

**CONSUMER DATA INDUSTRY ASSOCIATION
PROFESSIONAL BACKGROUND SCREENING ASSOCIATION
NATIONAL CONSUMER REPORTING ASSOCIATION**

Via electronic delivery at:

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June 10, 2024

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

**Re: Comment on Proposed Rule – Reducing Barriers to HUD-Assisted Housing
Docket No. FR-6362-P-01
HUD-2024-0031-0001**

To Whom It May Concern:

The Consumer Data Industry Association (“CDIA”),¹ Professional Background Screening Association (“PBSA”),² and the National Consumer Reporting Association (“NCRA”)³ offer

¹ CDIA is the voice of the consumer reporting industry, including the nationwide consumer reporting agencies, regional and specialized consumer reporting agencies, background check and residential screening companies, and others. CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments, and volunteer organizations assess risk and avoid fraud. CDIA members help to ensure fair and safe transactions for consumers, facilitate competition, locate crime victims and fugitives, reunite consumers with lost financial assets, help keep workplaces and apartment residents safe, and expand consumers’ access to products suited to their needs.

² PBSA is an international trade association of over 650 member companies that provide employment, resident, and volunteer background screening and related services to virtually every industry around the globe. The consumer reports prepared by PBSA’s background screening members are used by employers, property managers, government entities, and volunteer organizations every day to ensure that communities are safe for all who work, reside, or visit there. Among other goals, PBSA members seek to promote the accurate and timely reporting of a variety of consumer-related information for the purpose of empowering employment, housing, volunteering, and other opportunities to individuals. In the United States, consistent with those purposes, PBSA’s members obtain consumer information from thousands of different courts and other sources across the country and, in compliance with federal and state laws, produce millions of consumer reports per month.

³ Founded in 1992, NCRA is a national trade organization of consumer reporting agencies and associated professionals that provide products and services to hundreds of thousands of mortgage lenders and property

comments on behalf of the resident screening industry on the Department of Housing and Urban Development's ("HUD") proposed rule Reducing Barriers to HUD-Assisted Housing. Collectively our member organizations provide federally regulated data to housing providers, who set decision criteria and evaluate and decide on rental applications in order to maintain safe spaces in rental housing communities for all who live, work, and reside there. We comment on this rule because (1) it lacks negligent screening liability protection, (2) the lookback period for publicly available consumer history should be longer than three years, and (3) access to renter history held by Public Housing Authorities should be easily accessible. We also observe two recent national trends that are increasing the cost, response time, and complexity of resident screening: rental applicant fraud and wider and more complex federal, state, and local resident screening regulation.

Renters choose where to live based on many factors, including how safe they feel in that community. Renters not only live in their homes, but they may work from those homes and raise families there. Housing providers have an obligation to make informed and accurate decisions about the level of risk presented by new applicants so they can maintain the trust their residents place in them to provide a safe living environment. If that trust is violated, it can result in residents leaving the community, driving down occupancy rates, and making it more difficult for housing providers to offer affordable housing. Residents, law enforcement, and courts demand housing providers maintain safe places to live. Accordingly, housing providers have the right to know if an applicant has a history of serious criminal offenses or routine failure to make timely payments. Comprehensive reviews by housing providers of available public and private records protect existing residents and our communities.

The landscape of resident screening has changed dramatically over the last twenty years. Technology has made identity theft and fraud easier to perpetrate and it is more difficult to determine if an applicant is who they claim to be (*i.e.*, that they haven't stolen an identity or created a new one), that they can pay, and that they do not pose a risk of harm to their prospective neighbors.

In the view of state courts, not using available arrest and conviction criminal record information in resident screening presents concrete, material risks to residents and liability

managers who use consumer reports for housing decisions. NCRA's membership includes the nation's leading resident screening firms providing consumer data to the multifamily housing industry. NCRA's focus is on housing issues, driven by the critical data needed for making informed accurate decisions for both multifamily rental and single-family lending.

exposure to housing providers for negligent screening. For example, in 2016, a Nebraska resident's minor child was kidnapped and raped by another resident who had been allowed to move into a rental community without first undergoing a background check.⁴ Another child was raped and murdered in 2017 by a resident in an apartment community who had a history of violent offenses but was allegedly permitted into the community without undergoing a background check.⁵

Where regulation has narrowed the public record history housing providers may use in resident screening, increased risks to resident and employee safety and resident turnover have followed. For example, after the City of Seattle passed an ordinance restricting resident criminal background checks, one large property reported that over the next two years, calls to 911 from the building more than doubled, evictions increased substantially, and employee turnover rose to 400 percent as employees began to work in teams because they were afraid to work alone.⁶

States have called for expanded use of employee background checks in the wake of resident trauma. Most recently, in 2022, following the death of a renter at the hands of a property management employee, Miya's Law⁷ took effect in Florida to protect renter safety. The law requires housing providers to conduct thorough background checks on their employees through a consumer reporting agency.⁸

Justice-involved consumers need homes and support as they re-enter society. Regulatory proposals should provide additional liability protections to support HUD-assisted housing providers who opt to ignore relevant criminal history public records from 10 and 20 years earlier that creates negligent screening liability exposure. Further, we support market-rate providers' discretion under the proposed rule to continue to review available public records in their evaluations. We here suggest ways to improve the proposed rule to accomplish its goal of minimizing unnecessary exclusions from HUD-assisted housing

⁴ *Cure v. Pedcor Mgmt. Corp.*, 265 F. Supp. 3d 984, 988–89 (D. Neb. 2016) (denying motion to dismiss because plaintiff alleged sufficient facts to argue that if the housing provider had conducted a background check, it would have discovered that the perpetrator had multiple convictions for assault and public indecency).

⁵ Cate Cauguiran, *Family of woman murdered in Schaumburg apartment files lawsuit*, ABC 7 News (Aug. 2, 2017), available at: <https://abc7chicago.com/tiffany-thrasher-rape-murder-schaumburg/2267952/>.

⁶ Brief of Amicus Curiae, GRE Downtowner LLC, pp. 4-6, *Yim v. Seattle*, No. 2:18-cv-00736, Dkt. 71 (W.D. Wash.).

⁷ Codified at Fla. Stat. § 83.515.

⁸ A. Martinez, *Florida Renters Made Safer Under Miya's Law – Landlords Required to Background Check Workers*, Jun. 30, 2022, available at: <https://www.forbes.com/sites/alonzomartinez/2022/06/30/florida-renters-made-safer-under-miyas-law--landlords-required-to-background-check-workers/?sh=1e499e5b626c>.

programs while maintaining the health, safety, and peaceful enjoyment of rental housing communities by current residents and employees.

1. *The Proposed Rule Creates New Exposures for Housing Providers to Negligent Screening Liability.*

Residents deserve to be safe. Housing providers owe a duty of care to their residents to protect them from harm that is reasonably foreseeable, and the failure to consider available public record history to screen incoming applicants can be a basis for legal liability under state law.⁹ The proposed rule limits housing providers' ability to decline prospective residents based on the types of readily available public record information that courts find is precisely the basis for liability. Specifically, the proposed rule would require the establishment of a "lookback period" limiting reliance on criminal records by PHAs and providing that relying on records older than three years would be "presumptively unreasonable."¹⁰ Yet the proposed rule offers no negligent screening liability protection for HUD-assisted rental housing providers who adopt decision criteria that choose to ignore available criminal history older than three years.

Instead of following HUD's narrow lookback periods and limits on the use of arrest data, appellate courts regularly review the totality of available arrest and conviction records when evaluating negligent screening allegations. In *Cure v. Pedcor Management Corp.*, for example, a leading case, a three-year lookback period would mean a PHA or HUD-assisted housing provider would choose to ignore resident conduct that forms the basis for negligence liability.¹¹ In that frequently cited case, a resident named Abraham Richardson kidnapped a neighbor's child from her home at their apartment complex and brutally raped and assaulted her.¹² In a lawsuit brought by the girl's family against the housing provider, the court found the presence of prior criminal incidents perpetrated by Richardson in the public record helped "make a plausible case for holding Defendants liable for negligently failing to prevent the kidnapping and rape of Plaintiff's minor child by another resident."¹³ The relevant predictive incidents cited by the court as the basis for the housing provider's

⁹ See, e.g., *Cure v. Pedcor Management Corp.*, 265 F. Supp. 3d 984 (D. Neb. 2016); *Peterson v. Kings Gate Partners-Omaha I, L.P.*, 290 Neb. 658 (2015); *Griffin v. W. RS, Inc.*, 97 Wash. App. 557, 570, 984 P.2d 1070 (1999), *rev'd on other grounds by* 143 Wash.2d 81, 13 P.3d 558 (2001); see also *Hutchins v. 1001 Fourth Avenue Associates*, 116 Wash.2d 217, 224, 802 P.2d 1360 (1991).

¹⁰ Proposed Rule: Reducing Barriers to HUD-Assisted Housing, 89 FR 25332-01, 25363 (modifying 24 CFR § 5.855).

¹¹ 265 F. Supp. 3d 984 (D. Neb. 2016).

¹² 265 F. Supp. 3d 984, 989 (D. Neb. 2016).

¹³ *Id.* at 992.

negligent screening liability exposure included four criminal cases that were nine, four, three and a quarter, and two years old at the time of the assault.¹⁴ Were the housing provider to apply the proposed HUD rule's three-year lookback presumption, three of those four records would be ignored because they were more than three years old, and, while the fourth would have fallen within the lookback period, as a misdemeanor arrest charge, standing alone, the charge would be insufficient for the housing provider to decline under HUD FHEO guidance.¹⁵

In another case, *Peterson v. Kings Gate Partners-Omaha I, L.P.*, the Nebraska Supreme Court found potential negligent screening liability for a rental housing provider's failure to conduct a background check of a resident who assaulted another resident on the apartment's premises where a criminal background check would have revealed that he had assault and abuse convictions in the public record that were eight, ten, and twelve years old at the time of the assault.¹⁶ A Nebraska HUD-assisted housing provider following the proposed rule's three-year lookback presumption would be unable to decline the assaulter on the basis of these public records, and would have no liability protection for choosing to do so.

These are just two examples that make clear that where a consumer's criminal history records are publicly available, appellate courts expect them to be used by housing providers, else negligent screening liability exposure awaits. A housing provider who opts to narrow its criminal history lookback period to ignore available criminal convictions older than three years exposes its company and property to premises security liability exposures that courts find actionable, as well as avoidable safety risks that affect community residents.

Other recent policies to increase access to justice-involved persons address this industry negligent screening exposure in ways the HUD rule does not. In contrast to the proposed rule, states enacting clean slate legislation have provided some negligent screening liability limitation for landlords, employers, non-profits, and other public record users that fail to decline an application on the basis of expunged criminal history.¹⁷ In doing

¹⁴ *Id.* at 989 (citing paragraph 28 of the complaint).

¹⁵ *See id.*

¹⁶ *Peterson v. Kings Gate Partners-Omaha I, L.P.*, 290 Neb. 658, 660, 861 N.W.2d 444, 447 (2015) (Noting after a 2012 assault on the apartment premises gave rise to the lawsuit, "Wallace had several convictions for crimes of violence, including assault and battery in 2000; violation of a protection order for verbally assaulting a mentally challenged woman via telephone in 2002; and abuse of a vulnerable adult in 2004").

¹⁷ *See, e.g.*, Connecticut, S.B. 1019, Sec. 34 ("There shall be a rebuttable presumption against admission of evidence of the prior criminal conviction of an applicant or employee in an action alleging that an employer

so, these states have more sensibly advanced the cause of re-entry for justice-involved renters while balancing the legitimate need of some public record users to protect others whom they have a duty to protect. HUD should include in the rule liability protections from negligent screening similar to clean slate laws in Connecticut, Michigan and New York for HUD-assisted housing providers that choose to ignore or not consider available public records in their resident screening evaluations.

But the shortened lookback period in HUD's proposed rule puts PHAs and private market operators in a bind: any who voluntarily adopt criminal history lookback periods that limit consideration of public available criminal history to three years will still be held to a higher standard by the courts for state negligent screening claims.

2. Highly Reputable Recidivism Research Supports Far Longer Lookback Periods and Wider Crime Type Criteria than HUD Proposes for HUD-Assisted Housing.

As noted above, the proposed rule would require the establishment of a "lookback period" limiting reliance on criminal records by PHAs and providing that relying on records older than three years would be "presumptively unreasonable."¹⁸ Such a proposal risks the safety of other residents and visitors in the communities. While we appreciate HUD's recognition that the rule should not further discourage Housing Choice Vouchers ("HCV") participation by applying this standard to market-rate housing providers, the best available evidence suggests that a longer lookback period and the use of a wider set of offense types in housing provider criteria would better prevent recidivism and protect residents, employees, and their communities.

has been negligent in hiring an applicant or retaining an employee"); Michigan, Mich. Comp. Laws Ann. § 780.622(8) ("A conviction, including any records relating to the conviction and any records concerning a collateral action, that has been set aside under this act cannot be used as evidence in an action for negligent hiring, admission, or licensure against any person"); New York, A1029C, Sec. 3(e) ("In any civil action, an official record of a conviction that has been sealed pursuant to this section may not be introduced as evidence of negligence against a person or entity that provided employment, contract labor or services, volunteer work, licensing, tenancy, a home purchase, a mortgage, an education, a loan, or insurance if such record was sealed and was not provided to the person or entity by or on behalf of a governmental entity"); Pennsylvania, 2018 HB 1419, Sec. 2 ("An employer who employs or otherwise engages an individual whose criminal history record has been expunged or to which limited access has been applied under section 9122.1 (relating to petition for limited access) or 9122.2 (relating to clean slate limited access) shall be immune from liability for any claim arising out of the misconduct of the individual, if the misconduct relates to the portion of the criminal history record that has been expunged or provided limited access").

¹⁸ Proposed Rule: Reducing Barriers to HUD-Assisted Housing, 89 FR 25332-01, 25363 (modifying 24 CFR § 5.855).

The record supporting the proposed rule omits several years of national, peer-validated criminology research that validates longer lookback periods and supports a broader set of disqualifying criminal charges. The federal government has conducted several studies of re-arrest frequency which show high levels of repeat criminal activity by defendants eight or nine years after their prison release— a point in time which may be 20 years or longer after the date of the original conviction, depending on the length of the prison sentence. Specifically:

- A U.S. Department of Justice 2018 study found the re-arrest rate for state prisoners was 83% with nine years after release.¹⁹
- A 2019 U.S. Sentencing Commission report found a 39.8% re-arrest rate for nonviolent and a 64% re-arrest rate for violent federal prisoners over an eight-year period.²⁰
- A 2021 study released by the federal Bureau of Justice Statistics substantiates the concern regarding violent offenders, finding that “[a]bout 1 in 3 (32%) prisoners released in 2012 after serving time for a violent offense were arrested for a violent offense within 5 years.²¹ “Violent offenses” were defined to include homicide, rape or sexual assault, robbery, assault, and other miscellaneous or unspecified violent offenses.²²

These expert U.S. Department of Justice and U.S. Sentencing Commission studies support the case for thorough criminal history screening with lookback periods longer than 3 years and close attention to the disposition of the re-arrests of released prisoners. The studies demonstrate a high frequency of repeat, often violent, criminal activity—a key concern for rental housing providers who have a duty to provide safe communities for residents, and face litigation exposure to premises security claims and resident concerns for safety. Absent longer lookback periods and wider crime type criteria, housing providers cannot make data-

¹⁹ M. Alper, M. Durose, & J. Markman, *2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)*, available at: <https://bjs.ojp.gov/library/publications/2018-update-prisoner-recidivism-9-year-follow-up-period-2005-2014#:~:text=An%20estimated%2068%25%20of%20released,within%20the%20first%203%20years>.

²⁰ M. Clarke, *Long-term Recidivism Studies Show High Arrest Rates*, Prison Legal News (May 3, 2019), available at: <https://www.prisonlegalnews.org/news/2019/may/3/long-term-recidivism-studies-show-high-arrest-rates/>.

²¹ *Recidivism of Prisoners Released in 34 States in 2012: A 5-Year Follow-Up Period (2011-2017)*, p. 12, available at: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/rpr34s125yfup1217.pdf>.

²² *Id.* at 24.

driven decisions based on available public information about an applicant's risk of reoffending and may revert to subjective "gut proxies" which could pose a greater risk of discrimination.²³

A broader view of an applicant's criminal history is necessary because recidivism is not specialized by type of crime.²⁴ In other words, repeat offenders are generalists, not specialists.²⁵ Crime type is not a reliable predictor of risk of future offenses, because most people who offend do not specialize in a crime type.²⁶ One report by the Council on Criminal Justice found:

People released in 2012 who had been serving a prison term for a violent crime were almost as likely to be rearrested for a property crime (28.9%) as a violent crime (32.4%) . . . Similarly, many people serving time for property crimes (29.6%) were rearrested for violent offenses (51.2%).²⁷

Recidivism rates are also higher for those who engage in substance abuse (especially opiates), those who already have extensive criminal histories, and those who commit misconduct while incarcerated.²⁸ Contrary to the assumption embedded in much of our criminal justice policy, "there is only a weak correlation between crime types over time

²³ Evidence exists that the use of background screening reports to verify for the presence or absence of an applicant's court history may actually *reduce* the incidence of racial discrimination, as such objective consumer report data is more reliable than users' baseline opinions, the latter of which may impose subconscious stereotypes in lieu of verifiable data. See Harry J. Holzer *et al.*, *Perceived Criminality, Criminal Background Checks and the Racial Hiring Practices of Employers*, 49 J. Law & Econ. 451, 452 (2006) (finding that employers who use criminal background checks are more, not less, likely to hire African Americans and noting that "in the absence of background checks, employers use race, gaps in employment history, and other perceived correlates of criminal activity to assess the likelihood of an applicant's previous felony convictions and factor such assessments into the hiring decision").

²⁴ *Key Research on Hiring People With Criminal Histories*, RAND, available at: <https://www.rand.org/education-and-labor/projects/resetting-the-record/key-research.html>.

²⁵ Tara Richards *et al.*, *A Longitudinal Examination of Offending and Specialization Among a Sample of Massachusetts Domestic Violence Offenders*, J. of Interpersonal Viol., Vol. 28, Iss. 3, Sept. 2012, at <https://doi.org/10.1177/08862605124555> ("Results indicate that specialization among domestic violence offenders is rare – prior alcohol and drug crimes predict membership in the high-rate domestic violence arrest trajectory group and prior domestic violence arrests predict membership in both the low-rate and high-rate nondomestic violence arrest trajectories.")

²⁶ S. Bushway, *Resetting the Record: The Facts of Hiring People with Criminal Histories*, RAND Research Brief, Jan. 2024, https://www.rand.org/pubs/research_briefs/RBA2968-1.html

²⁷ *Recidivism Rates: What You Need to Know*, Council on Criminal Justice (Sept. 1, 2021), available at: https://counciloncj.org/recidivism_report/

²⁸ *Recidivism 2022 Report*, Pennsylvania Department of Corrections, p. 4, available at: <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/Recidivism%202022%20Report.pdf>

within a criminal career.”²⁹ To fully and accurately gauge an applicant’s risk to other residents, it is important to make a broader assessment of an applicant’s prior criminal history when assessing the threat posed if admitted as a resident. Looking at a narrow set of assault and property crimes will underestimate the recidivism risk posed by an applicant.

It is reasonable for housing providers to rely on this expert criminology research in support of a wide set of disqualifying criminal screening criteria. Narrowly drawn disqualifying crimes in criteria set up housing providers for state courts’ negligence liability just as short lookback periods do.

3. Access to Renter History Held by Public Housing Authorities Should Be Easily Accessible.

We commend HUD for proposing to make easier access to residents’ history as housing authority residents in the proposal. This expanded access would allow PHAs to offer owners and their agents information in the PHA’s possession about family tenancy history.³⁰ PHA history provides a more complete and nuanced picture of an applicant than can be gained from prior housing provider interviews and court records alone, and a system of regular reporting of residents’ relevant positive and derogatory PHA history allows for a more accurate assessment of any safety risks and makes it easier to approve the majority of residents - those who have a history of safe conduct. The final rule should proactively ensure this rental history is available from PHAs in a standard format for easy, accurate use.

Allowing more complete views of applicant history can also benefit applicants, by differentiating PHA residents with positive PHA histories from those with relevant, repeat derogatory histories during their public housing tenure.³¹ HUD itself has found that adding PHA rental data to credit file data only for those with on-time rental payment histories raised credit scores much more often than it lowered them. Moreover, adding the full-file PHA rental payment data make accuracy better by both increasing the majority of the consumer scores, and lowering those who do not make payments as agreed.³² Making a

²⁹ Bushway, Shawn D. and Nidhi Kalra, 2021, *A Policy Review of Employers’ Open Access to Conviction Records*, Annual Review of Criminology, 4:165-189, available at: <https://www.annualreviews.org/doi/abs/10.1146/annurev-criminol-061020-021622>

³⁰ Proposed Rule: Reducing Barriers to HUD-Assisted Housing, 89 FR 25332-01, 25372 (modifying 24 CFR § 982.307).

³¹ See generally *Potential Impacts of Credit Reporting Public Housing Rental Payment Data*, U.S. Department of Housing and Urban Development (Oct. 2019), available at: <https://www.huduser.gov/portal/sites/default/files/pdf/Potential-Impacts-of-Credit-Reporting.pdf>.

³² *Id.* at 8.

wider set of resident lease experience available from PHAs can further benefit the vast majority of residents with strong histories as they move elsewhere.

Applicant Fraud and New Regulation Trends Make Resident Screening Increasingly Complex and Costly.

We also wish to comment on two important trends in resident screening: rental applicant fraud and increasing regulation. Accurate, fast, and lawful decisions are hallmarks of our resident screening members' work. Yet, accurate, fast, and lawful decisions are complicated by increasing and more sophisticated levels of rental application fraud. Resident screeners play a key role for housing providers by differentiating fraudulent applicants from qualified ones seeking scarce affordable housing, so that providers can evaluate applications consistently and fairly.

Where safe, affordable rental housing is in short supply, rental application fraud management is a critical protection for housing providers and honest residents alike. Rental application fraud tends to fall into two categories: document fraud and identity fraud. The National Multifamily Housing Council found “Rampant, Increasing Fraud Impacting Rental Housing Costs” in a January 2024 survey, noting that 84% of surveyed property management companies had seen applicants falsifying income or employment documentation and 70% reported fraudulent IDs or use of another person’s information.³³

The recent reports continue an established trend. According to the Federal Trade Commission, between 2019 and 2021, reports of fraud, identity theft, and other deceptions spiked 67% in the United States.³⁴ In a 2020 analysis, LexisNexis found more than 30,000 fraud rings involved in forgery, filing false claims, identity theft, identity manipulation and fake bank checks.”³⁵

³³ “Rampant, Increasing Fraud Impacting Rental Housing Costs,” NMHC, Jan. 24, 2024.

<https://www.nmhc.org/news/press-release/2024/rampant-increasing-fraud-impacting-rental-housing-costs/>

³⁴ Consumer Sentinel Network: Data Book 2021, Federal Trade Commission (Feb. 2022), p. 6, available at:

https://www.ftc.gov/system/files/ftc_gov/pdf/CSN%20Annual%20Data%20Book%202021%20Final%20PDF.pdf.

³⁵ *Discover How to Detect and Disarm Identity Fraud Rings*, LexisNexis Risk Solutions, available at:

<https://risk.lexisnexis.com/insights-resources/article/identity-fraud-rings>.

A new TransUnion study released in April 2024 found that 6 in 10 property managers have experienced rental applicant fraud in the past two years – but 38% did not identify the fraud until after the applicant had moved in.³⁶

One law enforcement report demonstrates how applicant fraud can occur. On March 31, 2023, the U.S. Department of Justice (“DOJ”) announced that a former detective sergeant for the Stoneham Massachusetts Police Department was “arrested and charged for allegedly providing false information in rental applications to fraudulently obtain three separate apartment leases for which he intentionally withheld rent payments.”³⁷ The DOJ’s press release provides a good example of how this fraud often plays out. We note that a resident screening report tipped off landlords to the fraud:

Kennedy’s most recent landlord required him to submit to a resident screening service, including a credit check and eviction history check, according to the release. Kennedy allegedly provided the birthday and social security number of a relative with the same name; prosecutors said his own information would have likely shown a history of collections, delinquent payments, defaults, and evictions.

According to the charging document, Kennedy defrauded his last three landlords by providing materially false and misleading information in his rental applications to obtain the respective apartment leases. After moving in, it is alleged that Kennedy would intentionally withhold rent payments, despite making \$141,000 – \$187,000 a year from the Stoneham Police Department. As a result, Kennedy lived in the apartments rent-free by allegedly taking advantage of the slow eviction process.

Specifically, it is alleged that Kennedy defrauded his most recent landlord by submitting materially false and fraudulent information during the rental application process. The landlord required Kennedy to submit to a resident screening service, which included a credit check and eviction history check. Instead of providing his own date of birth and social security number to

³⁶ “Six out of 10 Property Managers Experienced Fraud in Past Two Years,” TransUnion, April 2024, <https://newsroom.transunion.com/six-out-of-ten-property-managers-experienced-fraud-in-past-two-years/>

³⁷ *Former Stoneham Police Officer Arrested for Wire Fraud*, Press Release, U.S. Department of Justice (March 31, 2023), available at: <https://www.justice.gov/usao-ma/pr/former-stoneham-police-officer-arrested-wire-fraud>.

the resident screening service – which would likely have shown Kennedy’s history of collections, delinquent payments, defaults and evictions – Kennedy allegedly provided the date of birth and social security number of a relative who shared his first and last name. The landlord relied on the information from the fraudulently obtained resident screening report to approve Kennedy’s rental application and give Kennedy a lease for the apartment. It is further alleged that Kennedy immediately and intentionally violated the terms of the lease by giving the landlord bad checks for his rent and security deposit and failing to make subsequent rent payments. Kennedy lived in the apartment for approximately four months without making rent payments and currently owes the landlord approximately \$14,000 in overdue rent.

In a market with limited available rental housing, rental applicant fraud squeezes out otherwise eligible consumers. Rental housing providers and screening providers are on the front line of addressing this problem. Resident screening reports are critical links to prevent fraud and limit losses, which are paid for by other residents in rental buildings. Ready access to PHAs’ evidence of program fraud helps stop subsequent program and rental applicant fraud. Continued access to court, corrections, and law enforcement evidence of payments is critical to stopping rental applicant fraud before it walks through the door.

In addition to technology-aided identity and document fraud, which require the development of new countermeasures, regulatory trends are also adding complexity to resident screening. The proposed rule, when read with contemporaneous HUD fair housing guidance used by enforcement agencies,³⁸ provides for additional documentation, more particularized criteria, and wider exceptions to the general criteria by housing providers when they assess prospective residents—new regulatory factors that make resident screening more time-consuming, intricate, and costly. Moreover, it is becoming increasingly challenging to obtain criminal records from courts as additional state limits on access to personally identifiable information are implemented. Courts are slow to update technology and are facing greater workloads as Clean Slate legislation is creating backlogs for these

³⁸ U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity: Guidance on Application of the Fair Housing Act to the Screening of Applicants for Rental Housing (April 29, 2024), available at: https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO_Guidance_on_Screening_of_Applicants_for_Rental_Housing.pdf

government entities already operating with limited budgets. These regulatory trends can be expected to increase costs and delays to consumers applying to rent.

We believe the suggestions in this comment letter will help address the complex challenges inherent in resident screening without compromising HUD's core policy goals, founded in its mission to "create strong, sustainable, inclusive communities and quality affordable homes for all," to "bolster the economy and protect consumers," and "build inclusive and sustainable communities free from discrimination[.]"³⁹

To achieve this mission, including all the highlighted key elements of that statement HUD's policy must work diligently on the balance between fair access to housing and safe housing.

Please contact us if you have any questions concerning our comments.

Sincerely,

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³⁹ <https://www.hud.gov/about/mission>