

Statement for the Record
House Financial Services Committee
Subcommittee on Diversity and Inclusion
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On behalf of the National Low Income Housing Coalition, I would like to thank you for the opportunity to submit a statement for the record for the September 28 congressional hearing, “Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals.”

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

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 almost 7 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 the needs of the lowest-income people.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 homes 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

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

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

The Department of Housing and Urban Development (HUD) issued guidance in 2015 and 2016 for PHAs and owners of federally assisted housing on the use of criminal and arrest records in tenant screening. However, the 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 and leading to overly restrictive policies that unjustly screen out tenants and neighbors. Moreover, because Black, Latino, and Native people, along with people with disabilities and members of the LGBTQ community, are disproportionately represented in the criminal-legal system, overly harsh tenant screening policies may violate fair housing standards.

Congress and the Biden-Harris administration should work together to reduce the barriers tenants with a conviction history face to obtaining safe, stable housing by providing additional guidance to PHAs and housing resources to those involved with the criminal-legal system. This committee can play a key role in mitigating the collateral consequences of a conviction history and ensuring justice-impacted individuals have a real opportunity for a second chance. To this end, we urge Congress and the Biden-Harris administration to:

1. **Enact the *Fair Chance at Housing Act*.** The *Fair Chance at Housing Act*, introduced in the 116th Congress by Representative Alexandria Ocasio-Cortez and then-Senator Kamala Harris, would require PHAs and owners of HUD-assisted housing to preform an individualized review of each applicant when considering criminal history during the tenant-screening process. Housing providers would be required to consider mitigating evidence of past convictions and the totality of circumstances when presented by the applicant. PHAs, but not owners, would also be required to establish a review panel that includes at least one resident representative to conduct the individualized review.

Housing providers would also be limited to considering only convictions that may be more likely to impact 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. PHAs and owners would be required to provide written notice to applicants of their screening policies and, in the event an application is denied, to provide written notice of the reasons for the denial and options for the tenant to appeal. The bill would also prohibit drug

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/>

and alcohol testing of applicants as a condition of admission and 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.

2. **Align HUD’s Public Housing Occupancy guidebook with HUD’s 2015⁷ and 2016⁸ guidance for PHAs and owners of federally assisted housing on the use of criminal and arrest records in tenant screening.** HUD should update its Public Housing Occupancy guidebook to align policies on the use of criminal and arrest records in tenant screening with the department’s 2015 and 2016 guidance, including:
 - Explicitly barring PHAs from using arrest records alone as the basis of any adverse action against a tenant, including denial of admission.
 - Prohibiting the use of blanket admissions bans against people with a conviction history, which, per HUD’s 2016 Fair Housing Guidance, likely violate the *Fair Housing Act of 1968*.
 - Requiring PHAs to provide written notice to applicants of their tenant screening policies and, in the event an applicant is denied, requiring PHAs to provide written notice of the reasons for denial as well as the opportunity for a tenant to appeal, as established in HUD’s 2015 guidance.

3. **Update admissions policies for HUD’s Office of Public and Indian Housing (PIH) to Limit the Collateral Consequences of a Conviction History.** Mitigating the collateral consequences of a conviction history would expand housing access to millions, help break the cycle of incarceration, homelessness, and recidivism, and is supported by an overwhelming majority of voters.⁹ Congress and the Biden-Harris administration should work together to:
 - Mandate that PHAs limit and make explicit 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. When evaluating an applicant with a conviction history, PHAs should also consider the crime’s severity, time passed since the crime was committed, and risk of potential harm to others.
 - Limit the use of lookback periods to three years or less. Federal law instructs housing providers to look back in an applicant’s conviction history within a “reasonable time,” but 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).¹⁰

⁷ 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>

⁸ 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

⁹ 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/>

¹⁰ Ibid

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.¹¹ 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,¹² and encourage shorter look back periods based on the circumstances.

- Allow people on probation, parole, or completing a diversion program to live in public housing. PHAs should admit people under court supervision – who have already met the court's standards for release – 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.¹³
- 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. HUD and Congress 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.

Thank you again for the opportunity to submit a statement for the record for the September 28 congressional hearing, "Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals." NLIHC looks forward to working with members of the Committee to ensure people with a conviction history have equitable access to safe, stable housing.

¹¹ Ibid

¹² 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>

¹³ 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