

May 30, 2023

Federal Trade Commission
Consumer Financial Protection Bureau
Non-Rulemaking Docket
Via regulations.gov

RE: Tenant Screening Request for Information (Docket ID: FTC-2023-0024)

Dear colleagues,

We are writing to express concerns regarding tenant screening practices within the housing sector, particularly as they relate to participants of the Housing Choice Voucher (HCV) program. It is essential to address the discrimination and unfair practices within the tenant screening process that significantly undermines HUD's largest affordable housing program.

Overview of screening process for an HCV program participant

To be admitted into the HCV program¹, applicants must submit an application to their local Public Housing Authority (PHA), thoroughly completed with all necessary personal information and documentation. The PHA reviews the application and determines eligibility to the program based on several factors such as income, family size, citizenship status, and a background search for federally mandated exclusions. It is at this point that the PHA may screen applicants for their own elective program criteria.² These screening practices can be quite extensive, including criminal records screening more stringent than the statutory minimum and beyond regulatory authorization.³ PHAs elective screening and rescreening criteria of HCV families vary from PHA to PHA.

Admittees are placed on a waiting list to receive their vouchers based on local demand and availability. It is common for tenants to wait years to rise to the top of the list and for lists to be closed indefinitely.⁴ Priority on waitlists may be based on the PHA's elective screening criteria. While waiting, tenants must check their status on the waitlist and maintain updated contact information. Applicants must be prepared to re-demonstrate eligibility for the program upon

¹ In this letter, the term "HCV Program" is used as an umbrella term that also encompasses specialized voucher programs such as the HUD-VASH (Veterans Affairs Supportive Housing) program, which provides vouchers to low-income veterans.

² "Selection of tenants: Each housing assistance payment contract entered into by the public housing agency and the owner of a dwelling unit shall provide that the screening and selection of families for those units shall be the function of the owner. In addition, **the public housing agency may elect to screen applicants for the program** in accordance with such requirements as the Secretary may establish...." 42 USC § 1437f (o)(6)(B) (emphasis added).

³ See Housing Choice Voucher Guidebook, Eligibility Determination and Denial of Assistance (Nov. 2019).

⁴ Acosta, Sonya and Erik Gartland, Families Wait Years for Housing Vouchers Due to Inadequate Funding, Center on Budget and Policy Priorities (Jul. 22, 2021) <https://www.cbpp.org/research/housing/families-wait-years-for-housing-vouchers-due-to-inadequate-funding>.

notification that they have been selected for a voucher or it will be issued to the next eligible applicant on the waitlist. To be issued the voucher, the tenant often must undergo housing counseling, attend educational seminars, or other mandatory appointments with PHA staff.⁵

With voucher in hand, HCV participants then begin their initial housing search. PHAs give voucher-holders a deadline, typically 60 to 120 days, to find suitable housing within the price range and “lease-up” their voucher. If families are unsuccessful within this time period (or any additional extensions of time), they will lose their voucher and it will be returned to the PHA. PHAs are aware of the struggles participants have during their housing search and as a result issue far more vouchers than their budget will allow. This accounts for the assumed percentage of program participants that will fail during their housing search so that PHAs can increase their utilization rates.⁶ Beyond the basic challenges of finding a rental unit, HCV program participants face additional obstacles in the tenant screening process that undercut their ability to move to suitable homes in areas of higher opportunity.

Arbitrary and overly restrictive tenant screening practices

We urge you to closely and thoroughly examine the screening criteria used by landlords and property management companies through the lens of an HCV holder in their time-limited housing search. There is a pressing need to ensure that these criteria are fair, unbiased, and aligned with the principles of equal opportunity and non-discrimination and executed in a way that allows tenants to realize their housing goals. The use of arbitrary or overly restrictive screening standards causes unnecessary and avoidable delays in HCV families housing search and perpetuates the legacy of segregation.

I. Blanket exclusions of voucher-holders are discriminatory.

Tenants who rely on rental assistance programs face substantial barriers when attempting to secure housing due to biases and negative preconceptions simply due to the source of their income.⁷ Participants in the HCV program undergo initial screenings and annual recertifications that offer knowledge to prospective landlords that tenants are free from certain disqualifying criminal convictions, eviction histories, or major breaches that would disqualify them from the program.⁸ Additionally, the rental income from voucher holders is reliable, as the PHA’s (larger) portion of rent is paid directly to the landlord. In addition to the programmatic benefits of renting to an HCV tenant, landlords often find these tenants to be reliable and long-term residents.⁹ Despite this, landlords and property managers frequently engage in Source of Income (SOI) Discrimination driven by unfounded stereotypes that voucher holders may be unreliable tenants or create additional burdens in the community.¹⁰ This perpetuates segregation and reinforces

⁵ 24 CFR § 982.301

⁶ See Housing Choice Voucher (HCV) Success Rate Methods to increase a PHA’s leasing success rate, U.S. Dept. of Hous. and Urban Dev. <https://www.hud.gov/sites/documents/IMPROVSUCCESSRATES.PDF>.

⁷ Fasanelli, Antonia K. & Philip Tegeler, Your Money’s No Good Here: Combatting Source of Income Discrimination in Housing, American Bar Association Journal (May/June 2021). <https://prac.wpengine.com/pdf/combating-source-income-discrimination-housing-2021.pdf>.

⁸ 24 CFR § 982.553.

⁹ Housing Choice Voucher (HCV) Myth-Busting and Benefits Fact Sheet, U.S. Dept. of Hous. and Urban Dev. https://www.hud.gov/sites/dfiles/PIH/documents/HCV_Benefits-MythBusting_FactSheet10-5.pdf.

¹⁰ *Id.*

socioeconomic disparities by hindering HCV families from accessing neighborhoods with better educational opportunities, employment prospects, and essential services.

The consequences of SOI discrimination are particularly detrimental as they deny HCV families the chance to utilize their voucher to break the cycle of poverty and improve their economic, health, and educational outcomes. The HCV program has the potential to reverse the effects of redlining and segregation by allowing participants to move to areas of higher opportunity.¹¹ However, tenants' prospects are often halted when the listing states "no vouchers."¹²

We are experiencing a shifting legal landscape surrounding SOI discrimination. Through a combination of state, county, and municipal anti-discrimination protections, over 57 percent of HCV households now live in zip codes with anti-SOI discrimination laws on the books; however, many jurisdictions remain unprotected.¹³ Tenants continue to report explicit and implicit SOI discrimination even in jurisdictions with protections.¹⁴ HCV recipients experience "steering" and "ghosting" from landlords and property managers and may not realize that they have been the subject of SOI discrimination or how to report it.¹⁵

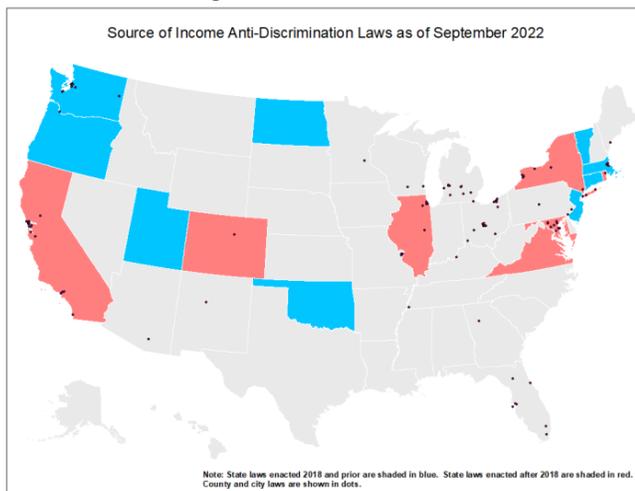


Fig. 1: Knudsen, Brian, Expanded protections for families with Housing Choice Vouchers, PRRAC (Sep. 2022).

We strongly recommend the FTC and CFPB to declare that SOI discrimination of all kinds is a harmful practice that has no place in a fair and ethical tenant screening process.

II. The use of credit reports and credit scores in the tenant screening process unfairly prejudices HCV families.

Imposing strict credit requirements without considering the underlying circumstances can unfairly penalize HCV families, hindering their ability to secure suitable housing options. The reliance on credit reports and scores fails to consider the broader context of HCV families' financial situations. These families have stable rental income sources through the voucher

¹¹ See Chetty, Raj et al., *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*, Opportunity Insights (May 2015); Sard, Barbara and Douglas Rice, *Realizing the Housing Choice Voucher Program's Potential to Enable Families to Move to Better Neighborhoods*, Center on Budget and Policy Priorities (Jan 2016).

¹² Cunningham, Mary, et al., A Pilot Study of Landlord Acceptance of Housing Choice Vouchers, Urban Institute (Sep. 2018) <https://www.huduser.gov/portal/sites/default/files/pdf/Landlord-Acceptance-of-Housing-Choice-Vouchers.pdf>.

¹³ See *Figure 1* Knudsen, Brian, Expanded protections for families with Housing Choice Vouchers, PRRAC (Sep. 2022) <https://prrac.org/pdf/soi-voucher-data-brief.pdf>.

¹⁴ Legal Defense Fund, The Bad Housing Blues: Discrimination in the Housing Choice Voucher Program in Memphis, Tennessee, LDF (Jan. 9, 2023) <https://www.naacpldf.org/housing-discrimination-report/>; Zaveri, Mihir, Discrimination Weakens Tool for Reducing N.Y. Homelessness, Lawsuit Says, The New York Times (May 25, 2022) <https://www.nytimes.com/2022/05/25/nyregion/ny-vouchers-homeless-discrimination.html>.

¹⁵ *Id.*

program and demonstrate a strong commitment to meeting their rental obligations. However, their credit reports may not accurately reflect their current ability to pay rent or their willingness to fulfill their contractual obligations.

Additionally, credit scoring models have been shown to have inherent biases that reflect systemic disparities in generational wealth and homeownership.¹⁶ As a result, use of these models disproportionately impacts marginalized communities, particularly people of color and individuals from low-income backgrounds.¹⁷ These biases can perpetuate systemic inequalities and result in discriminatory outcomes in the tenant screening process. PRRAC strongly discourages the use of credit scores and credit reports in the tenant screening process for voucher holders. It is an unnecessary obstacle for low-income families who have secured a reliable subsidy to ease their rental burden.

III. Minimum income requirements are inherently exclusionary to HCV families.

HCV participants, who have lower incomes and rely on rental assistance, struggle to meet rigid minimum income thresholds set by some housing providers. These requirements fail to account for the fact that voucher holders have a portion of their rent subsidized by the program, which contributes to their overall housing affordability. Such inflexible income requirements exclude HCV participants who, with their subsidy, can afford their portion of the rent, which is generally set at 30%-40% of their monthly adjusted income. By implementing stringent income thresholds based on families without rental subsidies, housing providers perpetuate segregation and restrict housing choices for those who are already marginalized.

A more equitable approach must involve assessing an applicant's ability to pay *their* portion of the rent based on their income after accounting for the voucher subsidy. The tenant's portion of the rent is personally tailored to their income to be affordable. By establishing the best practice to consider the tenant's voucher assistance and applying a more nuanced evaluation, the FTC and CFPB can ensure that voucher holders have fair and reasonable access to housing opportunities without erecting unnecessary barriers.

IV. The use of criminal records in the screening process should be limited to only convictions¹⁸ that are directly related to the tenancy.

The use of criminal records in tenant screening processes requires careful consideration. Housing Choice Voucher families already undergo federally mandated criminal records screening for specific disqualifying convictions such as sex offenses and drug manufacturing. However, some PHAs have chosen to go beyond these federal requirements and implement additional screening measures. Regrettably, many of these practices have resulted in predictable discriminatory terminations and exclusions. Recognizing this issue, the HUD Office of General Counsel (OGC)

¹⁶ Natalie, From Inherent Racial Bias to Incorrect Data—The Problems With Current Credit Scoring Models, Forbes Advisor (Feb. 26, 2021).

¹⁷ Atkins Stohr, Kimberly, Giving Credit Where Credit is Due, Boston Globe (Apr. 24, 2022) <https://www.bostonglobe.com/2022/04/24/opinion/giving-credit-where-its-due/>.

¹⁸ Arrest records that do not result in a conviction should never be considered as is it does not prove that there has been a crime committed. *See generally* "Arrest and Conviction Records: Overview of Anti-Discrimination Laws," U.S. Equal Employment Opportunity Commission (concluding that an employer cannot refuse to hire people simply because they have been arrested) <https://www.eeoc.gov/arrestandconviction>.

took a crucial step by providing guidance that identifies three theories of liability under which PHAs and landlords may be held accountable for their discriminatory use of criminal records.

In 2016, HUD OGC issued guidance that shifted the burden of proof to housing providers when facing challenges, requiring them to demonstrate that their criminal record screening policies are narrowly tailored to serve a substantial, legitimate, and nondiscriminatory interest. Building upon this, in 2022 HUD released a memo outlining the three theories of liability under the Fair Housing Act (FHA) that could render PHAs' criminal record screening processes discriminatory. These theories encompass discriminatory intent, discriminatory effects, and the obligation to provide reasonable accommodation to applicants with disabilities whose criminal history is linked to their disability. The memo also offers recommendations and best practices for PHAs to align their practices with the 2016 guidance, empowering them to move away from policies that employ irrelevant scrutiny and one-strike approaches.

It is crucial to recognize that criminal history alone is not a reliable predictor of housing success¹⁹. While ensuring the safety and security of housing communities is paramount, blanket exclusions based solely on past criminal records perpetuate systemic biases. The higher incarceration rates among Black and Latinx Americans are not indicative of an increased propensity to engage in criminal behavior but rather a result of systemic biases within the criminal justice system. By promoting individualized assessments that consider rehabilitation efforts, the passage of time, and the context of each individual's record, we can foster a more just and inclusive tenant screening process.²⁰

V. The use of eviction history will disproportionately affect HCV families.

HCV families are screened for previous evictions from federally subsidized housing.²¹ Many individuals who have experienced evictions are victims of circumstances beyond their control, such as job loss, medical emergencies, or unaffordable rent increases. Due to intersecting inequities, black women are disproportionately represented among evicted tenants.²² Placing excessive weight on past evictions without considering the underlying reasons can perpetuate a cycle of housing instability and hinder individuals from securing safe and stable housing. Instead, PRRAC urges the FTC and CFPB to encourage a more nuanced approach to evaluating rental history, taking into account factors such as rental payment consistency, efforts made

¹⁹ See Malone, Daniel K., Assessing criminal history as a predictor of future housing success for homeless adults with behavioral health disorders, *Psychiatric Services* 60:2, 224–30 (2009) (concluding that criminal history is not a good predictor of a housing success).

²⁰ U.S. Department of Housing and Urban Development (HUD). "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." 2016; U.S. Department of Housing and Urban Development (HUD). "Memorandum on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions." 2022; Fair Housing Act, 42 U.S.C. § 3601 et seq.; *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

²¹ Federal legislation mandates applicants be denied from admission or terminated from the program if they have been evicted from federally assisted housing for drug-related activity within three years. However, PHAs may establish additional requirements. 24 CFR § 982.553

²² Solomon, Molly and Erin Baldassari, Why Black Women Are More Likely to Face Eviction, KQED (Feb. 21, 2022) <https://www.kqed.org/news/11905386/why-black-women-are-more-likely-to-face-eviction>; See also Desmond, Matthew, Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship, MacArthur Foundation *How Housing Matters* (Mar. 2014).

towards resolving previous rental issues, and mitigating circumstances surrounding the eviction, particularly during the Covid-19 pandemic.²³

Excessive Fees

Furthermore, it is crucial to address the issue of excessive fees associated with tenant screening reports. Application fees, holding fees, and other administrative fees are insurmountable barriers for many low-income families. We call upon the agencies to review the tenant stories that have been submitted as part of this request for information and take note of trends in excessive fees that exist in the housing search process. Many prospective tenants, including those participating in the Housing Choice Voucher program, face financial constraints, and imposing substantial fees for screening reports can create additional barriers to securing safe and affordable housing. The FTC and CFPB play a pivotal role in safeguarding consumer rights and should explore ways to regulate and monitor these fees to prevent exploitation and promote housing access for all.

Transparency & Accountability

Finally, PRRAC applauds the efforts of the FTC and CFPB to bring consistency, transparency, and accountability in the tenant screening process. Clear guidelines and regulations should be established to ensure that landlords and property management companies adhere to fair practices and provide accurate information to applicants, particularly to voucher holders who experience different obstacles and restrictions. Tenants must be granted the opportunity to view their records and address any discrepancies or inaccuracies found in their screening reports. Tenant screening should not be shrouded in secrecy or used as a tool for unfair discrimination.

In conclusion, it is imperative that the agencies address the discriminatory and unfair practices within the tenant screening process, specifically as they pertain to participants of the Housing Choice Voucher (HCV) program. The use of arbitrary and overly restrictive screening criteria, such as blanket exclusions of voucher holders, reliance on credit reports and scores, rigid minimum income requirements, broad consideration of criminal records, and disproportionate weight given to eviction history, all undermine the goals of the HCV program and perpetuate segregation and inequality. By promoting fair, equitable, and individualized assessments in the tenant screening process, we can create housing opportunities that empower HCV families to break the cycle of poverty, access areas of higher opportunity, and improve their overall well-being. Through transparency, accountability, and the eradication of discriminatory practices, we can foster a more inclusive and just housing sector for all.

Thank you for your attention to this critical matter.

Sincerely,

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²³ National Eviction Crisis in the Era of the Coronavirus Pandemic, National Association of Social Workers, Social Justice Brief (2021) <https://www.socialworkers.org/LinkClick.aspx?fileticket=gmNJzUL1BpM%3D&portalid=0>.