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**Comment of Ariel Nelson,
Senior Attorney,
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Before the Senate Judiciary Committee of the New Mexico Legislature
in favor of S.B. 267
March 7, 2025**

Dear Chair Cervantes, Vice Chair Maestas, Ranking Member Brantley, and Honorable Members of the Senate Judiciary Committee:

On behalf of the National Consumer Law Center (NCLC),¹ I thank you for holding a hearing on S.B. 267, an act on housing application fees.

Renters across the country, including in New Mexico, face an affordable housing shortage. A dizzying array of fees to secure and maintain rental housing contributes to sky-high rent prices and housing instability. Renters often must pay these unavoidable junk fees during their search for housing (such as application fees, administrative fees, and “holding” fees), throughout the duration of their lease (such as excessive late fees and valet trash fees), and at the end of their lease (such as cleaning fees).² These fees can make the already difficult search for housing even worse by making it unaffordable. They can also add hundreds of dollars per month to the rent, compounding the heavy burden already placed on rental households, which make up about 31% of New Mexico residents.³

Although rental housing fees harm all renters, they are particularly harmful to renters of color, low-income renters, and renters who already face significant barriers in their search for housing, like those with criminal records.⁴ A Zillow study found that renters of color face steeper fees than

¹ NCLC is a nonprofit organization specializing in consumer protection issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all 50 states who represent low-income and elderly individuals on consumer issues. NCLC also publishes and annually supplements twenty-one consumer law practice treatises. It is from this vantage point—and from years of observing and analyzing issues at the intersection of consumer law and rental housing, including rental debt and rental housing junk fees—that NCLC offers this comment.

² See Ariel Nelson, April Kuehnhoff, Chi Chi Wu, & Steve Sharpe, Nat’l Consumer L. Ctr., *Too Damn High: How Junk Fees Add to Skyrocketing Rents* (2023) [hereinafter NCLC, *Too Damn High*], <https://www.nclc.org/resources/toodamn-high-how-junk-fees-add-to-skyrocketing-rents/>.

³ Nat’l Low Income Hous. Coal., *Out of Reach: New Mexico*, <https://nlihc.org/oor/state/nm> (last visited Mar. 7, 2025).

⁴ Note that these categories are overlapping, as renters of color are more likely to be denied admission because of criminal history and people with a criminal history are more likely to be low income. See, e.g.,

white renters.⁵ According to Zillow, renters of color usually submit more applications and pay higher fees for those applications than white renters.⁶ More specifically, the research found that 38% of Black and Latinx renters typically have to submit five or more applications, compared with 21% of white renters.⁷ Additionally, the typical white renter reported paying \$35 in application fees on their rental, while typical Black and Latinx renters reported spending \$50.⁸

And renter households are more likely to be households of color.⁹ “[L]ongstanding inequities in education and labor markets continue to limit the earnings of households of color, perpetuating racial and ethnic disparities in cost-burdened rates.”¹⁰ More than half of Black (54%) and Latino/Hispanic (52%) renter households are cost burdened—meaning that they pay more than 30% of their income on rent and utilities—while 42% of white households are cost burdened.¹¹

Renter households are also more likely to be lower income.¹² These lower income households struggle to pay the rent—about 50% of New Mexico renters are cost burdened, meaning they spend more than 30% of their income on housing costs.¹³ And around 28% of renter households in New Mexico are extremely low-income. Of those extremely low-income households, a whopping 86% are cost burdened.¹⁴ The dwindling supply of low-rent units is only worsening

id. at 32; Terry-Ann Craigie et al., Brennan Ctr. for Just., Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality, 6 (2020), <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal> (finding that “[o]n average, formerly imprisoned people earn nearly half a million dollars less over their careers than they might have otherwise,” that “[t]hese losses are borne disproportionately by people already living in poverty,” and that “they help perpetuate it”).

⁵ Manny Garcia, Renters of Color Pay Higher Security Deposits, More Application Fees, Zillow (Apr. 6, 2022), <https://www.zillow.com/research/renters-of-color-higher-fees-30922/>; see also Manny Garcia & Edward Berchick, *Renters: Results from the Zillow Consumer Housing Trends Report 2021*, Zillow (Aug. 10, 2021), <https://www.zillow.com/research/renters-consumer-housing-trends-report-2021-29863/>.

⁶ Garcia, *supra* note 5; see also Eric Dunn, *The Case Against Rental Application Fees*, Geo. 30 Geo. J. on Poverty L. & Pol’y 21, 46 (2022).

⁷ Garcia & Berchick, *supra* note 5.

⁸ Garcia, *supra* note 5.

⁹ About 58% of Black households and 52% of Hispanic households rented their housing in 2019 while only about 28% of white households rented. Drew Desilver, *As national eviction ban expires, a look at who rents and who owns in the U.S.*, Pew Research Ctr. (Aug. 2, 2021), <https://www.pewresearch.org/short-reads/2021/08/02/asnational-eviction-ban-expires-a-look-at-who-rents-and-who-owns-in-the-u-s/> (based on data from 2019); see also Joint Ctr. for Hous. Studies of Harvard Univ., *America’s Rental Housing 12* (2022) [hereinafter *America’s Rental Housing 2022*], https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf (renters are much more likely than homeowners to be households of color “High rentership rates among households of color reflect longstanding disparities in access to homeownership, including discriminatory lending, legal, and real estate practices.”).

¹⁰ *America’s Rental Housing 2022*, *supra* note 9, at 30.

¹¹ *Id.*; see also Andrew Aurand, Dan Emmanuel, Emma Foley, Matt Clarke, Ikra Rafi, & Diane Yentel, Nat’l Low Income Hous. Coal., *The Gap: A Shortage of Affordable Homes 1* (2023), <https://nlihc.org/gap> (“Black, Latino, and Indigenous households are disproportionately extremely low-income renters and are disproportionately impacted by [the affordable housing] shortage.”).

¹² See *America’s Rental Housing 2022*, *supra* note 9, at 13 (renters are much more likely than homeowners to have lower incomes).

¹³ Megan Myscowski, *New study finds New Mexico renters are still struggling*, KUNM (Jan. 25, 2024), <https://www.kunm.org/local-news/2024-01-25/new-study-finds-new-mexico-renters-are-still-struggling>.

¹⁴ Nat’l Low Income Hous. Coal., *Housing Needs by State: New Mexico*, <https://nlihc.org/housing-needs-by-state/new-mexico> (last visited Mar. 7, 2025).

cost burdens.¹⁵ New Mexico faces a shortage of 41,090 affordable and available homes for extremely low-income renters.¹⁶

State governments play a central role in landlord-tenant law in the United States, as they have traditionally been the entities that regulate rental housing. States can protect vulnerable renters from widespread and abusive junk fees-related practices. State laws are a traditional and powerful tool for imposing limits and prohibitions on rental housing junk fees. At least seventeen states have enacted laws addressing rental housing junk fees, and others are currently considering such legislation.¹⁷

S.B. 267 would take a basic but critical step toward protecting renters from surprise, unaffordable fees by requiring up-front disclosure of all fees, capping application fees, and prohibiting excessive late fees.

Housing providers frequently fail to disclose the many fees renters must pay up front. That means renters may not know the actual amount they will owe each month until they begin the lease signing process—at which point they have likely already invested significant time into their housing search and paid a nonrefundable application fee and possibly other fees.

The failure to provide accurate and understandable pricing information threatens renters' ability to effectively budget and to keep a roof over their heads. Surprise junk fees that renters cannot afford also jeopardize access to future housing and financial stability. Junk fees can become alleged rental debts that lead to dunning by debt collectors and negative marks on credit reports that lead to automatic rejections by future landlords.

Various states, including Idaho, Minnesota, Rhode Island, Utah, and Virginia require landlords to disclose fees,¹⁸ just as S.B. 267 would. And Massachusetts just promulgated regulations requiring up-front fee disclosure.¹⁹

In addition to fee transparency, S.B. 267 addresses one of the most egregious, most ubiquitous types of fees: application fees. The previous White House's Council of Economic Advisors estimated that the "excess burden" of application fees alone is \$276 million each year.²⁰

¹⁵ Joint Ctr. for Hous. Studies of Harvard Univ., *America's Rental Housing 2* (2024), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2024.pdf ("A record-high 22.4 million renter households spent more than 30 percent of their income on rent and utilities. This is an increase of 2 million households over three years Among cost-burdened households, 12.1 million had housing costs that consumed more than half of their income, an all-time high for severe burdens.").

¹⁶ Nat'l Low Income Hous. Coal., *Housing Needs by State: New Mexico*, *supra* note 14.

¹⁷ See Ariel Nelson, Steve Sharpe, April Kuehnhoff, & Chi Chi Wu, Nat'l Consumer L. Ctr., "What the Heck, Dude!": How States Can Fight Rental Housing Junk Fees 8–11 (2024) [hereinafter NCLC, *What the Heck, Dude!*], <https://www.nclc.org/resources/what-the-heck-dude-how-states-can-fight-rental-housing-junk-fees/>.

¹⁸ See *id.* at 14–15

¹⁹ 940 Mass. Code Regs. 38.00 (2025).

²⁰ Council of Economic Advisors, *The Price Isn't Right: How Junk Fees Cost Consumers and Undermine Competition* (2024), <https://www.whitehouse.gov/cea/written-materials/2024/03/05/the-price-isnt-right-how-junk-fees-cost-consumers-and-undermine-competition/>.

Tenants often do not get their application fees back—even when they are supposed to.²¹ If a landlord denies an application, the applicant loses the money they paid and must pay again to apply elsewhere.²² These fees add up and can simply be unaffordable for many people struggling to nail down housing. In short, these application fees make securing housing more difficult and more costly for renters, undercutting states’ ability to increase housing stability and decrease homelessness.²³

At least sixteen states have passed laws targeting application and screening fees.²⁴ Most of these laws (1) cap application fees by prohibiting landlords from charging more than a certain amount in fees, more than the actual cost of the screening, or more than once within a certain time period; (2) contain significant exceptions to prohibitions on fees, such as allowing landlords to charge a fee to cover the cost of tenant screening; (3) prohibit landlords that accept reusable tenant screening reports from charging application fees if the tenant provides such a report; or (4) require return of application fees under certain circumstances.²⁵ The strongest laws regulating application fees, however, simply prohibit landlords and their agents from charging application fees, like Vermont’s.²⁶

S.B. 267 also addresses late fees. Late fees can be very high and punitive, rather than based on an actual estimate of a landlord’s expenses.²⁷ Various states, including Colorado, Connecticut, Minnesota, New York, Utah, and Virginia cap late fees.²⁸

With S.B. 267, New Mexico has the chance to join the many other states that have passed laws protecting renters from predatory rental housing junk fees. S.B. 267 would require up-front disclosure of fees, standardize and cap application fees, prohibit landlords from charging fees other than a screening fee to process an application, and prevent excessive late fees. This bill would also allow private enforcement as well as enforcement by the New Mexico Attorney General, both of which are essential for ensuring compliance. The common-sense protections in this bill would make a big difference for renters struggling to find and maintain safe and decent housing that fits their budget and would help increase housing stability and decrease homelessness across the state.

Thank you for considering this important legislation. I respectfully urge you to support S.B. 267.

Sincerely,

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²¹ See NCLC, *Too Damn High*, *supra* note 2, at 10–11; see also Chi Chi Wu, Ariel Nelson, April Kuehnhoff, & Caroline Cohn, Nat’l Consumer L. Ctr., *Digital Denials: How Abuse, Bias, and Lack of Transparency in Tenant Screening Harm Renters 18–20* (2023), <https://www.nclc.org/resources/digital-denials-how-abuse-bias-and-lack-of-transparency-in-tenant-screening-harm-renters/>.

²² Dunn, *supra* note 623 (2022).

²³ *Id.* at 30.

²⁴ NCLC, *What the Heck, Dude!*, *supra* note 17, at 8–15 & Appendix.

²⁵ *Id.* at 8–11.

²⁶ Vt. Stat. Ann. tit. 9, § 4456a.

²⁷ NCLC, *Too Damn High*, *supra* note 2, at 11–13.

²⁸ NCLC, *What the Heck, Dude!*, *supra* note 17, at 11–12.