



May 9, 2024

The Honorable Sherrod Brown  
Chairperson  
U.S. Committee on Banking, Housing and  
Urban Affairs  
United States Senate  
Washington, D.C. 20510

The Honorable Tim Scott  
Ranking Member  
U.S. Committee on Banking, Housing and  
Urban Affairs  
United States Senate  
Washington, D.C. 20510

Dear Chairman Brown and Ranking Member Scott:

On behalf of the nearly 100,000 combined members of the National Apartment Association (“NAA”) and National Multifamily Housing Council (“NMHC”), we are writing in advance of the Senate Committee on Banking, Housing, and Urban Affairs hearing entitled, “Consumer Protection: Examining Fees in Financial Services and Rental Housing,” to share the views of the multifamily housing industry.

NAA and NMHC represent small, medium, and large for-profit and non-profit owners, operators, developers, property managers, and service providers involved in the provision of rental housing. These firms touch all segments, including conventional, affordable, military, student and seniors’ housing. Our members strongly support efforts to improve housing access, affordability, and the experience of applicants and residents.

#### Fees in the Housing Context

As evidenced by this hearing, the topic of fees, including those in rental housing, is of much conversation and debate, especially in the area of transparency. By way of context, rental housing providers use fees to facilitate necessary business practices and provide residents with concierge-type services or benefits throughout the lifecycle of the lease term. During the leasing process, housing providers and renters communicate about the rental housing costs that renters should expect to pay, including the base rent, fees and other customized charges associated with an individual’s unique circumstances.

This process provides multiple touch points for housing providers and renters to discuss the terms of their relationship before renters enter into a lease contract. This legally binding document serves many purposes. It reflects the rights and responsibilities of both parties, embodies applicable federal, state and local requirements for this tenancy and serves as a resource for renters. Processes and redundancies are built into the leasing process to ensure renters do not experience hidden, misleading or junk fees in rental housing.

#### Industry Actions to Support Renters

NAA and NMHC members are acutely aware of the impact of housing costs on renters and the benefits of greater transparency around fees associated with a renter’s lease. That is why NAA and NMHC answered President Biden’s call for housing providers to commit to the White House Resident-Centered Housing Challenge to improve the quality of life of renters.

As part of its commitment, NAA [increased cost transparency in our national lease program](#), “Click & Lease.” NAA is rolling out its “Know Your Costs” summary on the first page of the lease in every

state where we do business which includes key cost information on rental costs, fees and charges during the lifecycle of the tenancy. This summary will apply to leases for 8 million renter households across the country.

Additionally, NAA is proud to have put together its [Renting 101](#) educational resource for renters. This resource is intended to help households themselves prepare to rent, navigate the leasing process, better understand their rights and responsibilities in the lease and learn what to expect during and after their tenancy.

In September 2023, NMHC launched the [Foundations for Rental Housing](#) and Housing Help Hub as part of our commitment to uphold the White House Resident-Centered Housing Challenge. America's rental housing providers strive to provide quality housing and customer experience to millions of residents across the country. The Foundations for Rental Housing amplifies this commitment by highlighting more than 125 rental housing providers representing more than 4.3 million units across all 50 states and D.C. who have pledged support for six core concepts that form the basis of a positive renter/housing provider relationship:

- Engage with residents to foster an atmosphere of mutual respect, trust and communication.
- Have procedures in place to respond to resident requests.
- Comply with all applicable anti-discrimination, fair housing and fair credit laws.
- Support residents who express an interest in enhancing their credit through rent payment reporting.
- Respond to requests from residents facing financial hardship who are seeking external resources.
- Rights and responsibilities of lease holders and housing providers will be contained in the lease documents.

To help signatories carry out the Foundations, NMHC also introduced a new resource website that incorporates tools for both residents and housing providers.

#### The Regulatory Context Around Fees

As the Senate Banking Committee examines this issue, it is important to understand the larger policy environment around fees and the relationship between a renter and their housing provider. This relationship is already highly regulated at all levels of government, particularly at the state level. Each layer of regulation results in another unique set of compliance responsibilities for housing providers applicable to all aspects of the provision of rental housing, including fees.

As it relates to advertisements for rental housing, one of the first steps in the leasing process, renters have protections under existing consumer protection, truth in advertising and fair housing laws. These laws require that housing advertisements be truthful, fair and free of misleading information, including pricing information, and ensure there is consistency in the advertised price. For example, targeted ads for the same housing that are based on zip code cannot promote different prices which could result in discrimination of protected populations under the Fair Housing Act. In another example, application fee and resident screening laws regulate fee limitations and the required disclosures for applicants during the leasing process.

Even when a residency is not covered by a lease agreement, existing laws kick in to protect renters. All 50 states and the District of Columbia have enacted landlord-tenant laws to protect both

parties in real estate transactions. There are state-specific laws that address rental housing costs and required disclosures, such as what may constitute “rent”; security deposit and fee regulations; and disclosures related to lease modifications e.g., notification of a rent increase.

State and local laws even create separate and distinct responsibilities for housing providers relating to rent and the different types of common fees and charges in rental housing transactions, such as late fees, security deposits and sometimes renters’ insurance. For example, security deposits are not considered rent. “Security” falls in a unique category under landlord-tenant laws—an additional payment that is intended to assure performance under the rental agreement. State and local security deposit laws regulate:

- How much a housing provider may charge;
- Allowable deductions and payment substitutes such as surety bonds and insurance products;
- Whether housing providers are required to hold amounts in a separate business account and accountable for interest; and
- Deadlines for disclosure and return to the renter.

These laws already provide renters with transparency and predictability of their rental housing costs. These laws also provide relief to renters when their housing provider does not comply. Importantly, rather than the one-size-fits-all approach common in federal policymaking, these laws reflect the different types of relationships that exist in housing markets and tailor disclosures to fit these scenarios.

#### Challenges of Added Federal Regulatory Complexity

Unfortunately, current efforts to impose federal regulation of fees in the rental housing market will only add more complexity to the existing complex environment. For example, the Federal Trade Commission’s [Rule on Unfair or Deceptive Fees](#) proposes to establish new disclosure requirements for rental housing providers to inform renters of fees and other charges they should expect to pay during their residency. This proposal would fundamentally change how housing providers advertise and is likely untenable as a practical matter.

The FTC’s proposed blanket disclosure requirement of total price in an advertisement would further complicate rental housing providers’ compliance responsibilities and likely confuse and frustrate renters. Moreover, as noted above, it is not plausible to realistically know all fees that would apply to any given renter when posting an advertisement for an available rental unit. Each household has a unique set of circumstances, needs and state and local laws governing the relationship between housing providers and their residents.

#### Closing

In closing, we support the Committee’s efforts to better understand the issue of fees in all contexts but urge caution in pursuing additional federal regulations on rental housing providers. This area of the law is well governed at the state and local level. New rules would only complicate the ability of rental housing providers to comply with the law and not measurably improve the experience of prospective residents. Thank you for considering our views.

Sincerely,



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National Multifamily Housing Council



Gregory S. Brown  
Senior Vice President, Government Affairs  
National Apartment Association

Cc: Senate Committee on Banking, Housing and Urban Affairs