

Jeff Macomber, Chair
Secretary, California
Department of Corrections
and Rehabilitation

Michelle Baass
Director, California
Department of Health Care
Services

Diana Becton, J.D.
Contra Costa County District
Attorney

Enrico Castillo, M.D.
Psychiatrist and Associate
Vice Chair for Justice,
Equity, Diversion and
Inclusion, University of
California, Los Angeles

Stephanie Clendenin
Director, California
Department of State
Hospitals

Anita Fisher
Representing
Consumer/Family Member
Perspective
San Diego County

Tony Hobson, PhD
Behavioral Health Director,
Colusa County

Mack Jenkins
Chief Probation
Officer, Ret.
San Diego County

Stephen V. Manley
Santa Clara County
Superior Court Judge

Danitza Pantoja, PsyD
Coordinator of
Psychological Services,
Antelope Valley Union High
School District

Hon. Scott Svonkin (Ret.)
Director of
Intergovernmental
Relations, Los Angeles
County Probation

Tracey Whitney
Deputy District Attorney,
Mental Health Liaison,
Los Angeles County District
Attorney



June 10, 2024

Sent Via Email

Department of Housing and Urban Development
Office of General Counsel
Regulations Division
451 7th Street SW
Room 10276
Washington, DC 20410-0500

Re: Docket No. FR-6362-P-01 Reducing Barriers to HUD-Assisted Housing

To Whom it May Concern,

The Council on Criminal Justice and Behavioral Health (CCJBH) appreciates the opportunity to provide feedback on the development of the Department of Housing and Urban Development's (HUD's) new proposed rule, [Reducing Barriers to HUD-Assisted Housing](#), by providing insights on the complex needs of justice involved (JI) individuals with behavioral health (BH) conditions (hereafter referred to as the BH/JI population).

CCJBH is a 12-member Council within the Office of the Secretary at the California Department of Corrections and Rehabilitation (CDCR), comprised of appointed experts representing diverse perspectives at the intersection of criminal justice and behavioral health. CCJBH is charged with investigating, identifying, and promoting cost-effective strategies that prevent criminal involvement, improve behavioral health services, and encourage State and local system partners to work collaboratively in their efforts to serve individuals suffering from behavioral health conditions given their overrepresentation in the criminal justice system.

Given the high rates of homelessness of justice involved individuals, especially those who also live with mental health and substance use disorders (SUD), HUD's proposed Reducing Barriers to HUD-Assisted Housing rule is a much-needed step to broaden access to housing for the BH/JI population. Many justice-involved individuals are at-risk of homelessness, and one of the most significant barriers to ending homelessness for this population results from Public Housing Agencies (PHAs) and owners denying access to HUD-funded housing resources for individuals with prior criminal convictions. This is particularly evident and impactful for people of color given their overrepresentation in the criminal justice system. As such, to help support and strengthen HUD's efforts to increase equitable access HUD-funded programs for justice-involved individuals, CCJBH offers the following feedback for consideration:

- 1. HUD should amend the definition “currently engaging in” with respect to illegal use of a drug or other drug-related criminal activity to include the mitigating circumstances of the recovery process.** Since federal law requires PHAs and owners to deny any applicant who “is illegally using a controlled substance,” a person who used an illegal drug even 12 months ago would automatically be denied housing under the proposed rule. CCJBH recognizes HUD’s effort to standardize the assessment of housing denials based on prior criminal convictions or criminal activity. However, considering that 80 percent of the CDCR population has a SUD,¹ it is counterproductive to deny an individual the opportunity to obtain HUD-assisted housing at the onset of their recovery journey. As stated by the National Institute of Health’s National Institute on Drug Abuse, relapse is part of the recovery process.^{2,3} The definition of “currently engaging in” with respect to illegal use of a drug or other drug related criminal activity should reflect the reality of the recovery process and include a reasonable timeframe of less than 12 months. In particular, HUD should leverage the U.S. Department of Justice (USDOJ) [guidance](#), which defines “current illegal use of drugs” as “illegal use of drugs that occurred recently enough to justify a reasonable belief that a person’s drug use is current or that continuing use is a real and ongoing problem” (see Question #5).⁴
- 2. HUD should define “threatens the health, safety, and right to peaceful enjoyment” to preclude overly broad categories of disqualifying criminal activity.** The definition should require a narrow description of specific behaviors which constitute threats to the health, safety, and right to peaceful enjoyment. An overly broad definition allows PHAs and owners the subjectivity to generalize any activity as one that “threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA employees.” A clear definition aligns with HUD’s mission to minimize unnecessary exclusions from HUD-assisted housing programs. As part of this effort, HUD could also establish programs that help certain renters with internal and external maintenance of the property, requiring due diligence on the part of PHAs and owners to ensure renters in their program are maintaining the property be it a house or apartment.
- 3. HUD should examine whether 15 days is sufficient for tenants to dispute the accuracy and relevance of information and to provide any relevant mitigating information prior to a denial decision.** CCJBH appreciates the opportunity for tenants to challenge denial decisions; however, more time should be given to allow for tenants to collect necessary documentation, evidence, testimony, or other information needed for reconsideration.

¹ See CCJBH’s [2023 Legislative Report](#).

² See the National Institute on Drug Abuse’s publication, [Drugs, Brains, and Behavior: The Science of Addiction Treatment and Recovery](#).

³ This concept similarly applies to individuals who suffer from serious mental illness(es) as they, too, experience both relapse and recovery.

⁴ See the USDOJ guidance, [The ADA and Opioid Use Disorder: Combating Discrimination Against People in Treatment or Recovery](#).

Revising this to 21 or 30 days will better allow tenants time to connect with resources to coordinate, organize, and present documentation for appeal.

4. **HUD should encourage PHAs and owners to develop strategic partnerships with organizations supporting the whole-person care of JI individuals.** PHAs and owners proactively engaging with organizations that support JI individuals can be a strategy to promote safe and stable housing. Additionally, many state Medicaid initiatives are implementing flexibilities in new federal guidance related to improving outcomes for Medicaid members by addressing health related social needs, including through housing-related services. The California Advancing and Innovating Medi-Cal (CalAIM) has efforts such as, but not limited to, Community Supports which includes Tenancy and Sustaining Services. The Tenancy and Sustaining Service assists members of Medi-Cal Managed Care Plans in the identification and intervention of behaviors that may jeopardize housing, coordination with landlord and case management providers to address housing stability, resolving landlord disputes, and more. Establishing partnerships between PHAs and other organizations supporting the whole-person care of JI individuals can be beneficial to the success of HUD programs.
5. **HUD should make efforts to ensure the housing needs of the behavioral health population are addressed in the proposed rule to include participation in a behavioral health program or reentry from a behavioral health institution as a mitigating circumstance.** There is an undisputable link between behavioral health, criminal justice involvement, and homelessness. In California, CCJBH has documented the significant overrepresentation of individuals with mental health and/or SUDs in jails and prison.⁵ Individuals with a high level of behavioral health needs are often burdened with stigma and fear because many housing providers do not know how to best support their tenant’s housing and treatment needs. As stated in the proposed rule, CCJBH agrees with HUD that everyone needs a safe and affordable place to live, and having a stable place to live is critical to rebuilding a productive life. This approach is also key to *prevent* justice system involvement for those with behavioral health needs. As such, individuals with behavioral health conditions also deserve the protections of HUD’s proposed rule, including the requirement to perform a fact-specific and individualized assessment before making a discretionary decision to deny tenancy or admission based on criminal history (e.g., the nature and context of the criminal act). For example, vandalism charges that occurred during a period of psychosis and/or intoxication, which were unplanned/random differ from planned, criminal intent to vandalize property.
6. **HUD should pursue efforts to research the connection between criminal history and tenancy outcomes.** CCJBH appreciates the acknowledgement that “HUD is not aware of any empirical evidence that would justify a blanket exclusion from housing of people with criminal histories or by treating criminal records as *per se* disqualifying without reference to other evidence bearing on fitness for tenancy.” Unfortunately, absent this critical

⁵ See CCJBH’s [2023 Legislative Report](#).

information, many PHAs and owners continue to deny housing or housing assistance to people solely or largely based upon their criminal histories. Without this much needed research to determine if, in fact, there are *any* connections between criminal history and tenancy outcomes (or if there are connections, what specific criminogenic factors relate to housing outcomes), the stated problem of excluding the justice-involved population from vital HUD-funded housing resources could largely continue to remain unresolved.

People, families, and communities thrive when they have access to safe, stable housing, and individuals should not be automatically denied housing simply because they have a criminal record. Although the proposed Reducing Barriers to HUD-Assisted Housing rule represents an important step towards minimizing potentially arbitrary/unnecessary exclusions from these housing programs while allowing PHAs and owners to maintain the health, safety, and peaceful enjoyment of their residents, their staffs, and their communities, the lack of research to establish a relationship between prior criminal convictions and tenancy outcomes leaves the current system operating based on unsupported assumptions across the various components of the proposed rule. Absent this empirical evidence, it is difficult to answer the questions specifically posed by HUD regarding the proposed rule as there is no way to determine with confidence any prospective harm that could be caused by the admittance of individuals with prior criminal convictions into HUD-assisted housing. In fact, it is possible that as much if not more harm is being done to people, families, and communities when justice-involved individuals are subject to such exclusions.

In sum, CCJBH supports HUD's approach to standardized individual assessments and the amendment of regulations to support reducing the unnecessary exclusions from HUD-assisted housing for convictions that do not reflect at all on current fitness for tenancy. However, we strongly encourage HUD to identify and provide data and research supporting the relationship between criminal history and tenancy outcomes. Furthermore, CCJBH encourages HUD to adopt a periodic reevaluation of these newly proposed regulations based on the continued research of criminal conviction and tenancy outcomes (e.g., every five to seven years).

We sincerely thank you for allowing us to provide comments during this process and look forward to continuing to engage with HUD on these important efforts. If you have any questions, please contact: Brenda Grealish, Executive Officer, CCJBH at Brenda.Grealish@cdcr.ca.gov or (916) 479-1456.

Sincerely,

Brenda Grealish, Executive Officer
CCJBH