has been rejected, including a plain language description of the reason(s) for the rejection. The written notice must include all of the underlying records and reports on which the determination was based so that the applicant has the opportunity to explain or correct that information. Finally, the written notice must describe how to correct or explain any information, and how to timely appeal a rejection.

III. Tenant Housing Stability: Response to Questions D-2 and D-3

As explained above, evictions are a racial and gender justice issue. The FHFA should ensure that owners and managers of GSE-backed multifamily properties do not use eviction or the threat of eviction to perpetuate housing instability or sexual harassment.

a. Nuisance ordinances, crime-free housing ordinances or programs, and the requirements that they encourage or require housing providers to adopt limit access to safe, affordable housing.

Across the country, municipalities have enacted local so-called “crime-free” housing or nuisance ordinances that often encourage or require landlords to evict tenants and their families based on the mere suspicion of criminal activity and include such terms in “crime-free” housing addendums to leases; encourage or require landlords to bar housing applicants with any criminal record; and impose a fine or other penalty against a landlord after a rental unit exceeds a threshold number of calls to the police or for other emergency services as specified by the ordinance. These ordinances often intentionally target and displace people of color and people with disabilities.⁶⁰ Moreover, they disproportionately harm Black and Latine individuals because of the stark racial disparities that exist in the United States criminal legal system due to over-policing and systemic bias, as discussed above.

⁵⁸ Mackenzie Born, *Growing Renter Confidence Fueling Hot Market to Start 2022* (Feb. 15, 2022), <https://www.avail.co/blog/growing-renter-confidence-fueling-hot-market-to-start-2022>.

⁵⁹ See *Tenant Background Checks Market*, CFPB 10, 23–24 (Nov. 2022), https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf.

⁶⁰ See e.g., *Jones v. City of Faribault*, No. 18-1643, 2021 WL 1192466, at *14 (D. Minn. Feb. 18, 2021) (“The Court finds that the confluence of racialized complaints leading up to the [crime-free ordinance’s] enactment, the City’s knowledge that the [o]rdinance would have negative effects on the Somali community, and the City’s desire to eliminate low-rent housing downtown, create an inference that the City implemented the [o]rdinance because of its potential displacement of Black residents, not merely in spite of such effect.”).

Crime-free housing and nuisance ordinances also target and disproportionately harm survivors of gender-based violence. Because these ordinances frequently penalize households for calls for emergency assistance or for criminal activity allegedly occurring in the home, cities have used them to punish and cause the eviction of survivors of domestic violence and their families.⁶¹ The harmful effects of housing instability are compounded for Black women, Indigenous women, and other women of color, who face both increased barriers to housing and disproportionate rates of violence.⁶² HUD has repeatedly named housing discrimination against domestic violence survivors, and specifically the use of ordinances and programs to punish and threaten their housing, to be a significant fair housing issue,⁶³ as women account for the vast majority of domestic violence survivors.⁶⁴ Indeed, HUD previously identified repeal of these ordinances as a step jurisdictions could take to affirmatively further fair housing.⁶⁵

Additionally, crime-free housing and nuisance ordinances are disproportionately enforced against people with disabilities. People with disabilities may need to access emergency assistance with some frequency, risking eviction under ordinances that include any 911 call as a basis for

⁶¹ See, e.g., Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOCIO. REV. 117 (2012),

https://scholar.harvard.edu/files/mdesmond/files/desmond.valdez.unpolicing.asr_0.pdf; Gretchen W. Arnold, *From Victim to Offender: How Nuisance Property Laws Affect Battered Women*, 34 J. OF INTERPERSONAL VIOLENCE 1103 (2016); ACLU Women's Rights Project & Social Science Research Council, *Silenced: How Nuisance Ordinances Punish Crime Victims in New York*, ACLU (June 2015),

https://www.aclu.org/sites/default/files/field_document/equ15-report-nuisanceord-rel3.pdf; Joseph Mead et al., *Who is a Nuisance? Criminal Activity Nuisance Ordinances in Ohio*, CLEVELAND STATE UNIV. (Nov. 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3067028.

⁶² See Monica McLaughlin & Debbie Fox, *Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking*, NAT'L NETWORK TO END DOMESTIC VIOLENCE 6-6 (2019),

https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf; see also Carolyn M. West & Kalimah Johnson, *Sexual Violence in the Lives of African American Women*, NAT'L ONLINE RES. CTR. ON VIOLENCE AGAINST WOMEN (Mar. 2013), https://vawnet.org/sites/default/files/materials/files/2016-09/AR_SVAAWomenRevised.pdf; Sharon G. Smith et al., *National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 State Report*, NAT'L CTR. FOR INJ. PREVENTION AND CONTROL & CENTERS FOR DISEASE CONTROL AND PREVENTION (Apr. 2017), <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>.

⁶³ See, e.g., Helen R. Kanovsky, *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services*, HUD (Sept. 13, 2016), <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF> [hereinafter HUD Local Nuisance Guidance];

Mem. from Sara K. Pratt, Deputy Assistant Sec'y for Enf't and Programs to FHEO Off. Directors & FHEO Regional Directors, *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA)*, HUD (Feb. 9, 2011), <https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.PDF>.

⁶⁴ Sharon G. Smith et al., *The National Intimate Partner & Sexual Violence Survey: 2015 Data Brief – Updated Release*, NAT'L CTR. FOR INJ. PREVENTION AND CONTROL & CENTERS FOR DISEASE CONTROL AND PREVENTION 7 (Nov. 2018), <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>; see also Melissa Jeltsen & Alissa Scheller, *At Least a Third of All Women Murdered in the U.S. Are Killed by Male Partners*, HUFFINGTON POST, https://www.huffpost.com/entry/men-killing-women-domesti_n_5927140 (last updated Dec. 6, 2017).

⁶⁵ See HUD Local Nuisance Guidance, *supra* note 63, at 12–13.

citation.⁶⁶ For example, in one low-income property in Iowa that housed individuals with mental health disabilities, tenants frequently called 911 for assistance dealing with non-violent disagreements and noise, though these calls rarely led to criminal charges.⁶⁷ Instead of recognizing and responding to the particular needs of these residents, police often designated these calls as “disturbing the peace” and cited the property for response services.⁶⁸ Similarly, based on nuisance records in a city in Ohio, the city issued several fines, in the total amount of \$2,000 dollars, to the operator of a group home for people with development and intellectual disabilities, based on calls for a client in crisis, despite that the city’s records noted that the client required medical care for self-inflicted injuries and that the client had an intellectual disability and several mental health diagnoses.⁶⁹ In its enforcement letters, the city informed the group home operator that the fines would be waived upon receipt of proof that they evicted the disabled resident.⁷⁰

Because of the discriminatory nature and impact of these ordinances and programs on people of color, survivors of gender-based violence, and people with disabilities, the ACLU has challenged them across the country, including in Faribault, Minnesota,⁷¹ Bedford, Ohio,⁷² Norristown, PA,⁷³ Surprise, Arizona,⁷⁴ Maplewood, Missouri,⁷⁵ and Savannah, Georgia.⁷⁶ These cases have ended with the repeal or substantial reform of the ordinances at issue given the real harms that they impose. In addition, the Justice Department secured an agreement with the City of Hesperia and the San Bernardino County Sheriff’s Department to end its discriminatory “crime-free” rental housing program,⁷⁷ and HUD likewise negotiated a conciliation agreement (in partnership with the ACLU) ending with the repeal of the ordinance in Norristown, Pennsylvania.⁷⁸

⁶⁶ ACLU Women’s Rights Project & Social Science Research Council, *supra* note 61, at 4.

⁶⁷ *Id.* at 4–5.

⁶⁸ *Id.*

⁶⁹ Am. Compl., *Somai v. City of Bedford*, No. 19-cv-00373 (N.D. Ohio Jan. 30, 2020),

<https://www.aclu.org/cases/somai-v-city-bedford-oh?document=somai-v-city-bedford-oh-amended-complaint>.

⁷⁰ *Id.* ¶ 75.

⁷¹ See *City of Faribault*, 2021 WL 1192466, at *24 (denying in part defendants’ motion for summary judgment in an action challenging the city’s crime-free ordinance); *ACLU Wins Settlement to End Housing Discrimination Case*, ACLU (June 15, 2022, 1:15 PM), <https://www.aclu.org/press-releases/aclu-wins-settlement-end-housing-discrimination-case>.

⁷² *Somai*, <https://www.aclu.org/cases/somai-v-city-bedford-oh> (repealing the city’s criminal activity nuisance ordinance and preventing reenactment).

⁷³ *Briggs v. Borough of Norristown*, No. 13-cv-02191 (E.D. Pa. 2013), <https://www.aclupa.org/en/cases/briggs-v-borough-norristown-et-al> (repealing the city’s nuisance ordinance and preventing reenactment).

⁷⁴ *Markham v. City of Surprise*, No. 15-cv-01696 (D. Ariz. 2015), <https://www.aclu.org/cases/nancy-markham-v-city-surprise> (repealing the city’s nuisance ordinance and preventing reenactment).

⁷⁵ *Watson v. City of Maplewood*, No. 17-cv-01268, 2017 WL 4758960 (E.D. Mo. Oct. 20, 2017), <https://www.aclu.org/cases/rosetta-watson-v-maplewood> (denying in part Maplewood’s motion to dismiss an action challenging the city’s nuisance policy, which authorized officials to revoke residents’ occupancy permits for criminal activity and police calls).

⁷⁶ See Goodman, *supra* note 1.

⁷⁷ *Justice Department Secures Landmark Agreement with Hesperia and Sheriff’s Department to End ‘Crime Free’ Rental Housing Program*, U.S. ATT’Y’S OFF.: CENT. DIST. OF CAL. (Dec. 14, 2022), <https://www.justice.gov/usao-cdca/pr/justice-department-secures-landmark-agreement-hesperia-and-sheriff-s-department-end>.

⁷⁸ *HUD & Philadelphia-Area Borough Settle Allegations of Housing Discrimination Against Victims of Domestic Violence*, HUD ARCHIVES (Oct. 2, 2014), <https://archives.hud.gov/news/2014/pr14-121.cfm>.

Despite the harms that these ordinances pose to people of color, survivors of gender-based violence, and individuals with disabilities, many jurisdictions throughout the country continue to pass, maintain, and encourage participation in them and related programs.⁷⁹ GSE-backed properties should not include crime-free leasing addendums in their leases, or otherwise voluntarily participate in or cooperate with these programs.

b. Tenants have a right to housing free from harassment, and eviction or threats of eviction should not be used as a tool to perpetuate harassment.

There is a clear link between harassment and evictions, with the threat of eviction often used as a tool to perpetuate harassment.⁸⁰ Existing research has found sexual harassment is most likely to target the lowest-income tenants – including many who would qualify for but do not have housing subsidies,⁸¹ women of color,⁸² transgender women and other LGBTQ+ tenants,⁸³ and women with disabilities.⁸⁴ Harassment is often committed by small landlords without management companies. Researchers have found that harassment in housing takes somewhat different forms from sexual harassment in employment and is more likely to involve explicit sexual demands and coercion. Harassment in the home often inflicts devastating and lasting harm, as tenants may be forced to leave their homes to end the harassment. Such involuntary displacement can have far-reaching consequences for tenants, including job loss, physical and mental health issues, material hardship, and long-term housing insecurity.⁸⁵

Existing legal responses are often inadequate to address the situation, and landlords lag far behind employers and schools in ensuring that they and their staff are held accountable when they perpetrate sexual harassment or when they know of harassment committed by other tenants. State

⁷⁹ See, e.g., Liam Dillon, *Mandatory Evictions for Arrested Tenants Would Be Banned Under New State Bill*, L.A. TIMES (Feb. 18, 2023, 5:00 AM), <https://www.latimes.com/homeless-housing/story/2023-02-18/mandatory-evictions-for-arrested-tenants-would-be-banned-under-new-state-bill> (estimating “at least 147 cities and counties in California have enacted a crime-free housing law or advertise crime-free housing training for landlords”).

⁸⁰ See Linda Morris & Sandra Park, *Safe at Home: Fighting Against Sexual Harassment in Housing*, ACLU (Oct. 1, 2020), <https://www.aclu.org/news/womens-rights/safe-at-home-fighting-against-sexual-harassment-in-housing>.

⁸¹ See, e.g., Oliveri, *supra* note 36, at 620–21, 639.

⁸² See Kate Sablosky Elengold, *Structural Subjugation: Theorizing Racialized Sexual Harassment in Housing*, 27 YALE J.L. & FEMINISM 227, 240–41, 254 (2016),

https://openyls.law.yale.edu/bitstream/handle/20.500.13051/7073/Kate_Sablosky_Elengold.pdf?sequence=2&isAllowed=y; see also *Reeves v. Carrollsburg Condominium Unit Owners Ass’n*, No. Civ. A. 96-2495RMU, 1997 WL 1877201, at *7 (D.D.C. Dec. 18, 1997) (a Black woman brought an FHA hostile-environment claim based on racial and sexual harassment after her white neighbor “repeatedly subjected [her] to threats of rape and lynching, in addition to the racial and sexual character of his verbal abuse”).

⁸³ See, e.g., *Transgender Woman Sues Housing Providers for Harassment, Discrimination, and Unequal Treatment*, WASH. LAWS. COMM. FOR C.R. AND URB. AFFS. (Jan. 24, 2018), <https://www.washlaw.org/largest-bar-exam-prep-class-provider-agrees-to-settlement-over-allegations-of-discrimination-against-blind-students/>; *Wetzel v. Glen St. Andrew Living Community*, LAMBDA LEGAL, https://legacy.lambdalegal.org/in-court/cases/il_wetzel-v-glen-st-andrew (last updated Aug. 27, 2018).

⁸⁴ See Erika Harrell, *Crime Against Persons with Disabilities, 2009-2015 – Statistical Tables*, U.S. DOJ: BUREAU OF JUST. STAT. (July 2017), <https://bjs.ojp.gov/library/publications/crime-against-persons-disabilities-2009-2015-statistical-tables>.

⁸⁵ See Matthew Desmond & Rachel Tolbert Kimbro, *Eviction’s Fallout: Housing, Hardship, and Health*, SOCIAL FORCES ADVANCE ACCESS 4–7 (Feb. 24, 2015), https://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015_2.pdf.

laws frequently permit tenants who are sexually harassed and behind in rent to be evicted despite the harassment, and civil rights mechanisms generally cannot respond on a timely basis. Additionally, rising rents only increase tenant vulnerability to sexual harassment.

In alignment with the widespread efforts of HUD and the U.S. Department of Justice to address sexual harassment in housing,⁸⁶ the FHFA should elevate the issue of harassment in housing among multifamily housing providers, including through guidance on how to address and prevent sexual harassment. FHFA should require GSE-backed properties to provide notices of rights and responsibilities to landlords and tenants, including model lease terms. The protections from HUD's harassment regulation could be incorporated into loan agreements, similar to how they incorporated the CARES Act 30-day notice requirements.

IV. Conclusion

Unfair and discriminatory practices by private housing providers are pervasive through the rental housing market, and particularly impact Black and Latine families, including those headed by women. We appreciate the work that FHFA has already begun to do and urge you to use your authority to ensure that safe, affordable housing is available to all renters.

The ACLU appreciates the opportunity to submit comments. Please feel free to contact Sandra S. Park (spark@aclu.org) or Linda S. Morris (lindam1@aclu.org), ACLU Women's Rights Project, or Amanda M. Meyer (amandam@aclu.org), ACLU Racial Justice Program, with any questions.

Sincerely,

American Civil Liberties Union

⁸⁶ *Sexual Harassment in Housing*, HUD, https://www.hud.gov/program_offices/fair_housing_equal_opp/sexual_harassment (last visited July 26, 2023); Sexual Harassment in Housing Initiative, U.S. DOJ C.R. Div., <https://www.justice.gov/crt/sexual-harassment-housing-initiative> (last updated June 15, 2023).