

# Housing Access for Individuals Formerly Incarcerated and Convicted

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The United States is the world's largest jailer, imprisoning 1.9 million people in state and local jails and prisons, juvenile correctional facilities, immigrant detention facilities, and prisons and jails on tribal or territorial lands. The Federal Bureau of Investigation (FBI) estimates as many as one in three Americans has some type of criminal record, including convictions for minor offenses or arrests that never resulted in a conviction, and over five million people – including people who are incarcerated as well as those on probation or parole – are under supervision by the criminal-legal system.

Bias [inherent to the criminal-legal system: https://bit.ly/3GEhZtG](https://bit.ly/3GEhZtG) has caused people of color – particularly Black, Latinx, and Native people – as well as people with disabilities and members of the LGBTQ+ community, to be disproportionately impacted by the criminal-legal system. [Modern policing: https://bit.ly/3S3uyBI](https://bit.ly/3S3uyBI) rose out of “Slave Patrols” that began in the 1700s to terrorize, monitor, and control enslaved Black people. After the Civil War, Southern states enacted “Black Codes,” which criminalized Black people for engaging in everyday activities, including “walking at night” or “walking without a purpose.” These unjust laws swept Black people into prisons and jails, separating families and imposing collateral consequences that lasted long after release.

The prison population continued to expand throughout the early 20<sup>th</sup> century, spurred by a growing fear of crime rooted in racist lies and stereotypes about people of color and immigrants, as well as the enactment of a series of mandatory sentencing laws and increased policing of Black and immigrant communities. In the 1960's and 1970's, politicians – including

then-President Richard Nixon – adopted “tough on crime” rhetoric that falsely linked crime and race to appeal to white voters in the south and working-class voters in the north, an approach dubbed the “Southern Strategy.”

The “War on Drugs” launched in the 1970s and 1980s marked the beginning of the era of mass incarceration, as new laws were enacted imposing longer, harsher sentences against those convicted of drug possession. The “Anti-Drug Abuse Act of 1986” established mandatory minimum sentencing policies that disproportionately punished Black people, and the “Violent Crime Control and Safe Streets Act of 1994” created a federal “three strikes law,” under which someone convicted of a “serious violent felony” in federal court would receive life imprisonment if they had two or more previous convictions on their record, including at least one other “serious violent felony” or “serious drug offense.” These bills also filtered money into policing efforts that disproportionately targeted Black communities.

As a result of these policies, the number of people incarcerated in the United States increased by almost 700% between 1972 and when incarceration levels peaked in 2009, and Black people have been disproportionately harmed. Nationally, Black men are five times more likely to experience incarceration than white men, while Black women are incarcerated at double the rate of white women.

After decades of imprisoning people with punitive and destructive mandatory minimum sentences, lawmakers and criminal-legal system reform advocates are making progress in the decarceration of prison inmates across the country. By the end of 2020, the prison population had decreased 25% from its peak in 2009.

Formerly incarcerated people face a number of barriers to returning to their communities, including finding quality, affordable, accessible housing. The national shortage of 7.3 million affordable, available rental homes for households with the lowest incomes is a central cause of the nation's housing crisis, and a conviction or arrest record poses an additional barrier to accessing what housing units are available. Conviction histories also pose a barrier to employment, which makes it more difficult for formerly incarcerated people to find stable, well-paying jobs after release.

These barriers trap people impacted by the criminal-legal system in a vicious cycle of incarceration, homelessness, and reincarceration. People who have been incarcerated once are seven times more likely to experience homelessness than the general public, and people experiencing homelessness are significantly more likely to interact with police than the general public.

Public housing authorities (PHAs) and owners of federally assisted housing have broad discretion in screening out applicants with records or precluding returning citizens from rejoining their families. Congress and the Administration must work together to reduce these barriers and increase access to safe, affordable housing to ensure people exiting incarceration have the stability they need to thrive.

## Legislative Background

In past decades, Congress passed legislation that included increasingly stringent crime and drug enforcement policies in public housing. These policies increased penalties for certain drug-related activities and gave broad discretion to PHAs to evaluate potential and current residents. They also broadened resident accountability to include the behavior of a wider range of individuals, including minors and social acquaintances, and increased the oversight and penalties for PHAs that failed to make progress in implementing strategies to lower crime and drug use.

The "Anti-Drug Abuse Act of 1988" required PHAs to include a provision in their lease agreements that would allow them to evict tenants who used drugs or behaved in a way that threatened the safety of other tenants (Pub. L. No. 100-690, 102 Stat. 4181, 4300, 1988). Ten years later, Congress passed the "Quality Housing and Work Responsibility Act of 1998," which allowed PHAs to exclude applicants with conviction records and use discretion in determining whether an applicant was a potential safety risk to current residents (Pub. L. No. 105-276, 112 Stat. 2461, 2518, 1998). Additionally, the "Cranston-Gonzalez National Affordable Housing Act of 1990" created a mandatory three-year ban on readmitting tenants who had previously been evicted for engaging in drug-related criminal activity (Pub. L. No. 101-625, 104 Stat. 4079, 4180, 1990) and gave PHAs the option to increase the ban beyond the initial three years. The "Housing Opportunity Program Extension Act of 1996" (HOPEA) increased PHA's ability to evict tenants and allowed them to request applicants' criminal records from the National Crime Information Center and local police departments (Pub. L. No. 104-120, 110 Stat. 834, 836, 1996). HOPEA also granted PHAs the ability to reject applicants they believed were abusing drugs or alcohol or whose history of drug or alcohol use could pose a potential risk to the health and safety of current residents.

## Mandatory Screening Policies

Although PHAs have broad discretion in evaluating current and prospective tenants, there are several federal admissions policies that all PHAs and project owners are required to follow. However, these policies merely act as a floor that many PHAs supplement with additional screening policies.

Under federal law and regulation, PHAs and project owners must impose a permanent admission ban when a household includes a person who is required to register as a sex offender for life [42 U.S.C. § 13663(a) (2015);

24 C.F.R. §§ 960.204(a)(4), 982.553(a)(2), 2012]. Additionally, PHAs must impose a permanent admission ban or permanently terminate a household's tenancy when a household member has been convicted of manufacturing methamphetamine on federally assisted property [42 U.S.C. § 1437f(n) (2015); 24 C.F.R. §§ 960.204(a)(3), 982.553(a)(1)(ii)(C), 2012].

PHAs and project owners are also required to prohibit admitting a household for three years if a household member has been evicted from federally assisted housing for drug-related criminal activity [42 U.S.C. § 13661(a) (2015); 24 C.F.R. §§ 960.204(a)(1), 982.553 (a)(1)(i), 2012]. However, the PHA or project owner has discretion to admit the household if it is determined that the member successfully completed drug rehabilitation or the circumstances leading to the eviction no longer exist (e.g., the incarceration or death of the person who committed the drug-related criminal activity). Additionally, households must be denied admission if a member is currently engaged in illegal drug use or alcohol abuse [42 U.S.C. § 13661(b) (2015); 24 C.F.R. §§ 960.204(a)(2)(i), 982.553 (a)(1)(ii)(a), 2012]. PHAs and project owners must also prohibit admitting households where the PHA or property owner has reason to believe that a household member's historical or current abuse of illegal drugs or alcohol "may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents" [42 U.S.C. § 13661(b)(1) (2015); 24 C.F.R. §§ 960.204(a)(2)(ii), 982.553(a)(1)(ii)(B) (2012)].

These policies, along with whatever additional screening criteria a PHA or project owner may develop, are contained in the housing provider's written admissions policy and grant housing providers broad discretion in screening out tenants with a conviction record. Depending on the program, these written policies are referred to as admission and continued occupancy policies for public housing, administrative plans for the Housing Choice Voucher program, or tenant selection plans for project-based Section 8 developments.

## Issues

Much of HUD's guidance on evaluating current and potential tenants is advisory and not mandatory so PHAs and project owners across the country have developed their own criteria, creating additional barriers for people with conviction and arrest records and raising fair housing concerns.

One issue that continues to prevent people with a conviction or arrest history from accessing affordable housing arises from PHAs and project-owners using unreasonable lookback periods to evaluate applicants' conviction records. Federal law instructs housing providers to look back in an applicant's history of criminal activity within a "reasonable time," but neither the statute nor HUD explicitly define what constitutes a reasonable time; instead, HUD has provided suggested time limits or best practices for establishing a reasonable lookback time. This lack of formal guidance has allowed a large number of housing providers to establish admissions policies that have no time limit on using a person's conviction history to evaluate their application. Although HUD expects housing providers to define a "reasonable time," some neglect to do so or leave it open ended and, as a result, discourage people with conviction or arrest records from applying. Others impose blanket lifetime bans or use overly long lookback periods for certain crimes.

Despite HUD's suggested limit on lookback periods for certain crimes (for example, three years or less from the date of a criminal offense that resulted in conviction), housing providers routinely look further back into a person's conviction history, sometimes as long as 20 years. Such lengthy lookback periods act as a de facto ban on people with conviction or arrest histories, conflicting with HUD's long-held assertion that permanent admissions bans contradict federal policy.

Housing providers often neglect to include what events in a lookback period trigger denial (e.g., the criminal activity itself, a conviction, or release from incarceration), again making it difficult for people with conviction records to determine their eligibility. HUD's Public Housing Operating Guidebook also lacks clarity around when a PHA has the discretion to screen for criminal activity that "would adversely affect the health, safety, or welfare of other tenants." Too often, PHAs use "health, safety, and welfare" as a catch-all for criminal offenses, including those with no bearing on an applicant's success as a tenant. By casting such a wide net over almost any conviction, which can include shoplifting and jaywalking, housing providers screen out potential tenants to the point that anyone with a conviction record need not apply. As a result, housing providers create a de facto ban on individuals with a conviction record, even if they do not have a policy explicitly barring individuals with a conviction record from being admitted.

Until a 2015 HUD guideline banned the use of arrest records in federally assisted housing decisions (Notice PIH 2015-19), an arrest alone could trigger denial even if it did not lead to a subsequent conviction. Still, housing providers do not always comply with this guidance, and providers are increasingly turning to private tenant screening companies to review applicants' conviction and arrest records and make recommendations about whether to admit or deny. These companies usually pull criminal records data from public databases that are often incomplete or inaccurate. For example, a jurisdiction might misreport a misdemeanor as a felony or vice versa, fail to indicate when a record has been expunged or sealed, or mix up the histories of two people with the same name.

Tenant screening companies use the records they gather to make an "up or down" determination as to whether a prospective tenant should be approved for residency. Despite federal law guaranteeing tenants' right to see a copy of their

criminal background report, not all housing providers comply. This lack of transparency means applicants are typically left in the dark about the information used to deny their admission.

Too often, PHAs and project owners ignore or do not provide mechanisms for applicants to present mitigating evidence and explain the totality of circumstances surrounding a conviction. PHAs are required by federal law to consider mitigating circumstances during their admissions process, including the time, nature, and extent of the applicant's conduct, as well as the seriousness of the offense. PHAs can also consider a person's actions that indicate future good conduct, such as an applicant successfully completing a drug rehabilitation program.

However, PHAs often fail to inform applicants of their right to present evidence or choose to ignore mitigating circumstances when considering an application. For the Housing Choice Voucher program and Section 8 project-based properties, HUD merely encourages housing providers to consider mitigating circumstances rather than requiring them to do so. Some housing providers are reluctant to adopt such a policy, arguing that its subjective nature makes it too hard to apply uniformly and puts them at risk of violating the "Fair Housing Act" (FHA). However, adopting a one-size-fits-all policy that is not narrowly tailored and fails to consider mitigating circumstances may violate the FHA if it has a disparate impact on a protected class of people, including people of color or people with disabilities.

Returning citizens attempting to reunite with their families living in federally subsidized housing are sometimes barred from doing so or are not permitted to be added to the household's lease. Although HUD has no prohibition on adding returning citizens to a lease, it is widely believed that PHAs and project owners are not permitted to do so. Housing providers' refusal to add returning citizens to a lease places these individuals at risk of housing instability and homelessness and puts their families at-risk of



eviction if their loved one is found residing in the household.

Finally, people with conviction or arrest records who have managed to secure a Housing Choice Voucher can run into trouble if they need to transfer their voucher to another jurisdiction. When a household moves from one jurisdiction to another, the receiving PHA might rescreen the household using more stringent criteria than the one used by the initial PHA. If the receiving PHA determines that the household does not meet its criteria, it will try to terminate assistance.

This practice of rescreening prevents individuals with a conviction history and their families from being able to move to new areas that offer greater opportunities. In 2015, HUD published a [final rule: https://bit.ly/4iwYArU](https://bit.ly/4iwYArU) on voucher portability that reiterated PHAs' ability to rescreen families, stating, "[R]eceiving PHAs should be allowed to apply their own screening standards consistently among families in their program and for families moving into their jurisdiction under portability. However, it is important that moving families be informed that they are subject to screening based on the receiving PHA's criteria, and that the receiving PHA's screening criteria may be different than that of the initial PHA."

## IMPACT OF COVID-19

In response to the COVID-19 pandemic, in 2020 some state and local facilities released incarcerated individuals with underlying health conditions more vulnerable to COVID-19 complications, and individuals determined not to pose a threat to the health and safety of others. HUD issued in PIH Notice 2020-05 in April 2020, providing PHAs broad authority to waive regulatory and statutory provisions in an effort to increase access to federally assisted housing. These waivers could be adopted by PHAs to allow individuals with a conviction history to obtain residency in housing supported by the Housing Choice Voucher (HCV) or Project Based Voucher (PBV) program. However, adopting these waivers was

not mandatory and was left up to the discretion of PHAs; as a result, these policies were inconsistently implemented, and sometimes not implemented at all.

PHAs were given the option of waiving regulation HQS-10 § 982.401(d), which if adopted would allow current tenants of HCV- and PBV-assisted housing to add individuals to the household lease even if doing so would exceed HUD's minimum standard for adequate space. This waiver allowed people with a conviction record to be added to the lease of a family member residing in assisted housing. HUD also gave PHAs the option to waive 24 CFR § 960.202(c)(1) and 24 CFR § 982.54 (a), which allowed PHAs to amend and adopt changes to their Admission and Continued Occupancy Policy (ACOP) and Administrative Plans without formal board approval. If adopted, PHAs could use these waivers to change their tenant screening policies and reduce barriers to accessing housing for people with a conviction or arrest record. For example, PHAs could remove criminal record screening policies for individuals released from incarceration in response to COVID-19, as these individuals have already been determined not to pose a threat to the health or safety of others.

## Recent Efforts to Address Criminal Records and Housing

### ADMINISTRATIVE EFFORTS

The Obama Administration first took action in helping returning citizens gain access to housing in 2011, when then-HUD Secretary Shaun Donovan issued a letter to PHA executive directors stating, "[T]his is an Administration that believes in the importance of second chances—the people who have paid their debt to society deserve the opportunity to become productive citizens and caring parents, to set the past aside and embrace the future. Part of that support

means helping justice-involved individuals gain access to one of the most fundamental building blocks of a stable life—a place to live.”

Secretary Donovan further encouraged PHAs to allow people with a conviction history, when appropriate, to live with their families in public housing or the Housing Choice Voucher program and asked that when PHAs screened for criminal records, they “consider all relevant information, including factors which indicate a reasonable probability of favorable future conduct.” A year later, Secretary Donovan sent a similar [letter: https://bit.ly/4jwma9Q](https://bit.ly/4jwma9Q) to owners and agents of HUD-assisted properties.

In 2013, the U.S. Interagency Council on Homelessness (USICH) published a [guidebook: https://bit.ly/42YsgcW](https://bit.ly/42YsgcW) for PHAs that included best practices and policies to increase access to housing. In the guidebook, USICH notes the relationship between incarceration and homelessness, “as difficulties in reintegrating into the community increase the risk of homelessness for released prisoners, and homelessness increased the risk of re-incarceration.” Like Secretary Donovan, USICH encouraged PHAs to consider individual factors when screening potential tenants with conviction records in order to remove barriers to housing assistance.

In November 2015, then-President Barack Obama announced new actions to promote the rehabilitation and reintegration for formerly incarcerated people, including a new \$8.7 million demonstration program to address homelessness and reduce recidivism rates. President Obama also announced that HUD would provide \$1.75 million to aid eligible public housing residents under the age of 25 in expunging or sealing their criminal records under the new Juvenile Reentry Assistance Program.

In conjunction with the announcement, HUD released PIH 2015-19, recognizing the responsibility PHAs and project owners have in ensuring people with a conviction record are not

automatically barred from federally subsidized housing. The guidance clarifies the use of arrest records to determine who can live in federally subsidized properties and notes an individual’s arrest record cannot be used as evidence that they have committed a crime, stating “[T]he fact that there has been an arrest for a crime is not a basis for the requisite determination that the relevant individual engaged in criminal activity warranting denial of admission, termination of assistance or eviction.”

The guidance also makes clear that HUD does not require PHAs and project owners to adopt or enforce “one strike” policies that deny admission to anyone with a conviction record or that require families to be automatically evicted any time a household member engages in criminal activity in violation of the lease. However, it does not preclude PHAs and owners from utilizing such a policy. Instead, the guidance urges PHAs and owners to exercise discretion before making such a decision and to consider all relevant circumstances, including the seriousness of the crime and the effect an eviction of an entire household would have on family members not involved in the criminal activity. Additionally, the guidance reminds PHAs and property owners of the due process rights of tenants and applicants applying for housing assistance.

In April 2016, HUD issued legal guidance from the Office of General Counsel stating that housing providers, both in the public and private housing market, likely violate the FHA when employing blanket policies refusing to rent or renew a lease based on an individual’s conviction or arrest history, since such policies would likely have a disparate impact on racial minorities. The FHA prohibits housing discrimination on the basis of race, color, religion, sex, familial status, national origin or disability while coining these as “protected classes” of people and noting, “Because of widespread racial and ethnic disparities in the U.S. criminal justice system, criminal history-based restrictions on access to

housing are likely disproportionately to burden African Americans and Hispanics.”

The guidance, known as the “disparate impact rule,” states that when a housing provider’s seemingly neutral policy or practice has a discriminatory effect, such as restricting access to housing on the basis of conviction or arrest history, the policy or practice is unlawful under the FHA if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if the interest could be served by another practice that has a less discriminatory effect.

Some landlords and property managers assert that the reason they have blanket conviction history policies is to protect other residents and the property. HUD’s 2016 disparate impact guidance declares that “bald assertions based on generalization or stereotype that any individual with an arrest or conviction record poses a greater risk than those without such records are not sufficient.” Landlords and property managers must be able to prove through reliable evidence that blanket policies assist in protecting residents and property.

The guidance also states that a housing provider with a policy that excludes people because of a prior arrest without conviction cannot satisfy its burden of showing the policy is necessary to achieve a “substantial, legitimate, nondiscriminatory interest,” since an arrest is not a reliable basis upon which to assess an applicant’s potential risk to residents or property. When a person has been convicted, the policy must be applied on a case-by-case basis considering the nature and severity of the conviction, what the individual has done since conviction, and how long ago the conviction took place.

In addition, the guidance discusses how a housing provider may violate the FHA if the provider intentionally discriminates when using criminal history information in evaluating applicants and

tenants, “which occurs when the provider treats an applicant or renter differently because of race, national origin or another protected characteristic. In these cases, the housing provider’s use of conviction records or other criminal history information as a pretext for unequal treatment of individuals because of race, national origin or other protected characteristics is no different from the discriminatory application of any other rental or purchase criteria.”

In August 2019, the Trump Administration proposed changes to HUD’s disparate impact rule that would have made it more difficult to challenge a housing provider’s discriminatory policies. The Biden Administration moved in June 2021 to withdraw the proposed changes to the disparate impact rule and reinstate the 2013 guidelines. Under the rule’s 2013 guidelines, bringing a disparate impact claim requires a three-part “burden-shifting” standard that begins with a plaintiff, usually the target of a discriminatory policy, showing a policy or practice causes (or will likely cause) a discriminatory effect. Next, the burden shifts to the defendant, usually a housing provider, to prove that the policy or practice is necessary to achieve a legitimate, nondiscriminatory interest. Finally, if the defendant can prove the policy is necessary, the burden shifts back to the plaintiff who must then prove that the defendant’s interest can be achieved through another policy or practice that has a less discriminatory effect.

In March 2021, President Biden signed into law the “American Rescue Plan Act,” a \$1.9 trillion coronavirus relief package with nearly \$50 billion in essential housing and homelessness assistance. The bill provided \$5 billion for an estimated 70,000 emergency housing vouchers (EHVs) targeted specifically to people at risk of or experiencing homelessness and those escaping domestic violence, dating violence, sexual assault, stalking, or human trafficking. HUD Notice PIH 2021-15 clarifies that people exiting incarceration “who are at-risk of homelessness due to their

low incomes and lack of sufficient resources or social supports” are eligible for EHV.

The Consumer Financial Protection Bureau (CFPB) issued in November 2021 an advisory opinion warning consumer reporting agencies – including tenant screening companies – that using inadequate matching procedures like name-only matching may violate the “Fair Credit Reporting Act (FCRA).” In partnership with the Federal Trade Commission (FTC), in October 2023 CFPB took action against rental screening conglomerate TransUnion for violating FCRA by failing to ensure rental background checks contain accurate, up-to-date information. CFPB and FTC released a request for comment in February 2023 on background screening issues, including how criminal and eviction records as well as algorithms affect tenant screening decisions.

HUD Secretary Marcia Fudge issued a [directive: https://bit.ly/4iAB8Klf](https://bit.ly/4iAB8Klf) in April 2022 instructing HUD to review and identify internal policies and procedures that may increase barriers to housing access for people impacted by the criminal-legal system. HUD staff were given six months to review existing HUD guidance, regulations, and sub-regulatory documents and suggest needed changes to ensure increased access to federally assisted housing for people with conviction records.

In response to this directive, the Department released in October 2023 a Notice of Proposed Rulemaking (NPRM) removing a ban on people with conviction histories from serving as fair housing testers under HUD’s Fair Housing Initiatives Program (FHIP) and Fair Housing Assessment Program (FHAP). The final rule, “Expanding the Fair Housing Testing Pool for FHIP and FHAP Funded Entities,” was released in April 2024.

HUD also released an NPRM, “Reducing Barriers to HUD-Assisted Housing,” in April 2024. The NPRM proposed several meaningful

changes to HUD’s existing screening regulations for people with conviction histories applying to HUD-assisted housing, including clarifying the types of “relevant criminal activity” for which PHAs and owners can screen; limiting lookback periods in admissions decisions to no more than three years prior to an application; mandating an individualized assessment of rental applicants with a conviction history in admissions decisions; restricting the use of arrest records, and banning the use of arrest records as the sole basis for housing denial or eviction; clarifying the standard of proof for eviction and termination decisions based on criminal activity; and better regulating third-party screening services and companies. The final rule was not released before the end of the Biden Administration’s term.

## EFFORTS IN CONGRESS

In December 2018, Congress passed and then-President Donald Trump signed into law the bipartisan “First Step Act” (P.L. 115-391), which rolls back mandatory minimum sentences in certain circumstances and expands on “good time credits” for incarcerated people looking to shorten their sentences. While advocates acknowledged the bill was not perfect, they agreed it was a modest step forward for comprehensive criminal legal reform. The bill also included the “Second Chance Reauthorization Act” that supports state, local, and tribal governments and nonprofit organizations in their work to reduce recidivism and improve outcomes for people returning from incarceration. Second Chance grants support a variety of reentry services, including housing, job training, education, mentoring, and mental health treatment. The “Second Chance Reauthorization Act” expands opportunities for community-based nonprofits to apply for grants to develop support programs, such as housing, and drug treatment programs. It also requires coordination among multiple federal agencies (including HUD), state and local governments,



and service providers on federal programs and policies related to reentry.

In July 2019, Representative Alexandria Ocasio-Cortez (D-NY) and then-Senator Kamala Harris (D-CA) introduced legislation to ensure that people with criminal records have access to federally assisted housing. The “Fair Chance at Housing Act” would ban “one-strike” and “no-fault” eviction policies, demand higher standards of evidence to reject an applicant on the basis of their criminal record, and mandate an individualized review processes that takes into account both the totality of circumstances surrounding a criminal offense and any mitigating evidence provided by a prospective tenant. These measures would allow families to reunify when a household member returns home after serving time in prison or jail and help end the cycle of homelessness and recidivism too often experienced by justice-involved individuals.

In March 2020, the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) was signed into law. The CARES Act provided states and communities with much-needed resources to respond to the coronavirus pandemic, including additional funding for housing and homelessness assistance. While the CARES Act failed to provide resources to specifically address the housing needs of people exiting incarceration, there is nothing in the bill prohibiting funds being used to assist people with a criminal record in finding or maintaining safe, stable, affordable housing.

In April 2023, Representative Nanette Barragan (D-CA) introduced the “Returning Home Act,” which would create a reentry rental assistance and housing services grant program funded through the Department of Justice (DoJ) at \$100 million annually.

## Forecast for 2025

Congress and the White House must continue working together to enact meaningful reforms that would ensure people exiting incarceration and those with a conviction or arrest history are able to obtain safe, stable, affordable housing. While the NPRM “Reducing Barriers to HUD-Assisted Housing” was not ultimately published, the incoming Trump Administration should continue the important work of reducing unnecessary barriers to affordable housing and ensuring people with conviction histories have a fair opportunity for a second chance.

In addition to these policy changes, Congress should provide substantial federal investments in the construction of permanent housing with supportive services where needed, and in the expansion of the Housing Choice Voucher (HCV) program to ensure no one struggles to afford the cost of rent. Further, a federal source of income discrimination ban would help ensure that more people using a voucher find housing – including individuals with a conviction history – are able to fully utilize their voucher.

Additionally, it is crucial that the “First Step Act” receive full funding in the new fiscal year to fully implement the reforms established by the law. Criminal justice advocates will also continue pushing for new reforms and remind lawmakers that as its title suggests, the “First Step Act” is just that: a first step and one of many steps toward comprehensive criminal justice reform. Advocates can press for legislation, including the “Fair Chance at Housing Act,” that helps people returning from incarceration get back on their feet and reconnect with their communities.

## How Advocates Can Take Action

### Urge legislators to:

- Enact a federal ban on source of income discrimination.
- Pass comprehensive spending bills that include full funding for implementation of the “First Step Act.”
- Ensure that criminal legal system reform efforts include a comprehensive plan addressing the housing needs of people with criminal records.
- Support legislation that reduces housing barriers for people with criminal records, including the “Fair Chance at Housing Act.”

### Urge HUD to:

- Mandate PHAs adopt regulatory waivers to increase access to federally assisted housing for people with a conviction history.
- Ensure compliance with and build upon HUD guidance that would expand access to federally assisted housing for people with a criminal record.
- Require all federally subsidized housing providers to consider mitigating circumstances when making admissions decisions.
- Provide concrete guidance on reasonable lookback periods.
- Place limitations on what criminal activity housing providers may consider when reviewing applications.
- Set minimum standards for the quality and nature of criminal background information that can be used by PHAs and federally assisted housing providers to make housing decisions.
- Work with the Consumer Financial Protection Bureau and Federal Trade Commission to identify comprehensive, interagency solutions to tenant screening problems.
- Increase data collection on applicant screening practices.

## For More Information

Visit the Partnership for Just Housing, <https://nlihc.org/explore-issues/policy-priorities/housing-and-criminal-justice>.