AN UNWAVERING PATH FORWARD TO HOUSING JUSTICE
NATIONAL LOW INCOME HOUSING COALITION

June 10, 2024

Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 4176
Washington, DC 20410-5000

Via regulations.gov

Re: 89 FR 25332
Reducing Barriers to HUD-Assisted Housing

The National Low Income Housing Coalition (NLIHC) is dedicated solely to achieving racially and socially equitable public policy that ensures people with the lowest incomes have quality homes that are accessible and affordable in communities of their choice. Our members include state and local housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, public housing agencies, private developers and property owners, local and state government agencies, faith-based organizations, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we focus on policy and funding improvement for extremely low-income people who receive and those who need federal housing assistance.

NLIHC also co-convenes the Partnership for Just Housing (PJH), along with our partners at the Shriver Center on Poverty Law, National Housing Law Project (NHLP), VOICE of the Experienced, and the Formerly Incarcerated and Convicted People and Families Movement (FICPFM). PJH and FICPFM submitted a joint comment, which NLIHC also supports.

NLIHC appreciates the opportunity to comment on HUD's Notice of Proposed Rulemaking (NPRM), "Reducing Barriers to HUD-Assisted Housing," which proposes meaningful updates to the Department's guidance to Public Housing Authorities (PHAs) and owners/operators of HUD-assisted housing on screening housing applicants who have been impacted by the criminal-legal system. The NPRM is key to fulfilling former HUD Secretary

Marcia Fudge's directive to review HUD regulations, guidance, and policies, and identify and alleviate unnecessary barriers to housing access for formerly incarcerated and convicted individuals.[1]

This proposal is also a welcome step in addressing the power imbalance between renters and landlords that places renters at greater risk of housing instability, harassment, and homelessness, and that fuels racial and gender inequity. While NLIHC supports the rule and thanks HUD for its work, there remain needed updates and clarifications to ensure any final regulation advances more equitable screening, termination, and eviction practices, and to hold PHAs and assisted owners/operators accountable for following the updated rule.

Unjust Screening Practices Compound the Impact of the Affordable Housing Crisis

Renters across the nation are in crisis: the lack of affordable housing stock and high rents are putting more households at risk of housing instability, as rates of eviction filings surpass pre-pandemic averages [2] and homelessness – particularly among older adults and families with children – increases in many communities.[3] Nationally, there is a shortage of 7.3 million affordable, available rental units for people with the lowest incomes, and only 34 affordable, available rental homes exist for every 100 of the lowest-income households.[4]

For decades, the severe shortage of affordable, available, and accessible housing has been a growing crisis, exacerbated significantly over the last few years by the COVID-19 pandemic, record-breaking inflation, and wages that have not kept pace, particularly for people with the lowest incomes. Nationally, median rents have grown almost every year since 2001, reaching a full 21% increase by 2022.[5] However, in the same period, renters' incomes have only increased by 2%.[6] Between 2019 and 2023, wages for the lowest-paid workers increased by 12.1%, the highest increase for any income group; however, that is only a $1.45 per hour increase – an hourly wage of just $13.52.[7] On average, in 2023 a full-time worker needed to earn an hourly wage of $28.58 per hour for a modest two-bedroom rental home at the average fair market rent of $1,486 per month, or $23.67 per hour for a modest one-bedroom rental home at $1,231 per month.[8]

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[1] Fudge, M. L. (2022). "Eliminating Barriers That May Unnecessarily Prevent Individuals with Criminal Histories from Participating in HUD Programs." US Department of Housing and Urban Development. https://www.hud.gov/sites/dfiles/Main/documents/Memo_on_Criminal_Records.pdf

[2] Hepburn, P., Grubbs-Donovan, D., and Hartley, G. (2024). "Preliminary Analysis: Eviction Filing Patterns in 2023." Eviction Lab, Princeton University. https://evictionlab.org/ets-report-2023/

[3] The 2023 Annual Homelessness Assessment Report (AHAR) to Congress. US Department of Housing and Urban Development. https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf

[4] Aurand, A., et al. (2024). *The Gap: A Shortage of Affordable Homes*. National Low Income Housing Coalition. https://nlihc.org/gap

[5] Joint Center for Housing Studies. (2024). America's Rental Housing 2024. Joint Center for Housing Studies of Harvard University. https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2024.pdf

[6] Ibid

[7] Gould, E., & DeCourcy, K. (2024). Fastest wage growth over the last four years among historically disadvantaged groups: Low-wage workers' wages surged after decades of slow growth. Economic Policy Institute. https://www.epi.org/publication/swa-wages-2023/#epi-toc-1

[8] Aurand, A., et al. (2023). *Out of Reach: The High Cost of Housing.* National Low Income Housing Coalition. https://nlihc.org/oor

High rents take a disproportionate toll on low-income renters. The prevailing federal minimum wage is just $7.25 per hour; even after considering higher state and county minimum wages, the average minimum-wage worker must work 104 hours per week – more than two and a half full-time jobs – to afford a two-bedroom rental home, or 86 hours per week for a one-bedroom.[9] Someone who relies on Supplemental Security Income (SSI) can only reasonably afford to pay $274 per month in rent.[10] Importantly, because of historic and ongoing discrimination in housing and employment, people of color, people with disabilities, and members of the LGBTQ community are disproportionately likely to be renters and to be represented among the lowest-paid workforce.[11]

Issues of affordability are compounded for formerly incarcerated and convicted people, who face rampant discrimination in the job and housing markets. While incarcerated, people are paid between $0.10 per hour and $0.65 per hour, depending on assignment.[12] Incarcerated and convicted people are also charged fees, such as felony surcharges, electronic monitoring, and drug testing,[13] and incarcerated people must spend their limited wages on necessities like basic hygiene supplies and communicating with non-incarcerated loved ones.[14] These expenses and extremely low wages make it impossible for incarcerated people to save for necessary expenses like housing upon release. Even after serving their time, formerly incarcerated people make only 53% of the median worker's income,[15] making it even more difficult to afford housing. For Black and Native people who have been incarcerated, and who must navigate multiple forms of discrimination, the racial disparity in income grows over time.[16]

These affordability challenges are exacerbated by overly restrictive background screening practices; together, they place people impacted by the criminal-legal system at a significant disadvantage to finding quality, affordable housing, increasing the risk of housing instability, homelessness, and reincarceration.[17] As with discrimination in housing and employment, Black, Latino, and Native people, as well as people with disabilities and members of the LGBTQ+ community, are unfairly targeted and disproportionately impacted by the criminal-legal system;[18] accordingly, these groups are also more likely to be impacted by screening criteria and other criteria that unfairly deny people access to housing because of a conviction history.

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[9] Ibid
[10] Ibid
[11] Aurand, A., et al. (2024). *The Gap: A Shortage of Affordable Homes*. National Low Income Housing Coalition. https://nlihc.org/gap
[12] Ball, W. (2023). "Increasing Prison Wages to Dollars Just Makes Sense." Vera Institute for Justice. https://www.vera.org/news/increasing-prison-wages-to-dollars-just-makes-sense#:~:text=The%20current%20wage%20scale%20for,%240.25%20per%20hour%20or%20less
[13] Eisn, L.B. (2015). "Charging Inmates Perpetuates Mass Incarceration." Brennan Center for Justice. https://www.brennancenter.org/our-work/research-reports/charging-inmates-perpetuates-mass-incarceration
[14] Wood, B. (2016). "Behind Bars: Low Wages for Prisoners Makes Inmates Appreciate the Little Things." *Standard-Examiner*. https://www.standard.net/opinion/2016/nov/14/behind-bars-low-wages-for-prisoners-makes-inmates-appreciate-the-little-things/
[15] Wang, L. and Bertram, W. (2022). "New Data on Formerly Incarcerated People's Employment Reveal Labor Market Injustices." Prison Policy Institute. https://www.prisonpolicy.org/blog/2022/02/08/ employment/
[16] Ibid
[17] National Homelessness Law Center. (2024). "Emergent Threats: State Level Homelessness Criminalization." *Housing Not Handcuffs*. https://housingnothandcuffs.org/emergent-threats-homelessness-criminalization/
[18] Ghandnoosh, N. et al. (2023). *One in Five: Racial Disparity in Imprisonment – Causes and Remedies.* The Sentencing Project. https://www.sentencingproject.org/app/uploads/2023/12/One-in-Five-Racial-Disparity-in-Imprisonment-Causes-and-Remedies.pdf

Without a safe, affordable place to return to, people exiting incarceration are at a significantly increased risk of homelessness. People who have been incarcerated once are seven times more likely to experience homelessness than the general population, while those who have been incarcerated more than once are 13 times more likely to experience homelessness.[19] Homelessness, in turn, puts people at increased risk of interacting with the criminal-legal system and subsequent reincarceration, as communities across the country move to arrest or fine people experiencing homelessness for engaging in life-sustaining activities, like sleeping, in public spaces, even when there is no adequate shelter or housing available.[20]

While there is ample evidence of the harm barriers to housing cause, there is no meaningful proof that high barriers to assisted housing for formerly incarcerated and convicted people make our communities safer. Rather, studies show that people with criminal records have similar rates of maintained housing stability as people without criminal records.[21,22,23] Moreover, 22 PHAs have already adjusted their screening policies to limit the scope of records considered, and have not reported any significant changes to public safety outcomes.[24] HUD-assisted housing can – and does – play a pivotal role in ensuring people exiting incarceration and those with conviction histories can find safe, stable housing upon reentry and have an equal opportunity at a second chance.

We appreciate the opportunity to provide feedback on this important proposal. In reviewing feedback on and finalizing the proposed rule, NLIHC urges HUD to center the needs and expertise of formerly incarcerated and convicted people who navigate these systems daily and are best suited to identify needed reforms to fill gaps in service and create a more equitable system.

Responses to HUD's Questions for Comment

Question for comment 1: "Currently engaging in* or *engaged in." The NPRM proposes defining "currently engaging in" criminal activity as criminal activity that has occurred within the last 12 months, stating that "conduct that occurred 12 months or longer before the determination date does not support a determination that an individual is currently engaging" in criminal conduct. Under such a definition, a person looking for housing who used an illegal drug a year ago would still be automatically denied housing, despite abstaining from illegal drug use for an extended period.

[19] Couloute, L. (2018). "Nowhere to Go: Homelessness Among Formerly Incarcerated People." Prison Policy Initiative. https://www.prisonpolicy.org/reports/housing.html#:~:text=The%20revolving%20door%20%26%20homelessness&text=But%20people%20who%20have%20been,from%20their%20first%20prison%20term.
[20] National Homelessness Law Center. (2024). "Emergent Threats: State Level Homelessness Criminalization." *Housing Not Handcuffs*. https://housingnothandcuffs.org/emergent-threats-homelessness-criminalization/
[21] Malone, D. K. (2009). "Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults with Behavioral Health Disorders." *Psychiatric Services* 60(2), 224-230.
[22] Warren, C. (2019). "Success in Housing: How Much Does Criminal Background Matter?" Saint Paul, MN: Wilder Research.
[23] Kurlychek, M. C., Brame, R., & Bushway, S. D. (2007). "Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement." *Crime Delinquency* 53(1), 64-83.
[24] US Department of Housing and Urban Development. (2024). Document 6362-P-01, Reducing Barriers to HUD Assisted Housing. Federal Register. https://www.regulations.gov/document/HUD-2024-0031-0012

In the final rule, we recommend HUD define "currently engaging in" as criminal activity that has occurred within the 3-6 months before the determination. This change provides a more accurate definition of "current" and better aligns HUD's rule with its intention of ensuring long-term housing stability for residents. A 3–6-month definition also follows previous legal decisions, which have found that applicants to assisted housing who had not used drugs in the previous three months did not qualify as "currently engaging in" illicit drug use.[25]

Question for comment 2: Lookback period for criminal activity. The proposed rule would make it "presumptively unreasonable" for PHAs and owners/operators to consider convictions that occurred more than three years ago in making admissions decisions. However, this presumption would be overcome if there is sufficient empirical evidence that a longer lookback period is justified for specific crimes.

NLIHC supports HUD adopting the position that a lookback period of more than three years is "presumptively unreasonable," and allowing housing providers to use lookback periods shorter than three years. Under current guidance, it is routine practice for PHAs and owners/operators to use overly-long lookback periods – sometimes spanning decades– when screening potential tenants. Establishing a uniform lookback period will help provide needed clarity and consistency in screening practices, and it will provide more people an opportunity to live in assisted housing. HUD should also allow and encourage PHAs and owners/operators to adopt lookback periods shorter than three years, as numerous PHAs and states have already done.

We also support HUD beginning the lookback period at the date of criminal activity, rather than the date of release or the end of probation or parole. Under current guidance, when a lookback period begins is up to the discretion of individual PHAs and owners/operators, leading to inconsistent screening practices across jurisdictions. This change would create consistency for PHAs, owners/operators, and prospective tenants, and it would alleviate some of the collateral consequences formerly incarcerated and convicted people face after serving their sentence. Moreover, beginning a lookback period at the date of release or end of probation/parole rather than the date of conviction would render HUD's updated rule practically ineffective; people exiting incarceration are most at risk for homelessness in the period shortly after their release,[26] making this brief window a crucial time to connect someone to stable housing and prevent homelessness.

We are concerned, however, that PHAs and owners/operators may still have significant discretion in using longer lookback periods than the "presumptively unreasonable" three-years, and that the presence of older records may bias leasing decisions. There is no substantial, reliable evidence supporting the idea that lookback periods longer than three years are warranted for certain criminal offenses. Moreover, allowing individual PHAs and owners/operators to justify longer lookback periods for certain crimes threatens to reproduce the confusing, seemingly arbitrary differences in screening standards that currently pose a barrier for formerly incarcerated and convicted people. This would also add unnecessary complexity to effectively administering the rule and increase the administrative burden on PHA staff. Additionally, HUD

[25] *Lott v. Thomas Jefferson Univ.*, No. CV 18-4000, 2020 WL 6131165 (E.D. Pa. Oct. 19, 2020)
[26] Remster, B. (2017). A Life Course Analysis of Homeless Shelter Use among the Formerly Incarcerated. Justice Quarterly, 36(3), 437–465. https://doi.org/10.1080/07418825.2017.1401653

should consider ways in which it can limit access to records older than three years, including restricting screening companies' ability to provide these records. While these records may not be the sole basis for a housing denial, they nevertheless may influence providers' perception of a potential tenant.

Question for comment 3: Opportunity to dispute criminal records relied upon by PHA or owner. The proposed rule would mandate PHAs and owners provide applicants with relevant criminal records at least 15 days-notice before issuing a denial of admission, and notice of an opportunity to dispute the accuracy and relevancy of records.

NLIHC strongly supports HUD requiring housing providers to give applicants an opportunity to dispute potential denials, and we recommend providing applicants with at least 30 days to submit materials to dispute the accuracy and relevancy of records. Tenants will need time to gather the materials required to adequately dispute records or potential denials of admission. The process for gathering needed materials may include locating and contacting former housing providers, program sponsors, former or current employers, or legal assistance, and giving these parties time to respond with the requested information. PHAs and owners should be given guidance on when it is appropriate to provide applicants with an extension, and HUD should encourage them to grant extensions when requested.

To increase housing access, HUD should also clarify that available units should be held open while a potential denial of admission is being disputed. During the individualized assessment, HUD should instruct PHAs and owners to hold the available unit open until the review is concluded and a final tenancy decision is made. HUD may waive this requirement for PHAs and owners in cases where a comparable unit will be available when the review is completed.

Question for comment 4: Mitigating factors. HUD proposes that PHAs and owners consider a set of mitigating factors before denying admission, terminating assistance, or evicting a current tenant. These factors include the circumstances surrounding the conviction, the age of the individual at the time of the conduct, evidence of good tenant history before and/or after the conduct, and rehabilitation efforts.

We strongly support HUD's proposed individualized assessment, which mandates PHAs and owners/operators consider mitigating factors that may have led to a conviction, and an individual's conduct since the conviction. This proposal echoes many of the recommendations advocates – including those with lived experience navigating the criminal-legal system – have been pushing for years: providing people the opportunity to be considered as a whole person and not just a criminal record. We also applaud HUD for instructing housing providers to consider the impact of a termination or eviction on community safety, as neighborhoods are not made safer when people are evicted and pushed into homelessness.

NLIHC appreciates and supports HUD providing an updated list of mitigating factors that should be considered, and removing outdated, problematic language from previous regulations that reinforce negative attitudes about formerly incarcerated and convicted people and their families. In addition to the factors listed in the NPRM, HUD should consider adding factors like child support requirements, and whether a person's criminal activity is related to their status as a

survivor of gender-based violence, including sexual assault, domestic or intimate partner violence, human trafficking, or stalking.

Question for comment 5: Justifying denial of admissions. The proposed rule would limit the kinds of criminal activity that can be used to justify denying a prospective tenant to three broad categories: drug-related offenses, violent offenses, and offenses that pose a "threat to the health, safety, or peaceful enjoyment" of the premises.

NLIHC supports restricting the types of criminal activity housing providers can use to deny admission to a prospective tenant. Under current regulations, PHAs and owners/operators have broad discretion in screening out potential tenants with conviction histories, even if those convictions have nothing to do with tenancy, like shoplifting or civil disobedience charges.

However, it will be critical for HUD to define criminal activity that "threatens the health, safety, and right to peaceful enjoyment of the premises" to ensure the intention of the rule is not undermined. This broad category preserves much of the discretion allotted to housing providers when performing background screenings, making it easier for providers to circumvent the rule. Too often, language like "health, safety, and right to peaceful enjoyment" is used as a catch-all for criminal offenses, even those without bearing on an individual's success as a tenant. Instead, HUD should establish a definition that requires the threat be actual, substantial, and imminent, which would also align the rule with existing definitions in the Violence Against Women Act (VAWA) and Fair Housing Act (FHA). HUD should provide guidance for implementation of this provision in subsequent regulatory materials.

Relatedly, HUD should make clear in the final rule and subsequent guidance that Crime-Free Nuisance Ordinances (CFNOs) and other "crime-free" programs and policies are inherently contrary to the intention of the rule; as such, violations of CFNOs do not constitute a "threat to health, safety, and right to peaceful enjoyment." CFNOs are local polices that target residents responsible for alleged "nuisance" activity –including calls to emergency services or noise disturbances related to domestic violence – with fines, evictions, or other penalties.[27] These policies force survivors to make impossible decisions between calling for needed help and facing potential eviction from their homes. HUD should make clear that CFNO violations – particularly for applicants who are also survivors of violence – do not adequately constitute crimes that threaten the "health, safety, or right to peaceful enjoyment" of the premises by others.

Question for comment 6: Ensuring consistency of tenant selection plan. The proposed rule would require PHAs and owners/operators – except owners receiving federal subsidy through Tenant-Basted Rental Assistance (TBRA) or Project-Based Vouchers (PBVs) – to amend their tenant selection plans within six months after the final rule is effective.

NLIHC supports HUD's proposed requirement to update tenant selection plans, and the process for allowing tenants to respond to proposed changes to admissions plans. Similarly, tenants should be notified promptly once changes to the tenant selection plan are finalized. In addition to changes to the tenant selection processes, PHAs and owners should also be required to provide a

[27] National Housing Law Project (2023). "Nuisance and Crime Free Ordinances Initiative." NHLP. https://www.nhlp.org/initiatives/nuisance/

detailed description of how individualized assessments of applicants with conviction histories will be conducted. Reporting requirements for PHAs and assisted owners/operators, detailing housing decisions after an individualized assessment is conducted, and including aggregated demographic information on tenants denied and accepted, would help gather crucial information that can be used to identify potential changes to assessment processes. This information could also be used to identify patterns of housing denials in which conviction status is being used to mask discrimination against groups protected by the FHA.

Question for comment 7: Evidence relating to exclusions. The proposed rule clarifies that housing providers looking to exclude a household member for participating in (or failing to act to prevent) an action that warrants denial or termination of assistance must use a "preponderance of the evidence standard."

We support HUD's clarification that housing providers should use a "preponderance of the evidence" standard when determining whether an action occurred that may disqualify someone from continued housing assistance. While such a standard, in theory, sets a higher evidentiary standard, HUD should develop a working definition and promulgate best practices for determining whether an alleged action meets the "preponderance of the evidence" standard. These resources will provide needed clarity to housing providers and help ensure the new rule is being implemented adequately and consistently across jurisdictions.

Additionally, NLIHC supports the proposed rule's prohibition on the use of arrest records as the sole basis to deny an applicant access to HUD-assisted housing. Given the bias inherent to the criminal-legal system, Black, Latino, and Native people, people with disabilities, and members of the LGBTQ community are disproportionately likely to be targeted for arrest, even if they are not ultimately convicted. Accordingly, the use of arrest records as the sole basis for tenancy decisions likely has a disparate impact on these groups and should be prohibited. However, there remain critical areas for improving this provision.

Arrest records should not be used as the basis for further investigation. While arrest records cannot be used as the sole basis for denial, the rule allows housing providers to use arrest records as the basis for further investigation into an applicant's potential criminal history. This loophole is problematic for a number of reasons, undermining the intent of the prohibition on the use of arrest records and creating a loophole for housing providers to utilize background screening practices that unjustly exclude people from housing.

As HUD notes in its 2016 guidance, "an arrest shows nothing more than that someone probably suspected the person apprehended of an offense."[28] Arrests that do not result in a conviction typically indicate that the matter has been investigated and adjudicated by appropriate agencies, who concluded a conviction is not warranted. Moreover, as HUD has previously recognized, arrest and other criminal-legal records are too often inaccurate or incomplete,[29] leaving housing

[28] US Department of Housing and Urban Development. (2016). Criminal Records Guidance. https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF

[29] Nelson, A. (2019). "Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing." National Consumer Law Center. https://www. nclc.org/resources/report-broken-records-redux/

providers with inaccurate information on prospective tenants and broad discretion in determining which records to consider.

HUD should limit the use of other pre-conviction records and clarify what, if any, evidence outside of conviction histories may be used in admission, termination, and eviction decisions. Like arrest records, other pre-conviction records do not prove past unlawful conduct, and are often incomplete or inaccurate. Records that have been sealed, expunged, or otherwise made publicly unavailable have been through a lengthy legal process to be removed from the public record, and should never be considered in admission, termination, or eviction decisions. Juvenile records should also not be considered in these decisions, nor should an individuals' inclusion in a "gang database" be used as evidence that they have engaged in criminal activity. Additionally, HUD will need to release subsequent guidance for PHAs and owners/operators in states like Wisconsin, where programs like Wisconsin Circuit Court Access (formerly Consolidated Court Automation Programs, CCAP) provide the public with unfettered access to court records that could be used to unjustly deny someone access to housing.

Alleged or actual violations of probation or parole should not be grounds to deny admission, terminate assistance, or evict a current tenant. PHAs are and owners/operators are not responsible for knowing the details of residents' parole or probation conditions, nor are they responsible for enforcing those conditions. People who are on probation or parole have been evaluated by a legal body and deemed safe to live in their communities, and are already reporting to supervision officers and other entities to ensure they are complying with required conditions. Moreover, parole violations can include non-criminal infractions like not working regularly, missing an appointment with a supervision officer, or being unable to pay fees that are a condition of release,[30] none of which have bearing on an individual's success as a tenant.

HUD must also consider how an individual's status as a survivor of gender-based violence impacts their criminal-legal record. There is a well-established connection between victimization, trauma, criminalization, and homelessness.[31] Survivors of gender-based violence – including sexual assault, intimate partner violence, stalking, and human trafficking – are too often criminalized for the crimes committed against them, and for doing what is necessary to survive in dangerous situations. As with all aspects of the criminal-legal system, people of color, members of the LGBTQ community, and/or people with disabilities are disproportionately represented among formerly incarcerated and convicted survivors.[32] Housing providers should be required to consider how a prospective tenants' status as a survivor of violence impacts their criminal history. The National Safe Housing Task Force submitted a comment, which NLIHC supports, providing detailed analysis and recommendations to ensure any final rule reflects the experiences and needs of survivors.

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[30] Fenster, A. (2020). "Technical Difficulties: DC Data Shows How Minor Supervision Violations Contribute to Excessive Jailing." Prison Policy Initiative. https://www.prisonpolicy.org/blog/2020/10/28/dc_technical_violations/

[31] Menon, S. E., and Barthelemy, J. J. (2023). "Disrupting the Trauma-to-Prison Pipeline for Justice-Involved Young Women Victimized by Violence." *Journal of Adolescent Trauma.* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10205930/#:~:text=The%20pathways%20to%20justice%20involvement,et%20al.%2C%202015).

[32] Gilfus, M. (2002). "Women's Experiences of Abuse as a Risk Factor for Incarceration." VAWAnet: The National Online Resource Center for Violence Against Women. https://vawnet.org/material/womens-experiences-abuse-risk-factor-incarceration

Question for comment 8: Resecreening of tenants for criminal activity. In instances where a household receiving HCV assistance moves from the jurisdiction of one PHA to another, HUD's proposal would prohibit the receiving PHA from rescreening the household.

NLIHC supports HUD's proposed prohibition on rescreening households. Under current regulations screening procedures vary by PHA, so a household that qualifies for housing assistance under one PHA and is looking to move may not qualify for assistance under another PHA. As a result, rescreening can styme HCV recipients' ability to utilize their vouchers in communities of their choice, including neighborhoods with access to resources like good schools, grocery stores, and reliable public transportation.

Question for comment 10: Screening requirements for HCV and PBV owners. Many of the tenant screening requirements proposed in HUD's notice would not apply to owners receiving HCVs, and some exclusions would apply to PBV owners.

NLIHC urges HUD to extend the rule to landlords with HCV tenants. We were disappointed by the exclusion of the HCV program participants from the proposed rule. Consistent rules across programs will help provide needed clarity to PHAs and owners/operators of assisted housing, and they will support the effective implementation of the new rule. While we understand HUD's need to balance increased access with incentives for landlord participation, the HCV program is the nation's largest rental assistance program, assisting over five million people in 2.3 million families;[33] by excluding HCV owners from the proposed rule, HUD is missing a huge portion of assisted households that could be helped by decreased barriers to housing access. Moreover, around 75% of people assisted by HCVs are people of color, and around 24% have a disability;[34] excluding the HCV program from following HUD's updated policies would fail to curb potentially discriminatory screening practices against HCV recipients, and undermine the impact of the updated rule.

We also support HUD including recipients of PBV funding in the updated screening requirements. Property owners who receive PBV funding should similarly be obligated to abide by HUD's updated rules related to criminal record screenings. Recipients of PBVs rely on the funding the vouchers provide to afford the development and operation of affordable housing, providing ample incentive for PBV participants to remain in the program even with increased standards of criminal background screening.

Question for comment 11: Continued use of the term "alcohol abuse." In addition to consideration of the term "alcohol abuse," HUD's NPRM seeks to remove other outdated, problematic language from existing regulations.

NLIHC supports and appreciates HUD's attention to removing problematic language that reinforces negative stereotypes and outdated attitudes towards formerly incarcerated and convicted people, and toward people with alcohol dependency. These edits include deleting language around "personal responsibility and "program integrity," which implied formerly

[33] Center on Budget and Policy Priorities. (2021). "Policy Basics: The Housing Choice Voucher Program." CBPP. https://www.cbpp.org/research/policy-basics-the-housing-choice-voucher-program
[34] Ibid

incarcerated and convicted people lack personal responsibility and compromise the integrity of housing programs. While seemingly small, this shift in language is a welcome step in utilizing person-centered language. HUD should continue to gather feedback from stakeholders – especially formerly incarcerated and convicted people – about how the department can ensure its programs utilize trauma- and recovery-informed, person-centered language in its guidance and materials moving forward.

Other Comments and Recommendations

NLIHC urges HUD to provide comprehensive training and Technical Assistance (TA) to PHAs and owners/operators on successful implementation of this new guidance. Successful implementation of any final rule will be necessary to ensure formerly incarcerated and convicted people face fewer barriers to HUD-assisted housing.

HUD should also create and distribute resources to current and prospective tenants to ensure they know their rights. Much like TA and training for PHAs and owners/operators, ensuring prospective and current tenants are aware of their rights – and how to report violations of those rights – will be critical for successful implementation. HUD should create and distribute to current and prospective tenants resources on:

- Opportunities to dispute: While prospective HUD tenants have the right to appeal a housing denial under current guidance, most are not aware of this right. As a result, denials go unchallenged and prospective tenants miss the opportunity to obtain housing. Tenants should be made aware of their opportunity to dispute a potential denial and provided with information on how to dispute a denial, including materials that would be needed for an individualized assessment. Additionally, in the event a denial is sustained, the PHA or owner should provide the applicant with a written decision, detailing the evidence they relied on and what was found credible versus not credible.

- Interaction with VAWA rights and protections: Prospective and current tenants should be made aware of how the updated guidance impacts the rights and protections guaranteed to them under VAWA.

NLIHC supports HUD's proposed limitation on when PHAs and owners can deny admission based on an applicant's failure to disclose a previous criminal record, and we encourage HUD to close loopholes in the proposal that undermine this important provision. Under its proposed rule, HUD would limit PHAs and owners' ability to deny admission based on the applicant's failure to disclose a criminal record. PHAs and owners would still be able to deny a tenant admission if they rely solely on self-disclosure in conducting background screenings, or if the conviction would have been "material to the decision" of whether to lease to the tenant. HUD should eliminate these exceptions, which fail to take into consideration inaccurate, incomplete, or easily misinterpreted information too often included in criminal records. For example, in Louisiana, the process of expunging a criminal record is not automatic but people are not necessarily aware of the administrative steps they must go through to have the record officially expunged. As a result, someone looking for housing in Louisiana may mark they have no

criminal record on their application, but the expunged record will still show up on a background check. If HUD maintains this provision, it should make clear that failure to disclose a criminal record cannot be the basis of an automatic denial; rather, it should trigger the individualized assessment process.

HUD should work closely with federal, state, local, and advocacy agencies involved in incarceration and reentry services to coordinate efforts and ensure people are connected to housing before they leave incarceration. This NPRM represents an important opportunity for HUD to fundamentally change the process of reentry housing for the better. Currently, people exiting incarceration and those with conviction histories are largely left to their own devices when it comes to finding housing. For people who have been incarcerated for years – and for many, decades – finding safe, affordable, accessible housing is a daunting task that requires support. Working in partnership with criminal-legal system and law enforcement agencies will help dissolve the informational silos that create another barrier to equitable housing access for formerly incarcerated and convicted people, and help ensure people exit incarceration into safe, supportive homes.

Conclusion

We thank HUD for its work, and for the opportunity to comment on this proposal. The proposed updates are a vital first step to ensuring more equitable housing access for formerly incarcerated and convicted people, which makes our communities safer and gives people the opportunity to thrive after incarceration. We look forward to continuing to work with HUD on implementation of the final rule and any subsequent sub-regulatory guidance. Any questions about this response can be directed to Kim Johnson, policy manager, at kjohnson@nlihc.org.