

October 10, 2024

The Honorable Rohit Chopra  
Consumer Financial Protection Bureau  
1700 G Street NW,  
Washington, DC 20552

Re: National Consumer Law Center Requests for Rulemaking under the Equal Credit Opportunity Act to Protect Renters

Dear Director Chopra:

PolicyLink writes in full support of the National Consumer Law Center's (NCLC) Petition for Rulemaking, filed on August 12, 2024, urging the Consumer Financial Protection Bureau (CFPB) to extend critical protections to renters under the Equal Credit Opportunity Act (ECOA). Extending proposed rulemaking to the issues outlined in NCLC's petition would follow a long list of impactful rules, guidance, and requests for information from the CFPB, including the [joint RFI with the FTC](#) regarding tenant screening, the proposed rule on the [expansion of FCRA](#) to encompass data brokers, and the [proposed rule to protect the millions of workers](#) who use paycheck advance products

To advance equity, PolicyLink advocates for groundbreaking policy changes that enable everyone, especially people of color, to be economically secure, live in healthy communities of opportunity, and benefit from a just society. PolicyLink is guided by the belief that the solutions to the nation's challenges lie with those closest to these challenges: when the wisdom, voice, and experience of those traditionally absent from policymaking drive the process, profound policy transformations emerge. PolicyLink values the opportunity to comment on NCLC's petition, which could help to advance opportunities for the more than 100 million individuals, families, and children who experience financial insecurity to have guaranteed access to safe and affordable housing.<sup>1</sup>

PolicyLink strongly supports NCLC's request for the CFPB to engage in rulemaking to define residential real estate leases as "credit" and landlords as "creditors" under the ECOA for the following purposes:

1. For purposes of the adverse action requirement of the ECOA, so that landlords will be required to give a statement of reasons when rejecting rental applicants
2. To extend the proposed ban on medical debt on credit reports under the Fair Credit Reporting Act to reports used for tenant screening

## The Fair Housing Implications of Tenant Screening

The implications of tenant screening and background checks are far-reaching, as these practices are deeply rooted in systemic inequalities. Numerous studies show that evictions and eviction filings disproportionately affect Black and Latinx communities, women, and people with disabilities, who

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<sup>1</sup> PolicyLink. "100 Million and Counting: A Portrait of Economic Insecurity in America." (2019) <https://www.policylink.org/resources-tools/100-million>

already face systemic discrimination in housing and employment.<sup>2</sup> For instance, a 2022 survey of landlords found that 90 percent of landlords reported using practices that check an applicant’s previous evictions, income, job and rental history, credit scores and criminal backgrounds to make housing decisions.<sup>3</sup> These issues are compounded by the widespread use of multiple tenant screening companies, each with different reporting standards, forcing renters to pay additional application fees for housing they may be denied due to outdated or inaccurate information.

Adverse rental admissions decisions based on tenant background checks work to systematically deny access to housing, limit access of choice, and can affect quality of life for generations.<sup>4</sup> Landlords also reported taking into stricter consideration an applicant’s previous eviction records, income, and information on late payments for previous rents in the aftermath of the COVID-19 pandemic.<sup>5</sup> When low-income people apply for housing they typically apply to more places more frequently, are paying additional application fees, and are being screened through several different companies with different reports.<sup>6</sup>

Medical debt is also a poor indicator of an applicant's creditworthiness and rental history. Excluding this debt from tenant screening reports would prevent unnecessary denials based on healthcare-related financial hardship, ensuring that no one is unfairly locked out of housing due to medical debt. For low-income families, the negative impacts of including medical debt in tenant screening extend beyond rejection from housing; it perpetuates a cycle of instability that affects educational attainment, health outcomes, and community wellbeing.

## The Case for Rulemaking Under the ECOA

Rectifying errors or inaccuracies in tenant screening reports is a daunting task for most tenants, particularly those juggling work, childcare, or other responsibilities. Tenants often face significant delays

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<sup>2</sup> Hepburn, Peter, Renee Louis, and Matthew Desmond, “Racial and Gender Disparities among Evicted Americans.” *Sociological Science* 7:649-662 (2020), DOI: 10.15195/v7.a27; Breanca Merritt & Morgan D. Farnworth, “State Landlord–Tenant Policy and Eviction Rates in Majority-Minority Neighborhoods,” *Housing Policy Debate*, 31:3-5, 562-581 (2021), DOI: 10.1080/10511482.2020.1828989; Matthew Desmond & Tracey Shollenberger, “Forced Displacement From Rental Housing: Prevalence and Neighborhood Consequences,” *Demography* 52:1751-1772 (2015), DOI 10.1007/s13524-015-0419-9; Jaboa Lake, Valerie Novack, Mia Ives-Rublee “Recognizing and Addressing Housing Insecurity for Disabled Renters,” Center for American Progress (May 2021)

<https://www.americanprogress.org/article/recognizing-addressing-housing-insecurity-disabled-renters/>

<sup>3</sup> Abby Boshart, “How Tenant Screening Services Disproportionately Exclude Renters of Color from Housing,” Urban Institute (Dec 2022)

<https://housingmatters.urban.org/articles/how-tenant-screening-services-disproportionately-exclude-renters-color-housing>

<sup>4</sup> Boshart, “How Tenant Screening Services Disproportionately Exclude Renters of Color from Housing”

<sup>5</sup> According to a 2022 survey conducted by the Urban Institute, 39 percent of landlords reported that they are utilizing “more stringent screening criteria,” with even more landlords who experienced a lapse in rental payment during the pandemic employing more strict screening criteria. Jung Hyun Choi, Laurie Goodman, and Daniel Pang, “The Real Rental Housing Crisis is on the Horizon,” Urban Institute (March 2022)

<https://www.urban.org/urban-wire/real-rental-housing-crisis-horizon>; Boshart, “How Tenant Screening Services Disproportionately Exclude Renters of Color from Housing”

<sup>6</sup> Chi Chi Wu, Ariel Nelson, and “How Junk Fees Add to Skyrocketing Rents,” National Consumer Law Center, Steve Sharpe, and April Kuehnhoff (March 2023)

<https://www.nclc.org/wp-content/uploads/2023/03/JunkFees-Rpt.pdf>

or unresponsive tenant screening companies when trying to correct errors, while many tenants are unaware of their rights under FCRA, or encounter significant challenges when attempting to assert those rights. For example, when a prospective tenant notices a mistake on a tenant screening report and attempts to get it corrected, they often do not receive a timely response from the tenant screening companies.<sup>7</sup>

Tenants and advocates across the country are increasingly demanding stronger tenant screening protections and eviction record sealing policies that make it difficult for an eviction to influence a person's housing stability into the far future. As a result of these demands, policymakers are exploring and passing policies that dismantle the significant barriers eviction records create for access to stable and healthy housing, by regulating public access to such records and creating restrictions for how they can be used in rental decisions for prospective tenants. Since 2020, 17 states have proposed and considered over 31 policies that would seal eviction records and create protections in the tenant screening process.<sup>8</sup>

For example, the Renters Access Act (RAA) passed in 2021 requires Philadelphia landlords to provide prospective renters with written notice of adverse action.<sup>9</sup> If the prospective landlord rejects a prospective tenant's application, the landlord is required to provide the reason why the tenant's application was rejected, along with copies of any third-party reports or information that a landlord used to make their decision. RAA gives applicants more transparency into the application process and also allows tenants searching for housing the opportunity to correct any errors or clarify negative records prior to applying to a unit, which helps a tenant to avoid onerous rental application fees, saving time and money. This creates more efficiency in the rental process as prospective tenants. This transparency is crucial in promoting fair and accountable decision-making processes, allowing applicants to understand the basis of their rejection and potentially address any inaccuracies or unfair judgments.

Such reforms are essential for promoting fairness, equity, and accountability in the rental market. Without them, tenant screening processes will continue to reinforce housing inequities, particularly for vulnerable populations. For all renters, having the right to know why a housing application was denied should be a baseline requirement. Just as consumers are entitled to transparency when denied a mortgage or car lease, tenants should have the same right to understand and contest adverse decisions affecting their housing opportunities. This is especially true when those decisions are based on factors such as medical debt that have little relevance to their ability to maintain a stable tenancy.

Thank you for your attention to this critical matter. We appreciate your consideration of the perspectives shared in this public comment in support of the NCLC petition as you evaluate policies and initiatives to

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<sup>7</sup>Consumer Financial Protection Bureau, "Consumer Snapshot: Tenant background checks" (Nov 2022) [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-snapshot-tenant-background-check\\_2022-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-snapshot-tenant-background-check_2022-11.pdf);

Consumer Financial Protection Bureau, "Tenant Background Checks Market Report" (Nov 2022) [https://files.consumerfinance.gov/f/documents/cfpb\\_tenant-background-checks-market\\_report\\_2022-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf)

<sup>8</sup> Erika Rickard & Natasha Khwaja, "State Policymakers Are Working to Change How Courts Handle Eviction Cases" The Pew Charitable Trusts (Aug 2021)

<https://www.pewtrusts.org/en/research-and-analysis/articles/2021/08/26/state-policymakers-are-working-to-change-how-courts-handle-eviction-cases>; PolicyLink, "Mapping the Growth of Eviction Record and Tenant Screening Protections" (May 2023) <https://www.policylink.org/mapping-the-growth-of-eviction-record>

<sup>9</sup> Philadelphia, PA., The Philadelphia Code, Unlawful Housing and Real Property Practices § 9-1008 (3) & § (4), 9-810; also see Fair Housing Commission "Renters' Access Act: Tenant Screening Guidelines," Philadelphia Commission on Human Relations (Oct 2021)

protect consumers. We reiterate our strong support of the CFPB as it makes the necessary regulatory changes and guidance needed to advance stability and racial equity in the housing sector. Please contact me at [rasheedah@policylink.org](mailto:rasheedah@policylink.org) if you would like to speak with PolicyLink in more detail about our comment.

Sincerely,

*Rasheedah Phillips*

Rasheedah Phillips  
Director of Housing  
PolicyLink