UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MARY LOUIS AND MONICA DOUGLAS, on behalf of themselves and all others similarly situated, and COMMUNITY ACTION AGENCY OF SOMERVILLE, INC., Plaintiffs, v. SAFERENT SOLUTIONS, LLC, and METROPOLITAN MANAGEMENT GROUP, LLC, Defendants.	Civil Case No. 1:22-cv-10800-AK

REPLY IN SUPPORT OF
DEFENDANT SAFERENT SOLUTIONS, LLC'S MOTION TO DISMISS
PLAINTIFFS' AMENDED COMPLAINT

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INTRODUCTION

Plaintiffs ask this Court to do what no other court has done: declare that fair housing laws prohibit consideration of credit history when evaluating a voucher recipient's rental application. They do so even though courts and the relevant federal agency have expressly approved this practice, and even though Plaintiffs allege no facts (i) that alleged disparities in credit histories lead to impermissible disparities in SafeRent Scores, or (ii) that any alleged disparities in SafeRent Scores lead to impermissible disparities in housing outcomes.

Plaintiffs and the government say that none of this matters, and they should be permitted to scrutinize individual components of a facially neutral policy for evidence of statistical disparity in the absence of factual allegations showing real-world impact. That would violate the Supreme Court's directive that "[c]ourts should avoid interpreting disparate-impact liability to be so expansive as to inject racial considerations into every housing decision." *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 543 (2015). This Court should decline Plaintiffs' invitation to do so, and dismiss the Amended Complaint.

ARGUMENT

I. A PRIMA FACIE CASE OF DISPARATE IMPACT HAS NOT BEEN ALLEGED.

A. The race-based disparate impact claims fail.

1. Plaintiffs do not identify an arbitrary, artificial, and unnecessary policy.

The Supreme Court has set forth "safeguards" that must be observed in adjudicating disparate impact claims, including a principle that "private policies are not contrary to the disparate-impact requirement unless they are 'artificial, arbitrary, and unnecessary barriers.'" *Inclusive Communities*, 576 U.S. at 543 (citation omitted). Without citing any authority, the government argues that this requirement is irrelevant at the pleading stage. (Doc No. 37) at 7 &

n.8. Courts have held otherwise. *See* (Doc No. 32) at 9 (collecting cases). As Massachusetts' highest court observed, the "artificial, arbitrary, and unnecessary" requirement is a "pleading requirement[ ]," and part of the "rigorous examination" that must be conducted "at the pleading stage." *Burbank Apartments Tenant Ass'n v. Kargman*, 48 N.E.3d 394, 411 (Mass. 2016). The result of "the [Supreme] Court's call for 'adequate safeguards' . . . indicates a higher burden for disparate impact plaintiffs under the FHA than under Title VII." *Id.* at 411 n.29; *see also Inclusive Communities*, 576 U.S. at 543 ("prompt resolution of these cases is important").[1]

The Amended Complaint fails to identify a policy that meets this standard. Plaintiffs fault the SafeRent Score for considering applicants' credit history (along with other information) because, they assert, credit history is not relevant to voucher recipients' ability to pay rent. But it is undisputed that tenants with vouchers must pay part of the monthly rent themselves. (Doc No. 15) ¶¶ 7, 13, 15, 31. Where "[t]he prospective tenant is still responsible for the payment of some portion of the rent," landlords may "consider a Section 8 tenant's creditworthiness." *Pasquince v. Brighton Arms Apartments*, 876 A.2d 834, 841 (N.J. App. Div. 2005).

Tellingly, neither Plaintiffs nor the government cite a single decision prohibiting housing providers from considering an applicant's credit history when making a housing decision. To the contrary, courts have agreed that credit history may lawfully be used in connection with tenant screening, including for tenants with housing vouchers. *See* (Doc No. 32) at 8 (collecting cases). Plaintiffs try to distinguish these cases as not involving the type of disparate impact claims asserted here, (Doc No. 36) at 9–10, but the details of the underlying claims do not alter the basic proposition for which these cases stand: landlords are permitted to assess the ability of

[1] The government argues that these courts would have reached the same result on other grounds, but does not dispute their conclusion that the *Inclusive Communities* framework applies on a motion to dismiss.

"prospective tenants . . . to meet the requirements of tenancy," including "screening for credit history." *Sutton v. Freedom Square Ltd.*, 2008 WL 4601372, at *4 (E.D. Mich. Oct. 15, 2008).

HUD likewise has approved of this practice. When listing "permitted screening criteria" that may be used "to determine whether to accept or deny an applicant's tenancy," HUD lists "screening for credit history" as the very first criterion. HUD Handbook 4350.3 (excerpt attached as Ex. 1) § 4-7(F)(1), (2) (capitalization omitted).[2] As HUD explains:

> Examining an applicant's credit history is one of the most common screening activities. The purpose of reviewing an applicant's credit history is to determine how well applicants meet their financial obligations. A credit check can help demonstrate whether an applicant has the ability to pay rent on time. . . . Owners may reject an applicant for a poor credit history[.]

Id. § 4-7(F)(2); *see also id.* § 4-7(F)(1) (owners "should consider at least developing screening criteria related to" the permitted criteria); *id.* § 4-14(B)(1) ("a written application form . . . should include . . . credit . . . history, consistent with the property's tenant selection policies"); *id.* § 4-27(B)(1) ("Owners may reject an applicant for a poor credit history"); Glossary at 32 ("Screening criteria may include consideration of . . . credit . . . history"). The government notes that this handbook governs a different housing assistance program, (Doc No. 37) at 8, but does not explain why the permissibility of credit checks should vary across housing programs, or why some property owners are permitted to conduct credit checks while others are not.[3]

The government claims that its handbook "does not comprehensively capture, or even fairly represent, all that HUD or the federal government has said on considering credit history in the housing context." (Doc No. 37) at 9. But the only other document the government points to—a "General FAQ" (attached as Ex. 3)—discusses only "exceptions to credit check policies,"

[2] Full handbook available online at https://www.hud.gov/sites/documents/43503HSGH.PDF.

[3] The language the government quotes from a separate handbook (excerpt attached as Ex. 2) is a non-exclusive list that does not prohibit credit checks. *See* (Doc No. 37) at 9 n.9.

implying that such a policy generally is permitted. Ex. 3 at 1. The document also states that public housing authorities sometimes may be *required* to perform credit checks. *Id.* at 1 n.2. Indeed, some public housing agencies in Massachusetts appear to include credit checks as part of the application process for housing programs.[4]

The two scenarios flagged in the FAQ do not help Plaintiffs. First, the FAQ warns against "forgo[ing] credit checks for any potential residents" if doing so would "discriminate because of a protected characteristic." Ex. 3 at 1. That situation is inapplicable here; there is no allegation that the SafeRent Score considers credit history for some applicants but not others. Second, the FAQ suggests that it may be "a best practice" to use "alternate forms of verification of ability to pay for any prospective tenant without traditional credit" and to not require "other verification of ability to pay" "if an agency will provide full rent payments." *Id.* at 1–2. Those situations likewise do not apply here: Plaintiffs do not allege that they lacked traditional credit, and they admit their housing vouchers did not cover their full rent. *See* (Doc No. 15) ¶¶ 13, 15.

Plaintiffs—but not the government—cite to an April 2022 guidance document that discusses applicant screening in general (attached as Ex. 4), but that document does not help Plaintiffs. Credit history is mentioned in a single sentence, along with other examples of separate screening criteria such as criminal records and evictions that "may operate unjustifiably to exclude individuals." Ex. 4 at 6. Although the document provides concrete examples of how screening based on criminal records and rental history may do so, nothing further is said about credit history. Moreover, nothing in this document purports to modify HUD's prior guidance (concerning the

[4] For example, the Brookline Housing Authority checks "[c]redit report[s]" for "all applicant household members" over the age of 18. Ex. 5. Metro Housing Boston also advises property owners: "You are allowed to do credit checks . . . under fair housing as long as you are using the same practices and using them in the same manner for protected class members as for other applicants." Ex. 6; *see also id.* (a tenant's "ability to pay rent" may be "demonstrated through their . . . credit history").

same programs) that "[o]wners may reject an applicant for a poor credit history." Ex. 1 § 4-7(F)(2). The government's amicus brief cannot erase the consistent position HUD has embraced, particularly where Plaintiffs seek to challenge conduct dating back at least four years. For all these reasons, Plaintiffs have failed to allege that using credit history as part of the SafeRent Score is an artificial, arbitrary, and unnecessary policy.

2. The Amended Complaint does not allege a significant statistical disparity caused by SafeRent.

For at least three reasons, the Amended Complaint fails to allege a significant statistical disparity for Black and Hispanic rental applicants caused by SafeRent.

Failure to allege a disparity in housing outcomes. It is not enough for Plaintiffs to allege that credit history, or even SafeRent Scores, differ across protected classes; the complaint must include factually-supported allegations that *housing outcomes* are different.[5] As the Supreme Court has recognized, "the operative text" of the FHA "looks to results." *Inclusive Communities*, 576 U.S. at 534–35. "[E]ven at this early juncture, the statistics must plausibly suggest that the challenged practice *actually* has a disparate impact." *Mandala v. NTT Data, Inc.*, 975 F.3d 202, 210 (2d Cir. 2020).

The Amended Complaint alleges nothing about how often Black or Hispanic voucher holders are denied housing, and it fails to allege facts demonstrating a significant disparity compared to voucher holders of other races. Even if the Amended Complaint sufficiently alleged a significant race-based disparity in SafeRent Scores (which it does not), that would not

[5] Plaintiffs' passing criticism of the SafeRent algorithm's alleged failure to consider "the financial benefits of housing vouchers," (Doc No. 15) ¶ 31, falls short for the same reason. Even if true—and it is not—it is not enough to allege that a better algorithm could have been developed; Plaintiffs must allege an impermissible impact on housing decisions, which they have not done.

automatically translate into different or worse housing outcomes, and the Amended Complaint identifies no reason why that would be true.

Plaintiffs rely on *Miller v. Countrywide Bank*, 571 F. Supp. 2d 251 (D. Mass. 2008), but that case proves the point. The plaintiffs in *Miller* claimed that a bank's pricing policy had a discriminatory impact by "mak[ing] African-American[] borrowers "over three times more likely than white borrowers to receive a high-APR home loan[]" and "two times more likely to receive a high-APR refinancing loan." *Id.* at 253. The *Miller* plaintiffs thus pleaded a disparity in the allegedly discriminatory *outcome*: loans with higher fees and rates. *See id.* at 258–59. Here, by contrast, Plaintiffs' theory is that "Black and Hispanic rental applicants [are] disproportionately likely to be denied housing." (Doc No. 15) ¶ 4. But the Amended Complaint includes no allegations about how often members of the protected classes are actually denied housing, or how those rates compare to applicants of other races.

Plaintiffs cannot fill this gap by pointing to disparities in other factors like bankruptcy and eviction history. Although Plaintiffs point to "alleged disparities across the range of inputs to the SafeRent Score," (Doc No. 36) at 13, the Amended Complaint alleges race-based disparities *only* with respect to credit history. (Doc No. 15) ¶¶ 51–60. The opposition mentions eviction history in a footnote, but arguments in a brief cannot substitute for allegations in a complaint. *See Doe v. Univ. of Mass.-Amherst*, 2015 WL 4306521, at *1 n.1 (D. Mass. July 14, 2015).

The government suggests that Plaintiffs may challenge "individual elements of policies and practices" without showing a disparate impact in actual outcomes. (Doc No. 37) at 9. No authority supports this approach.[6] Permitting narrow challenges to single elements of a policy,

[6] The government's reliance on *Langlois v. Abington Hous. Auth.*, 207 F.3d 43 (1st Cir. 2000), is misplaced. The local preference challenged there was not merely part of a formula that determined who received vouchers, but was a policy that dictated who "would be listed ahead of" other

without considering the real-world impact of the policy as a whole, would violate the Supreme Court's directive that "[c]ourts should avoid interpreting disparate-impact liability to be so expansive as to inject racial considerations into every housing decision." *Inclusive Communities*, 576 U.S. at 543. The government's approach would require vendors like SafeRent to "use[] and consider[]" race in exactly this kind of "pervasive and explicit manner." *Id.*

Failure to allege a disparity in credit history between relevant groups. Plaintiffs' complaint is also deficient because its "statistical analysis" does not identify "disparities between populations that are relevant to the claim [they] seek[] to prove." *Mandala*, 975 F.3d at 210. The Amended Complaint includes allegations about the credit history of Black and Hispanic consumers, *see* (Doc No. 15) ¶¶ 51–57, but is silent about Black and Hispanic *voucher holders*. Plaintiffs likewise fail to explain why their general statistics plausibly represent renters who use vouchers. Although Plaintiffs offer the conclusory argument that "disparities in credit history also exist for those who are low-income," (Doc No. 36) at 13–14, they offer no reason why that assertion plausibly shows a race-based difference in credit history among voucher recipients.

Plaintiffs have not adequately alleged causation. The Amended Complaint fails for a third reason: it does not sufficiently allege that including credit history as part of the SafeRent Score *causes* a disparity in rental housing. Plaintiffs and the government agree "that a disparate impact plaintiff must allege causality," (Doc No. 37) at 11; *see* (Doc No. 36) at 14, but they fail to take that standard seriously. The Supreme Court has instructed that the "causality requirement" is "robust." *Inclusive Communities*, 576 U.S. at 542. A robust standard is necessary to "ensure[] that racial imbalance does not, without more, establish a prima facie case of disparate impact." *Id.* (cleaned up). Otherwise, defendants could be "held liable for racial disparities they did not create,"

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applicants. *Id.* at 46. Moreover, the plaintiffs in *Langlois* presented evidence showing a disparate impact in the ultimate *outcome* of who actually received vouchers. *See id.* at 50.

contrary to the FHA and broader anti-discrimination goals. *Id.*; *see also Burbank Apartments*, 48 N.E.3d at 411 n.29 (under *Inclusive Communities*, the "robust causality requirement" constitutes "a heightened pleading requirement").[7]

Here, Plaintiffs fail to show causation for at least two reasons. *First*, the Amended Complaint addresses one aspect of the SafeRent Score in asserting disparate impact: consideration of voucher holders' credit history. (Doc No. 15) ¶¶ 2, 45–61, 72. As Plaintiffs recognize, however, other factors are also used to calculate the score, such as bankruptcy records and eviction history. *Id.* ¶¶ 25, 30, 35. The government similarly acknowledges that SafeRent's "scoring system relies on a variety of factors." (Doc No. 37) at 3. But the Amended Complaint does not contain any facts showing that credit history—rather than these other factors—specifically caused a disparity in housing outcomes. The Supreme Court has addressed this type of situation, and warned that "[i]t may . . . be difficult to establish causation" where "multiple factors . . . go into" a decision. *Inclusive Communities*, 576 U.S. at 543. Plaintiffs respond that they have "alleged disparities across the range of inputs to the SafeRent Score," (Doc No. 36) at 14, but again, the Amended Complaint does not challenge the SafeRent Score in its entirety. *Supra* at 6.

Second, SafeRent does not make any housing decisions—housing providers do, as demonstrated by Plaintiff Douglas's experience. The Amended Complaint correctly recognizes that "[h]ousing providers" are the ones that "select the minimum SafeRent Score required for a rental application to be approved." (Doc No. 15) ¶ 39. The fact that SafeRent transmits a score to housing providers "with 'approve' or 'deny' language, not simply a numerical score," *id.* ¶ 43, simply reflects a comparison of a prospective tenant's SafeRent Score to the "minimum score" *set*

[7] Regardless of whether the Supreme Court "announce[d] a new, or additional, causality requirement," or simply "addressed causation" as it "already exist[ed]," (Doc No. 37) at 11, lower courts are bound by the standards in *Inclusive Communities*.

by the housing provider. *Id.* ¶ 39; *see also id.* ¶ 41 (acknowledging that "housing providers" may "use SafeRent Scores to accept or deny rental applicants in different ways"). Plaintiff Douglas's allegations show how this works: according to the Amended Complaint, her rental application "was initially rejected" based on her SafeRent Score, but the housing provider later changed course and "eventually did accept Ms. Douglas' rental application." *Id.* ¶¶ 83–89.

The authorities on which Plaintiffs rely are distinguishable for similar reasons. This case is unlike *Dothard v. Rawlinson*, 433 U.S. 321 (1977), where minimum height and weight requirements for certain jobs directly caused a disproportionate impact on women applicants. *See id.* at 324–28. Here, by contrast, credit history is one of multiple inputs for the SafeRent Score, and Plaintiffs fail to allege any disparate impact in the final decisions made by housing providers based on overall scores. Plaintiffs are likewise incorrect that the Ninth Circuit's decision in *Southwest Fair Hous. Council, Inc. v. Maricopa Domestic Water Improvement Dist.*, 17 F.4th 950 (9th Cir. 2021), supports an inference of causation here. In that case—unlike this one—"[t]he sole cause of the disproportionate impact" was the challenged policy, so the court was not "left wondering whether members of a protected class are subject to the [challenged outcome] because of this policy or because of *some other factor*." *Id.* at 966 (emphasis added).

B. The state-law voucher-based disparate impact claim fails.

Plaintiffs' state-law voucher-based claim fails for the same reasons as the race-based claims: Plaintiffs have failed to plead any arbitrary policy (*supra* at 1–5), any disparity in housing outcomes (*supra* at 5–7), or a robust causal connection (*supra* at 7–9). Apart from a single conclusory allegation, (Doc No. 15) ¶ 152, the Amended Complaint alleges no facts showing that applicants who use vouchers do not fare as well as those who do not. Nor can Plaintiffs save their claim by alleging a correlation between lower income and lower credit scores. *See* (Doc No. 36) at 10, 14; (Doc No. 15) ¶¶ 58–61. The relevant group for purposes of Plaintiffs' claim is *not* the

population of all low-income individuals—it is the narrower group of people who receive vouchers to help pay rent. Simply alleging that this smaller group *also* has lower incomes (as required to participate in the program) does not establish that voucher holders as a whole have lower credit scores compared to non-voucher holders. For the low-income population in particular, the opposite may be true: those who are awarded voucher assistance may well have better credit histories than those who are not. This matters, because even at the pleading stage, "the statistical analysis must, at the very least, focus on the disparity between appropriate comparator groups." *Mandala*, 975 F.3d at 210.

II. SAFERENT IS NOT SUBJECT TO LIABILITY UNDER FEDERAL OR STATE FAIR HOUSING LAWS.

A. The Fair Housing Act does not apply to third-party vendors that do not make housing decisions.

The Amended Complaint should be dismissed for the additional reason that the FHA does not apply to third-party companies that provide tenant screening services.

Plaintiffs misread the statutory phrase "otherwise make unavailable." While that phrase has been described as "encompass[ing] a wide array of housing practices," the First Circuit has also interpreted it to "specifically target[] the discriminatory use of zoning laws and restrictive covenants." *Casa Marie, Inc. v. Super. Ct. of P.R.*, 988 F.2d 252, 257 n.6 (1st Cir. 1993); *see also Halprin v. Prairie Single Fam. Homes of Dearborn Park Ass'n*, 388 F.3d 327, 328 (7th Cir. 2004) ("The language [of the FHA] indicates concern with activities, such as redlining, that prevent people from acquiring property."). Tenant screening services that consider HUD-approved factors are not comparable to practices like redlining and restrictive covenants.

As both Plaintiffs and the government acknowledge, Plaintiffs are seeking to proceed on a theory of *direct* liability against SafeRent. *See* (Doc No. 36) at 21; (Doc No. 37) at 13. But SafeRent is not in the same position as parties with direct involvement in housing availability

(landlords, realtors, municipal officials, zoning boards) and habitability (municipal services, apartment managers, maintenance). SafeRent does not make the ultimate housing decisions, and it does not have "control or any other legal responsibility" it can exercise to prevent an individual from securing, occupying, and enjoying rental housing. 24 C.F.R. § 100.7(a)(1)(iii).

The *CoreLogic* case on which Plaintiffs and the government rely—the only case applying the FHA to a tenant screening company—is distinguishable, because it concerns "an algorithm" that "interpret[ed] an applicant's criminal record" in a way that HUD had prohibited. *Conn. Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC*, 369 F. Supp. 3d 362, 367 (D. Conn. 2019). That screening tool then allegedly provided "a decision on whether the applicant qualifie[d] for housing" based solely on that prohibited criterion. *Id.* The company further generated "adverse action letter[s] for the housing provider to send" to applicants reflecting the decision. *Id.*

None of those factors are present here. SafeRent's tenant screening report relies on factors *approved* by HUD (*supra* at 3–5). SafeRent merely "provides a report and score to its housing provider clients," (Doc No. 15) ¶ 42, does not make any final housing decisions, and did not generate adverse action letters with respect to Plaintiffs' applications.

Plaintiffs' reliance on *Staub v. Proctor Hosp.*, 562 U.S. 411 (2011), is misplaced. In *Staub*—an employment case—the Supreme Court looked to the supervisors' actions to determine whether the employer acted with animus in dismissing an employee, but the supervisors themselves could not be liable for dismissing the employee just because they were in the causal chain. *See id.* at 417–18. "Countless private and official decisions may affect housing in some remote and indirect manner, but the Fair Housing Act requires a closer causal link between housing and the disputed action." *Jersey Heights Neighborhood Ass'n v. Glendening*, 174 F.3d 180, 192 (4th Cir. 1999). That link is absent here.

B. The state-law claims should be dismissed for additional reasons.

Plaintiffs' opposition fails to address the argument that SafeRent is not among the listed private actors "to whom th[e] provisions [of 4(6)(b)] apply." (Doc No. 32) at 17–18. That "fail[ure] to respond" means the Section 4(6)(b) claim should be dismissed as "waived." *Mahoney v. Found. Med., Inc.*, 342 F. Supp. 3d 206, 217 (D. Mass. 2018).

Plaintiffs' attempt to save their Section 4(10) claim relies on a misquotation of the statute. Plaintiffs argue the statute covers entities that qualify as a "credit services organization" under Mass. Gen. Laws ch. 93, § 68(A), and they contend SafeRent meets that definition because it "is a consumer reporting agency" under federal law. (Doc No. 36) at 23–24. Contrary to Plaintiffs' quotation of Section 68(A), a "credit services organization" under Massachusetts law "shall *not* include . . . any consumer reporting agency as defined in 15 USC 1681 et seq." Mass. Gen. Laws ch. 93, § 68(A) (emphasis added). Section 4(10) therefore does not apply to SafeRent, which is not a credit services organization and does not furnish credit.

The Court should reject Plaintiffs' attempt, *see* (Doc No. 36) at 21–22, 31 n.21, to raise new claims under Sections 4(5) and 4(6)(a) for the first time in an opposition brief. The Amended Complaint never refers to Sections 4(5) or 4(6)(a), and a "fleeting mention of an unpleaded claim . . . is not sufficiently informative to satisfy the short and plain statement requirement of Rule 8(a)(2)." *Diaz-Rivera v. Rivera-Rodriguez*, 377 F.3d 119, 123 (1st Cir. 2004) (cleaned up).[8]

[8] In any event, Plaintiffs' newly-raised claims fail. An aiding-and-abetting claim under Section 4(5) requires allegations, among other things, (1) that SafeRent "committed a wholly individual and distinct wrong separate and distinct from the claim in main"; (2) that SafeRent "shared an intent to discriminate"; and (3) that SafeRent "knew of [its] supporting role in an enterprise designed to deprive [Plaintiffs] of a right guaranteed" under ch. 151B. *Saari v. Allegro Microsystems, LLC*, 436 F. Supp. 3d 457, 466 (D. Mass. 2020) (cleaned up). Plaintiffs cannot make that showing in a case where (1) their aiding-and-abetting allegations rest on the same conduct that underlie their direct liability claims, (2) there are no allegations that SafeRent engaged in intentional discrimination, and (3) SafeRent considered criteria approved by HUD. Similarly,

III. THE DERIVATIVE CHAPTER 93A CLAIMS SHOULD BE DISMISSED.

Plaintiffs assert claims only under the "unfairness" prong of Chapter 93A. (Doc No. 36) at 24 n.16. These claims cannot proceed for at least three reasons. *First*, Plaintiffs' Chapter 93A claims rely entirely on the fair housing allegations. *See* (Doc No. 36) at 25, 27. Claims that are derivative of other inadequately pled claims should be dismissed. *See* (Doc No. 32) at 19; *accord Whitehall Co. Ltd. v. Merrimack Valley Distrib. Co.*, 780 N.E.2d 479, 483 (Mass. App. Ct. 2002).

Second, it is not "unfair" to engage in a practice that the relevant regulator has approved. HUD has specifically described checking "credit history" as "permitted" and "one of the most common screening activities." *Supra* at 3. That is enough to take SafeRent's practices outside the scope of Chapter 93A. *See* (Doc No. 32) at 19–20.

Third, Plaintiffs' allegations fail the "rather rigorous test" that governs their claims. *Cablevision of Bos., Inc. v. Pub. Imp. Comm'n of Bos.*, 38 F. Supp. 2d 46, 61 (D. Mass.), *aff'd*, 184 F.3d 88 (1st Cir. 1999). The disparate impact theory Plaintiffs assert does not rise to the level of "egregious, non-negligent" conduct required under Chapter 93A. *Walsh v. TelTech Sys., Inc.*, 821 F.3d 155, 160 (1st Cir. 2016). Although Plaintiffs suggest in their opposition that SafeRent engaged in intentional discrimination, the Amended Complaint makes no such allegation. Nor have Plaintiffs cited any case finding "unfairness" where a party has adopted a facially neutral practice that is claimed to have a discriminatory outcome.[9] To the contrary, "it is neither arbitrary nor unfair" to adopt an evaluation metric that reflects a "common sense" difference between

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Section 4(6)(a) applies only to a party that "refuse[d] to rent or lease or sell or negotiate for sale"; it lacks the "otherwise make available" language that appears in the FHA. Because SafeRent is not a housing provider and does not make housing decisions, it cannot refuse, deny, or withhold housing within the meaning of Section 4(6)(a).

[9] Plaintiffs cite *Brooks v. Martha's Vineyard Transit Auth.*, 433 F. Supp. 3d 65 (D. Mass. 2020), but that case involved *intentional* "[r]acial harassment" where public transit authorities allegedly "refus[ed] to allow [plaintiff] on the bus because of his race." *Id.* at 77–78.

individuals who are not similarly situated. *Essigmann v. W. New England Coll.*, 419 N.E.2d 1047, 1049 (Mass. App. Ct. 1981).

IV. PLAINTIFFS HAVE NOT ESTABLISHED ARTICLE III STANDING.

A. Plaintiffs have failed to allege an injury under Sections 3604(b) or 4(6)(b).

Plaintiffs' claims under 42 U.S.C. § 3604(b) and Mass. Gen. Laws ch. 151B, § 4(6)(b) fail for lack of standing. Plaintiff Louis cannot point to any discriminatory terms, conditions, or services, because she did not secure housing in connection with her SafeRent Score. *See* (Doc No. 15) ¶ 79. As to Plaintiff Douglas, the Amended Complaint does not describe how she was offered or received less favorable terms or services compared to other groups.

Plaintiffs' argument that SafeRent discriminated in pre-acquisition services misreads Section 3604(b), which reaches services provided to *residents*, not services (like SafeRent's) that are provided to *landlords*.[10] The injury Plaintiffs claim here is the alleged denial of housing, which is covered by Section 3604(a)'s prohibition on refusing to rent housing. To hold that Section 3604(b)'s prohibition on discrimination in terms, conditions, and services encompasses that *same* injury would render statutory language superfluous, something courts decline to do. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("It is a cardinal principle of statutory construction that a statute

[10] *See A Soc'y Without A Name v. Virginia*, 655 F.3d 342, 350 (4th Cir. 2011) ("Intake services to sign up for a homeless shelter are simply not within the type of services covered by the FHA because they are unlike services generally provided by governmental units such as police and fire protection or garbage collection." (internal quotation marks omitted)); *Clifton Terrace Assocs., Ltd. v. United Techs. Corp.*, 929 F.2d 714, 720 (D.C. Cir. 1991) ("[Section 3604(b) is] directed at those who provide housing and then discriminate in the provision of attendant services or facilities" and "those who otherwise control the provision of housing services and facilities."); *Southend Neighborhood Imp. Ass'n v. County of St. Clair*, 743 F.2d 1207, 1210 (7th Cir. 1984) ("[Section 3604(b)] applies to services generally provided by governmental units such as police and fire protection or garbage collection."). *Cf.* H.R. Rep. No. 100-711, at 23 (1988), as reprinted in 1988 U.S.C.C.A.N. 2173, 2184 (listing "access to recreation facilities, parking privileges, cleaning and janitorial services and other facilities, uses of premises, benefits and privileges made available to other tenants, residents, and owners").

ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous void, or insignificant." (internal quotations omitted)).

B. Community Action Agency of Somerville lacks standing.

Plaintiff CAAS attempts to ground its standing in the expenditure of resources because *some* CAAS clients cannot apply to *some* property management companies that are "*most likely* to use SafeRent *or similar vendors*" to screen tenants. (Doc No. 36) at 33 (emphasis added). This formulation is much too speculative and attenuated to support standing to sue SafeRent. The facts here differ from *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), where the organizational plaintiff sued the actual housing providers—not a third-party screening service—and specifically alleged the expenditure of resources on "counseling and other referral services" after providers allegedly lied to Black applicants about housing availability. *Id.* at 368, 378–79.[11] Lacking comparable allegations that connect the alleged diversion of CAAS's resources to CAAS clients who would have been denied housing if their applicants were screened by SafeRent, the Amended Complaint alleges nothing more than "a setback to the organization's abstract social interests." *Id.* at 379.

CONCLUSION

This Court should dismiss the Amended Complaint with prejudice.

[11] Other cases on which Plaintiffs rely, *see* (Doc No. 36) at 32–34, are distinguishable for the same reasons. *See, e.g.*, *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 902, 905 (9th Cir. 2002) (organization sued owner of apartment complex after "conduct[ing] two sets of controlled tests"); *Fortune Soc'y v. Sandcastle Towers Hous. Dev. Fund Corp.*, 388 F. Supp. 3d 145, 153, 164 (E.D.N.Y. 2019) (organization had "hired a new employee . . . specifically to assist" with "find[ing] alternative housing for the Twenty Clients" that housing provider refused to accept).

Dated: February 17, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2023, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), pursuant to Local Rule 5.4(c).

/s/ *Jeffrey Huberman*
Jeffrey Huberman

EXHIBIT 1

In Support of Defendant SafeRent Solutions, LLC's Reply

excerpted from
https://www.hud.gov/sites/documents/43503HSGH.PDF

HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs

November 2013

CHAPTER 4. WAITING LIST AND TENANT SELECTION

4-1 Introduction

A. This chapter describes requirements and makes suggestions regarding activities that occur during the marketing, application, waiting list, and tenant selection process. Owners may complete these activities before, concurrently with, or after the eligibility determination made in accordance with the requirements described in Chapter 3 of this handbook.

B. This chapter is organized into four sections.

- **Section 1: Tenant Selection Plan** describes the required and recommended contents of the HUD tenant selection plan.
- **Section 2: Marketing** describes marketing and outreach activities to attract tenants with particular attention to Affirmative Fair Housing Marketing Plans.
- **Section 3: Waiting List Management** includes information related to application taking, waiting lists, and record-keeping related to tenant applications.
- **Section 4: Selecting Tenants from the Waiting List** covers tenant selection and screening criteria. It also discusses applicant interviews, and applicable requirements and procedures when applicants are found to be ineligible, including written notification to applicants of denial of assistance.

C. All pre-occupancy activities must be undertaken in a manner that does not discriminate on the basis of race, color, national origin, sex, religion, disability, or familial status. See Chapter 2 for general civil rights requirements. This chapter does address some particular nondiscrimination and equal opportunity requirements for pre-occupancy activities.

4-2 Key Terms

A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations, or by HUD. These terms are listed in Figure 4-1 and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.

B. The terms disability and persons with disabilities are used in two contexts for civil rights protections, and for program eligibility purposes. Each use has specific definitions.

1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.

3. Disability. Owners may adopt a preference to select families that include a person with a disability. Owners may not create preferences for persons with a specific type of disability unless allowed in the controlling documents for the property. (See Chapter 3, Section 2.) Owners may not apply a preference for persons without disabilities.

4. Victims of Domestic Violence, *Dating Violence or Stalking*. Owners may adopt a preference for admission of families that include victims of domestic violence, *dating violence or stalking*.

5. Specific groups of single persons. Owners may adopt a preference for single persons who are elderly, displaced, homeless or persons with disabilities over other single persons.

D. Determining the Relative Weight of Owner-Adopted Preferences

Owners may decide to assign various importance to owner-adopted preferences. If the owner chooses to do so, a ranking, rating, or combination of preference circumstances must be identified in the Tenant Selection Plan and consistently used. For example, an owner may choose to provide the highest ranking to working families, though this ranking is subordinate to income targeting requirements and to statutory and regulatory preferences described in paragraphs 4-6 A and B above. Alternatively, an owner might choose to adopt a policy that provides top priority to an applicant who qualifies for the most preference categories (also known as combining preferences).

4-7 Screening for Suitability

Screening is used to help ensure that families admitted to a property will abide by the terms of the lease, pay rent on time, take care of the property and unit, and allow all residents to peacefully enjoy their homes. Information collected through the screening process enables owners to make informed and objective decisions to admit applicants who are most likely to comply with the terms of the lease. An effective screening policy will also ensure fair, consistent, and equal treatment of applicants. All screening criteria adopted by the owner must be described in the tenant selection plan and consistently applied to all applicants in a non-discriminatory fashion and in accordance with all applicable fair housing and civil rights laws.

A. Screening Versus Determining Eligibility

Screening for suitability of tenancy is not a determination of *eligibility* for the program.

1. Eligibility is a determination that an applicant family meets all of the criteria for the type of subsidy in the property. To be eligible a family must meet the income limits and provide specific information and documentation of other family information (i.e., SSNs, and citizenship information). Eligibility is discussed in detail in Chapter 3.

2. Screening is a determination that an otherwise eligible household has the ability to pay rent on time and to meet the requirements of the lease.

B. **Key Requirements**

1. Owners are permitted to establish and apply written screening criteria to determine whether applicants will be suitable tenants. If an owner's review of information about the applicant indicates that the applicant will not be a suitable tenant, the owner may reject the application for assistance or tenancy.

2. Owners must establish written screening criteria to prohibit the admission of certain individuals who have engaged in drug-related criminal behavior, or are subject to a State lifetime sex offender registration program, or are individuals whose abuse or pattern of abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents. Owners may choose to expand these requirements regarding prohibition of admission to certain applicants *[24 CFR part 5, subpart I & J]*.

3. *Owners must establish written procedures for using the EIV Existing Tenant Search. See D below.*

4. Screening criteria must be included in the tenant selection plan. (See paragraph 4-4.C and Figure 4-2.)

5. Owners must apply screening criteria uniformly to all applicants to prevent discrimination and avoid fair housing violations.

6. The screening of live-in aides at initial occupancy and the screening of persons or live-in aides to be added to the tenant household after initial occupancy involve similar screening activities. Both live-in aides and new additions to the tenant household must be screened for drug abuse and other criminal activity, including *State lifetime registration as a sex offender*, by applying the same criteria established for screening other applicants. In addition, owners may apply any other owner established applicant screening criteria to new household members in order to establish suitability for tenancy. Owner established screening criteria may also be applied to live-in aides, except for the criterion regarding the ability to pay rent on time because live-in aides are not responsible for rental payments.

7. Police officers and other security or management personnel that reside in subsidized units are subject to the same screening criteria as other applicants.

8. The costs of screening must not be charged to applicants. Such costs may be charged against the project operating account. A variation on this rule applies to cooperatives.

9. Certain types of screening are prohibited. See paragraph 4-8 below.

C. **Screening For Drug Abuse and Other Criminal Activity**

1. Tenant selection plans must contain screening criteria that include standards for prohibiting admission of those who have engaged in drug-related or criminal activity. The plan may, under certain circumstances, include additional provisions that deny admission to applicants for other drug and criminal activity.

2. Owners must establish standards that prohibit admission of:

   a. Any household containing a member(s) who was evicted in the last three years from federally assisted housing for drug-related criminal activity. The owner may, but is not required to, consider two exceptions to this provision:

      (1) The evicted household member has successfully completed an approved, supervised drug rehabilitation program; or

      (2) The circumstances leading to the eviction no longer exist (e.g., the household member no longer resides with the applicant household).

   b. A household in which any member is currently engaged in illegal use of drugs or for which the owner has reasonable cause to believe that a member's illegal use or pattern of illegal use of a drug may interfere with the health, safety, and right to peaceful enjoyment of the property by other residents;

   c. Any household member who is subject to a State sex offender lifetime registration requirement; and

   d. Any household member if there is reasonable cause to believe that member's behavior, from abuse or pattern of abuse of alcohol, may interfere with the health, safety, and right to peaceful enjoyment by other residents. The screening standards must be based on behavior, not the condition of alcoholism or alcohol abuse.

3. Owners may establish additional standards that prohibit admission if the owner determines that any household member is currently engaging in, or has engaged in, the following activities during a reasonable time before the admission decision:

   a. Drug-related criminal activity. The owner may include additional standards beyond the required standards that prohibit admission in the case of eviction from federally assisted housing for drug-related criminal activity and current drug use.

b. Violent criminal activity.

c. Other criminal activity that threatens the health, safety, and right to peaceful enjoyment of the property by other residents or the health and safety of the owner, employees, contractors, subcontractors, or agents of the owner.

NOTE:. If an owner's admission policy includes any of the activities above or similar restrictions that uses a standard regarding a household member's current or recent actions, the owner may define the length of time prior to the admission decision during which the applicant must not have engaged in the criminal activity. The owner shall ensure that the relevant reasonable time period is uniformly applied to all applicants in a non-discriminatory manner and in accordance with applicable fair housing and civil rights laws.

4. An owner's screening criteria also may include the following provisions:

a. Exclusion of culpable household members. An owner may require an applicant to exclude a household member when that member's past or current actions would prevent the household from being eligible.

b. Drug or alcohol rehabilitation. When screening applications, an owner may consider whether the appropriate household member has completed a supervised drug or alcohol rehabilitation program. The owner may require appropriate documentation of the successful completion of a rehabilitation program.

c. Length of mandatory prohibition. The owner may set a period longer than required by the regulation (as described in subparagraph C.2 above) that prohibits admission to a property for disqualifying behavior. For those behaviors that would result in denial for a reasonable time, the owner must define a reasonable period in the tenant selection plan.

d. Reconsideration of previously denied applicants. An owner may reconsider the application of a previously denied applicant if the owner has sufficient evidence that the members of the household are not and have not engaged in criminal activity for a reasonable period of time. The owner must define a reasonable period of time in the tenant selection plan. When the owner chooses to adopt this admission provision, the owner must require the household member to submit documentation to support the reconsideration of the decision which includes:

(1) A certification that states that she or he is not currently engaged in such criminal activity and has not engaged in such criminal activity during the specified period.

(2) Supporting information from such sources as a probation officer, a landlord, neighbors, social service agency worker or criminal record(s) that were verified by the owner.

e. Consideration of the circumstances relevant to a particular case. In developing optional screening criteria for a property, and applying the criteria to specific cases, owners may consider all the circumstances relevant to a particular household's case. Such considerations may not be applied to the required screening criteria described in subparagraph C.2 above. These types of circumstances include:

(1) The seriousness of the offense;

(2) The effect denying tenancy would have on the community or on the failure of the responsible entity to take action;

(3) The degree of participation in the offending activity by the household member;

(4) The effect denying tenancy would have on nonoffending household members;

(5) The demand for assisted housing by persons who will adhere to lease responsibilities;

(6) The extent to which the applicant household has taken responsibility and takes all reasonable steps to prevent or mitigate the offending action; and

(7) The effect of the offending action on the program's integrity.

D. ***Screening Using the EIV Existing Tenant Search**

Owners must establish procedures in their Tenant Selection Plan for using the EIV Existing Tenant Search to determine if the applicant or any member of the applicant's household are being assisted under a HUD rental assistance program at another location See Chapter 9, Enterprise Income Verification (EIV) for information on using the Existing Tenant Search.*

E**.** **Considerations In Developing Screening Criteria**

Specific screening criteria will vary from property to property. In developing screening criteria, owners may want to consider the following factors:

1. Length of the property's waiting list. An owner of a property that has a long waiting list may consider establishing relatively restrictive screening standards, whereas an owner of a property with little or no waiting list may want to have less restrictive standards. *Regardless of standards established, the owner must screen for State lifetime sex offender

registration in all states where the applicant, or members of the applicant's household, have resided or using a database such as the Dru Sjodin National Sex Offender Database that searches all of the individual state sex offender registries. This searchable database is located at http://www.nsopw.gov.* Setting standards involves balancing the need to fill vacancies with the long-term effect of accepting higher risk tenants. Thorough screening often makes the project more attractive to applicants, thereby decreasing vacancies and turnover.

2. Application and screening fees. Screening takes staff time and may require funds to pay for credit reports and other information.

Rental housing. Owners may not charge application fees or require applicants to reimburse them for the cost of screening, including screening for criminal history. Therefore, owners will want to carefully weigh the cost of various screening activities against the benefits. Screening costs may be charged as an operating expense against the property operating account.

a. Screening criteria for assisted units in cooperatives.

(1) Application fees. Cooperatives may require prospective members to pay application fees if such fees are permissible under state and local laws. The cooperative's board of directors must approve the application fee. While the fee must be reasonable in amount and consistently applied, cooperatives need not submit the fee for Field Office approval. The cooperative must treat the application fee as an earnest money deposit. The application fee is not intended to cover the administrative expenses the cooperative incurs in processing applications. If the applicant is accepted for membership, the cooperative must apply the application fee to the purchase of the membership. If the applicant is rejected by the cooperative, the cooperative must refund the full application fee. The cooperative may retain the application fee only if the applicant backs out of the purchase transaction. While rental projects may not collect application fees, cooperatives may do so because application fees are traditional for homeownership transactions, and admission to a cooperative requires completion of more complicated paperwork than does admission to a rental. Collection of an earnest money deposit will minimize instances in which the cooperative spends time and money processing the application and then the applicant backs out.

(2) Credit report fees. Cooperatives may charge applicants for the cost of credit reports. This fee is intended to cover the cooperative's out-of-pocket cost; these fees are not refundable and need not be applied to the applicant's purchase costs. Cooperatives are permitted to charge these costs to applicants because:

- Such charges are standard industry practice for homeownership;
- Costs of these reports for home purchase can be more expensive than those required for rental purposes; and
- During initial occupancy, HUD requires cooperatives to obtain credit reports on all applicants, and many cooperatives have continued that policy as memberships are resold in later years.

F. **Permitted Screening Criteria Commonly Used by Owners**

1. Overview. Owners are permitted to screen applicants for suitability to help them to determine whether to accept or deny an applicant's tenancy. Owners should consider at least developing screening criteria related to the following factors and may establish other criteria not specifically prohibited in paragraph 4-8 below. All screening criteria adopted by the owner must be described in the tenant selection plan and consistently applied to all applicants.

2. Screening for credit history. Examining an applicant's credit history is one of the most common screening activities. The purpose of reviewing an applicant's credit history is to determine how well applicants meet their financial obligations. A credit check can help demonstrate whether an applicant has the ability to pay rent on time.

   a. Owners may reject an applicant for a poor credit history, but a lack of credit history is not sufficient grounds to reject an applicant.

   b. As part of their written screening criteria, and in order to ensure that all applicants are treated fairly, owners should describe the general criteria they will use for distinguishing between an acceptable and unacceptable credit rating. Owners are most often interested in an applicant's credit history related to rent and utility payments. A requirement for applicants to have a perfect credit rating is generally too strict a standard.

   c. Owners may determine how far back to consider an applicant's credit history. Owners generally focus on credit activity for the past three to five years. It is a good management practice to give priority to current activity over older activity.

d. Owners may have to justify the basis for a determination to deny tenancy because of the applicant's credit rating, so there should be a sound basis for the rejection.

3. Minimum Income Requirement. Section 236 and Section 221(d)(3) BMIR applicants who receive no other form of assistance, such as Section 8, may be screened for the ability to pay the Section 236 basic rent or the BMIR rent. Owners may establish a reasonable minimum income requirement to assess the applicant's ability to pay the rent. In the Section 8, RAP, and Rent Supplement programs, owners may **not** establish a minimum income requirement for applicants. (See paragraph 4-8.A.)

4. Screening for rental history. In addition to determining whether applicants are likely to meet their financial obligations as tenants and pay rent on time, owners are also interested in whether applicants have the ability to meet the requirements of tenancy.

   a. Owners must not reject an applicant for lack of a rental history but may reject an applicant for a poor rental history.

   b. As part of their written screening criteria, and in order to ensure that all applicants are treated fairly, owners should describe the general criteria they will use for distinguishing between acceptable and unacceptable rental history.

5. Screening for housekeeping habits. Owners may visit the applicant's current dwelling to assess housekeeping habits.

   a. As part of their written screening criteria, and in order to ensure that all applicants are treated fairly, owners should describe the general criteria they will use for distinguishing between acceptable and unacceptable housekeeping practices.

   b. Owners must establish reasonable standards which can be consistently applied to all families. Messy living quarters are not the same as safety and health hazards.

   c. In defining the home visit standards, the owner should establish a geographic radius within which home visits are made, and outside of which home visits are not made. It is impractical to establish a policy requiring home visits for all applicants, which might require the owner to visit units many miles from the property. For example, an owner may determine that 50 miles is the maximum distance that can be traveled to visit an applicant at home.

6. Consideration of extenuating circumstances in the screening process. Owners may consider extenuating circumstances in evaluating information obtained during the screening process to assist in determining the acceptability of an applicant for tenancy. If the applicant is a person

with disabilities, the owner must consider extenuating circumstances where this would be required as a matter of reasonable accommodation.

4-8 Prohibited Screening Criteria

Owners are prohibited from establishing any of the following types of screening criteria.

A. Criteria That Could Be Discriminatory

Owners must comply with all applicable federal, state or local fair housing and civil rights laws and with all applicable civil rights related program requirements.

1. Owners may not discriminate based on race, color, religion, sex, national origin, age, familial status, or disability.

2. Owners may not discriminate against segments of the population (e.g., welfare recipients, single parent households) or against individuals who are not members of the sponsoring organization of the property. Owners may not require a specific minimum income, except as allowed by paragraph 4-7 E.3 of this Handbook.

3. These prohibitions apply to (1) accepting and processing applications; (2) selecting tenants from among eligible applicants on the waiting list; (3) assigning units; (4) certifying and recertifying eligibility for assistance; and (5) all other aspects of continued occupancy.

4. Complaints alleging violations of these prohibitions must be referred to HUD's Regional Offices of Fair Housing and Equal Opportunity.

B. Criteria That Require Medical Evaluation or Treatment

1. Owners may not require applicants to undergo a physical exam or medical testing such as AIDS or TB testing as a condition of admission.

2. Owners may not require pregnant women to undergo medical testing to determine whether she is pregnant in order to assign a unit with the appropriate number of bedrooms.

3. Owners may uniformly require all applicants to provide evidence of an ability to meet the obligations of tenancy, but owners may not impose greater burdens on persons with disabilities. Persons with disabilities may meet the requirements of the lease with the assistance of others, including an assistance animal, a live-in aide, or with services provided by someone who does not live in the unit.

C. Criteria That Require Meals and Other Services

Owners may not require tenants to participate in a meals program that is not approved by HUD.

4-14 Taking Applications for Occupancy

A. Key Requirements

1. Application. Anyone who wishes to be admitted to an assisted property or placed on a property's waiting list must complete an application. In addition to providing applicants the opportunity to complete applications at the project site, owners may also send out and receive applications by mail. Owners shall accommodate persons with disabilities who, as a result of their disabilities, cannot utilize the owner's preferred application process by providing alternative methods of taking applications.

2. Applicant certification. The application must include a signature from the applicant certifying the accuracy and completeness of information provided. See the discussion in Chapter 5, Section 3 for information about the Privacy Act and disclosure requirements.

3. *Supplemental Information to Application for Assistance. The application must include as an attachment, form HUD-92006, Supplement to Application for Federally Assisted Housing. See D below for instructions on use of this form.*

4. The applicant provides self-certification of their race and ethnicity for data collection by using form HUD-27061-H (Exhibit 4-3). Completing this form is optional and there is no penalty for not completing it. Owners should not complete the form on behalf of the tenant. When the applicant chooses not to self certify race or ethnicity, a notation that the applicant chose not to provide the race and ethnicity certification *may* be placed in their file.

B. Contents of Application

1. Although HUD does not prescribe an application format, a written application form used to initiate verification of eligibility factors should include the following data:

   a. Household characteristics name, sex, age, disability status (only where necessary to establish eligibility) of each household member, need for an accessible unit, and race/ethnicity of head of household;

   b. General household contact information address, phone number;

   c. Identification of the approved preferences, if HUD approval is required, for which the household qualifies (only if preferences are used at the property);

   d. Source(s) and estimate(s) of household's anticipated annual income and assets;

e. Citizenship declaration (see Exhibit 3-5) and verification consent forms (see Exhibit 3-6). (This is not required for 221(d)(3) BMIR (without Section 8 or any other assistance), 202 (without Section 8), 202 PAC, 202 PRAC, and 811 PRAC properties that have no other subsidy);

f. Marketing information to understand how the applicant heard about the property; and

g. Screening information prior landlords, credit, and drug and criminal history, consistent with the property's tenant selection policies.

2. *The owner's application must request the following information from applicants.

a. Whether the applicant or any member of the applicant's household, is subject to State lifetime sex offender registration in any state.

b. Listing of states where the applicant and members of the applicant's household have resided.

c. Disclosure of SSNs for the applicant and for all members of the applicant's household, except those household members who do not contend eligible immigration status.

d. Information from applicants who were age 62 or older as of January 31, 2010, and who do not have a SSN, if they were receiving HUD rental assistance at another location on January 31, 2010. This information is needed in order for the owner to verify whether the applicant qualifies for the exemption from disclosing and providing verification of a SSN.

3. The owner must include as an attachment to the application form HUD-92006, Supplement and Optional Contact Information for HUD-Assisted Housing Applicants, Supplement to Application for Federally Assisted Housing.*

C. Types of Applications

Owners may choose to use a "full" application form, requiring all the detailed information needed to make a determination of eligibility, or a shorter pre-application form.

1. If an applicant will be placed on a waiting list, as opposed to being immediately offered a unit, the owner may use a pre-application (brief form of application), which provides the minimum information needed to determine if the applicant should be put on the waiting list.

2. If only a preliminary application has been completed, a full application should be completed at the time a unit is available so that the owner has enough information to determine the applicant's eligibility completely.

D. *__Supplement to Application for Federally Assisted Housing__

Section 644 of the Housing and Community Development Act of 1992 requires owners to provide applicants, as a part of their application for housing, the option to include information on an individual or organization that may be contacted to assist in providing any delivery of services or special care to applicants who become tenants and to assist with resolving any tenancy issues arising during tenancy.

1. At time of application:

   a. Owners must provide applicants the opportunity to complete the information on form HUD-92006, Supplement to Application for Federally Assisted Housing. This form gives applicants the option to identify an individual or organization that the owner may contact and the reason(s) the individual or organization may be contacted. The applicants, if they choose to provide the additional contact information, must complete, sign and date the form.

   b. Owners **cannot** require that applicants provide the contact information, as providing contact information is optional on the part of the applicant. Those applicants who choose not to provide the contact information should check the box indicating that they choose not to provide the contact information and sign and date the form.

   c. Owners should provide applicants the opportunity at time of admission to update, remove or change contact information provided at the time of application, particularly if a long period of time has elapsed between the time of application and actual admission.

   d. If the applicant chooses to have more than one contact person or organization, the applicant must make clear to the owner the reason each person or organization may be contacted. The owner should accommodate the applicant by allowing them to complete a form HUD-92006 for each contact and indicate the reason the owner may contact the individual or organization.

      For example, the applicant may choose to have a relative as a contact for emergency purposes and an advocacy organization for assistance for tenancy purposes.

2. After admission:

   a. Owners should provide tenants who were not provided the opportunity to provide contact information at the time of

application and admission, the option to complete form HUD-92006 and provide contact information at the time of their annual recertification.

b. Owners **cannot** require tenants who have not provided contact information to provide the contact information, as providing this information is optional on the part of the individual or family.

c. Tenants may request to update, remove or change the information provided on form HUD-92006 at any time and owners must honor this request.

d. Owners should provide tenants who have provided contact information using form HUD-92006 the opportunity to update, remove or change the information at the time of annual recertification to ensure that current information is on file. This includes allowing tenants who originally chose not to provide contact information the opportunity to provide contact information if they request to do so. Remember, providing contact information is optional on the part of applicants and tenants.

3. Owners use of the contact information.

Owners will contact the individual or organization provided only for the use or uses indicated by the applicant or tenant on form HUD-92006. This contact information will assist the owner in providing the delivery of services or special care to the tenant and assist in any tenancy issues arising during the term of tenancy of the tenant.

4. Retention and confidentiality of contact information.

a. If the applicant does not become a tenant, the owner will retain the form HUD-92006 with the application for three years. (See Paragraph 4-22.B)

b. If the applicant becomes a tenant, the owner will retain the form HUD-92006 with the application for the term of tenancy plus three years. (See Paragraph 4-22.C)

c. Owners must keep the contact information confidential. Owners are allowed to release the information for the stated statutory purpose only: To assist the owners in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants.*

4-15 Matching Applicants on the Waiting List to Available Units

A. Overview

Once unit size and preference order is determined, owners must select applicants from the waiting list in chronological order to fill vacancies. The owner

of Social Security disability payments (i.e., award letter indicating disability payments are provided).

e. Age. Documentation of age is used to confirm that applicants claiming an elderly preference are 62 years of age or older. Acceptable documentation may include birth certificates or social security or military documents that show the applicant's birth date.

4-27 Implementing Screening Reviews

A. Timing for Conducting Screening Reviews

All screening activities should occur prior to approval of tenancy. Screening generally occurs at the same time as, or immediately following, the full eligibility review but may occur earlier.

B. Screening for Credit History

1. Owners may reject an applicant for a poor credit history, but owners must not reject an applicant for lack of a credit history.

2. There are two primary sources that owners use to determine credit history.

   a. Previous landlords. It is good practice to contact the applicant's previous landlords to determine if the applicant paid rent on time.

   b. Credit report companies. There are a number of private companies that can provide owners with a credit report on an applicant. These private companies charge a fee for this service. Owners may use such services but may not pass on these fees to the applicant. At an additional cost, some companies can provide additional information by searching public databases for criminal records. Owners must be consistent in the use of credit reporting services.

C. Screening for Rental History

1. The most common method for assessing rental history is to ask for comments from the applicant's current and former landlords. When collecting information from landlords, it is important to collect objective information. Figure 4-7 provides examples of objective questions that are appropriate to ask. It also includes examples of inappropriate or subjective questions that should not be asked.

2. Information that an owner may learn from a landlord that may be grounds for rejecting an applicant includes:

   a. Failure to cooperate with recertification procedures;

   b. Violations of house rules;

c. Violations of the lease;

Figure 4-7: Questions for Current and Former Landlords

Objective/Acceptable Questions
• Was the tenant ever late with a rent payment? If yes, when and how many times was the tenant late? • Did other lease violations occur? If so, what were they? How frequently did each of the other lease violations occur? • Was the tenant ever cited for disturbing behavior? How often? • Did the tenant violate house rules? What rules were violated, and how many times did violations occur? • Was the tenant evicted?
Inappropriate Questions
• Did the tenant's boyfriend/girlfriend visit often? • Did the tenant make lots of complaints to the owner? • What is the tenant's reputation?

d. History of disruptive behavior;

e. Poor housekeeping practices;

f. Previous evictions for lease violations;

g. Termination of assistance for fraud; or

h. Conviction for the illegal manufacture, distribution, or use of controlled substances.

3. Owners may want to consider relying more heavily on former landlord references than on current landlord references. A current landlord may be tempted to provide a good reference for a bad tenant so that the tenant will voluntarily leave his/her property. Former landlords do not have this reason to provide misleading information, and, therefore, may provide more accurate references.

D. **Screening for Housekeeping**

1. Poor housekeeping habits might be described as those that create an unsafe or unhealthy environment, e.g., an uncontrolled accumulation of trash, which has led to roach infestation or poses a health danger to other residents.

2. If visiting an applicant's current home is part of the owner's screening practices, the owner must visit the homes of all applicants unless the owner has established a geographic radius within which home visits are made (see paragraph 4-7 E.5).

3. If an applicant is living with someone else, and the housekeeping is out of control of the applicant, the owner must not deny admission to the applicant. The owner should evaluate only the living quarters over which the applicant has control.

E. **Screening for Drug Abuse and Other Criminal Activity**

1. HUD requires that owners develop tenant selection plans that contain prohibitions against the admission of applicants who are engaging or have engaged in drug abuse or criminal activity. The specific requirements for developing the plan are found in paragraph 4-7 C.

2. Owners must require every adult member of an applicant household to sign a consent form allowing all relevant criminal information to be released.

3. Owners are not required to conduct a background check on applicants applying for an unassisted unit or tenants living in an unassisted unit in a project-based property. Owners may conduct background checks on applicants for unassisted units if they wish.

4. In order to meet the screening requirements, owners may need to obtain access to criminal records. Owners may choose from several sources to obtain the screening information:

   a. *An owner may use the local Public Housing Authority (PHA) to conduct the appropriate check of an applicant's criminal conviction history and to check if the applicant or any members of the applicant's household are subject to a State lifetime sex offender registration and to make the screening determination.*

   b. The owner may use alternative sources, including private credit and screening services, to check available databases storing criminal history.

5. *If the owner selects a PHA to obtain criminal conviction records, the PHA will use the criminal records and State sex offender registration record(s) received from the law enforcement agency along with the owner's screening criteria to determine, on behalf of the owner, the suitability of

the applicant for tenancy. If the owner uses the PHA to conduct the criminal background check, procedures to be used include:*

a. Owners may request that the PHA in the jurisdiction of the property obtain criminal conviction records *and State sex offender registration record(s)* for screening purposes. The request must include a copy of the signed consent form(s) and the project standards for prohibiting admission.

b. The PHA, upon receipt of the owner's request, will request criminal conviction records *and State sex offender registration record(s)* from the law enforcement agency.

c. The law enforcement agency must promptly release a certified copy of the record. National Crime Information Center (NCIC) records are provided in accordance with NCIC procedures.

d. The PHA must determine whether criminal action by a household member, as shown by the conviction records *and State sex offender registration records*, may be a basis for screening out the applicant and notify the owner making the request.

e. The PHA may charge the owner a reasonable fee for processing requests and may also require the owner to reimburse the PHA fees charged by law enforcement agencies.

f. The PHA is required to maintain the criminal records *and State sex offender records* in a confidential manner and may not disclose the contents to the owner.

g. *Owners must retain documentation in the tenant file showing the date, type and results of the criminal background check, including the State lifetime sex offender registration check, performed by the PHA.*

6. The owner may deny admission to an applicant using his/her standard for admission screening if the criminal background check indicates the applicant provided false information. *The owner must deny admission if the State sex offender registration record indicates the applicant provided false information.* If the determination is made by either the PHA or owner to deny admission to the applicant, the entity making the determination must:

a. Notify the applicant of the proposed denial of admission.

b. Provide the subject of the record and the applicant with a copy of the information the action is based upon.

c. Provide the applicant with an opportunity to dispute the accuracy and relevance of the information obtained from any law enforcement agency.

7. If the owner uses alternative sources to screen for criminal activities, the owner may consider the following when identifying potential information sources:

   a. Obtain information from each city, county, and/or state where the applicant was a resident;

   b. Attempt to obtain information that includes an applicant's arrest record, in addition to the conviction record *and State sex offender registration record*; and

   c. Establish guidelines for "reasonable cause to believe" when screening for illegal drug use and abuse of alcohol that interferes with other residents' health, safety, and right to peaceful enjoyment of the property.

4-28 Ensuring That Screening Is Performed Consistently

A. Procedures

While owners have discretion in establishing screening criteria, they must apply the criteria consistently to all applicants. To ensure that applicants are treated consistently during the screening process, good practice suggests that owners should:

1. Use consistent staffing. Have one or a limited number of staff conduct the screening to reduce inconsistencies that occur, because employees may interpret policies and procedures differently.

2. Provide instructions. Develop step-by-step instructions for staff who are conducting screening activities to help to ensure consistency.

3. Use standard forms. Whenever possible, use standard forms to document fair practices and to increase the likelihood that each applicant will receive the same consideration.

4. Use objective criteria. For example, when interviewing an applicant's former landlord about rent payment and rental history, the owner should ask fact-based questions. Owners must avoid subjective questions that ask for opinions or do not directly relate to the tenant's ability to meet the requirements of the lease. (See Figure 4-7 for examples of appropriate and inappropriate questions.)

5. Follow a formal, written process for collecting information. Owners must not take into consideration informal information or gossip about an applicant. Such information may be discriminatory and will affect applicants inconsistently since the owner does not collect it for all applicants.

Glossary

Accessible (FH Act)

When used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical impairments (handicaps).[1] The phrase *readily accessible to*, and *usable by*, is synonymous with accessible. A public or common use area that complies with the appropriate requirements of *ICC/ANSI A117.1-2003, ICC/ANSI A117.1-1998, CABO/ANSI A117.1-1992,* ANSI A117.1-1986 or a comparable standard is accessible within the meaning of this paragraph. *[24 CFR 100.201]*

Accessible (Section 504)

When used with respect to the design, construction, or alteration of a *facility or a portion of a facility other than an individual dwelling unit*, means that the facility or portion of the facility, when designed, constructed, or altered, can be approached, entered, and used by individuals with a physical impairment (handicaps).[1] The phrase *accessible to*, and *usable by*, is synonymous with accessible. *[24 CFR 8.3]*

Accessible, when used with respect to the design, construction, or alteration of an *individual dwelling unit*, means that the unit is located on an accessible route and when designed, constructed, altered or adapted can be approached, entered, and used by individuals with a physical impairment (handicaps).[1] A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in 24 CFR 8.32 is accessible within the meaning of this paragraph. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified person with a disability (handicaps)[1] (e.g., a current occupant of such unit or of another unit under the control of the same recipient, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person. *[24 CFR 8.3]*

Screening — A review of an applicant's history to identify patterns of behavior that, if exhibited at the assisted housing development, would make the applicant an unsuitable tenant. Screening criteria may include consideration of drug-related or criminal activity, tenancy, credit and rent payment history, or other behaviors that may affect the rights of other residents and management.

Section 504 — Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, as it applies to programs or activities receiving Federal financial assistance. *[24 CFR 8.3]*

Section 8 — The housing assistance payments program that implements Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f note). *[24 CFR 891.505]*

Security Deposit — A payment required by an owner to be held during the term of the lease (or the time period the tenant occupies the unit) to offset damages incurred due to the actions of the tenant. Such damages may include physical damage to the property, theft of property, and failure to pay back rent. Forfeiture of the deposit does not absolve the tenant of further financial liability.

***Security Personnel** — A qualified security professional with adequate training and experience to provide security services for project residents.*

Service Animals — See Assistance Animals.

Service Bureaus — These organizations prepare:

1. Monthly subsidy voucher facsimiles based on the 50059 data requirements, and

2. Approved special claims and transmit them to the user's Contract Administrator or TRACS for processing and payment.

Otherwise, the service bureau will follow instructions received from HUD or the Contract Administrator on special claim payments. In instances where the software being used to double-check calculations before transmission discovers errors in the 50059 data requirements provided, these organizations print out revised 50059 data requirements and return the revised documentation to their sites for appropriate action.

Service bureaus may provide their users with the monthly benefit history reports used in annual recertifications, as well as returning TRACS messages received from the Contract Administrator or TRACS.

NOTE: Service bureaus are organizations that provide a number of different services and are paid a fee to do so. Their users (owners

EXHIBIT 2

In Support of Defendant SafeRent Solutions, LLC's Reply

excerpted from
https://www.hud.gov/sites/dfiles/PIH/documents/HCV_Guidebook_Housing_Search_and_Leasing_November%202020.pdf

Housing Search and Leasing

Contents

Changes from Previous Version

Page	Description of Change	Date Change Made
21	Removed extraneous references that are covered in detail in the HAP Contracts and Special Housing Types chapters	November 2020
20	Removed phrase to clarify that use of form HUD-52517 is required.	November 2020

1 Chapter Overview

This chapter explains the briefing process, Housing Choice Voucher (HCV) issuance, housing search, tenancy approval, and leasing processes. Housing search and leasing are critical activities in the administration of the HCV program. Until the family finds a unit that meets both their needs and program requirements, the family cannot benefit from the many opportunities offered by the HCV program. At the same time, the PHA cannot earn the administrative fee needed to operate the program until a unit is leased and placed under the Housing Assistance Payments (HAP) contract. When a family receives adequate information about program rules and PHA expectations and assistance during the housing search and leasing processes, both the family and PHA benefit. Families are likely to lease units more quickly and better understand program requirements, while the PHA increases its ability to meet SEMAP leasing requirements, improve its leasing success rate, and control costs.

The voucher is the family's authorization to search for housing. The family receives the voucher after the PHA selects the family from the waiting list, determines the family eligible for assistance, and conducts the program briefing. Upon issuance of a Housing Choice Voucher, the housing search process begins. Once the family finds a suitable unit, the PHA begins its process of approving or denying the assisted tenancy. If the tenancy is approved, leasing activities begin.

Briefing Objectives

- Introduce the Housing Choice Voucher program and the benefits it offers to participating families;
- Provide step-by-step instructions on how and where (including how much time they have) to search for a unit;
- Explain how rent and subsidy are calculated;
- Inform families of their rights under the HCV program;
- Inform families of their responsibilities as HCV program participants;
- Clarify the role of owners in the HCV program; and
- Clarify the role of the PHA and its expectations of HCV program participants.

2 Briefings

2.1 Introduction

Prior to issuing a voucher to a family, a PHA must[1] give the family an oral briefing, as well as an information packet, outlining the HCV program requirements.

PHAs should use the oral briefing to communicate basic program requirements and any PHA-specific requirements. At a minimum, the PHA should give the family an overview of the contents of the briefing packet, so families are aware of the information contained in the packet and, therefore, are more likely to refer to the packet during the housing search and leasing process.

Although the briefing presentation and the contents of the information packet are discussed under separate subheadings below, they are very much related in practice. The

[1] 24 CFR § 982.301(a)

8 Request for Tenancy Approval

Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the family must[43] submit two documents to the PHA, no later than the expiration date stated on the Housing Choice Voucher:

- a request for tenancy approval, and
- an unexecuted copy of the lease, including the HUD-prescribed tenancy addendum.

The PHA has the discretion to specify the procedure for requesting tenancy approval, and the family must[44] submit the request for tenancy approval in the form and manner required by the PHA. PHAs must[45] collect the information on the form HUD-52517. Form HUD-52517 contains basic information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease. Owners must[46] certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the household.[47] For units constructed prior to January 1, 1978, owners must[48] either: (1) certify that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector; or (2) attach a lead-based paint disclosure statement. Finally, owners of projects with more than four (4) units must[49] provide rent amounts for recently leased comparable units within the premises for purposes of the PHA's determining whether the requested rent is reasonable (See the Rent Reasonableness chapter).

The PHA has the discretion to permit a family to submit more than one request for tenancy approval at a time. When determining whether to allow submission of more than one request for tenancy approval at a time, PHAs may want to consider whether such a practice will be confusing to owners, and whether staff time allows for such a practice.

9 PHA Approval of the Tenancy

Before approving the assisted tenancy and executing the HAP contract, the PHA must[50] ensure that the following program requirements have been met:

- The unit is eligible;
- The unit has been inspected by the PHA and meets HQS;
- The lease includes the tenancy addendum;
- The rent charged by owner is reasonable; and
- For families receiving HCV program assistance for the first time, and where the gross rent of the unit exceeds the applicable payment standard for the family, the PHA must[51] ensure that the

[43] 24 CFR § 982.302(c)
[44] 24 CFR § 982.302(d)
[45] Form HUD-52517
[46] Form HUD-52517
[47] Form HUD-52517, line 12b
[48] Form HUD-52517, line 12c
[49] Form HUD-52517, line 12a
[50] 24 CFR § 982.305(a)
[51] 24 CFR § 982.305(a)(5)

9.7 Tenant Screening

Tenant screening and selection are the responsibility of the owner. At or before tenancy approval by the PHA, the PHA must[61] inform the owner of this responsibility. Although tenant screening and selection remain the function of the owner, PHAs may opt to screen for family behavior or suitability for tenancy. The PHA must[62] conduct any such screening of applicants in accordance with policies stated in its administrative plan.

PHAs are required to give the owner the following information:

- Current and prior address of the prospective Housing Choice Voucher tenant, as recorded by the PHA; and
- Name and address, if known to the PHA, of the prospective HCV tenant's current and prior landlord.

The PHA may offer the owner other information in the PHA possession, about the family, including information about the tenancy history of family members, or about drug trafficking by family members. If the PHA adopts a policy of offering owners other information the PHA has about a family related to past tenancy and drug trafficking history, this policy must[63] be included in the PHA's administrative plan and in the information packet that the family receives at the briefing. The PHA must[64] provide the same types of information to all families and to all owners. In cases involving a victim of domestic violence, dating violence, sexual assault, or stalking, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

The PHA may inform owners that they may consider a family's background with respect to such factors as:

- Payment of rent and utilities;
- Care of unit and premises;
- Respect for the rights of other residents to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that threatens the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy.

10 Lease and Tenancy

10.1 Notification to Owner and Family

After receiving the family's request for tenancy approval and determining whether assisted tenancy may be approved based on the requirements listed within this chapter, the PHA must[65] promptly notify the family and owner whether the assisted tenancy is approved. If the PHA approves the tenancy, the family and the owner enter into a lease, the PHA prepares the HAP contract, and the owner and the PHA execute the HAP contract

[61] 24 CFR § 982.307(a)(2)
[62] 24 CFR § 982.307(a)(1)
[63] 24 CFR § 982.307(b)
[64] 24 CFR § 982.307(b)(3)
[65] 24 CFR § 982.305(d)

EXHIBIT 3

In Support of Defendant SafeRent Solutions, LLC's Reply

available at
https://www hud.gov/program_offices/fair_housing_equal_opp/general_faq_housing_providers_and_fair_housing

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR
HOUSING & EQUAL
OPPORTUNITY

HUD – OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Frequently Asked Questions (FAQs)
On Fair Housing Issues Regarding Exceptions to Credit Check Policies and Occupancy Limits, Affirmative Marketing, and Language Access

The Fair Housing Act ("Act") (42 U.S.C. §§ 3601-19) prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex (including gender identity and sexual orientation), familial status, and disability. Discrimination includes a failure to make a change, exception, or adjustment to a policy, practice, procedure, or service when such accommodation may be necessary for an individual with a disability to enjoy and use housing.[1] In addition to the requirements under the Act, there may be additional requirements for recipients of federal assistance from HUD.

Credit Check Policy Exceptions

Q: If a landlord or property manager requires credit checks at admission, may the landlord or property manager forgo credit checks for specific groups?

A: Yes. Landlords and property managers may generally forgo credit checks for any potential residents as long as they do not discriminate because of a protected characteristic under the Fair Housing Act, which prohibits discrimination in housing-related transactions on the basis of race, color, national origin, religion, sex (including gender identity or sexual orientation), familial status, and disability.[2] For example, if a credit check exception is made because of immigration status, the exception must apply equally to all those in the immigration status and not only to those of a certain national origin.

It is a best practice for landlords and property managers to review their credit check policies (and other background check policies) to ensure that they do not discriminate unlawfully because of any protected characteristics. It is also a best practice to use

[1] Section 504 of the Rehabilitation Act of 1973 ("Section 504") and the Americans with Disabilities Act may also apply to requests for reasonable accommodations from residents of public or assisted housing.
[2] One exception to this general rule is in the public housing context. Depending on the circumstances, public housing authorities may not have complete discretion in forgoing a general policy of performing credit checks.

Housing providers may be required to make exceptions to credit check policies in certain circumstances, including to comply with the Violence Against Women Act ("VAWA"), 34 U.S.C. § 12491 (*see* PIH 2017-08 (HA) (May 19, 2017) and H 2017-05 (June 30, 2017) or as a reasonable accommodation under the Act and Section 504 (42 U.S.C. § 3604(f)(3)(B), 29 U.S.C. § 794.

alternate forms of verification of ability to pay for any prospective tenant without traditional credit. For example, if an agency will provide full rent payments for the family, other verification of ability to pay would appear unnecessary since the purpose of the credit check would be to provide a reasonable basis for believing that a tenant's rent will be paid.

Occupancy Limit Exceptions

Q: Are there any general rules for determining when occupancy limits may be discriminatory? May landlords and property managers make exceptions to their occupancy limits for certain groups of people but not others?

A: Unreasonable occupancy limits on the number of persons who may occupy a unit may violate the Act's prohibition on discrimination against families with children. HUD guidance advises that as a general rule, an occupancy policy of two persons per bedroom is reasonable under the Act, but the reasonableness of such a policy may depend on specific facts and circumstances, including the size and configuration of the unit and sleeping areas.[3] The guidance describes the factors that are used to determine whether a housing provider's occupancy limits may discriminate because of familial status.

Note that HUD does not prescribe specific occupancy standards for public housing. For Housing Choice Vouchers, Public Housing Authorities (PHAs) must ensure that the rented unit meets Housing Quality Standards space requirements listed at 24 CFR 982.401(d)(2). PHAs can also set public housing and Housing Choice Voucher occupancy limits locally in their Admissions and Continued Occupancy Policies or Administrative Plans. However, when determining these policies, PHAs must comply with fair housing requirements and may need to comply with specific state or local laws regarding occupancy standards.

Subject to the Fair Housing Act, and State or local law, a landlord or property manager may make exceptions to its existing occupancy policies limiting the number of persons per bedroom or unit. Exceptions must be made without regard to protected class under the Fair Housing Act, which prohibits discrimination in housing-related transactions on the basis of race, color, national origin, religion, sex (including gender identity or sexual orientation), and disability in addition to familial status. In addition, exceptions to occupancy policies may not be made in a manner that has an unjustified discriminatory effect on persons because of a protected characteristic. Landlords and property managers should also refer to their state and local laws regarding occupancy limits.

[3] Office of the Assistant Secretary for Fair Housing and Equal Opportunity, Fair Housing Enforcement – Occupancy Standards Notice of Statement of Policy, Federal Register, Vol. 63, No. 243 (December 18, 1998), at https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.

Affirmative Marketing

Q: What may landlords and property managers do and not do to advertise to specific groups?

A: Landlords and property managers should not publish or cause to be published an advertisement that expresses a preference, limitation or discrimination on the basis of any classes protected by the Fair Housing Act, i.e., race, color, religion, sex (including gender identity and sexual orientation), disability, familial status, or national origin.

Landlords and property managers may target marketing to populations least likely to apply for housing without special outreach efforts. "Least likely to apply" has been defined in some contexts to mean that there is an identifiable presence of a specific demographic group (i.e., the protected characteristics listed above) in the housing market area, but members of that group are not likely to apply for housing in the absence of special outreach efforts. Special outreach efforts may include marketing materials in other languages for limited English proficient individuals, and alternative formats for persons with disabilities. The reasons for not applying may include, but are not limited to, insufficient information about housing opportunities, language barriers, or transportation impediments.

It is important to know that landlords and property managers should avoid targeting advertisements solely to one group of persons because of a protected characteristic under the Fair Housing Act. In other words, advertising that includes a marketing to one specific population should be part of a larger non-selective advertising campaign to persons with a range of protected characteristics.

It is perfectly legal to advertise housing in languages other than English. However, the content of advertisements should not be discriminatory, and languages should not be limited in a manner that discriminates because of a protected characteristic. Advertisements should make clear that no one will get special preference – or be discriminated against – based on their protected characteristic. Landlords and property managers should refer to HUD's fair housing advertising guidance for more information.

Examples:

- Allowed: Landlord in an area with several large communities of limited English proficient speakers advertises in multiple languages as part of a larger non-selective advertising campaign.

- Not allowed: Landlord in an area with several large communities of limited English proficient speakers advertises only in one non-English language.

Language Access

Q: Are there rules or best practices that landlords and property managers of non-HUD-subsidized properties should follow to ensure that people who are not fluent in English are being treated lawfully?

A: Regardless of whether a property is receiving federal financial assistance, landlords and property managers may not discriminate against people on the basis of national origin, and national origin can be closely related to the language that people speak. Therefore, for example, a landlord's practice of requiring that tenants be able to speak English may constitute discrimination on the basis of national origin. For more information, please visit HUD's guidance on Fair Housing Act protections for persons with limited English proficiency (LEP).

Best practices to avoid discriminating against LEP persons would include having rental documents translated, contracting with interpreters, hiring bilingual staff, and/or using a telephone interpreter line.

Q: Are there special rules that landlords and property managers of HUD-subsidized properties should follow to ensure that people who are not fluent in English are being treated lawfully?

A: In addition to the Fair Housing Act, landlords and property managers must follow certain rules for housing that receives federal financial assistance from HUD, as provided in the assistance contracts entered into by the property owners.

Title VI of the Civil Rights Act of 1964 requires recipients of federal financial assistance to take reasonable steps to ensure meaningful access to their programs and activities by limited English proficient (LEP) persons. Such services may include having rental documents translated, contracting with interpreters, hiring bilingual staff, and/or using a telephone interpreter line. Recipients cannot refuse to serve LEP persons, unduly delay housing services or translation services, or provide inadequate translation services. No matter how few LEP persons the HUD-subsidized unit is serving, oral interpretation services should be made available in some form. Please see HUD's LEP Frequently Asked Questions page for more information about HUD's Title VI LEP guidance. Additional resources may be found on LEP.gov and HUD.gov. Landlords and property managers receiving federal financial assistance from agencies other than HUD should consult with those agencies for applicable LEP guidance.

* * *

While this document provides general guidance on the Fair Housing Act and other civil rights requirements relevant to the questions and answers above, for any additional guidance landlords and property managers should consult their own counsel.

EXHIBIT 4

In Support of Defendant SafeRent Solutions, LLC's Reply

available at
https://www.hud.gov/sites/dfiles/FHEO/documents/HUD%20Title%20VI%20Guidance%20Multifamily%20Marketing%20and%20Application%20Processing.pdf

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500
April 21, 2022

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

I. Introduction

Title VI of the Civil Rights Act of 1964 ("Title VI") prohibits discrimination on the basis of race, color, and national origin in programs or activities receiving federal financial assistance.[1] The Office of Fair Housing and Equal Opportunity (FHEO) issues this guidance concerning how Title VI applies to marketing and application processing at HUD-subsidized multifamily properties - including Project-Based Rental Assistance, Section 202, and Section 811 programs.[2]

II. Background

The more than 1.5 million HUD-subsidized multifamily units nationwide are a critical affordable housing resource for low-income residents. However, many properties employ marketing, rental application processing, and waitlist management practices that limit access for eligible housing-seekers in the market areas.[3] These practices can contribute to segregation of HUD-subsidized properties and disparate outcomes by race, color, or national origin. For example, a white family living in a unit with Project-Based Rental Assistance (PBRA) is more than three times as likely to live in a low-poverty neighborhood as a Black family living in a PBRA unit.[4] This guidance sets forth how certain marketing, rental application processing, and waitlist management practices may perpetuate segregation or otherwise discriminate in violation of Title VI and related authorities.[5] It also discusses more inclusive practices that are less likely to have such discriminatory results.

III. Legal Authority

Title VI requires that no person in the United States shall be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving

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[1] 42 U.S.C. § 2000d, 24 CFR Part 1.

[2] This guidance is directed at subsidized multifamily programs (listed in Figure 1-1 in HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs, November 2013). Note however that Title VI applies to all programs or activities receiving federal financial assistance, including, for example, Public Housing and HOME projects.

[3] The term "market area" here means a geographic area from which tenants may reasonably be expected to be drawn, such as a County or a metropolitan statistical area, depending on patterns of commuting, employment, services, *etc*.

[4] The Center on Budget and Policy Priorities, Realizing the Housing Voucher Program's Potential to Enable Families to Move to Better Neighborhoods, 2016 (Table A-2).

[5] Note that a number of related authorities apply to HUD-subsidized multifamily properties, including Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and the Fair Housing Act (42 U.S.C. § 3601 et seq.), and their implementing regulations. HUD-funded housing providers have an obligation to affirmatively further fair housing. The Americans with Disabilities Act (42 U.S.C. § 12101) and its regulations may also be applicable.

federal financial assistance on the ground of race, color, or national origin. Title VI prohibits intentional discrimination on the basis of race, color, or national origin. Title VI regulations also prohibit discriminatory effects, which occur when a facially neutral policy or practice disproportionately affects members of a group identified by race, color, or national origin, where the recipient's policy or practice lacks a substantial legitimate justification, and where there exists one or more alternatives that would serve the same legitimate objectives but with less disproportionate effect on the basis of race, color, or national origin. Title VI encompasses a wide range of harm that may be caused by a recipient's administration of its programs or activities, including perpetuating the repercussions of past discrimination. HUD Title VI regulations specify that a recipient may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

- Restrict a person in any way in access to housing, services, or benefits;[6]
- Afford persons an opportunity to participate in housing, services, or benefits different than that afforded to others;[7]
- Treat a person differently from others in determining whether they satisfy eligibility criteria;[8]
- Provide any housing, services, or benefits to a person differently than to others;[9]
- Utilize criteria or methods of administration which have the effect of subjecting persons to discrimination or defeating or impairing the objectives of a funded program or activity.[10]

IV. Marketing

For marketing practices to afford equal opportunity and access to housing as Title VI requires, a recipient should aim "to ensure that all racial groups in a marketing area have knowledge of and an opportunity to rent units in a particular building."[11] Marketing practices that have "[t]he inevitable result" of excluding members of a protected class may violate fair housing and civil rights requirements.[12] When groups protected by Title VI are underrepresented

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[6] 24 C.F.R. § 1.4(b)(1)(iv).
[7] 24 C.F.R. § 1.4(b)(1)(vi).
[8] 24 C.F.R. § 1.4(b)(1)(v).
[9] 24 C.F.R. § 1.4(b)(1)(ii).
[10] 24 C.F.R. § 1.4(b)(2)(i).
[11] *See Alschuler v. Dep't of Hous. & Urban Dev.*, 515 F. Supp. 1212, 1234 (N.D. Ill. 1981). While this guidance primarily addresses Title VI, persons with disabilities may be similarly affected by many of the practices described. Program accessibility and reasonable accommodation obligations apply during the outreach and application stage.
[12] *United States v. Inc. Vill. of Island Park*, 888 F. Supp. 419, 447 (E.D.N.Y. 1995). *See e.g.*, *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 464–65 (1979) ("Adherence to a particular policy or practice, with full knowledge of the predictable effects of such adherence ... is one factor among many others which may be considered by a court in determining whether an inference of segregative intent should be drawn.") (internal quotation marks and citation omitted).

at a property compared to their representation among qualified housing-seekers in the market area, housing providers should evaluate their marketing efforts' contribution to that result and consider alternatives.[13] Note that the requirements of Title VI are in addition to, and not co-extensive with, other legal requirements, including the Department's Affirmative Fair Housing Marketing rules.[14]

Certain marketing practices may not equitably reach potential applicants across the market area. For example, reliance on word-of-mouth marketing (without additional efforts designed to reach a broader applicant pool) can disadvantage potential applicants who are not connected to the familial or social networks of existing residents. The same effect may occur when marketing through or relying on referrals from a single community organization or small number of community organizations that serve limited or targeted populations. Similarly, placing "for rent" signs at a property, in the absence of other, broader outreach, will be unsuccessful in reaching applicants who do not live near, visit, or pass by the property, and may perpetuate existing patterns of residential segregation.

In contrast, marketing strategies that employ a variety of community contacts, media, and social media, covering a broad geographic area are more likely to equitably reach potential applicants and avoid perpetuating segregation or exclusion. Many of these strategies are low-cost and can provide sufficiently detailed information. For example, housing providers may distribute detailed flyers and blank applications to local organizations across the market area with ties to a wide range of prospective applicants, such as social service providers (*e.g.*, foodbanks, legal-aid offices, emergency shelters, health clinics), employers, advocacy organizations and other agencies, local governmental offices, housing authorities, and community gathering places (*e.g.,* senior centers, recreation centers, libraries, schools, and places of worship). As many organizations serve only a subset of eligible residents, in general, the more organizations that are contacted, the more likely marketing efforts are to reach a diverse pool of applicants across the market area. Partnership with community contacts throughout the market area may be particularly effective for reaching potential applicants who have limited internet access, limited English proficiency, or who may otherwise require assistance in applying.

In addition, maintaining a web or mobile site with clear information about availability, eligibility, and application processes can be a low-cost way to inform eligible housing-seekers about housing opportunities at the property – especially those who have difficulty calling or visiting during business hours.[15] The same applies for posting on social media, local listservs,

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[13] While case law has not established a threshold of significance for disparities, the greater the disparity, the more responsiveness is warranted. *Groves v. Alabama State Bd. of Educ.*, 776 F. Supp. 1518, 1526 (M.D. Ala. 1991). ("There is no rigid mathematical threshold that must be met to demonstrate a sufficiently adverse impact.").

[14] *See* 24 C.F.R. § 200 Subpart M; 24 C.F.R. part 108.

[15] While not all eligible residents may use or have access to the internet, so other strategies should be employed, a website is a key tool for making important documents publicly accessible, such as waitlist opening notifications, applications, welcome packets, Tenant Section Plans, translated documents and other language resources, FAQs, *etc*.

and other sites relevant to housing-seekers in the market area (including registries of affordable housing maintained by local governments, housing authorities, or community organizations). Placing advertisements with local radio stations, newspapers, and newsletters, as well as posting advertisements in public places, such as buses, trains, and billboards can be effective in reaching additional applicants.

Note that recipients must take reasonable steps when marketing to ensure meaningful access for individuals with limited English proficiency (LEP).[16] A recipient's failure to provide meaningful access to LEP individuals can be a form of national origin discrimination that violates Title VI.[17] When conducting marketing and outreach, the presence of LEP persons among the eligible population in the market area should be evaluated and appropriate language assistance services resources, including translated materials, should be developed accordingly. As outlined in the Department's 2007 Title VI LEP recipient guidance, reasonable steps may include: advertising in non-English language newspapers, radio, and other media; "[w]orking with grassroots and faith-based community organizations and other stakeholders to inform LEP individuals of the recipients' services;" "[u]sing a telephone voice mail menu ... in the most common languages encountered;" "[providing] information about available language assistance services and how to get them;" and "stating in outreach documents that language services are available from the recipient" in statements "translated into the most common languages."[18]

No matter what marketing methods are used, marketing efforts should commence well before *any* waitlist opening, such as sixty days before, to have a meaningful effect on reducing disparities.[19] Making detailed, clear, and consistent information available to all potential applicants is also vital – including descriptions of property amenities, eligibility criteria, approximate rent, procedures for obtaining and submitting applications, and an explanation of how tenants will be selected (*i.e.*, by lottery according to preferences). Further, marketing materials should be written and designed in a manner that conveys that all applicants are welcome regardless of their race, color, or national origin. Particularly if a property has a name, logo, location, or reputation that may suggest affiliation with a particular group (*e.g.*, a religious reference) or other limitation on applicants, affirmative efforts should be made to overcome this perception.[20] Such efforts may include a prominent statement that the property is not limited in

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[16] HUD documents translated into other languages are on HUD's limited English proficiency page.

[17] *Cabrera v. Alvarez*, 977 F. Supp. 2d 969, 977-78 (N.D. Cal. 2013) (Finding a Title VI intentional discrimination claim by a Spanish-speaking LEP tenant survived a motion to dismiss based, in part, on 28 C.F.R. § 42.405(d)(1)).

[18] Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 72 Fed. Reg. 2731, Jan. 22, 2007.

[19] HUD's Affirmative Fair Housing Marketing Plan (AFHMP) – HUD-935.2A – requires advertising to begin at least ninety days before occupancy for new construction and substantial rehabilitation projects.

[20] Note that the Fair Housing Act's prohibition on discriminatory statements is violated if the notice, statement, or advertisement indicates discrimination to an "ordinary reader" or "ordinary listener," regardless of whether the defendant has discriminatory intent. *See, e.g.*, *Tyus v. Urban Search Mgmt.*, 102 F.3d 256, 266-67 (7th Cir. 1996); *Ragin v. Harry Macklowe Real Estate Co.*, 6 F.3d 898, 905-07 (2d Cir. 1993); *HOME v. Cincinnati Enquirer*, 943 F.2d 644, 646 (6th Cir. 1991). Section 3604(c) of the Act makes it unlawful "[t]o make, print, or publish, or cause

that way and welcomes applicants of all backgrounds, as well as images of diverse human models and other visual content that affirmatively conveys that the property is actively seeking a diverse applicant pool.

While every marketing strategy may not be necessary for multifamily developments with a small number of units, it is important that each property employ marketing strategies that are responsive to existing racial or other demographic concentrations in the property and seek to afford equal opportunity to all eligible residents of the market area. Many effective strategies are little to no cost, such as emailing flyers and applications to community contacts and maintaining a website. To ensure compliance with Title VI requirements, housing providers should periodically assess the effectiveness of outreach strategies and develop new strategies as appropriate. Housing providers may facilitate this assessment by tracking how applicants heard about the property and adjusting efforts accordingly.

V. Application Procedures

Burdensome application procedures can form barriers to housing that are functionally equivalent to a denial.[21] Likewise, making it difficult for potential applicants to obtain "necessary and correct information concerning what [they] must do to become a tenant discourages and impedes [their] application and results in [their] exclusion from the apartments."[22] When such hurdles have the purpose or effect of excluding members of a protected group from a development, they may violate Title VI.

For example, requiring applications to be picked up and/or submitted in person can function as a barrier, unjustifiably excluding potential applicants who cannot travel to the property – because they do not live in the neighborhood, have inflexible work schedules or caretaking responsibilities, rely on limited transportation options, or other reasons. Distributing and/or accepting applications only during a narrow window of time – such as one day or a few hours over several days – can also operate as barriers.

Broader application distribution and acceptance requirements can reduce disparities and promote equitable housing opportunity, especially given the ease of digital communication. Examples include making applications available on a property's website, including the mobile version of the property's website, distributing applications to community contacts throughout the market area, and accepting applications through a variety of methods, including in-person, mail, web-based forms, and email. Housing providers should ensure that applications may be picked-up and dropped off outside of regular business hours, including evenings and weekends, ideally at multiple locations. Distributing and accepting applications for longer periods of time will also

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to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, [disability], familial status, or national origin, or an intention to make any such preference, limitation, or discrimination."

[21] *See United States v. Youritan Constr. Co.*, 370 F. Supp. 643, 648 (N.D. Cal. 1973) (finding "racially discriminatory conduct occurred because the owners and their top assistants failed to take aggressive action to [e]nsure that agents dealing with applicants treated everyone alike without regard to race or color.").

[22] *Id.*

afford a wider range of potential residents the opportunity to apply. Finally, placing applicants on a waitlist pursuant to lottery rather than by prioritizing those who are first to apply is similarly likely to yield a more diverse tenant body, particularly when there is very high demand for the property.

Clearly explaining how applicants may submit their applications and how applicants will be prioritized and selected for tenancy -- including prominently explaining the procedure for requesting a reasonable accommodation in the application process -- is also key to ensuring equal opportunity. As with marketing strategies, housing providers should periodically assess whether application processing requirements are perpetuating segregation or unjustifiably restricting access to the housing opportunity. This is especially true as technological advances change how housing-seekers find and engage with housing opportunities.

V. Applicant Screening and Waitlist Management

Applicant screening and waitlist management practices also may create unnecessary barriers to housing opportunity or be inconsistently applied in practice, in a way that disproportionately excludes individuals based on their race, color, or national origin.[23] When protected class groups are underrepresented at a property compared to their representation among qualified applicants (and potential applicants in the market area), housing providers should evaluate applicant screening and waitlist management practices such as eligibility criteria, preferences, and waitlist update protocols and consider less discriminatory alternatives.[24]

Screening criteria, such as those related to criminal records, credit, and rental history, may operate unjustifiably to exclude individuals based on their race, color, or national origin. HUD has issued guidance regarding criminal records screening noting that housing providers should not rely on arrest records, and should consider the nature, severity, and recency of conviction records, as well as extenuating circumstances.[25] Similarly, 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. For example, records from eviction or related cases in which the tenant prevailed or that were settled without either party admitting fault do not necessarily demonstrate a poor tenant history. Likewise, extenuating or mitigating circumstances may apply (*e.g.*, an eviction was due to unexpected medical or emergency expenses, or a negative reference reflected bias). This is

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[23] A typical disparity measure involves a comparison between the proportion of persons in the protected class who are adversely affected by the challenged practice and the proportion of persons not in the protected class who are adversely affected. *Tsombanidis v. W. Haven Fire Dep't*, 352 F.3d 565, 576–77 (2d Cir. 2003). A disparity is established if the challenged practice adversely affects a significantly higher proportion of protected class members than non-protected class members. *Id.*

[24] Note that housing providers must follow tenanting requirements outlined in 24 C.F.R. § 8.27 regarding units that have accessible features.

[25] U.S. Department of Housing, 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, April 4, 2016.

important because non-white households may be more likely to face eviction actions, even for the same housing history as white counterparts.[26]

Policies for screening tenants should be available to prospective applicants and contain enough detail for an applicant to tell whether they are likely to qualify. For example, a criminal records screening policy should specify the types of records being considered (*e.g.*, convictions), which specific types of crimes are disqualifying, the lookback period (*e.g.*, three years from application date), and that evidence of mitigating circumstances or rehabilitation and requests for disability-related reasonable accommodations will be considered.[27] Housing providers should not request or consider records of criminal activity or rental history that fall outside the scope of their stated policies. Housing providers who utilize a third-party tenant screening service should ensure that screenings are conducted in accordance with all tenant selection policies.

The use of preferences in housing programs can also significantly restrict access to housing opportunities in a discriminatory manner, especially when demand for housing is so high that persons without a preference have little to no chance of obtaining housing. Preferences should be carefully considered in light of existing patterns of residential segregation and past discriminatory practices. Preferences for residents of a geographic area like a City or County are permitted only with advance approval by HUD, and may not discriminate in violation of civil rights laws.[28] Housing providers must clearly inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences.[29] The use of preferences must not operate in a manner contrary to civil rights protections and also must be consistent with federal requirements applicable to the housing program.

It is important to note that preferences and screening criteria can discriminate in the mechanics of their application, as well as their overall design. In many areas, residents experiencing housing insecurity or homelessness are disproportionately minority,[30] so adopting practices that account for the needs of these populations can help ensure compliance with Title VI.[31] For example, limitations on the type of proof accepted to establish residency may disadvantage applicants living in housing insecurity – *e.g.*, requiring a lease or mail with the applicant's name and current address may disadvantage applicants staying with friends or family, moving frequently, sleeping in shelters or their car, receiving mail at a P.O. box, *etc*. Similarly, a

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[26] Peter Hepburn, Renee Louis, and Matthew Desmond, "Racial and Gender Disparities among Evicted Americans," Sociological Science ("[T]he threshold for filing against white renters is higher than the threshold for filing against Black and Latinx renters" (citing Matthew Desmond and Carl Gershenson. 2017. "Who Gets Evicted? Assessing Individual, Neighborhood, and Network Factors." Social Science Research 62:362–77.)).

[27] Housing providers must use adequate matching procedures to match information to applicants, including not using "name-only matching." *See* Fair Credit Reporting; Name-Only Matching Procedures, Op. C.F.P.B. (2021), https://files.consumerfinance.gov/f/documents/cfpb_name-only-matching_advisory-opinion_2021-11.pdf.

[28] 24 C.F.R. § 5.655(c)(1)(i) (citing 24 C.F.R. § 5.105(a)(1)); and 24 C.F.R. § 5.655(c)(1)(iii).

[29] 24 C.F.R. § 5.655(c).

[30] HUD, Annual Homeless Assessment Report to Congress, 2019.

[31] *Boykin v. Gray*, 895 F. Supp. 2d 199, 212 (D.D.C. 2012) ("If a disproportionately high percentage of the homeless population in Washington, D.C. is minority, then action by the District adversely affecting that population could state a claim for disparate impact.").

lack of clarity around *when* applicants must live in a jurisdiction to qualify for a residency preference may operate to exclude or deter applicants who may need to move one or more times over the course of time they are on a waitlist.

Procedures for updating the waitlist and removing applicant names can also disadvantage or exclude certain groups of persons in accessing the housing opportunity. Applicants experiencing housing insecurity or homelessness may have difficulty if a stable mailing address is required, rather than allowing for communication by phone or email. When wait times are long, removing applicants from the waitlist if mail is returned as undeliverable without any other attempt to reach an applicant can disadvantage applicants who are transient due to housing insecurity. This is especially true as people rely increasingly on phone and email, even for more formal communication with government agencies, banks, *etc*. Allowing applicants, the choice of how they would like to be contacted, including by mail, email, phone, or all three is less likely to unjustifiably exclude applicants.

As with marketing, clear communication is key to non-discriminatory application of preferences and screening criteria. Detailed information in English and non-English languages should be available to potential applicants about screening criteria and preferences, what information may be requested and reviewed, and how applicants may contest adverse determinations – including on a property's website. Applicants should be made aware of how the property may contact them, and what is required to remain active on the waitlist. Housing providers should keep such records as are necessary to evaluate the impact of screening criteria, preferences, and waitlist management practices such as applications, requests for more information, decisions, appeals, *etc*.

EXHIBIT 5

In Support of Defendant SafeRent Solutions, LLC's Reply

Brookline Housing Authority

available at
https://www.brooklinehousing.org/applicants.aspx

BHA
Brookline Housing Authority

Applicant Information Apply Online Waitlist

Applicant Information

2022 Income Limits

	Public Housing		Leased Housing		
Family Size	**State Public**	**Federal Public**	**Section 8**	**MRVP**	**AHVP**
1	$70,750	$78,560	$49,100	$78,300	$70,750
2	$80,850	$89,760	$56,100	$89,500	$80,850
3	$90,950	$100,960	$63,100	$100,700	$90,950
4	$101,050	$112,160	$70,100	$111,850	$101,050
5	$109,150	$121,200	$75,750	$120,800	$109,150
6	$117,250	$130,160	$81,350	$129,750	$117,250
7	$125,350	$139,120	$86,950	$138,700	$125,350
8	$133,400	$148,080	$92,550	$147,650	$133,400

State Family Housing: High Street Veterans - Egmont Street Veterans - Trustman Apartments

Federal Family Housing: Walnut Street Apartments – 22 High Street

The Federal Family waiting list is currently CLOSED for all 1, 2 & 3 bedrooms.

Preliminary eligibility includes:
Does not exceed income limit (see income limits above)
The applicant or head of household must be 18 years of age or an emancipated minor

The BHA also checks the following for all applicant household members:
Credit report (18+)
Landlord history (18+)
Criminal history (14+ and any Personal Care Assistant)

State Elderly and Disabled Housing: Trustman Apartments

Federal Elderly and Disable Housing: Walnut St. Apartments - Sussman House - Kickham Apartments and Col. Floyd Apartments

Housing for either elderly or individuals or persons with disabilities. An elderly person in the state program are individuals who are at least 60 years old. An elderly person in the federal program are individuals who are at least 62 years old. Disabled can be of any age.

Preliminary eligibility includes:
Does not exceed income limit (see income limits above)
The applicant or head of household must be 18 years of age or an emancipated minor
Applicant or household meet the definition of elderly and/or disabled

The BHA also checks the following for all applicant household members:
Credit report (18+)
Landlord history (18+)
Criminal history (14+ and any Personal Care Assistant)

Section 8- Housing Choice Voucher (HCV) Program:

The Section 8 HCV Program is a HUD regulated, federally funded, subsidized-rental program that allows recipients of a voucher to rent safe and sanitary housing in the private sector. The voucher holder pays part of the rent, which is determined by the household's monthly adjusted gross income, the rent Payment Standard for the area, and the apartment's rent. The tenant is not allowed to pay more than 40% of their gross income towards the rent and utilities on an initial lease-up but must pay at least 30% of their gross income. The Brookline Housing Authority administers the voucher and, with funds received from the Department of Housing and Urban Development (HUD), pays the remainder of the rent amount directly to the landlord. The HCV recipient may use the voucher to find a unit in any part of the United States, Puerto Rico, and the US Virgin Islands.

Preliminary eligibility includes:
Does not exceed income limit (see income limits above)
The applicant or head of household must be 18 years of age or an emancipated minor

The BHA also checks the following for all applicant household members:
Credit report (18+)
Landlord history (18+)
Criminal history (14+ and any Personal Care Assistant)

Section 8 - Massachusetts Rental Voucher (MRVP) Program:

The Massachusetts Rental Voucher Program, offers both tenant and project-based rental subsidies.

A Tenant Based Voucher, which is known as Mobile, is assigned to the Participant and is valid for any housing unit that meets the standards of the state sanitary code.

A Project Based Voucher is assigned to a specific housing unit or development. Project Based Developments: Village at Brookline – Beacon Park - 100 Center Communities at 1550 Beacon St

Preliminary eligibility includes:
Does not exceed income limit (see income limits above)
The applicant or head of household must be 18 years of age or an emancipated minor

The BHA also checks the following for all applicant household members:
Credit report (18+)
Landlord history (18+)
Criminal history (14+ and any Personal Care Assistant)

LIHTC Affordable Housing: 61 Park Street – 90 Longwood Ave – Dummer Street

61 Park LLC

The Brookline Housing Authority will be accepting applications for one-bedroom elderly and non-elderly disabled designated units at the 61 Park Street Apartments. This property currently undergoing renovations as part of the RAD Program to a Tax Credit Development. Local, elderly (62 years) and non-elderly disabled preferences will apply. The waiting list will remain open indefinitely.

90 Longwood LLC

The Brookline Housing Authority will be accepting applications for one-bedroom elderly and non-elderly disabled designated units at the 90 Longwood Avenue Apartments. This property is soon to begin renovations as a RAD Program from Federal Public Housing to a Tax Credit Development. Local, elderly (62 years) and non-elderly disabled preferences will apply. The waiting list will remain open indefinitely.

Dummer Street Information

The Brookline Housing Authority developed the new 32-unit affordable housing property at 86 Dummer Street. It opened in 2016. All 32 units are income-restricted and managed by Peabody Properties.

Transitional Housing Program: Candidates for this program are referred to BHA by the Commonwealth's Department of Transitional Assistance.

The BHA sets aside seven apartments for homeless families as part of the DHCD-funded Transitional Housing Program (THP). Together with our partner agencies BHA provides transitional housing and extensive support services to homeless families as they work toward self-sufficiency and housing stabilization. Participant families occupy these units for a 9-12 month period while they receive services like counseling from social workers, connections to resources such as child care, transportation, education/employment opportunities,

personal money management training, and more in order to develop their self-sufficiency skills. The goal of the program is to help these families achieve self-sufficiency so that they can become successful renters in the future. Once the participant successfully meets their self-sufficiency goals, they may enter into a traditional lease with the BHA or they may seek permanent housing elsewhere.

Contact Us

Admin Login

Gloucester Housing Authority

available at
http://www.ghama.com/publicHousing.aspx

Public Housing

State Public Housing | Federal Public Housing

State-Aided Family and Elderly Housing

The Gloucester Housing Authority (GHA) owns and manages 522 units of State-Aided Family & Elderly Conventional Housing.

The GHA's family development is located at Riverdale Park. The development has two, three and four bedroom units. Residents at the development pay a rent based on 27% of their adjusted monthly income and are responsible for paying gas and electric utilities.

The GHA has three high-rise and two garden-style elderly housing developments. All elderly units contain a living room, kitchen, bathroom and one-bedroom. Barrier-free units are located in the high-rise developments. All developments have on-site laundry and community facilities. All utilities are included at the high-rise developments, where residents pay a rent based on 30% of their adjusted monthly income. Residents of the garden developments pay a rent based on 25% of their adjusted monthly income plus the cost of their electricity.

Eligibility is based on income and a demonstrated ability to comply with all lease provisions through favorable past housing history, credit checks and a criminal records check. Residents remain eligible as long as they are in compliance with their lease and/or until their rent equals DHCD established maximum allowable rent levels.

Preferences are granted to qualified veterans, minorities and persons who currently work or reside in Gloucester.

DHCD Annual Plan

Applicants

- Click here to Apply for State Public Housing

Residents

- Request for Rent Adjustment Form (Download, complete form and return to GHA)
- Tenant Complaint Form
- ABL Program Summary
- ABL Hardship Waiver Application
- ABL Complaince Process
- ABL Escrow Process 7-8-2019

Forms

Income Limits/Flat Rents

EXHIBIT 6

In Support of Defendant SafeRent Solutions, LLC's Reply

available at
https://www metrohousingboston.org/what-we-do/fair-housing-civil-rights-help/tenant-screening-selection-and-lease-negotiation-faq/

Fair Housing & Civil Rights

Tenant Screening, Selection, and Lease Negotiation FAQ

What is Fair Housing?

Fair housing is a set of principles and laws that mandate equal access and opportunity in housing. Fair housing covers all housing-related activities, from search and application to amenities, management policies, terms and conditions plus termination of tenancy. Fair housing covers persons who are members of a protected class which are designated as groups of persons and their families that historically have experienced discrimination. In Massachusetts, those classes are race, religion, national origin, gender, disability, familial status, marital status, sexual orientation, public assistance (including rental vouchers), genetic information, and military status.

Who must follow fair housing laws?

Property owners, developers, condo associations, and homeowner associations are covered parties under fair housing laws. Their employees, such as property managers, clerical staff, maintenance workers and all others are responsible for performing their duties in a manner consistent with fair housing. Attorneys and real estate agents must act and advise their clients in a compliant manner. Other residents in the building or development can be held responsible under fair housing laws and regulations if their behavior is considered to be discriminatory. Developers, architects and contractors can be held liable under the accessible design and construction fair housing mandates for units built for persons with disabilities and their families

Is advertising covered under fair housing?

Yes, advertising must be done in a manner that provides equal opportunity and access to all protected class members. Advertisements that appear in newspapers, newsletters, broadcast media, rental listing services, or on the Internet should not have language that discourages or prevents applications from protected class members. Using statements such as “No Sec. 8”, “Not Sec. 8 approved”, “No small children”, “not deleaded” or “near church/synagogue/ mosque/temple” can be interpreted as fair housing violations.

How does fair housing affect the tenant screening and selection?

The use of screening criteria that discourages or prevents protected class members from being evaluated equally as prospective tenants could be a fair housing violation. For example, asking for references from an applicant because of their immigration status but not asking for references from other applicants would be discriminatory.

What are acceptable screening practices under fair housing?

All applicants, regardless of protected class status, must be screened using identical criteria. It is acceptable to use standard questions that are asked of all applicants. Allowable questions would be the identification of head of household, past tenant history, income level (but not the source of income), etc. You are allowed to do credit checks, CORI and request references under fair housing as long as you are using the same practices and using them in the same manner for protected class members as for other applicants.

Are there things that a property owner should not be asking when doing tenant screening?

Yes, property owners should not be asking if the applicant has a disability or the nature or severity of disability, race, ethnicity, national origin, sexual orientation, religion, the age of the applicants’ children, marital status, if they receive government benefit assistance, or their military status.

Know your rights.
If you feel you may have been discriminated against regarding your housing situation, our fact sheets are here to help.

FAIR HOUSING RESOURCES

Filing a Complaint
Tenant Fact Sheet
Homebuyer Fact Sheet
Property Owner Fact Sheet
Tenant Screening, Selection, and Lease Negotiation FAQ
Persons with Disabilities Fact Sheet
Veteran Fact Sheet
Fair Housing and Rental Assistance
Fair Housing Law and Predatory Lending
Fair Housing Law and Lead
Advertising FAQ
Reasonable Accommodation and Reasonable Modification
Fair Housing Resources
Harassment in Housing
Fair Housing and Compulsive Hoarding

What standards of tenant selection are allowable under Fair Housing?

Tenants must be selected on their ability to fulfill the terms of successful tenancy. That would include their ability to pay rent which could be demonstrated through their proof of income and credit history. The applicant's past history with respect to housekeeping, relations with other residents, and cooperation with property owners can be indicated through references from their past property owners, employers and clergy. All of these are acceptable under Fair Housing as long as they are applied to all applicants and in the same manner. All information gathered through the screening and selection process must be handled in a sensitive and confidential manner.

It is important to remember that you can not deny an applicant because they have a rental voucher such as Sec. 8 or MRVP. Also a family with a child under the age of 6 or a pregnant woman can not be denied the right to apply for housing because there is lead in the unit and/or common areas. Both of these practices are violations under fair housing laws.

How does fair housing affect the lease negotiation process?

The same process and flexibility must be granted to all applicants and residents in determination of the terms and conditions of the lease. Higher standards of tenancy can not be imposed on protected class members. For example, a lease policy on restricted use of common areas could not be imposed only on families with children but must be applied to all tenants equally. Also, a higher or additional security deposit can not be levied against persons with disabilities because of concerns regarding anticipated damage to the unit due to wheelchair usage.

Can requests for fair housing reasonable accommodations and modifications be part of the screening process?

Reasonable accommodations and reasonable modifications are not allowable as tenant screening criteria. Applicants who have disabilities must be screened using the same criteria that are applied to nondisabled applicants.

Are there resources that provide additional information on fair housing?

- **Housing and Urban Development Fair Housing & Equal Opportunity**
- **Department of Justice**
- **Fair Housing Accessibility FIRST**
- **MA Commission Against Discrimination**
- **MA Attorney General's Office**

Does Metro Housing|Boston provide assistance to property owners on fair housing?

You can contact the Metro Housing|Boston Fair Housing Manager at (617) 425-6681 for technical assistance.

> For help with fair housing matter please contact the Fair Housing Project by email at **fairhousing@metrohousingboston.org** or call (617) 425-6681.