



257 Lawrence Street, Hartford CT 06106 | P (860) 721-7876 | www.cceh.org

Submitted via www.regulations.gov

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

Re: HUD Docket No. FR-6152-P-01, RIN 2506-AC53 Comments in Response to Proposed Rulemaking: Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs

Dear Office of General Counsel:

I am writing on behalf of the Connecticut Coalition to End Homelessness (CCEH) in response to the Department of Housing and Urban Development's (HUD) proposed rule change published in the Federal Register on July 24, 2020 (RIN 2506-AC53; HUD Docket No. FR-6152-P-01) entitled, "Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs." CCEH is membership organization representing over 100 members including emergency shelter providers, supportive housing providers, community and business leaders, and strategic partners who share the goal of ending homelessness. We are the voice of the homeless assistance front-line and we advocate for the resources, policies, and public support to end homelessness. On behalf of our membership we issue the following comment in strong opposition to the pending final rule that would reinterpret the HUD's Equal Access Rule so that the law will no longer protect transgender individuals from discrimination in gender specific homeless shelters.

The proposed rule is antithetical to our work to end homelessness and is in direct conflict with our values around LGBTQ equity and inclusion. We believe in the right to housing and that everyone has a right to safe housing regardless of sexual orientation or gender identity. We have long supported HUD's stated mission "to create strong, inclusive communities, and quality affordable homes for all," and "to build inclusive, sustainable communities free from discrimination." We are concerned that this proposed rule change runs counter to that mission, and places an already vulnerable population in harm's way.

We know that transgender people face devastating rates of homelessness across the United States and in Connecticut. According to the 2015 US Transgender Survey, nearly one-third of transgender and gender non-conforming people experience homelessness at some point in their life. The survey results paint an even more dismal picture for black transgender women, a group that is especially vulnerable to violence, abuse, and HIV. More than 50 percent of respondents said they had experienced homelessness at some point in their lives, and nearly one-quarter of them reported

being homeless within the previous year¹. The National Alliance to End Homelessness reported that 63 percent of transgender people experiencing homelessness are unsheltered, compared to only 49 percent of their cis-gendered counterparts. Additionally, homelessness among the transgender population has increased by 118 percent since 2016.² What is even more disconcerting, is that people experiencing homelessness who are transgender are more likely to be in the youth age group, and are generally between the ages of 18-24.³

With the data illuminating one part of the story, to truly understand the impact this proposed rule change would have on Connecticut's transgender and gender non-conforming community, CCEH joined forces with several statewide organizations to conduct a virtual listening session and repeatedly reached out to our membership to solicit feedback on the rule change. Through this process we learned that while we have made great strides to ensure safe, shelter and fair housing for transgender and gender non-conforming people, we have a lot of work to do towards creating welcoming, and inclusive spaces that better meet the needs of transgender people. Advocates shared that they believe that if this proposed rule is enacted it will endanger transgender people, for many of those experiencing homelessness will not seek shelter and face violence and higher rates of unsheltered homelessness.

In our work to train front-line on access to safe shelter, we have come to understand the importance of protecting ensuring the safety of transgender people in need of shelter, and that equal access to shelter does not endanger the safety or privacy of other shelter residents. Shelter providers report that respecting the needs of transgender shelter clients does not diminish nor endanger the rights, health, or safety of other shelter occupants. Conversely, without access to safe shelter or housing, transgender people are forced to engage in risky behaviors, making them more predisposed to to interactions with the criminal justice and hospital systems. Unsheltered transgender people are more likely to have interactions with the police, and to visit the emergency room than those in shelter. In order to truly ensure the safety of shelter occupants and the homeless, HUD must prioritize the health and wellbeing of transgender and gender non-conforming clients by respecting their gender identity and enforcing the principles of the Equal Access Rule.

We have also heard a resounding cry for equitable access to housing and emergency shelters, especially in light of the coronavirus pandemic. To limit access to shelter and housing is to limit access to the protection from COVID-19. COVID-19 has been particularly devastating for people experiencing homelessness, and the key to serving them in the pandemic is making services more, not less accessible. Doing away with key protections and limiting access to shelter puts the transgender community at increased risk of contracting COVID-19 and we risk increasing the number of people exposed to the virus. National data also indicates that sixty percent of unsheltered transgender people have co-occurring disorders, compared to only three percent of sheltered individuals, while thirty eight percent reported having a chronic health issue compared

¹ James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality. <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>

² Transgender Homeless Adults & Unsheltered Homelessness: What the Data Tell Us. (2020). National Alliance to End Homelessness. <https://endhomelessness.org/wp-content/uploads/2020/07/Trans-Homelessness-Brief-July-2020.pdf>

³ Increases in Individual Homelessness: A Gender Analysis (2020). National Alliance to End Homelessness. <https://endhomelessness.org/increases-in-individual-homelessness-a-gender-analysis/>

to only three percent of their sheltered counterparts. As such, unsheltered transgender people are highly vulnerable and one population most at risk of contracting and/or spreading coronavirus.⁴

In the mist of the pandemic, we urge HUD to immediately withdraw its proposed rule change proposal and immediately pursue a path to make shelters more affirming, safe, and assessable for those in need.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact me.

Sincerely,

Sarah Fox
Director of Advocacy and Community Impact
Connecticut Coalition to End Homelessness
C: 203-535-3967
E: sfox@cceh.org

⁴ Transgender Homeless Adults & Unsheltered Homelessness: What the Data Tell Us. (2020). National Alliance to End Homelessness. <https://endhomelessness.org/wp-content/uploads/2020/07/Trans-Homelessness-Brief-July-2020.pdf>

**Appendix A: Council on the Collateral Consequences of a Criminal Record
Housing Subcommittee
Final Recommendations – February 11, 2020**

Purpose and Background

This document outlines the proposed recommendations of the Housing Subcommittee for the Council on the Collateral Consequences of a Criminal Record. These recommendations are the result of a series of meetings held by the Subcommittee from September 2019 through January 2020, in which Subcommittee members discussed ways to reduce housing denials and increase access to housing among people with criminal records, while preserving housing owners' ability to manage risk.

The Subcommittee included people and family members with lived expertise in the criminal justice system, criminal justice advocates, legal services organizations, housing advocates, state and local housing agencies, and private landlords. Care was taken to achieve a consensus among these diverse perspectives represented on the Subcommittee. The Subcommittee believes that the recommendations outlined below provide a viable policy that would achieve the dual goals of reducing housing denials on the basis of a criminal record while still preserving landlords' ability to mitigate risk through tenant selection.

An important backdrop to the Subcommittee's discussions developing these recommendations was the 2015 ruling by the U.S. Supreme Court in *Texas Dept. of Housing v. Inclusive Communities*, followed by the April 2016 guidance from the U.S. Department of Housing and Urban Development. The HUD guidance states that tenant selection policies that include a blanket denial of persons with a criminal record may violate the Fair Housing Act, as it would constitute discrimination on the basis of race given the racial disparities in the criminal justice system. As an alternative, HUD's guidance is that landlords and housing owners must use an individualized assessment in conducting criminal background screening as part of tenant selection that takes into account other factors beyond the convictions itself. The US Supreme Court similarly affirmed in 2015 that racially disparate impacts of a policy can be grounds to find a violation of the Fair Housing Act. However, both the Supreme Court ruling and HUD guidance fall short in providing landlords with a specific approach to conducting individualized assessments.

Subcommittee members used this disparate impact ruling and guidance on Fair Housing as the starting point for its discussions and focused on developing a policy that would: a) prohibit blanket denials on the basis of a criminal record, b) regulate and monitor how criminal background checks

can be used as part of tenant selection, and c) allow applicants to provide other information that must be taken into consideration by landlords related to eligible convictions. In other words, our recommendations propose a standardization of how landlords and housing owners must conduct individualized assessments of criminal records as part of tenant selection processes. In doing so, our Subcommittee drew heavily from a policy adopted by New York State for state-financed housing.

Proposed Policy

The policy recommendation proposed below were developed to work as a whole and are meant to be taken in its entirety:

A. Scope and Coverage of Policy - The following policy would apply to all rental housing, including private market rental housing, state-financed housing, federally subsidized housing, and regardless of ownership, but extends the same exemptions as Connecticut’s Discriminatory Housing Practices Act to owner-occupied buildings with two or less units. The policy covers any entity that is involved in tenant selection for rental housing including landlords, housing owners, housing authorities, third-party property management organizations.

B. No Blanket Denials on the Basis of a Criminal Record (“Ban the Box”) –

- No person may be denied admission to housing simply for having a criminal record, for having any particular convictions, or based on the severity of any offense.
- Landlords and housing owners may not include a question in rental applications asking applicants if they have a criminal conviction, as doing so might lead to a perception that they will be automatically denied for having a criminal convictions.
- Landlords and housing owners may still conduct criminal background screening, but must abide by the limitations outlined in Section ‘C’. (NOTE: Landlords are not required to conduct a criminal background check.)
- Landlords and housing owners may only consider a denial of an applicant for housing based on a conviction that involved physical violence to persons or property or that adversely affected the health, safety, or welfare of others. However, even in considering such convictions, landlords and housing owners must still conduct an individualized assessment as outlined in ‘D’.

C. What May Be Reviewed in a Criminal Background Check – In conducting criminal background checks as part of tenant selection processes, landlords and housing owners must:

- Only review and consider prior convictions that took place within 10 years of the time of the application to housing.
- Not review any convictions for a charge that occurred prior to the age of 17.
- Not review or consider prior arrests, accusations, or parole/probation technical violations that did not lead to a conviction.
- Not review any convictions that have been excused by pardon, overturned on appeal or otherwise vacated.

- Conduct a criminal background check that complies with the requirements of the Fair Credit Reporting Act.

D. Individualized Assessment – If a landlord or housing owner wishes to deny a person admission to housing on the basis of a criminal convictions that involved physical violence to persons or property or that adversely affected the health, safety, or welfare of others, the landlord or housing owner must conduct a written individualized assessment. Such an individualized assessment must take into account the following:

- The time passed since offense
- The age at time of offense
- The time spent in the community following incarceration
- Treatment completion when offenses involve drugs or alcohol that led to criminal behavior
- Rehabilitative programming
- Employment status
- Rental history
- Volunteers or community activities
- Community recommendations
- Other relevant factors

Landlords and housing owners are encouraged to use a standardized assessment form similar to the attached form provided by New York State Homes and Community Renewal.

E. Due Process –

- The landlord or housing owner must provide the applicant with an application that includes information that explains the procedures and policies with regard to background checks, the applicant’s right to review, contest, and explain the information contained in the background check, and the applicant’s right to present evidence of rehabilitation.
- The housing provider must maintain records of all applicants and applications for a minimum of two years.
- All applicants must be given an opportunity to review and explain any conviction record to the housing provider before any decision regarding tenancy is made.
- If an application is denied, the applicant must be provided with any documentation used to deny his or her application, an explanation of the denial of housing, and be given an opportunity to respond. There may be no less than five business days between an Applicant receiving the notice and documentation used to deny the application and the Applicant’s opportunity to respond.
- If response exceeds five days, must be considered and placed on list for next available unit
- The housing provider must create and maintain a written evaluation used in the decision-making process in accordance with these guidelines.

F. Enforcement – The Connecticut Commission on Human Rights and Opportunities (CHRO) would provide enforcement of this policy. People with criminal records are to be covered as having protections under state’s Fair Housing law, with the scope of those protections defined by this policy. Information regarding this policy will be communicated to housing owners, landlords, and managers via State Department of Housing, Connecticut Housing Finance Authority, ConnNAHRO, and others.