

May 13, 2021

The Honorable Joseph Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

The Honorable Kamala D. Harris
Vice President of the United States
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Re: Access to Stable Housing for Justice-Involved Individuals

Dear President Biden and Vice President Harris,

In her groundbreaking work *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Michelle Alexander observes as follows:

[I]t is no longer socially permissible to use race, explicitly, as a justification for discrimination, exclusion, and social contempt. So we don't. Rather than rely on race, we use our criminal justice system to label people of color "criminals" and then engage in all the practices we supposedly left behind.

Addressing and dismantling systemic racism are at the core of your agenda. As acknowledged by your platform, systemic racism cannot be dismantled without significant criminal justice reform. Criminal justice reform, however, must address matters beyond the prison walls and behavior of police officers. The efforts to change these institutions must be coupled with reforms ensuring that justice-involved individuals receive a second chance and are able to fully re-integrate into society. No person can thrive without safe, secure, and affordable housing. Yet those with criminal records often face insurmountable hurdles to meet this basic need.

During its tenure, the Obama-Biden administration enacted essential policy acknowledging this reality. Critically, President Obama convened a cabinet-level Federal Interagency Council on Reentry that led to the coordination of numerous important reentry-related policies, including game-changing Fair Housing guidance from the U.S. Department of Housing and Urban Development. Indeed, HUD has encouraged public housing

authorities (PHAs) and project owners to use their discretion to give “second chances” to justice-involved individuals and to help them “gain access to one of the most fundamental building blocks of a stable life – a place to live.”¹ The Trump Administration, however, went to great lengths to roll back these efforts. We urge your Administration, not only to reinstitute, but to push beyond the essential work of the Obama-Biden administration to ensure that barriers to safe and affordable housing are removed for justice-involved individuals.

We thus write to you as a broad coalition of housing and criminal justice advocates, including not-for-profit organizations, attorneys, policy analysts, social workers, and, perhaps most importantly, justice-involved individuals. Over the last decade, centralizing the experience and expertise of those who have had contact with the justice system has proven essential to related reform efforts. For racial justice, criminal justice reform, and the fight against poverty and crime to be priorities of this Administration, those with criminal records must have the chance to find safe, stable, and affordable housing and we must continue prioritizing the voices of justice-involved individuals in arriving at meaningful solutions.

Indeed, as a result of policies restricting justice-involved individuals’ access to adequate housing, those who come into contact with the criminal justice system experience [homelessness at high rates](#).² Many must sleep in shelters or double-up with family, both of which are especially [dangerous during the pandemic](#).³ The difficulties faced by justice-involved individuals have been compounded by the dawn of the digital age and the near-ubiquity of the tenant screening industry in rental transactions. The Shriver Center on Poverty Law recently published [a report](#) focusing on how tenant screening practices may result in tenants being unfairly excluded from housing and permanently blacklisted.⁴

As such, additional legislation, regulation, and guidance are urgently needed to ensure that those with criminal records are not effectively blacklisted from finding suitable housing. Of course, many reforms must be enacted to achieve these goals. While this letter includes some legislative suggestions, it focuses primarily on regulatory measures the Administration can take near the outset of its term, namely: (1) strengthening the policies instituted by the Obama-Biden Administration and reversing Trump-era policies weakening Fair Housing Act enforcement; (2) limiting the discretion of public housing authorities’ (PHAs) and participating property owners’ to deny access to public and subsidized housing to those with criminal records; and (3) enhancing agency regulation of tenant-screening companies.

¹ Letter from Shaun Donovan, HUD, to Public Housing Authority Executive Directors (June 17, 2011).

² Matthew Doherty, *Incarceration and Homelessness: Breaking the Cycle*, COPS OFF. NEWSLETTER (Dept. of Justice/U.S. Interagency Council on Homelessness, Wash., D.C.), Dec. 2015, www.cops.usdoj.gov/html/dispatch/12-2015/incarceration_and_homelessness.asp.

³ Daniela Silva, *With winter approaching, homeless shelters face big challenges against coronavirus*, NBC NEWS (Dec. 5, 2020), www.nbcnews.com/news/us-news/winter-approaching-homeless-shelters-face-big-challenges-against-coronavirus-n1249906.

⁴ Tex Pasley et al., *Screened Out*, SHRIVER CNTR. ON POVERTY LAW (Jan. 2021), www.povertylaw.org/report/tenant-screening-report/.

HUD Should Reinstitute and Bolster Obama-Biden Fair Housing Act Regulations and Guidance to Ensure Greater Housing Access to People with Criminal Records

Problem to be Addressed: Effective October 26, 2020, the Trump Administration implemented a [final rule](#)⁵ greatly limiting disparate impact liability⁶ under the Fair Housing Act. The Trump rule rolled back [Obama-Biden regulations](#)⁷, thus also undermining Obama-Biden guidance relying on these regulations, such as that limiting the discriminatory use of [criminal background checks](#)⁸ and [crime free/nuisance ordinances](#)⁹ (CFNO)¹⁰. However, even with the Obama-Biden disparate impact regulation in place, the corresponding guidance on criminal background checks and CFNOs are not binding and are vulnerable to rescission, being afforded low levels of deference,¹¹ or even [legal challenges](#).¹²

Further, before the end of its term, the Trump administration began the process of publishing additional rules weakening FHA protections for those with criminal records. The Trump administration, for example, [proposed the rescission](#)¹³ of the rules implementing the FHA's mandate to affirmatively further fair housing, a mandate which, in turn, undergirds the Obama-Biden guidance discussed above regarding criminal background checks and CFNOs.

⁵ HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, RIN 2529-AA98, <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-19887.pdf>

⁶ Nick Adjami, *Disparate Impact: A Crucial Fair Housing Protection Under Attack*, EQUAL RIGHTS CTR. (Oct. 14, 2019), www.equalrightscenter.org/disparate-impact-under-attack/. Per the Equal Rights Center, “[u]nder the Fair Housing Act, ‘disparate impact’ refers to a policy or practice that seems neutral on its face, but has the effect of disproportionately harming people of a certain protected class.” *Id.* For example, HUD has noted in its criminal records guidance that, while excluding all housing applicants with arrest records may be a race-neutral policy, such a policy likely has a ‘disparate impact’ on racial demographics whose members are more likely to have arrest records.

⁷ Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11,460 (Feb. 15, 2013), www.hud.gov/sites/documents/DISCRIMINATORYEFFECTRULE.PDF.

⁸ 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, U.S. DEPT. OF HOUSING AND URBAN DEV. (April 4, 2016), www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.

⁹ Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services, U.S. DEPT. OF HOUSING AND URBAN DEV. (Sept. 13, 2016), www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF.

¹⁰ Crime Free Nuisance Ordinances, or CFNOs, generally refer to municipal laws that “punish landlords and tenants based on the need for police or other emergency services at a property.” *Local Laws That Punish Tenants and Landlords for Calls to Police*, ACLU (last accessed Mar. 19, 2021), www.aclu-il.org/en/campaigns/crime-free-housing-nuisance-ordinances. For example, some municipalities may obligate a landlord to evict tenants if there have been too many calls to the police from or regarding the property where the tenants reside. *Id.*

¹¹ Per *United States v. Mead Corp.*, 533 U.S. 218 (2001), while agency regulations are entitled to the force of law, subregulatory guidance, such as the Obama-Biden criminal records and CFNO guidance, are only entitled to deference insofar as they have the “power to persuade.” *Id.*, at 235.

¹² See *Texas v. EEOC*, 933 F.3d 433 (5th Cir. 2019), www.law.justia.com/cases/federal/appellate-courts/ca5/18-10638/18-10638-2019-08-06.html.

¹³ Preserving Community and Neighborhood Choice, 24 C.F.R. pt. 5, 91, 92, 570, 574, 576, 903 (July 23, 2020), www.hud.gov/sites/dfiles/ENF/documents/6228-F-01%20Preserving%20Housing%20and%20Neighborhood%20Choice.pdf.

Recommended Action:

- HUD should prioritize taking action to repeal the [Trump 2020 disparate impact rule](#)¹⁴ through the procedures established by the [January 20th White House Memorandum](#)¹⁵ or, if necessary, Congressional Review Act and reinstate the 2013 disparate impact rule. Fortunately, the Massachusetts District Court has [stayed implementation](#)¹⁶ of the Trump disparate impact regulation for the pendency of the litigation. The Biden Administration has taken the essential steps of withdrawing the Trump Administration’s appeal of that stay and issuing an [executive order](#)¹⁷ to review the Trump rule. To continue along this course:
 - The Administration should thus immediately withdraw any defense of the Trump rule in litigation while also taking the necessary steps to rescind the rule and reinstitute a bolstered version of the Obama-Biden Era protections.
 - This bolstered rule should serve not only to reestablish disparate impact as a meaningful basis for Fair Housing Act liability, but to also maintain “perpetuation of segregation”¹⁸ as a basis for liability under the CHA
- HUD should strengthen its Fair Housing guidance on the use of criminal background checks by codifying this subregulatory guidance into regulation. The Obama-Biden guidance on criminal background checks and CFNOs should be reviewed, updated, clarified, and bolstered to enhance their efficacy and [persuasive value](#)¹⁹ to courts. The guidance should then be codified into regulation through the necessary processes to make the guidance binding and to avoid [challenges to its legality](#)²⁰ under the Administrative Procedure Act.
 - Suggested improvements to guidance regarding use of criminal records:
 - The guidance should be clarified to ensure plaintiffs are able to meet their initial burden through the use of readily available data without undue burden or expense.

¹⁴ HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard, 24 C.F.R. pt. 100 (Sept. 24, 2020), www.s3.amazonaws.com/public-inspection.federalregister.gov/2020-19887.pdf.

¹⁵ Ronald Klain, *Regulatory Freeze Pending Review*, WHITE HOUSE (Jan. 20, 2021), www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/.

¹⁶ *Mass. Fair Housing Cntr. v. U.S. HUD*, 2020 U.S. Dist. LEXIS 205633 (D. Mass. Oct. 25, 2020), <http://lawyersforcivilrights.org/wp-content/uploads/2020/10/Nationwide-PI-Against-HUD.pdf>.

¹⁷ President Joseph R. Biden, *Memorandum on Redressing Our Nation’s and the Federal Government’s History of Discriminatory Housing Practices and Policies*, WHITE HOUSE (Jan. 26, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/>.

¹⁸ A policy may violate the Fair Housing Act by perpetuating segregation and impeding the development of integrated neighborhoods. For example, if a town’s zoning rules prevent multifamily housing, instead forcing such housing to be concentrated within other areas, such a policy may violate the Fair Housing Act by perpetuating the segregation of families of color likely to reside in such multifamily housing from the rest of the population.

¹⁹ *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), <https://supreme.justia.com/cases/federal/us/323/134/>.

²⁰ *Texas v. EEOC*, 933 F.3d 433 (5th Cir. 2019), <https://law.justia.com/cases/federal/appellate-courts/ca5/18-10638/18-10638-2019-08-06.html>.

Courts have rejected disparate impact claims, at the outset of the case, because the plaintiff failed to bring forth data about the specific applicant pool,²¹ though such data is seldom readily available to plaintiffs.

- Further, this guidance should be expanded to analyze use of criminal records, not only under a disparate impact theory, but also under a ‘perpetuation of segregation’ theory and, where applicable, under municipalities’ duty to affirmatively further fair housing.

- The guidance should also analyze the Fair Housing implications of the use of criminal background checks on persons with disabilities. This guidance should also be codified into formal regulation.

- HUD should strengthen its Fair Housing guidance on CFNOs and codify it into regulation.

- Suggested improvements to guidance regarding CFNOs:

- The current guidance focuses on how CFNOs result in sex discrimination, in intent and/or effect, by harming victims of domestic violence and others who may need police or emergency services. Such application is laudable and necessary.

- HUD should also update this guidance to discuss the other forms of discrimination resulting from the enactment and enforcement of CFNOs, including the targeting of Black and Latinx renter households with these laws in order to maintain racial boundaries and perpetuate residential segregation²².

- As the police are key enforcers of these laws locally, HUD must draw the connection between discriminatory policing, including the over policing of Black and Latinx communities, with the blunt and crude enforcement of these laws.

- In addition, updated guidance should address how municipalities who are entitlement jurisdictions or subrecipients of federal housing community development funds may be acting contrary to their duty to affirmatively further fair housing through the implementation of CFNOs.

- HUD also needs to move forward with issuing guidance on how CFNOs could lead to discrimination against persons with disabilities.

- As stated above, this guidance should also be codified into formal regulation.

²¹ See, e.g., *Inclusive Communities Project, Inc. v. Lincoln Property Co.*, 920 F.3d 890 (2019). See also *Alexander v. Edgewood Mgmt. Corp.*, Civil Case No. 15-1140 (D.D.C., Jun. 25, 2019), www.leagle.com/decision/infdc020190708691 and the following cases with analogous holdings in the employment context: *Mandala v. NTT Data, Inc.*, 975 F.3d 202 (2d Cir. 2020); *Lyons v. Washington State Department of Social and Health Services*, 2020 WL 816017, slip op. (W.D. Wash., Feb. 19, 2020).

²² See generally Emily Werth, *The Cost of Being Crime Free* SHRIVER CNTR. ON POVERTY LAW (originally published Aug. 2013, updated March 2017 & Oct. 2020), <https://www.povertylaw.org/article/the-cost-of-being-crime-free/>.

•Relatedly, HUD, the Department of the Treasury, and USDA Rural Development should issue guidance to their federally assisted housing providers about CFNOs, making clear that those housing providers must honor the rights of tenants within their stock to only be evicted for cause and must comply with the FHA and VAWA. HUD, Treasury, and RD should make clear that for-cause protections, the FHA, and VAWA preempt CFNO policies that set a lower threshold or run contrary to the mandates of these federal laws.

Federal Agencies Should Ensure Justice-Involved Individuals Have Equitable Access to Federally Subsidized Housing

Problem to be Addressed: As stated above, individuals involved with the criminal justice system must endure housing instability in large part because local housing authorities and property owners participating in subsidized housing programs have [wide discretion to exclude or evict individuals based upon their records](#).²³ While the federal government has made some effort to impose limits on this discretion, often such limits are too vague to be meaningfully enforced.

Recommended Action:

Legislative Action

• Congress should pass legislation modeled on the Fair Chance at Housing Act of 2019. Introduced by Vice President Kamala Harris during her tenure as U.S. Senator, the Fair Chance at Housing Act is aimed at removing barriers to obtaining federal housing assistance for individuals with criminal records and their families. This proposed legislation seeks to undertake a comprehensive reform of eviction and screening policies for HUD-subsidized housing programs by taking the following measures:

- Banning blanket “1-strike” policies, which allow tenants to be evicted for a single incident of criminal activity, no matter how minor, in favor of a holistic review;
- Banning “no-fault” policies, which allow an entire family to be evicted for criminal activity by a guest of a household member even without the knowledge of anyone in the household;
- Raising the standards of evidence to be used by public housing authorities (PHAs) and owners and requiring a holistic consideration of all mitigating circumstances when making screening or eviction determinations based on criminal activity;
- Limiting the discretion of PHAs and owners to exclude households for certain types of criminal records such as juvenile records, expunged records, fines and fees violations, and arrests not leading to conviction;

²³ Marie Claire Tran-Leung, *When Discretion Meets Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing*, SHRIVER CNTR. ON POVERTY LAW (Feb. 2015), <https://www.povertylaw.org/wp-content/uploads/2019/09/WDMD-final.pdf>.

- Ensuring that tenants who are evicted for criminal activity and applicants who are denied admission for criminal activity are given adequate written notice of the reasons for the decision and the opportunity to present mitigating evidence or appeal a decision;
 - Prohibiting the use of suspicionless drug and alcohol testing by owners and PHAs; and
 - Providing PHAs with additional administrative funding to help house people with criminal records through the Section 8 Housing Choice Voucher program.
- Congress can also amend 42 USC 1437d(q)(1)(C) to prohibit PHAs and participants in federal housing programs from accessing juvenile records in the process of making a housing decision.

Administrative

• HUD and USDA should take action to ensure that the admissions and evictions policies of PHAs and project owners comply with existing federal law, regulations, and subregulatory guidance, as outlined in HUD Notice H 2015-10, Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on the Use of Arrest Records in Housing Decisions (Nov. 2, 2015), <https://www.hud.gov/sites/documents/15-10HSGN.PDF>. The Government Accountability Office has already recommended that HUD take two immediate steps:

- First, HUD should update its guidebooks for the public housing and Housing Choice Voucher programs to reflect HUD Notice H 2015-10, the 2016 fair housing guidance on the use of criminal records, and other guidance on criminal history policies.

- In recommending this specific action to ensure PHA compliance in August 2018, GAO observed that HUD had not yet made progress toward effectuating these updates, despite statements indicating otherwise. GAO-18-429, Rental Housing Assistance: Actions Needed to Improve Oversight of Criminal History Policies and Implementation of Fugitive Felon Initiative (Sept. 20, 2018), <https://www.gao.gov/assets/700/693855.pdf>.

- As GAO noted, “updating its HCV and public housing guidebooks to reflect newer criminal history guidance [is necessary for HUD to] ensure that these guidebooks serve as consolidated and up-to-date references for PHAs that accurately communicate HUD’s current guidance on criminal history policies.” *Id.* at 23.

- Second, HUD and USDA should put into place measures to routinely monitor compliance by PHAs and project owners with federal requirements on criminal history policies.

- At the very least, HUD should ensure that its Compliance Monitoring Checklist for high-risk and very-high-risk PHAs include questions to address the federal requirements on criminal history policies.

- In addition, HUD and USDA should revise their checklist instructions to direct HUD and USDA staff to obtain information on implementation of these requirements by PHAs and project owners and to determine whether implementation is consistent with written policy.

- For example, the checklist does not question instances when a PHA or project owner relies on arrests to prove disqualifying criminal activity, nor do the instructions guide HUD staff on determining whether a PHA with a written policy of excluding arrests in fact uses them. *Id.* at 25.

- In addition to these GAO-recommended actions, HUD and USDA should ensure that third-party property managers of HUD-assisted properties follow criminal history policies consistently. In New Orleans, for example, even though the Housing Authority of New Orleans has adopted and implemented a model policy around the use of arrest and conviction records, many of the third-party managers of its properties have declined to use the same policy. What results is a patchwork of policies, which ultimately harms the families trying to access subsidized housing. Increased guidance and intervention from HUD and USDA in these types of cases will go a long way to ensuring consistency in policies.

- HUD and USDA should issue detailed rules and guidance clarifying what constitutes a “reasonable” look-back period for criminal background checks per 42 U.S.C. § 13661(c) after engaging in research including consultation with directly impacted experts.

- HUD should issue detailed rules and guidance clarifying a public housing authority’s discretion to deny admission to a household where any member is “engaged in any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents,” 42 USCA § 13661, by, for example:

- Submitting [H.U.D.’s 2015 guidance](#)²⁴ regarding the use of criminal records through the formal rule making process and adding clarification that pre-conviction records beyond arrest records (such as supervised release status) are not sufficient evidence to demonstrate that a person is “engaged” in prohibited criminal activity and therefore may not be used as a basis to exclude any individual from housing;

- Limiting use of “one strike, you’re out” policies and providing detailed limits on what criminal activity may be considered “drug-related” or “violent” and what criminal activity may be considered to “adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents” by providing limiting factors and, in some instances, prohibiting public housing authorities and owners from using certain crimes as a basis for denial of admission. For example, regulation or guidance may provide more tangible parameters and/or clarify that the targeted, drug-related, violent, and other criminal activity must **clearly and demonstrably**

²⁴ Lourdes Castro Ramirez and Edward Golding, *Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions*, Notice H 2015-10, U.S. DEPT. OF HOUSING AND URBAN DEV. (Nov. 2, 2015), <https://www.hud.gov/sites/documents/15-10HSGN.PDF>.

adversely **impact** the health, safety, or right to peaceful enjoyment of the premises by other residents, **beyond what is experienced by the community-at-large**.

- The 2020 election served, in many ways, as a bipartisan [refutation of the war on drugs](#)²⁵ and its reach. As such, HUD should seize this historical moment to significantly limit the discretion of public housing authorities to deny admission to applicants on the basis of convictions for simple possession.
- HUD should issue rules and guidance prohibiting housing authorities and property owners from using arrests or expunged records as a basis for excluding any individual from housing and clarifying that housing authorities may not exclude individuals for being on supervised release awaiting trial;
- HUD should issue rules and guidance significantly limiting the discretion of PHAs and property owners to evict tenants because of the conduct of their guests or visitors under “one-strike” rules.
 - In *HUD v. Rucker*, for example, a housing authority evicted an elderly couple because their grandchildren were caught smoking marijuana in the building’s parking lot. While the Supreme Court [held](#)²⁶ that the housing authority was within its rights, such a decision was merely permissive; HUD retains discretion to limit this practice through its regulatory authority.
- Federal agencies other than HUD, primarily the Department of Treasury and Department of Agriculture, administer federally subsidized housing programs. These federal agencies should actively ensure that housing providers within these federally subsidized housing programs are complying with the HUD 2015 and 2016 criminal records guidance.
 - More than any other federal program, the Low Income Housing Tax Credit helps to subsidize the greatest number of affordable housing units in the country, which means that guidance from the Treasury Department about the obligation of housing providers to adopt reasonable criminal history policies could have far reach. The Treasury Department has been silent on the issue of criminal history policies.
 - A few state housing finance agencies have addressed the need for housing for justice-involved individuals in their qualified allocation plans (e.g., Georgia, Ohio, Pennsylvania) and can provide important models for other states. The time has come, however, for the Treasury Department to take a critical leadership position on this issue.

²⁵ Nicholas Kristof, *Republicans and Democrats Agree: End the War on Drugs*, N.Y. TIMES (Nov. 7, 2020), <https://www.nytimes.com/2020/11/07/opinion/sunday/election-marijuana-legalization.html>.

²⁶ Petitioner’s Brief, *HUD v. Rucker Oakland Housing Auth. v. Rucker*, 534 U.S. 1111 (2002) (Nos. 00-1770 and 00-1781).

- Similarly, the U.S. Department of Agriculture should issue guidance for housing providers within its Rural Development program and outline their obligations to adopt reasonable criminal history policies.

Federal Agencies Should Increase their Regulation of the Tenant-Screening Industry

Problem to be Addressed and Recommended Actions:

•**Issue to be Addressed 1:** In recent years, the use of criminal background checks for tenant screening purposes has [become ubiquitous](#).²⁷ Yet the tenant screening industry is poorly understood. As technology has improved, screening companies have begun to offer more sophisticated products with algorithms that may offer landlords a means of attempting to skirt their obligations in violation of the Fair Housing Act.²⁸ Tenant-screening practices that may purport to be objective and non-discriminatory may still process information in a way that disproportionately injures protected classes. For example, a district court recently allowed a Fair Housing Act case against CoreLogic, a tenant screening company, to go to trial after CoreLogic's report recommended denying housing to a Latinx applicant because of a single arrest record. *See Conn. Fair Hous. Ctr. v. CoreLogic*, 3:18-CV-705, 2020 U.S. Dist. LEXIS 141505 (D. Conn. Aug. 7, 2020).

•**Recommended Action:** Currently, HUD has offered no guidance for tenant screening companies on their obligations under the Fair Housing Act. Because algorithmic products offer recommendations about whether to accept a housing applicant, screening companies will begin to play a more instrumental role in the housing provider's decision-making process. Thus, HUD should make it a priority early on to draft Fair Housing Act guidance addressing tenant screening providers specifically. Such a guidance should also apply to companies that screen tenants for USDA and Department of Treasury assisted housing.

•**Issue to be Addressed 2:** The increasing ubiquity of tenant screening reports should be addressed, not only as a civil rights issue, but also as a consumer protection matter. Under the Fair Credit Reporting Act, tenant screening companies are obligated to ensure that their reports are accurate and up to date. The Federal Trade Commission and Consumer Financial Protection Bureau have [taken some preliminary steps](#)²⁹ to improve the accuracy of these reports. But as the tenant screening industry grows and evolves, these agencies must collaborate with HUD to implement effective regulations.

²⁷ Ariel Nelson, *Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing*, NAT'L CONSUMER LAW CNTR. (Dec. 2019), <https://www.nclc.org/images/pdf/criminal-justice/report-broken-records-redux.pdf>.

²⁸ Notably, Article 22 of the European Union's General Data Protection Regulation requires that before anyone can be denied housing, a job, or something else important based on automated screening, there needs to be an opportunity for human review, which provides for a good model.

²⁹ Juliana Gruenwald Henderson, *FTC and CFPB to Host December Workshop on Accuracy in Consumer Reporting*, FED. TRADE COMM. (Sept. 19, 2019), <https://www.ftc.gov/news-events/press-releases/2019/09/ftc-cfpb-host-december-workshop-accuracy-consumer-reporting>.

•**Recommended Action:** The FTC, CFPB, and HUD should convene a joint task force to draft regulations in order to ensure that screening reports are accurate and not used to encourage housing discrimination.

Thank you so much for taking the time to engage with these recommendations. We would invite the opportunity to dialogue further on implementing the President's agenda. If you have any questions, please contact Eric Sirota, Director of Housing Justice, Shriver Center on Poverty Law, at (312) 767-9273 or ericsirota@povertylaw.org.

Sincerely,



Shriver Center on Poverty Law

National Organizations

A Little Piece Of Light
Center for Disability Rights
Equal Rights Center
Formerly Incarcerated Convicted People and Families Movement
Health Justice Innovations
Housing Rights Initiative
JustLeadership USA
National Alliance on Mental Illness
National Housing Law Project
National Low Income Housing Coalition
NETWORK Lobby for Catholic Social Justice
The Daniel Initiative
Tzedek Association

State and Local Organizations

All Square
All of Us or None - Riverside
All of Us or None - Texas
A New Way of Life
Centro Legal de la Raza
Chicago Area Fair Housing Alliance
College and Community Fellowship
Community Renewal Society
Community Service Society of New York
CURYJ
Disability Rights Maryland
First Followers
Florida Rights Restoration Coalition

Forward Justice
Harvard Legal Aid Bureau
Housing Action Illinois
Housing Choice Partners
Interfaith Action for Human Rights
Justice & Accountability Center of Louisiana
Kansas Appleseed Center for Law and Justice
Legal Aid Justice Center
Life Coach Each One Teach One Reentry Fellowship
Louisiana Fair Housing Action Center
Legal Services for Prisoners with Children
Mobilization for Justice
New Haven Legal Assistance Association
Northwest Side CDC
Northwest Side Housing Center
Operation Restoration
Pathways to Housing DC
Public Justice Center
Public Law Center
RAHAM Detroit
Regional Housing Legal Services
Sponsors, Inc.
Starting Over, Inc.
Takoma Park Mobilization
The First 72+
The R.I. Center for Justice
The Washington Legal Clinic for the Homeless
TRANScending Barriers
Uptown People's Law Center
Vermont Legal Aid
Voice of the Experienced
Voters Organized to Educate
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