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

October 11, 2024

Re: National Consumer Law Center Petition for Rulemaking under the Equal Credit Opportunity Act to Protect Renters Docket No. CFPB–2024– 0038

Dear Director Chopra:

The Americans for Financial Reform Education Fund (AFREF) writes to support the National Consumer Law Center's Petition for Rulemaking filed August 12, 2024 asking the Consumer Financial Protection Bureau (CFPB) to open a rulemaking under the Equal Credit Opportunity Act (ECOA) to help renters. AFREF is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups dedicated to advocating for policies that shape a financial sector that serves workers, communities and the real economy to advance economic and racial justice. The petition for rulemaking addresses important components of the ongoing legacy of structural racism in credit and residential housing for people of color seeking rental leases to shelter their families and build a foundation for economic stability.

AFREF supports the Petition's request and urges the Bureau to define residential real estate leases as "credit" and landlords as "creditors" under the ECOA, so that (1) landlords will be required to give a statement of reasons when rejecting rental applicants and (2) the CFPB's proposed rule to ban medical debt from appearing on credit reports will be extended to credit reports used for tenant screening.

It is inappropriate, unfair, and racially discriminatory to consider medical debts on residential lease applications. Medical debt is not an accurate predictor of an individual's ability to repay debts[1] and should not be considered even for credit underwriting decisions. Nor should medical debt be used by landlords as a basis to reject a rental application. When a rental application is denied, landlords should be required to provide an ECOA adverse action notice that includes reasons for the denial.

The CFPB is well within its authority to treat rental housing leases as "credit" under ECOA for the narrow purpose in the proposed petition.[2] Landlords offer long-term leases, typically one year, that tenants pay in monthly installments for a long-term service that aligns with the statute's definition of credit which includes "the right granted by a creditor to a debtor […] to purchase property or

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[1] VantageScore. "Impact of VantageScore Credit Scores Due to Changes in Medical Debt Collection Information Reporting." August 2022 at 4.
[2] *See* National Consumer Law Center. Requests for Rulemaking under the Equal Credit Opportunity Act to Protect Renters. August 12, 2024 at 14 to 17.

service and defer payment therefor."[3] Landlords frequently pursue tenants for rental obligations of the entire term of the lease even if the tenant has vacated the rental property and is no longer availing themselves of the services. Landlords frequently file rental debt items on tenants' credit reports, demonstrating both that landlords consider the service is for the full term of the lease and that they consider the obligation to pay the full term of the lease a form of credit. Moreover, ECOA states that the "Bureau shall prescribe regulations to carry out the purposes of this subchapter […] for any class of transaction, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of this subchapter,"[4] giving the CFPB the authority to craft specific regulations to implement these credit protections for rental housing applicants.[5]

The proposed ECOA rulemaking would help the nation's 44 million renter households by providing clarity when rental applications are rejected and lessen the negative impacts of medical debt and its ability to cut off access to rental housing. A rule addressing both medical debt and requiring an adverse action notice for rental applications is especially important to protect Black, Latine, and other renters of color who are more likely to have medical debt burdens that currently can impair their access to rental housing and who are more likely to experience rental housing application rejections by landlords.

Medical debts and tenant screening rejections and their negative consequences are substantially rooted in a historical and ongoing legacy of structural racism in housing, employment, and healthcare policies and practices that continue to contribute to racial economic inequality. This proposal will not remedy these inequities and does not address the causes of the wide racial disparities that result from medical debt and tenant screening rejections but is essential to prevent the negative outcomes from medical debt and tenant screening rejections from perpetuating these racial inequities in future opportunities to secure housing.

The scale, impact, and racial inequities of medical debt

AFREF supports the CFPB's proposed rule to remove medical debt from credit reports and prohibit consumer reporting agencies from sharing medical debt information with creditors, which would provide needed protections for families from the unfair inclusion of that medical debt in credit eligibility determinations.[6] Landlords frequently check the credit scores of their prospective tenants that may also be used as justification to deny families access to rental housing. Extending the ban of medical debts from credit reports being used for tenant screening purposes is an essential protection for Black, Latine, and other people of color who are more likely to have medical debt because of a confluence and combination of structural racism in housing, employment, and health care policies and programs.

[3] 15. U.S.C. §1693a(d).

[4] 15 U.S.C.§1691b(a).

[5] The CFPB could also promulgate additional regulations under the Fair Credit Reporting Act, as it has proposed in its medical debt reporting rule (Notice of Proposed Rulemaking. Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V). 89 Fed. Reg. 118. June 18, 2024 at 51682 et seq.). The FCRA regulations "generally applies to persons that obtain and use information about consumers to determine the consumer's eligibility for products, services, or employment," (12 C.F.R. §1022.1) which would include the provision of rental housing.

[6] Americans for Financial Reform Education Fund and Center for Responsible Lending. Comment re CFPB Notice of Proposed Rulemaking re Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V), Docket No. CFPB-2024-0023/RIN 3170-AA54. August 12, 2024.

People accrue medical debt when they lack the financial resources to pay for medical care. Today, 15 million consumers have medical debt collections on their credit reports that average at least $3,100.[7] Families with more modest income, lower household wealth, no or inadequate health insurance coverage, higher medical needs, and less access to local, affordable, quality health care can easily accumulate medical debt from medical expenses that are unaffordable. Nearly 140 million people in the United States have faced medical financial hardship because of out-of-pocket health care bills.[8] The financial burden of medical debt can erode savings, cause families to cut back on essential expenses such as food, cause stress and anxiety, negatively impact credit scores, and more.[9] The consequences can be dire. A 2019 study found that two-thirds of U.S. bankruptcies were related to medical expenses or medical-related work loss — over 500,000 medical bankruptcies annually.[10]

Structural racism and institutional practices have imposed a far higher medical debt on Black, Latine, and other people of color.[11] The discriminatory federal, state, and local housing, employment, and health care policies and programs — alone and in combination — contributed to Black and Latine families having lower incomes and household wealth, greater health care needs, less insurance coverage, and less access to affordable, quality care that leads to higher levels of medical debt. Black families are nearly twice as likely to have medical debt as white families and Latine families are 14 percent more likely (Black 13 percent, Latine 8 percent, and white 7 percent).[12] These figures are likely an underestimate based solely on medical debt in collections. More than 40 percent of families — half of Black and Latine families (56 percent and 50 percent, respectively) — report outstanding medical bills on credit cards or owed to family members as well as medical debt in collections.[13] These medical debts burden household finances. A 2022 survey by the Commonwealth Fund found that half of Black and Latine families struggled to pay medical bills or medical debt and one in eight had medical debt over $4,000.[14] More than half of Black and Latine (52 percent and 56 percent, respectively) families reported spending all or most of their savings to afford paying their medical debt.[15]

The financial impacts of medical debt for families of color can be severe. Medical debts are the most common reason debt collectors contact people.[16] These debt collections, lawsuits and judgments, and wage garnishments are 60 percent more common in communities of color than white communities, due to systemic and historical discrimination in financial services, housing,

[7] Sandler, Ryan and Zachary Blizard (Sandler and Blizard 2024). Consumer Financial Protection Bureau. "Recent Changes in Medical Collections on Consumer Credit Records." March 2024 at 3 to 4.
[8] Yabroff, K. Robin et al. "Prevalence and correlates of medical financial hardship in the USA." *Journal of General Internal Medicine*. Vol. 34. 2019.
[9] Lopes, Lunna et al. (Lopes et al. 2022). KFF. "Health Care Debt in the U.S.: The Broad Consequences of Medical and Dental Bills." June 16, 2022.
[10] Himmelstein, David U. et al. "Medical bankruptcy: Still common despite the affordable care act." *American Journal of Public Health*. Vol. 109, No. 3. March 2019 at 431 to 433.
[11] This analysis focuses on Black and Latine people and families largely because of the lack of comparable data across all variables, but information on Indigenous, Asian, immigrant people and families is included where available.
[12] Rakshit, Shameek et al. (Rakshit et al. 2024). KFF. "The Burden of Medical Debt in the United States." February 12, 2024.
[13] Lopes et al. 2022.
[14] Collins, Sarah R, Lauren A. Haynes, and Belebohile Masitha (Collins, Haynes, and Masitha 2022). Commonwealth Fund. "Findings from the Commonwealth Fund Biennial Health Insurance Fund." 2022 at Table 5.
[15] Lopes et al. 2022.
[16] CFPB. "Consumer Experiences with Debt Collection." January 2017 at 21.

employment, and the criminal justice system.[17] Medical debt can harm families' credit scores and constrain their ability to secure credit.

Federal labor laws that entrenched occupational segregation for Black workers (and now Black, Latine, and immigrant workers, especially women) have not only lowered earnings and wealth building capacity for workers of color, they have limited access to employer-based health insurance coverage, which makes medical debt more likely.

Long-standing structural racism in residential housing — redlining, mortgage discrimination, environmental injustice, food deserts, and more — contribute to racial economic inequality and racial health inequities for Black, Latine, and Indigenous families. Federal, state, and local racial exclusion policies, restrictive covenants that prohibited home sales to people of color, home lending and housing discrimination, and violence created and enforced racially segregated communities that continue to exist more than a half a century after the enactment of the Fair Housing Act. The disinvestment, lower homeownership rates, and lower levels of economic activity in segregated neighborhoods are associated with lower income levels, lower educational attainment levels, and lower household wealth.[18] In 2022, typical Black and Latine families had lower incomes (about 44 percent lower) and far lower household net worth (about 80 percent lower) than typical white families according to Federal Reserve data.[19] The gap between Black and white wealth today is essentially the same as it was before the civil rights movement — a depressing failure to make progress on economic equality.[20] Medical debt represents a significant share of typical household income for Black and Latine families. The $3,100 medical debt burden would represent nearly 6 percent of the Black median household income ($53,500) and nearly 5 percent of the Latine median household income ($62,800) in 2022.[21]

Credit scoring often replicates the systemic racial biases of the financial system because the Black and Latine consumers with lower incomes, more medical debt, lower homeownership rates, fewer assets, and less credit history are deemed by the credit reporting bureaus as less able to repay their debts.[22] Black and Latine consumers that have credit scores tend to have lower average credit scores than white consumers (8 percent and 5 percent lower, respectively) and subprime credit scores are concentrated in Black, Latine, and Indigenous communities.[23]

These lower credit scores can hinder Black, Latine, and Indigenous families ability to access affordable and suitable credit. But increasingly employers and landlords are using credit scores in their employment and tenant screening processes. As a result, lower credit scores can also negatively impact tenant screening reports, resulting in increased rental application denials and barriers to rental

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[17] Breno Braga et al. Urban Institute. "Local Conditions and Debt in Collections." June 2016.

[18] Turner, Margery Austin and Solomon Greene. Urban Institute. "Causes and Consequences of Separate and Unequal Neighborhoods." 2020.

[19] Federal Reserve Board. Survey of Consumer Finances 2022. Before Tax Median Family Income and Median Household Net Worth. 2023.

[20] Kuhn, Moritz, Moritz Schularick, and Ulrike I. Steins. CESifo. "Income and Wealth Inequality in America, 1949-2016." Working Paper No. 6608. June 2018.

[21] U.S. Census Bureau. "Income in the United States, 2022." September 12, 2023 at Table A-2.

[22] National Consumer Law Center. "Past Imperfect: How Credit Scores and Other Analytics 'Bake In' and Perpetuate Past Discrimination." May 3, 2016.

[23] Sandberg, Erica. "How race affects your credit score." *US News and World Report.* August 9, 2022; Urban Institute. "Credit Health During the COVID-19 Pandemic." March 8, 2022.

housing for Black and Latine renters and renters of color. Moreover, credit reports are often riddled with inaccuracies and provide an unfair and inaccurate projection of a tenant's fitness for a lease, automatically cutting off opportunities for them to secure housing.

Taking medical debt entirely out of consideration for tenant screening purposes would help protect families from the unfair inclusion of medical debt information in credit eligibility considerations. For the same reasons medical debt should be removed from credit reports and for credit eligibility determinations, removing medical debts from credit reports used for tenant screening will mitigate the racists impacts of medical debt for Black, Latine, and other renters of color who are more likely to have medical debt and more likely be rejected from a rental application due to structural racism in housing, employment, and health care policies and programs.

Racial inequities in the rental housing market

The systemic racism that has suppressed the credit scores of Black, Latine, and other families of color has exacerbated the difficulty these families face finding affordable and secure housing, including rental housing. Families need access to fair and sustainable credit to build wealth by buying homes, investing in businesses, purchasing vehicles to get to work, attend higher education, and cover emergency and household expenses. Black, Latine, Indigenous, immigrant, and other people of color have historically faced significant barriers — state-sanctioned discrimination in home mortgage lending that redlined entire communities as uncreditworthy — accessing housing (both home purchase and rental housing) at affordable prices and reasonable terms.

Landlords frequently contract with specialized tenant screening consumer reporting agencies to evaluate potential tenants. These agencies operate with little-to-no oversight and often provide inaccurate information about renters, particularly regarding criminal legal system involvement or evictions history.[24] Additionally, they also use credit scores to assess potential tenants, which replicates the existing racial gap in credit scores. Currently, these agencies have no obligation to share information with potential tenants, who often do not know why they have been rejected. Additionally, existing dispute procedures have been found ineffective, as landlords tend to rent to someone else before the potential tenant can clear their record.[25]

The lack of transparency and high error rate of screening agencies disproportionately harm Black and Latine families. Because of our nation's history of segregation, financial exclusion, racist housing policies, and our resulting racial wealth gap, Black and Latine households are much more likely to be renters than white households. In 2020, 72 percent of white households owned their homes, compared to 42 percent of Black households, 48 percent of Latine households, and 58 percent of Indigenous households.[26]

[24] The use of criminal and evictions records also reinforces the extreme racial bias in policing, sentencing, and mass incarceration, means that Black, Latine, and Indigenous people are far more likely to be involved with the justice system as defendants and those re-entering their communities. These justice-involved people can have financial penalties (such as unpaid civil or criminal fines) imposed on their credit reports, more difficulty obtaining employment, more difficulty accessing the traditional financial system, and more difficulty

[25] *Supra*, at note 18.

[26] National Community Reinvestment Coalition. "The Racial Wealth Divide And Black Homeownership: New Data Show Small Gains, Deep Fragility." February 28, 2024.

The use of artificial intelligence and other automated systems have worsened tenant screening outcomes for Black, Latine and renters of color. RentGrow, a tenant screening company used by both public sector and private landlords was recently alleged to have generated numerous flawed screening reports, in part due to its use of artificial intelligence and other automated systems to generate tenant screening reports.[27] One study found that the screening service was "notoriously inaccurate," with a 13 percent error rate.[28] According to a complaint filed by the National Association of Consumer Advocates, RentGrow generated flawed tenant screenings that mixed up people with similar names, using court proceedings involving people who were unrelated to a prospective tenant, and flagged records that were over seven years old, in violation of the Fair Credit Reporting Act.

The proposed CFPB would requiring landlords to provide a clear ECOA adverse action notice that includes the reasons why they denied a prospective tenant which would correct a deeply unfair information asymmetry that harms tenants. Prospective tenants would be able to know what information is being disclosed about them, would have the opportunity to correct incorrect information, and, to the extent that the information about them is correct, would be able to try and remedy the cause for future rental applications. This proposal is a necessary step towards a fairer and more just housing landscape for families that rent, especially for Black, Latine, Indigenous, and other families of color.

AFREF supports the NCLC petition's request and urges the Bureau to define residential real estate leases as "credit" and landlords as "creditors" under the ECOA. Medical debt must not be considered for tenant screening purposes and renters with rejected rental applications should be given a clear reason why they were rejected. This petition would expand the scope of the proposed medical debt rule to prohibit medical debt information from being used in any rental applications, which would reduce the likelihood that medical debt reports would exacerbate the existing racial barriers to affordable and secure housing for families of color.

[27] *See* Complaint, *National Association of Consumer Advocates v. Rentgrow* (D.C. Super. Ct. Oct. 1, 2024).
[28] Wiener, Aaron. "D.C. contractor sued for alleged improper screening of hopeful tenants." The Washington Post. October 3, 2024.