

Safe, affordable, accessible housing is the foundation upon which we build our lives, but millions of people with a conviction history are routinely denied access to a safe place to call home because of their involvement with the criminal-legal system. Formerly incarcerated people typically return to low-income communities where resources, particularly affordable, accessible housing, are scarce – nationally, there is a shortage of 6.8 million homes affordable and available to the lowest-income renters, and there is not a single state or congressional district in the country with enough affordable homes to meet demand.¹

Across the country, 3,300 public housing authorities (PHAs) provide affordable public housing to approximately 1.2 million low-income households.² This stock of affordable housing is an invaluable asset for combatting housing insecurity and homelessness, but too often PHAs impose barriers to housing access that lock people with a conviction history out of the opportunity to live in federally assisted housing. The systemic bias inherent to the criminal-legal system has led Black, Latino, and Native people, as well as people with disabilities and members of the LGBTQ community, to be disproportionately impacted by these barriers.^{3,4,5} When people with a conviction history are unable to find safe, affordable housing, they are at an increased risk of housing instability, homelessness, and ultimately recidivism.⁶

Much of HUD’s guidance on evaluating current and potential tenants is advisory rather than mandatory, giving PHAs and project owners broad discretion in screening out tenants with a conviction history. HUD’s ongoing update to the Public Housing Occupancy guidebook presents the opportunity for a complete revision to HUD’s admission policies so they align with HUD’s 2015 and 2016 guidance for PHAs and owners of federally assisted housing on the use of criminal and arrest records in tenant screening.

These changes would also bring HUD into compliance with the recommendations established in a 2018 Government Accountability Office report,⁷ and would reign in PHA’s discretion in screening out potential tenants. Moreover, mitigating the collateral consequences of a conviction history would expand housing access to millions and is supported by an overwhelming majority of voters.⁸ In order to ensure compliance with Fair Housing Act (FHA) standards, the Office of Public and Indian Housing should consider reviewing this section of the guidebook with HUD’s Office of Fair Housing and Equal Opportunity. Listed below are recommendations that HUD should consider while making these crucial updates to PIH admissions policies.

¹ Aurand, A., Emmanuel, D., Threet, D., Rafi, I., and Yentel, D. 2021. *The Gap: A Shortage of Affordable Homes*. National Low Income Housing Coalition. Retrieved from: <https://reports.nlihc.org/gap>

² Department of Housing and Urban Development. “Public Housing.” Retrieved from: https://www.hud.gov/program_offices/public_indian_housing/programs/ph

³ The Sentencing Project. 2019. *Report to the United Nations on Racial Disparities in the US Criminal Justice System*. Retrieved from: <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>

⁴ Oberholtzer, E. 2017. “Police, courts, jails, and prisons all fail disabled people.” Prison Policy Initiative. Retrieved from: <https://www.prisonpolicy.org/blog/2017/08/23/disability/>

⁵ Griffith, D. “LGBTQ youth are at greater risk of homelessness and incarceration.” Prison Policy Initiative. Retrieved from: https://www.prisonpolicy.org/blog/2019/01/22/lgbtq_youth/

⁶ Cusack, M. and Montgomery, A.E. 2017. “Examining the bidirectional association between veteran homelessness and incarceration within the context of permanent supportive housing.” *Psychological Services 14*(2). Retrieved from: <https://pubmed.ncbi.nlm.nih.gov/28481612/>

⁷ Government Accountability Office. 2018. “Rental Housing Assistance: Actions Needed to Improve Oversight of Criminal History Policies and Implementation of the Fugitive Felon Initiative.” Retrieved from: <https://www.gao.gov/assets/gao-18-429.pdf>

⁸ University of Maryland School of Public Policy. 2021. “Limiting the Negative Consequences of Criminal Records: A National Survey of Registered Voters.” Voice of the People. Retrieved from: <https://vop.org/criminalrecords/>

Arrests may not be the basis of any adverse action. HUD should explicitly include in its guidebook that PHAs cannot use arrest records alone as the basis of any adverse action against a tenant including denial of admission, as stated in its 2015 Notice.⁹

Blanket bans are not allowed. Per HUD’s 2016 Fair Housing Guidance,¹⁰ blanket admissions bans against people with a conviction history are illegal under the FHA. PHAs may not broadly screen out tenants with a conviction history because of the disproportionate impact of the criminal-legal system on protected classes, including Black, Native, and Latino people, as well as people with disabilities.

Clarify the meaning of criminal activity that “would adversely affect the health, safety, or welfare of other tenants.” The 2003 Public Housing Occupancy Guidebook stated PHAs should screen for criminal activity by an applicant that “would adversely affect the health, safety, or welfare of other tenants or drug related criminal activity,” but also emphasizes “there are a wide variety of other crimes that cannot be claimed to adversely affect the health, safety or welfare of the PHA’s residents.” 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, like shoplifting or civil disobedience.¹¹ HUD should elaborate on what is meant by “adversely affect the health, safety, or welfare of other tenants” or, at minimum, maintain the language emphasizing the wide variety of crimes that cannot be claimed to adversely affect PHA residents.

Limit the use of lookback periods to three years or less. While federal law instructs housing providers to look back in an applicant’s conviction history within a “reasonable time,” neither statute nor HUD guidance explicitly define what constitutes a reasonable time. In the absence of formal guidance, many housing providers establish admissions policies that have no time limit on using a person’s conviction history to evaluate their application or set unreasonable time limits (99 years, for example).¹²

HUD should limit the use of lookback periods to three years or less from the date of release from incarceration or the date of conviction, whichever is more recent,¹³ and encourage shorter look back periods based on the circumstances. Despite HUD’s suggested limit on lookback periods for certain crimes (for example, five years for serious crimes¹⁴), housing providers routinely look further back into a person’s conviction history. Such overly long lookback periods can act as a de facto ban on people with a conviction history from receiving housing assistance and conflict with HUD’s long held assertion that permanent admissions bans contradict federal policy and may violate the FHA.¹⁵ In addition, there is no data suggesting long look-back periods contribute to the health and safety of other residents.

⁹ Department of Housing and Urban Development. 2015. *Notice PIH 2015-19/H 2015-10*. Retrieved from: <https://www.hud.gov/sites/documents/15-10HSGN.PDF>

¹⁰ Department of Housing and Urban Development. 2016. *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*. Retrieved from: https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF

¹¹ Tran-Leung, M. 2015. *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing*. Shriver Center on Poverty Law. Retrieved from: <https://www.povertylaw.org/wp-content/uploads/2019/09/WDMD-final.pdf>

¹² Ibid

¹³ Altamirano Marin, J., Crew, E., and diZerega, M. 2021. *Looking Beyond Criminal History: Recommendations for Public Housing Authority Admissions Policies*. Vera Institute of Justice. Retrieved from: <https://www.vera.org/downloads/publications/looking-beyond-conviction-history.pdf>

¹⁴ Department of Housing and Urban Development. 2001 “Screening and eviction for drug abuse and other criminal activity; final rule.” Retrieved from: <https://www.govinfo.gov/content/pkg/FR-2001-05-24/pdf/01-12840.pdf>

¹⁵ Ibid

Limit the kinds of convictions PHAs and project owners can include in assessments and prohibit screening for misdemeanors. Housing providers utilize overly broad categories of criminal activity, casting a wide net over almost any conviction even if it has little bearing on an applicant's potential success as a tenant.¹⁶ HUD should mandate PHAs limit the types of convictions considered in their screening processes to only felonies more likely to have an impact on an applicant's success as a tenant, and should consider the crime's severity, time passed since the crime was committed, and risk of potential harm to others. PHAs should, in turn, make explicit the types of convictions considered in their screening processes. Limiting tenant screening for conviction history to only felony activities related to tenancy will help ensure PHAs are in compliance with fair housing laws.

Conduct individualized assessments of applicants with conviction histories. PHAs and owners of federally assisted housing should perform an individualized review of each applicant involved in the criminal-legal system that considers the totality of circumstances surrounding a conviction and gives prospective tenants the opportunity to present mitigating evidence. Consistent with due process principles and HUD's 2015 guidance,¹⁷ PHAs should provide written notice to applicants of their screening policies and, in the event an applicant is denied, should provide written notice of the reasons for denial as well as the opportunity for the tenant to appeal. HUD should also prohibit PHAs from using drug and alcohol testing as a condition of admission.

Allow people on probation, parole, or completing a diversion program to live in public housing. Individuals released on parole, probation, or completing a diversion or alternative-to-incarceration program have already met the court's standards for release. PHAs should admit people under court supervision using an individualized review process that takes into consideration the totality of circumstances and provides prospective tenants the opportunity to present mitigating evidence. Explicitly allowing people on probation or parole to live in public housing is also a key factor in family reunification and can help provide the support needed for successful reentry.¹⁸

Limit denials related to illicit drug use. Current HUD guidance allows PHAs to deny a prospective household if a member is "currently engaged in illegal drug use or alcohol abuse," but fails to define "currently engaged." HUD should define "currently engaged" as a period of no more than the previous three months, and only consider drug or alcohol use related to a conviction.¹⁹

Include absence as a result of incarceration as a permitted temporary absence. PHAs typically have policies allowing tenants to be absent from their unit for brief periods if they notify the PHA in advance and provide information requested by the PHA. PHAs should expand these policies to allow people who are in jail pretrial or whose sentences allow them to stay in their community to retain their housing.²⁰

¹⁶ Warren, C. 2019. *Success in Housing: How Much Does Criminal Background Matter?* Wilder Research. Retrieved from:

https://www.wilder.org/sites/default/files/imports/AEON_HousingSuccess_CriminalBackground_Report_1-19.pdf

¹⁷ Department of Housing and Urban Development. 2015. *Notice PIH 2015-19/H 2015-10*. Retrieved from: <https://www.hud.gov/sites/documents/15-10HSGN.PDF>

¹⁸ Bae, J., diZerega, M., Kang-Brown, J., Shanahan, R., & Subramanian, R. 2016. *Coming Home: An Evaluation of the New York City Housing Authority's Family Reentry Pilot Program*. Vera Institute of Justice. Retrieved from: https://www.vera.org/downloads/publications/NYCHA_report-032917.pdf

¹⁹ Altamirano Marin, J., Crew, E., and diZerega, M. 2021. *Looking Beyond Criminal History: Recommendations for Public Housing Authority Admissions Policies*. Vera Institute of Justice. Retrieved from: <https://www.vera.org/downloads/publications/looking-beyond-conviction-history.pdf>

²⁰ Ibid

Ensure people exiting incarceration can be added to a household's lease. People exiting incarceration and attempting to reunite with their families living in subsidized housing are sometimes barred from doing so or 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. HUD should reassert PHAs' and project owners' responsibility to perform an individualized review of prospective tenants with conviction histories and should clarify that PHAs and project owners cannot implement blanket bans on adding a family member with a conviction history to a lease.

We urge you to take these suggestions into consideration and thank you for your time. If you have any questions or would like to discuss this further, please reach out to Kim Johnson, policy analyst at the National Low Income Housing Coalition, at kjohnson@nlihc.org.

Sincerely,

[Signatures]