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May 30, 2023

Submitted online at www.regulations.gov

Federal Trade Commission

Consumer Financial Protection Bureau

Via <https://www.regulations.gov/docket/FTC-2023-0024>

**RE: Federal Trade Commission
Docket No. FTC-2023-0024,
Tenant Screening Request for
Information**

Dear Federal Trade Commission and Consumer Financial Protection Bureau:

The William E. Morris Institute for Justice (“MIJ”) is a non-profit organization dedicated to protecting the most basic civil and human rights of low-income Arizonans. MIJ prioritizes advocacy on systemic issues that affect economically vulnerable Arizonans and other Arizonans in historically marginalized communities.

Ensuring fair and equal access to housing opportunities for Arizonans is important to MIJ and the people in the communities we serve. Through our federal, state, and local housing advocacy, we seek to establish new, or to protect existing, statutes, regulations, and rules that ensure fair and equal housing opportunities, and maximize housing availability, for low-income Arizonans.

Relatedly, MIJ has a strong historical interest in advocacy to address Arizona’s systemic eviction problem, characterized by a high volume of filings, inequities in access to legal counsel in eviction proceedings, and the collateral consequences of eviction records for low-income Arizona families and individuals. MIJ published reports in 2005¹

¹ *Injustice In No Time – The Experience of Tenants in Maricopa County Justice Courts*, William E. Morris Institute for Justice, (June 2005), <https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/4-final-eviction-report/file>.

and 2020² on the experiences of litigants in eviction actions in Maricopa County, Arizona, which had annual eviction filing rates ranging from 10% (ten out of every hundred households) to 20% each year from 2000 through 2018.³

We appreciate the opportunity to provide comments and observations responsive to the Request for Information (“RFI”) on tenant screening matters from the Federal Trade Commission (“FTC”) and the Consumer Financial Protection Bureau (“CFPB”) in Docket No. FTC-2023-0024. Economically vulnerable Arizonans are presently experiencing a housing availability crisis, with only 24 rental homes available for every 100 extremely low-income Arizona tenant households.⁴ Meanwhile, Arizona eviction filings are on the rise.⁵ Tenant screening practices particularly affect low-income Arizonans, who are experiencing unprecedented barriers to finding rental homes.⁶ The tenant screening RFI is accordingly critical and timely.

Our team at MIJ includes attorneys with decades of experience in housing litigation in multiple jurisdictions around the United States, including Arizona, Minnesota, and New York. Our comments and responses are informed by our practice experiences and our collaboration with Arizona civil legal aid attorneys on statewide housing advocacy strategies. Our RFI comments below specifically reference our observations, and those of our civil justice partners, regarding Arizona housing providers’ and landlords’ tenant screening approaches and rental application policies, practices, and procedures.⁷

² *What’s Justice Got to Do with It - The Experience of Tenants in the Maricopa County Justice Courts*, William E. Morris Institute for Justice, (May 2020), <https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/47-institute-maricopa-county-justice-courts-eviction-report-5-21-2020/file>.

³ Eviction Lab Website, Maricopa County, Arizona (last visited May 26, 2023), <https://evictionlab.org/map/?m=modeled&c=p&b=efr&s=all&r=counties&y=2018&z=4.26&lat=38.14&lon=-97.50&lang=en&l=04013 -112.19 33.28>.

⁴ National Low Income Housing Coalition, *The Gap: A Shortage of Affordable Housing* (Mar. 2023), <https://nlihc.org/gap>.

⁵ Kunle Falayi and Catherine Reagor, *Three Evictions, Three Stories. Why the Phoenix Area Eviction Crisis is Only Getting Worse*, Arizona Republic (May 2, 2023), <https://www.azcentral.com/in-depth/news/local/arizona/2023/04/17/eviction-filings-are-on-the-rise-in-metro-phoenix-what-can-be-done/69907643007/>.

⁶ Catherine Reagor and Amy Qin, *Arizona’s Low-Income Renters Have Little Chance of Finding a Home. Here’s Why*, Arizona Republic (June 8, 2022), <https://www.azcentral.com/story/money/real-estate/2022/06/08/why-low-income-renters-in-arizona-have-little-chance-finding-home/7502256001/>.

⁷ In these comments, the terms *housing providers* and *landlords* are used in their broadest connotations. For example, a public housing authority is a *housing provider* in situations in which the public housing authority administers a voucher providing financial housing assistance to a rental housing applicant or tenant, even if not

General Observations

The FTC and the CFPB prioritize consumer protection functions and broadly help American consumers seek redress for predatory harms they experience at the hands of businesses and enterprises. Housing providers and landlords are businesses, and tenants are a category of consumers. However, rental housing applicants are not tenants, at least until their rental housing applications are approved. And so-called tenant screening practices – including the use of consumer credit data and the charging of fees to evaluate rental housing applications using various metrics and rubrics – implicate not just federal consumer protection laws providing relief for unfair industry practices, and potentially fraudulent or deceptive business practices, within the purview of the historical enforcement authority FTC and the CFPB. In addition to federal consumer protections, many states and local governments have statutes and ordinances governing and regulating tenant screening practices. Federal, state, and local anti-discrimination laws are often implicated in tenant screening practices as well.

We recommend that the FTC and CFPB forge collaborations with state Attorney General offices, state and local civil rights enforcement authorities, fair housing advocacy organizations, and civil legal aid providers. Such collaborations will ensure the detection of the full range of systemic legal problems experienced by rental housing applicants and the meaningful enforcement of their civil legal rights in the broad array of practice areas implicated when they encounter problems during the tenant screening phase of their housing searches.

Common and Problematic Tenant Screening Criteria

Many Arizona housing providers and landlords require information from rental housing applicants about their backgrounds, including their histories of criminal, eviction, and other court records, as well as their sources of income, as part of routine rental application practices and procedures. Arizona housing providers and landlords utilize criteria surrounding these applicant history factors in their basic screening tools as part of their rental application practices and procedures. Critically, housing providers and landlords inquire about these specific matters and then use responsive information to disqualify rental housing applicants with certain background indicators in these areas. We discuss issues associated with some of these key criteria and metrics in turn.

technically a landlord these situations. The term *landlord* includes owners of residential rental property, property management companies, developers of multi-family housing, and their agents and assignees.

Criminal Background

Many major cities in Arizona, including population-dense Mesa, Tempe, and Tucson, participate in a Crime Free Multi-Housing (“CFMH”) program. As the name suggests, CFMH programs emphasize rooting out crime in rental communities, nominally for the purpose of community safety. Housing providers and landlords participating in cities’ CFMH programs mandate that tenants agree, often through lease addenda, not to engage in certain criminal activity. The programs and lease addenda typically assign tenants responsibility for the acts of others, including other residents of a rental home, their guests and visitors, or even “associates,” from committing criminal acts on – or even near – the rental properties covered by such addenda.

The primary manual for these programs was developed by the International Crime Free Association, an Arizona-based organization.⁸ The manual includes tenant screening procedures for potential renters that discusses “behaviors” to look for at the applicants’ prior residences. The targeted “behaviors” include past conduct allegedly or possibly related to drugs, property damage, and “threatening” behaviors. These metrics serve as mere proxies, of course, for alleged or suspected criminal behavior of rental housing applicants and using any broadly relevant information as a reason, according to the program manual, to deny applications and opportunities to become tenants to applicants.

Importantly, there is often no time limit on the look-back period for rental housing applicants’ alleged or suspected past criminal behaviors, meaning that a 25-year-old conviction can still be used against them. While multiple federal authorities⁹ protect rental housing applicants from such broad approaches to criminal background screening, the result of municipalities’ endorsement of CFMH programs is that, in Arizona, rental housing applicants’ criminal histories prevent them from securing housing opportunities and, oftentimes, from even pursuing rental homes they would likely be able to rent with fair and compliant criminal background screening practices in place.

⁸ The International Crime Free Association lists its address as a post office box in Higley, Arizona, and – though the reach of its influence is national – the “crime free” tenant screening metrics it endorses are of particular concern to Arizona housing advocates and tenants. See International Crime Free Association website, <http://crime-free-association.org/>.

⁹ See, e.g., HUD Memorandum on 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 (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>.

Putting aside participants in CFMH programs, many other housing providers and landlords utilize some level of criminal background screening. In MIJ's experience, there is a tendency among Arizona housing providers and landlords to capture and to utilize broad criminal background information and to deny applications based on broadly applied criminal background screening metrics in their tenant screening processes.

Arizona housing providers' and landlords' use of problematic criminal background criteria goes unchecked in most cases. Often, records of mere arrests or contacts with law enforcement are used to disqualify otherwise qualified rental housing applicants. Of particular concern with housing providers' and landlords' broad use of criminal records data is harm the practice causes to survivors of domestic violence and sexual assault, unhoused Arizonans, Arizonans with chemical dependency and other mental health-related disabilities, and other vulnerable Arizonans in historically marginalized communities.

Eviction History

Arizona housing providers and landlords also routinely disqualify applicants who have previously faced eviction in court. In addition to the CFPB itself,¹⁰ media reporting,¹¹ published reports,¹² policy research,¹³ and Arizona civil legal aid attorneys indicate that the mere existence of an eviction case court file in a tenant's rental history will often disqualify them from housing opportunities in rental application processes.

To address this problem, in 2022 Arizona enacted A.R.S. § 33-1379, providing for the sealing of eviction case court files in cases in which tenants secure dismissals or judgments in their favor, or upon the stipulation of both parties.¹⁴ However, the

¹⁰ Consumer Financial Protection Bureau, *Consumer Snapshot: Tenant Background Checks* (November 2022), https://files.consumerfinance.gov/f/documents/cfpb_consumer-snapshot-tenant-background-check_2022-11.pdf.

¹¹ Rebekah L. Sanders, *What Do Landlords Learn in a Background Check? More than Most Renters Realize*, Arizona Republic (April 23, 2022), <https://www.azcentral.com/in-depth/money/business/consumers/2022/04/23/landlord-background-checks-include-more-personal-info-than-renters-realize/5553429001/>.

¹² Jaboa Lake and Leni Tupper, *Eviction Record Expungement Can Remove Barriers to Stable Housing* (Sept. 30, 2021), <https://www.americanprogress.org/article/eviction-record-expungement-can-remove-barriers-stable-housing/>.

¹³ PolicyLink, *Eviction Records and Tenant Screening Protections* (March 27, 2023), <https://www.policylink.org/resources-tools/tools/all-in-cities/housing-anti-displacement/eviction-records-tenant-screening-protections>.

¹⁴ Arizona Revised Statute § 33-1379, <https://www.azleg.gov/ars/33/01379.htm>.

effectiveness of the law is presently in question, as credit reporting agencies and other data miners secure information about sealed cases before the time of their effective sealing.¹⁵ This results in reporting of sealed cases when past eviction defendants with sealed records apply for housing. The problem with errors arising out of tenant screening agencies' mining of bulk data are not new and have been outlined comprehensively by consumer advocates for years.¹⁶ The CFPB itself recently documented myriad problems arising out of common data procurement and management practices in the tenant screening industry, including accuracy problems with court records data commonly obtained and the lack of manual verification or sourcing of consumer data.¹⁷ The status quo leaves rental housing applicants who have won cases, even under the new record-sealing law, facing rental application denials based on the mere existence of the eviction case court file contained in screening company databases.

While affected tenants may have legitimate legal issues to raise under the Fair Credit Reporting Act ("FCRA"),¹⁸ many tenants – and many Arizona consumer protection authorities, courts, and landlords – are unaware of FCRA's application or the protections the law provides. Even if rental housing applicants had such awareness, there are very limited legal resources available to tenants to enforce their rights through litigation or other avenues.

Source of Income

Discrimination in rental housing applicant screening based on applicants' sources of income – and particularly their receipt of rental subsidies through the Section 8 Housing Choice Voucher program – is widespread in Arizona. In response to the problem, in 2021 and 2022, the City of Tucson initiated a process to review and ultimately to enact a source-of-income anti-discrimination protection into its civil rights

¹⁵ Kunle Falayi and Catherine Reagor, *Three Evictions, Three Stories. Why the Phoenix Area Eviction Crisis is Only Getting Worse*, Arizona Republic (May 2, 2023), <https://www.azcentral.com/in-depth/news/local/arizona/2023/04/17/eviction-filings-are-on-the-rise-in-metro-phoenix-what-can-be-done/69907643007/>.

¹⁶ See, e.g., Persis S. Yu and Sharon Dietrich, *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses* (April 2012), <https://filearchive.nclc.org/pr-reports/broken-records-report.pdf>.

¹⁷ Consumer Financial Protection Bureau, *Tenant Background Checks Market* (November 2022), https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf.

¹⁸ “Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.” [15 U.S.C. § 1681e\(b\)](#).

ordinances. The City of Tucson prevailed in a legal challenge to the new ordinance in early 2023,¹⁹ paving the way for a similar ordinance passed in the City of Phoenix in 2023 while the Tucson challenge was still pending to take effect.²⁰

Still, most municipalities in Arizona do not have specific prohibitions against discrimination in housing applications based on source of income. Some cities, including Phoenix²¹ and Mesa,²² have created financial incentive and risk mitigation programs to encourage landlords to accept rental assistance vouchers. Even in communities with such incentives, or even existing anti-discrimination protections, source-of-income discrimination remains a problem.²³

Regarding the above-stated screening criteria issues, we recommend that the FTC and CFPB prioritize efforts to educate the American public regarding existing criminal background screening guidance, credit reporting protections, and federal housing discrimination prohibitions. The FTC and CFPB should also collaborate with other federal partners, such as the United States Department of Housing and Urban Development (“HUD”), and conduct outreach to ensure broader enforcement of HUD guidance, FCRA, the Fair Housing Act, and other existing legal protections for tenants affected by criminal background screening, inaccurate eviction and other court history reporting, and source of income discrimination that regularly occurs during rental housing application processes.

We also specifically recommend that the FTC and CFPB implement protocols to share information with HUD to ensure that jurisdictions subject to the Affirmatively Furthering Fair Housing (“AFFH”) mandate of the federal Fair Housing Act are not

¹⁹ City of Tucson Website, Source of Income Ordinance (last visited May 26, 2023), <https://sourceofincome.tucsonaz.gov/>.

²⁰ City of Phoenix Website, Phoenix City Council Approves Ordinance to Ban Source of Income Discrimination in Housing (Mar. 1, 2023), <https://www.phoenix.gov/newsroom/article/2671>.

²¹ Christina Estes, *Phoenix Offers Section 8 Landlords Cash Incentives and Higher Rent Payments*, KJZZ (Mar. 28, 2023), <https://kjzz.org/content/1842637/phoenix-offers-section-8-landlords-cash-incentives-and-higher-rent-payments>.

²² Martiza Dominguez, *Mesa Needs More Landlords to Accept Housing Vouchers. Here's What the City is Doing to Fix That*, (May 4, 2023), <https://www.azcentral.com/story/news/local/mesa/2023/05/04/how-mesa-is-getting-landlords-to-accept-housing-vouchers/70175711007/>.

²³ Colton Shone, *Disabled Phoenix Woman Facing Homelessness While Landlords Refuse Section 8 Voucher*, (May 5, 2023), <https://www.azfamily.com/2023/05/05/disabled-phoenix-woman-homeless-after-landlords-refuse-section-8-voucher/>.

violating their AFFH obligations by endorsing CFMH programs.²⁴ Additionally, we ask that the FTC and CFPB implement protocols to ensure appropriate referrals to HUD when consumer protection complaint investigations reveal potential discrimination in housing providers' application of criminal background screening criteria.

Finally, we recommend that the FTC and CFPB act to provide specific guidance and direction on consumer protection issues arising out of bulk data procurement and dissemination in the tenant screening industry. Giving regulatory and enforcement substance to existing legal protections in FCRA and other sources of legal authority would benefit economically vulnerable rental housing applicants currently experiencing harm from a flawed system of tenant screening data collection and use.

Tenant Screening Process Realities in Arizona

Lack of Transparency

Arizona housing providers and landlords are not transparent about the various criteria they use to evaluate applicants for housing opportunities. Rental housing applicants in Arizona are often not aware of how their applications will be judged. Even when some level of disclosure of screening criteria may occur, it is often not at the level of specificity to ensure that rental housing applicants can make informed decisions about whether to pay application fees to pursue housing opportunities for which they may simply not be eligible.

When “negative information” arises in housing providers' and landlords' reviews of rental housing applications, usually that is the end of the process for the applicants. Landlords are unlikely to take the initiative to inquire for detailed clarifications or explanations regarding negative information they collect and receive about applicants. And, in general, Arizona housing providers and landlords do not utilize procedures allowing rental housing applicants to explain family and personal hardships, mitigating circumstances, or inaccurate information in the evaluation of income, credit, criminal, or other rental history. It is increasingly common for rental housing application processes to be digitized, not allowing for individual assessments of a potential tenants' circumstances or opportunities for prospective tenants to clarify portions of the reports.

²⁴ See HUD 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 (September 13, 2016), Part V, <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>.

In general, Arizona housing providers and landlords do not communicate adverse actions consistently in writing, or with the level of specificity necessary for rental applicants to understand the reasons their applications are denied. Applicants in need of housing are left confused, frustrated, and desperate.

Rental Housing Junk Application Fees

Rental application fees are a significant problem in Arizona. Arizona renters may spend hundreds of dollars in rental housing application fees during their rental home search processes.²⁵ This is especially true for applicants who apply for rental home after rental home, only to be denied without explanation. Typical application fees range from \$50-\$90, with added fees for spouses, roommates, or pets.²⁶ Application fees are reported to be as high as \$200 in some cases.²⁷

Application fees are charged with minimal transparency or safeguards to ensure that tenants are protected from predatory consumer practices by landlords. It is often unclear if the fees relate to actual housing provider staffing costs, the business cost of securing tenant screening reports, or other administrative costs associated with processing rental housing applications. Based on the dollar amount of some application fees, we are concerned that housing providers and landlords are charging “junk fees” untethered to any real cost or business expense borne by housing providers and landlords.

Exacerbating the problem with the amounts of applicant screening fees, it appears that in some cases housing providers charge application fees that are non-refundable in any scenario. Public reporting has even highlighted that non-refundable application fees have been charged for rental homes that are no longer available.²⁸ And application fees

²⁵ Rebekah L. Sanders, *Why Metro Phoenix Renters Are Spending Hundreds of Dollars Just to Find an Apartment*, Arizona Republic (Sept. 14, 2021), <https://www.azcentral.com/story/money/business/consumers/2021/09/14/why-metro-phoenix-renters-spending-hundreds-find-apartment/5759664001/>.

²⁶ *Id.*

²⁷ Joe Ducey, *Should You Get a Refund on an Apartment Rental Application Fee?*, ABC15 Arizona (Sept. 21, 2022), <https://www.abc15.com/news/let-joe-know/what-to-know-before-you-pay-apartment-application-fees>.

²⁸ Kirsten Johnson, *Valley Renter Frustrated by Application Fees During Apartment Hunt*, ABC15 Arizona (Dec. 15, 2022), <https://www.abc15.com/news/let-joe-know/valley-renter-frustrated-by-application-fees-during-apartment-hunt>.

are on top of other questionable fees included in leases for successful rental housing applications.²⁹

A recent report found that Black, Latinx and Asian American Pacific Islander (“AAPI”) rental housing applicants pay more per application fee – 43% more – and apply to more rental properties than white rental housing applicants before securing housing.³⁰ Not only do the fees cause financial hardship, but the data indicate they are being collected in a manner having a disparately harmful effect on protected classes, potentially in violation of federal and state fair housing protections.

With no Arizona statute or regulation limiting the amount that can be charged for application fees, or the circumstances under which any application fee can be accepted and retained, the above-enumerated practices flourish unabated. Application fees become junk fees that serve as yet another financial burden on low-income Arizona renters, who are encountering a whole range of other affordability challenges in their housing searches.

Algorithms, Artificial Intelligence, Predictive Analytics, and Automated Harm

Housing providers and landlords in Arizona commonly use the services of tenant screening companies, some of whom utilize black-box artificial intelligence (“AI”) technologies to analyze data and to evaluate rental housing applications.³¹ The information culled and processed by these AI screening tools often leads to the reporting of inaccurate information and denials of rental housing applications.³² When AI errors happen, they may not be discoverable by the rental housing applicant, especially if the applicant is never told why their rental application is denied.³³ Even if a savvy rental

²⁹ Kirsten Johnson, *Arizona Renters Fed Up With Fees Could See Relief in New Bill*, ABC15 Arizona, (Mar. 15, 2023), <https://www.abc15.com/news/let-joe-know/arizona-renters-fed-up-with-fees-could-see-relief-in-new-bill>.

³⁰ Renters of Color Pay Higher Upfront Costs, Zillow, (April 6, 2023), <https://zillow.mediaroom.com/2023-04-06-Renters-of-color-pay-higher-upfront-costs>.

³¹ Rebekah L. Sanders, *What Do Landlords Learn in a Background Check? More than Most Renters Realize*, Arizona Republic (April 23, 2022), <https://www.azcentral.com/in-depth/money/business/consumers/2022/04/23/landlord-background-checks-include-more-personal-info-than-renters-realize/5553429001/>.

³² *Id.*

³³ *Id.*

housing applicant uncovers that the source or erroneously reported credit information is an AI tool, the applicant often will not know where to turn for help.³⁴

This is an emerging area of advocacy for MIJ in Arizona. In 2022, we supported a bill at the Arizona Legislature that would have prohibited violations of applicable constitutional and federal and state statutory law by any AI tool or algorithm used in a decision-making process.³⁵ The bill died after passing the Arizona House of Representatives in 2022 and was not re-introduced in 2023.

We ask that the FTC and CFPB take the lead in this emerging area of concern for economically vulnerable Americans. The agencies must raise public awareness of how AI interacts with credit, healthcare, housing, and other critical consumer and human needs. Additionally, the agencies must inform the public about existing legal protections available to consumers, and how they may enforce their rights when they experience automated harm in association with AI.

Potential Tenant Screening Process Improvements

Below are basic ideas regarding tenant screening best practices that could improve the experiences of rental housing applicants and minimize the concerns of prospective tenants about their treatment by housing providers, landlords, tenant screening agencies, and adjacent credit reporting enterprises. The FTC and the CFPB should utilize their authority along with existing laws to advance the ideas enumerated below.

Tying Application Reviews and Fee Retention to Order of Application Receipt

Presently, Arizona rental housing applicants do not have assurance that housing providers and landlords are reviewing their applications in the order in which they are received to maximize fairness and equality of consideration in rental application processes across the state. Additionally, rental housing applicants are unaware of critical points in time when housing providers and landlords determine that they will retain applicant screening fees routinely charged and accepted in association with rental housing applications. Adding regulatory safeguards that enumerate best practices for considering and reviewing applications, and retaining application fees, would be helpful to Arizona rental housing applicants. If implemented on a widespread basis,

³⁴ *Id.*

³⁵ See House Bill 2685, Arizona's Fifty-Fifth Legislature, Second Regular Session, 2022, available at <https://www.azleg.gov/legtext/55leg/2R/bills/HB2685H.pdf>.

accompanied by broader enforcement actions of consumer protection authorities, order-of-application screening mechanisms and protocols, including requirements regarding when application fees must be returned rather than retained, would create more fair and equal housing opportunities for prospective tenants in Arizona and increase housing availability for economically vulnerable Arizonans searching for rental homes.

Individualized Tenant Screening

Housing providers and landlords should be prohibited from automatically denying tenant applications solely based on one criterion, including a rental housing applicant's eviction history, a credit score or AI-generated tenant score, or a history of applying for emergency or other rental assistance. Instead, housing providers and landlords should conduct individualized assessments of applicants based on uniform screening criteria and proactive consideration of applicants' hardships and mitigating circumstances.

Disclosure of Tenant Screening Criteria

Housing providers and landlords should disclose the criteria used to determine an applicant's eligibility for renting a home. The criteria should be posted in all rental housing advertisements and made available to potentially interested applicants upon request. If a housing provider or landlord uses a third party company to screen applications, or to implement screening criteria at the housing provider's or landlord's direction, a rental housing applicant should receive information about the third party company, including the company's name, address, and contact information.

Disclosure of Tenant Screening Fee

Like the tenant screening criteria, housing providers and landlords should disclose all fees associated with submitting a rental application and clarify that the same fee applies to all applicants. Additionally, housing providers and landlords should disclose the circumstances on which application fees they charge and accept will be retained, or returned, in association with the parameters for consideration and review of rental housing applications.

Return of Tenant Screening Fee

Housing providers and landlords should return to the tenant all fees associated with submitting a rental application if a rental housing applicant is denied for any reason

not listed in the disclosed criteria, or if a rental housing applicant's application is never formally considered.

Monetary Cap on Tenant Screening Fees

Tenant screening fees should be limited to documented administrative and other costs incurred by housing providers and landlords.

Disclosure of the Reasons for Denial

If a rental housing applicant's rental application is denied, the housing provider or landlord should provide the tenant a written statement with the reasons on which the decision was based and an opportunity for the rental housing applicant to correct or to dispute the information leading to the application denial.

Requiring Updates to Bulk Data Acquisitions from Courts

As a condition of receiving bulk data from courts, tenant screening companies and other bulk data purchasers and disseminators should be required to update the data they receive frequently and regularly. Putting aside the potential application of FCRA in these situations, courts should both affirmatively [1] require such updating contractually and include additional safeguards requiring the purging of outdated, inaccurate, and misleading data from tenant screening companies' and other bulk data purchasers' and disseminators' files and records, and [2] mandate notice from tenant screening companies and other bulk data purchasers and disseminators to any and all recipients of any such data.

Limited English Proficiency Training and Materials

Arizona housing providers and landlords could benefit from language accessibility training and resources to navigate interactions with Limited English Proficiency ("LEP") Arizonans seeking housing opportunities.

Include Statement on Applicable Fair Housing Laws

As part of rental housing application and tenant screening processes, housing providers and landlords should provide notice to rental housing applicants of all applicable fair housing laws, making clear that the protections under those laws apply to applicants.

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Conclusion

Fair housing is a right, not a privilege. Fair credit is also a right, not a privilege. In Arizona, the Fair Housing Act and the Fair Credit Reporting Act are under-utilized due to lack of resources to support litigation and advocacy on behalf of rental housing applicants, who experience fair housing and fair credit violations in their pursuit of housing opportunities. Moreover, economically vulnerable Arizonans regularly experience economic and financial harm arising out of violations of their general consumer protection rights in rental application transactions, through the collection of unregulated fees with no safeguards to ensure the fees are properly collected or use for appropriate purposes in rental application screening procedures.

Thank you for your consideration of MIJ's comments on the Request for Information on tenant screening matters. Please do not hesitate to reach out if you have any questions or if we can provide any additional information.

Sincerely,

/s/ William E. Morris Institute for Justice

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