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December 14, 2021

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

Dear Director Chopra:

We are pleased to present you and your staff with our latest NCLC Policy Brief - [Assisting Consumers with Rental Debt During COVID-19: Legal Aid and Non-Profit Attorneys Share Their Experiences.](#)

This Policy Brief presents the results of a survey of 82 legal aid and non-profit attorneys from 27 states and the District of Columbia who worked with consumers with alleged rental debt between June and August 2021. The vast majority (71%) of attorneys who represented consumers with rental debt pre-pandemic reported an increase in the number of consumers with alleged rental debt from June to August 2021 compared to their caseload pre-pandemic.

Alleged rental debt can haunt a renter long after they have vacated a housing unit, whether they left because of an eviction or voluntarily moved out. Rental debt can lead to wage garnishment, dunning by debt collectors, and negative marks on credit reports resulting in lowered credit scores. This last consequence - negative credit report entries - can present a long-term barrier to renters obtaining new housing. In fact, about half (49%) of the attorneys who responded to our survey reported their clients had trouble finding housing as a result of alleged rental debt reported on a credit report.

We urge the CFPB to take action to prevent rental debt from becoming a barrier to decent housing for millions of Americans, disproportionately low-income and renters of color. We reiterate our requests from our [October 5, 2021 letter](#) that the Bureau:

- Require debt collectors, including attorneys for landlords, to provide notice about Emergency Rental Assistance Program (ERAP) funds.

- Prohibit debt collectors from seeking payment for amounts that were or will be paid by ERAP or similar funds and require collectors to pause collection efforts, including evictions, where the collector has notice that an application for ERAP funds has been submitted.
- Clarify that states are not preempted from adopting laws to exclude pandemic-era eviction and other negative information from tenant screening reports.
- Prohibit credit reporting of rent arrears if ERAP funds have been paid or an application has been submitted, and require deletion of any such collection items.

With respect to the last request, we recognize that Treasury has stated in FAQ 40 of its [Emergency Rental Assistance FAQs](#) (Aug. 25, 2021) that landlords who receive ERAP funds should “ensure that any reports to credit agencies will confirm the matter’s resolution.” However, this language does *not* require deletion of the debt collection item, because debt collectors could confirm the resolution simply by marking the debt as paid. Paid debt collection items can stay on a consumer’s credit report for seven years, and could harm a renter’s future ability to obtain housing for that entire time. We fear that some landlords might refuse to rent to a consumer with a paid rental debt, much as some landlords refuse to rent to tenants who had an eviction filed against them even if the eviction was dismissed or the tenant prevailed in the case.

We very much appreciate that the CFPB, and you personally, have made protecting renters a priority, including issuing the November 4 Advisory Opinion on Name-Only Matching and the July 1 Enforcement Compliance Bulletin on Consumer Reporting of Rental Information. Renters have been especially hard hit by the COVID-19 pandemic, and the Bureau should do everything in its power to protect their ability to obtain decent housing.

If you have any questions about the NCLC rental debt survey or this letter, please contact Chi Chi Wu at cwu@nclc.org or 617-226-0326

Sincerely,

National Consumer Law Center
(on behalf of its low-income clients)



As of September 2021, renters across the United States owed an estimated [\\$15 billion](#) in rental debt. According to estimates from the [Center on Budget and Policy Priorities](#), that translates to 10.3 million adults living in rental housing—14 percent of adult renters—who were not caught up on rent. [The tenants behind on rent are mostly low-wage workers and disproportionately people of color.](#)

According to the [National Equity Atlas](#), **67% of people with rent arrears are people of color.** 27% of Black renters, 19% of Latinx renters, 18% of Asian or Pacific Islander renters, and 17% of multiracial renters are behind on rent, compared to 9% of white renters.

Neither the now-expired Centers for Disease Control and Prevention (CDC) moratorium nor state-imposed moratoria absolved renters from making rent payments. And although the federal government’s [Emergency Rental Assistance Program](#) (ERAP) can be used to address rent arrears, it has been [incredibly slow](#) to reach tenants—forcing some tenants to face eviction while attempting to access rental relief funds.

Tenants who owe rent arrears face a host of devastating long-term consequences, including [the inability to secure safe and affordable new housing](#).

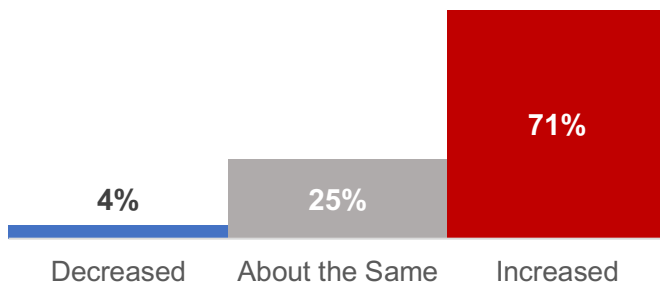
Although most landlords do not regularly report rent payments to the nationwide consumer reporting agencies (CRAs), they may refer unpaid rent to collection agencies or sell the accounts to debt buyers that may report the alleged debts.

Landlords often automatically reject housing applications from potential tenants who are alleged to owe money to former landlords. Because most landlords use [tenant screening reports](#) that include credit information, a damaged credit report hinders a tenant’s ability to secure new housing. This could force the tenant to turn to landlords who charge above-market rates for low-quality housing or could even lead to homelessness.

Rental debt is money allegedly owed due to a current or prior tenancy, and includes amounts for rent arrears, claims for unpaid rent after breaking a lease, and alleged damages. It might be pursued through legal actions in court, credit reporting, or debt collection.

NCLC Survey of Legal Aid and Non-Profit Attorneys Reveals Credit Reporting and Debt Collection Consequences of Alleged Rental Debt

Change in Caseload of Clients with Alleged Rental Debt from June to August 2021 Compared to Pre-Pandemic



Of the 82 respondents, 69 reported working with clients with alleged rental debt.

To begin to assess the effects of rental debt arising out of the pandemic, **NCLC surveyed 82 legal aid and non-profit attorneys from 27 states and the District of Columbia who worked with consumers with rental debt between June and August 2021.** 71% of survey respondents who represented clients with rental debt pre-pandemic reported an increase in consumers with alleged rental debt from June to August 2021.

Survey respondents wrote:

- “I have . . . seen massive increases in rental debt due to COVID-19 layoffs and loss of income.”
- “The amount of rental debt is much larger than what we have seen in the past.”
- “I've been seeing an increased number of evictions and rental debt cases.”

“We have property owners in our community becoming ‘creative’ in suing tenants for arrears as opposed to filing [an] eviction (during the CDC moratorium) and using this as leverage to displace tenants (self-help eviction from our standpoint).”

“[Rental] debts. . . related to an eviction judgment or simply reported as a debt in collection on [a] consumer report, create an insurmountable housing barrier. Unless the tenant has resources to pay . . . they will not . . . qualify for most housing and will be forced into substandard housing or homelessness.”

Of the 82 survey respondents who worked with consumers with alleged rental debt between June and August 2021:

37%

Said their clients had court proceedings related to alleged rental debt (separate from an eviction proceeding)

“Landlords report debts that haven't been reduced to judgment to collection agencies. These debts plus eviction related debts prevent tenants from obtaining rental housing. The debts appear inflated at best.”

44%

Said their clients had alleged rental debt reported on a credit report

“As the pandemic progressed, not only have we seen the average rental debt of tenants we work with increase, but also the occurrence of landlords filing Garnishment or Warrant in Debt cases, sometimes instead of Unlawful Detainers.”

49%

Said their clients had trouble finding housing as a result of alleged rental debt reported on a credit report

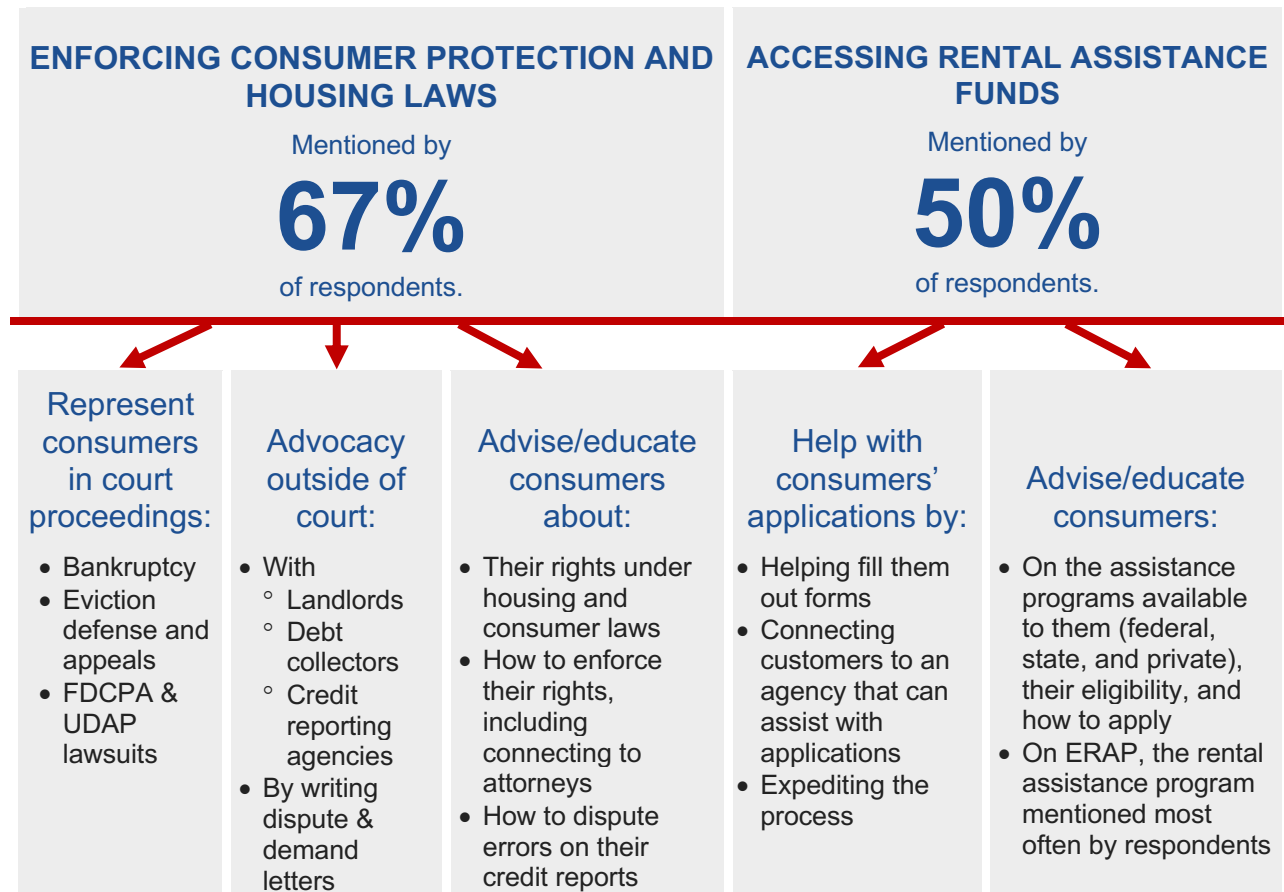
39%

Said their clients had been contacted by a debt collector about an alleged rental debt using a method other than a court proceeding

Respondents spoke of landlords “becoming creative” and using “any other possible excuse” to collect on an alleged rental debt or evict tenants. They wrote:

- “Many landlords were advised by the magistrate judges not to seek money judgments for rent in eviction proceedings, in order to circumvent the moratorium [when it was active].” [Blank block](#)
- “[Landlords . . .] ask for exorbitant costs for damages and keep the security deposit, [and] then send a 14 day notice to pay the rest as though it were rent and forward it to a collection agency to try and collect that money from tenant.”
- “We had been seeing landlords claiming other reasons for eviction to get around the moratorium, but almost every case was actually rooted in a payment issue.”

When asked to discuss the strategies used to help consumers dealing with alleged rental debt from June to August 2021, 58 responses fell into two large buckets:



“The ERAP money is not getting to renters in time to prevent eviction”

Respondents repeatedly reported that Emergency Rental Assistance Program (ERAP) payments were one of the most effective ways to assist their clients and avoid eviction. However, respondents cited the slow, complicated application process, the need for education among tenants and landlords alike, and a lack of regulation to protect tenancies as consumers wait for ERAP funds to arrive as huge barriers to assisting their clients. Respondents wrote:

- ⇒ “Many consumers become frustrated with long hold times on calls and do not have access to computers or technology. As a result, they give up on applying.”
- ⇒ “People who have owed rent for a very long time . . . still do not know that rental assistance programs exist or how to access them.”
- ⇒ “The biggest obstacle to keeping tenants housed is probably how some landlords refuse to hold off on evictions until rental relief can be processed and obtained. Despite fairly robust rent relief options, there is very little statewide policy to encourage landlords to cooperate with the rent relief process.”
- ⇒ “The application process for tenants to receive rent assistance is too cumbersome, . . . leaving non-profit lawyers, community agencies, etc. shouldering the burden of actually getting this money where it needs to go. If landlords don't cooperate, it's even more difficult to preserve tenancies. The application and approval process needs to be simpler and pay out faster.”

Respondents called for more comprehensive outreach and education to both tenants and landlords, for a simplification of the application process, and for formal protections that would require a landlord to wait for ERAP funding to arrive before evicting tenants.