



# FAIR CHANCE AT HOUSING ACT

The National Low Income Housing Coalition and the National Housing Law Project support the “Fair Chance at Housing Act,” introduced by Senator Kamala Harris and Representative Alexandria Ocasio-Cortez to help ensure that justice-involved people have access to federal housing assistance. Currently, housing authorities and other federally-assisted housing providers openly discriminate against people with criminal records, denying them the opportunity to reunify with family post-incarceration and putting them at risk of housing instability, homelessness, and recidivism. Justice-involved individuals are disproportionately people of color, people with disabilities, and LGBTQ individuals. The Fair Chance at Housing Act will reduce the impact of the collateral consequences associated with having a criminal record by expanding opportunities to stable, decent, accessible and affordable housing.

Some key pieces of the proposal include:

## Individualized Review and Opportunity to Provide Mitigating Evidence

Under existing law, federally- assisted housing providers have significant discretion with respect to tenant screening, leading to overly restrictive policies that unfairly screen out good tenants and neighbors.

The Fair Chance at Housing Act requires that, when considering criminal history during the tenant screening process, public housing agencies (PHAs) and owners of HUD-assisted housing perform an individualized review of each applicant that considers the totality of the circumstances.<sup>1</sup> Housing providers would be required to consider mitigating evidence of past criminal activity when presented by the applicant.<sup>2</sup> PHAs, but not owners, would be required to establish a review panel that includes at least one resident representative to conduct the individualized review for applicants applying for public housing or Housing Choice Vouchers (HCVs).

Housing providers would also be limited to considering only criminal activity that may be more likely to have an impact on the applicant’s success as a tenant

such as felonies that resulted in a conviction and that threaten the health or safety of other tenants, employees, owners, or PHAs. This would exclude information in a criminal record like arrests that never amounted to convictions, minor drug offenses, offenses for which the individual was only sentenced to probation, and offenses related to an inability to pay fees or other legal financial obligations.

The bill would require that PHAs and owners provide written notice to applicants of their screening policies, and if an applicant is denied, provide written notice of the reasons for the denial and the options for the tenant to appeal. If a PHA or owner decides to deny admission or voucher assistance based on covered criminal conduct, they must give the applicant the option to remove the culpable member of the household rather than subjecting the family to a blanket denial. The bill would also explicitly prohibit drug and alcohol testing of applicants as a condition of admission.

HUD would be authorized to pay additional administrative fees to PHAs that provide HCVs to people who have exited jail or prison.

## Eliminate “One Strike” Eviction Policies

The Fair Chance at Housing Act would eliminate overly harsh and disfavored “one strike” policies that allow PHAs and owners to evict families any time a household member or guest engages in criminal activity in violation of their lease. Like the screening process, prior to

<sup>1</sup> However, private owners participating in the Housing Choice Voucher (HCV) program would not be required to provide such review but would be required to provide written notice of any screening policy they employ to applicants, when they apply to lease the owner’s apartment. Any public housing units that are managed by a private company would be subject to the same screening policies that the PHA would otherwise be subject to, including units managed by Moving to Work (MTW) PHAs, and units being converted through the Rental Assistance Demonstration (RAD).

<sup>2</sup> Mitigating evidence can include evidence of rehabilitation, the time elapsed since the criminal offense was committed, the severity of the offense, whether the applicant received a reduced sentence, and whether the criminal conduct was related to an individual’s disability or an individual’s status as a victim of domestic violence.

an eviction, PHAs and owners would only be able to consider certain criminal conduct that threatens the health or safety of other tenants, employees, owners, or PHAs.<sup>3</sup> PHAs and owners would be required to conduct an individualized review of the totality of the circumstances before deciding to terminate assistance and must consider any mitigating evidence that is presented by the family.<sup>4</sup>

The bill prohibits PHAs and owners from carrying out a forced entry into federal assisted housing while investigating criminal conduct unless permission is given by the tenant. The bill explicitly prohibits drug and alcohol testing of a tenant or family member as a condition of continued eligibility for federal housing assistance.

If a PHA or owner decides to terminate assistance for a tenant based on criminal conduct after performing an individualized review, the household must be given the option to remove the culpable member rather than subjecting the entire household to termination of assistance.

The bill would also eliminate the current requirement that PHAs and owners include a mandatory lease provision that allows for “no fault” evictions or termination of assistance, where families can be evicted or lose their voucher for the drug-related criminal activity of a guest even without the knowledge of the tenant or voucher holder. The bill would also eliminate a mandatory lease provision that stipulates that a violation of parole is grounds for eviction.

## Allow People with Criminal Records to Visit Families

Under current interpretation of law, a PHA can permanently ban a non-tenant from visiting a public housing development based on criminal conduct without evidence, without notice, and without providing any

<sup>3</sup> The bill explicitly excludes certain conduct from being considered “covered criminal conduct,” including misdemeanors, arrests, juvenile adjudications or convictions, convictions that have been expunged or sealed, offenses related to fees or back payments associated with incarceration, and convictions where the individual was only sentenced to probation.

<sup>4</sup> However, private owners participating in the HCV program would not be required to provide such review. Any public housing units that are managed by a private company would be subject to the same evictions policies that the PHA would otherwise be subject to, including units managed by Moving to Work (MTW) PHAs, and units being converted through the Rental Assistance Demonstration (RAD).

opportunity for appeal. This has had the result of keeping families apart including prohibiting family members from coming home for the holidays.

The Fair Chance at Housing Act would ensure that PHAs can only ban a non-tenant from visiting a public housing development if the person was convicted of a felony that threatens the health or safety of other tenants, employees, owners, or PHAs, and only after a thorough consideration of all mitigating factors, including the familial relationship between the tenant and the non-tenant.

The bill would require PHAs to give adequate notice of the agency’s decision, which includes the basis for the prohibition and the right to present mitigating evidence. In the case of a prohibition, the bill would provide the opportunity for the tenant or non-tenant to request a redetermination once a year, and any prohibition would expire after three years.

## Data Collection

Currently, there is a lack of data on the rates of denials and terminations for assistance based on a person’s criminal records. The Fair Chance at Housing Act would require PHAs and owners to collect and report on an annual basis information related to denials and terminations based on criminal conduct, disaggregated by race, ethnicity, sex, and disability status.

## Rural Housing

Formerly incarcerated individuals residing in rural areas face unique challenges to successful reentry. Stigma can deter private landlords from renting to justice-involved people, and federally-assisted rental housing is sometimes one of the only affordable rental housing options available in rural communities.

The Fair Chance at Housing Act would direct the Secretary of Agriculture to revise the department’s regulations regarding screening and termination of assistance procedures for its rural housing programs to be consistent with HUD’s own policies.

For questions, please contact: Sarah Saadian, NLIHC Vice President of Public Policy at [ssaadian@nlihc.org](mailto:ssaadian@nlihc.org) or Deborah Thrope, NHLP Supervising Attorney [dthrope@nhlp.org](mailto:dthrope@nhlp.org)



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