

June 10, 2024

Via Regulations.gov

**RE: Reducing Barriers to HUD-Assisted Housing, HUD-2024-0031**

Freedom Network USA (FNUSA) and 39 anti-trafficking organizations and individuals submit these comments on the Department of Housing and Urban Development's (HUD) proposed rule, Reducing Barriers to HUD-Assisted Housing. Our comments are focused on meeting the needs of human trafficking survivors. We applaud HUD's proposed rule for requiring public housing agencies (PHAs) and HUD-funded housing providers to implement individualized assessments of criminal records and limiting the records that can be considered for denials. This rule will open the door for more survivors to access necessary HUD-funded housing services. We offer the following comments on the complex ways in which criminal records prevent human trafficking survivors from accessing necessary housing and considerations that should be taken by the HUD to ensure survivors are best able to access HUD-funded housing services.

*Freedom Network USA (FNUSA), established in 2001, is a coalition of over 100 non-governmental organizations and individuals that provide services to and advocate for the rights of trafficking survivors in the United States. Through FNUSA's OVC-funded Housing Project, we provide training and technical assistance to human trafficking housing providers to improve survivors' access to quality housing services nationwide. Our Survivor Reentry Project provides criminal record relief representation to survivors who are left with criminal records as a result of their victimization.*

## **Background**

### **I. Housing needs of trafficking survivors**

One of the most critical needs of trafficking survivors is to find and maintain safe, affordable housing. Within FNUSA's Housing Project, many survivors have shared that their experiences of housing insecurity and homelessness are directly related to their experiences of trafficking. Because trafficking is rooted in economic exploitation, survivors often struggle to obtain the necessary funds, have poor credit, and lack sufficient rental history to find affordable market-rate housing options. Housing instability both creates vulnerabilities to trafficking and exacerbates existing vulnerabilities. Lacking stable housing after a trafficking situation also makes survivors vulnerable to re-exploitation. Systemic racial, gender identity, sexual orientation, and national origin-based discrimination in the housing, financial, and labor sectors further exacerbate housing instability and create vulnerabilities to trafficking for marginalized groups.

Survivors of trafficking are often from communities that experience multiple forms of marginalization. Improving access to housing for people with disabilities, those with low incomes, the elderly, and those with criminal records acts as a trafficking prevention measure.

Trafficking can be a disabling event for many, and survivors may require additional support and access to disability-specific resources.

While the US government funds some housing programs specifically for trafficking survivors, they are limited and not sufficient to meet the need. Trafficking-specific housing services may not be right for every survivor and they often seek out other housing options. The systemic barriers to housing for survivors cannot be met by NGO-run housing services, and survivors should be able to access the full range of HUD-funded housing services, as noted by HUD in its recent study analyzing survivors' access to available housing services.<sup>1</sup>

## **II. The impact of criminal records on trafficking survivors**

Trafficking survivors are often forced into criminal activity as part of their trafficking experience, leaving them with complex criminal records.<sup>2,3</sup> The most common records found in our Survivor Reentry Project include charges for prostitution, drug-related offenses, driving-related offenses, theft, forgery, false documents, and failure to appear. FNUSA members see other frequent charges like assault, domestic violence-related offenses, identity theft-related crimes, non-compliance for probation, and trespassing. Survivors often report that they face charges for assault committed in self-defense as well. These records result in survivors being excluded from safe housing, increasing their risk of homelessness and re-exploitation.

In states that are targeting the rights of LGBTQ+ residents, survivors may face criminal records that are direct violations of their rights. Some states are also starting to criminalize access to reproductive healthcare. Full access to healthcare is essential for survivors and for preventing trafficking. These types of charges should *never* prevent someone from accessing safe, affordable housing.

Substance use-related charges are a complicated issue for survivors. Survivors may have multiple possession charges or paraphernalia possession charges that prevent them from finding safe housing. Survivors may be forced to carry or distribute drugs or paraphernalia as part of the labor trafficking scheme. Traffickers often force substance use as a means of control. Other survivors use substances as a form of self-medication to cope with their victimization.<sup>4</sup> A survey of US survivors of sex trafficking found that 84.3 percent used substances during their

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<sup>1</sup> U.S. Department of Housing and Urban Development, "Housing Needs of Survivors of Human Trafficking Study," March 21, 2024, <https://www.huduser.gov/portal/portal/sites/default/files/pdf/Housing-Needs-of-Survivors-of-Human-Trafficking-Study.pdf>

<sup>2</sup> Julia Einbond, et al., "A Case of Mistaken Identity: The Criminalization of Victims of Labor Trafficking by Forced Criminality," *Criminal Law Bulletin*, May 8, 2023, <https://covenantousenj.org/labor-trafficking-by-forced-criminality/>

<sup>3</sup> Office to Monitor and Combat Trafficking in Persons, "The Use of Forced Criminality: Victims Hidden Behind the Crime," June 2014, <https://2009-2017.state.gov/documents/organization/233938.pdf>

<sup>4</sup> Noel Crowley, "Intersectionality between Substance Use and Human Trafficking," Freedom Network USA, <https://freedomnetworkusa.org/2022/07/12/intersectionality-between-substance-use-and-human-trafficking/>

trafficking exploitation.<sup>5</sup> No form of substance use should prevent survivors from accessing safe housing.

Survivors recently released from prison or jail are at significant risk of revictimization when they are unable to obtain safe, stable housing and social services upon release. For many survivors, meeting housing needs allows them to access other necessary social supports. When people are focused on finding a place to sleep, they have less time and energy to seek out other services.

Survivors often require housing immediately upon leaving or in order to leave a trafficking situation. Because of the immediacy of the need, survivors may have records of criminal activity within the proposed 3-year lookback period or activity that may be considered “current” within the proposed 12-month period. If survivors continue to be prevented from accessing lifesaving housing due to forced criminality or records caused by acts of survival, they will continue to be made more vulnerable to exploitation and trafficking.

HUD should expressly note the experiences of criminalized trafficking survivors and survivors of other forms of interpersonal and gender-based violence in the rule overview. The rule should also outline other housing protections provided to survivors, including references to VAWA guidelines. While survivors of trafficking are not explicitly covered by VAWA, they may also be survivors of VAWA-covered crimes.

## **Recommendations**

### **I. Considerations for mitigating factors and discretion of housing providers**

The current proposed rule provides significant discretion for HUD-funded housing providers and PHAs in denial decisions related to criminal records. Many of the criminal records frequently held by trafficking survivors have been considered in housing denials as “other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises of other residents.” This standard is highly subjective and many charges commonly considered in this category, including prostitution and sex work-related charges, are not indicators that someone will threaten the health, safety, or peaceful enjoyment of other residents.

The rule also does not address expunged, vacated, or sealed records. As criminal record relief options are increasing across the US, housing providers need specific guidance to ensure that these cleared records are not being used to deny access to housing. Websites that provide criminal records, and even law enforcement records, are often out of date and still include cleared or sealed records. It is very difficult to remove cleared records from these websites. Survivors have faced continuous barriers to housing after clearing their records due to these

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<sup>5</sup> Hanni Stoklosa, et al., “Human Trafficking, Mental Illness, and Addiction: Avoiding Diagnostic Overshadowing,” January 2017, <https://journalofethics.ama-assn.org/article/human-trafficking-mental-illness-and-addiction-avoiding-diagnostic-overshadowing/2017-01#:~:text=A%20broader%20survey%20of%20US,%20used%20heroin%20%5B9%5D>.

issues. This issue extends to sex offender registries as well. Survivors who receive charges related to the recruitment or exploitation of minors are often forced to register as sex offenders, even if they were coerced or forced into the crimes. Even when records are vacated, it is extremely difficult to remove oneself from sex offender registries, and secondary registries (like the International Megan's Law registry and national databases). It often takes survivors many years to remove their names from these lists.

**Recommendations:** HUD should address the unique needs of survivors in the rule and limit the ability of PHAs and HUD-funded housing providers to deny applications due to records associated with trafficking by including human trafficking as a mitigating factor. HUD should limit confusion by clearly defining "other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises of other residents." HUD should follow the rule with strong sub-regulatory guidance, training, and technical assistance for PHAs and HUD-funded housing providers to ensure they understand the impact of human trafficking, consider mitigating factors related to someone's trafficking experience, and utilize trauma-informed application processes.

The rule should include information about expunged, vacated, and sealed records. It should include specific guidance for reviewing applications with cleared records that still show up on record search websites. Vacated and expunged records should not be considered in the individualized assessments. They should also not be allowed to be considered in any "failure to disclose" provisions. The rule and subsequent guidance should also specify that news articles about arrests and potential criminal activity should not be considered in assessments. Survivors report that these news articles have been used as reasons for denials of housing and job opportunities, despite the charges being dropped, arrests expunged, or convictions vacated. Guidance, training, and technical assistance should include information about criminal record relief and a clear process for applicants to appeal when these records are involved in a denial. In addition, while there is a statutory mandate to immediately deny applicants listed on sex offender registries, other sex-related crimes should not result in mandatory denials.

## **II. Lookback period**

Survivors may access HUD-funded housing and PHAs while they are in or just after leaving a trafficking situation. This means there may be criminal activities caused by their trafficking experience within the proposed 3-year lookback period. While including mitigating factors and considerations for trafficking survivors will help alleviate some of the access issues for survivors, some will not be in a position to appeal denials or explain the causes of criminal records when they are seeking safety. Accessing safe housing can be the determining factor in preventing a survivor from revictimization, therefore, limiting unnecessary denials is extremely important for survivors. Some survivors may not yet recognize that they were victims of trafficking or be able to put forced criminal activity into words. Most survivors will apply for HUD-funded housing without an advocate to assist them through the process.

**Recommendations:** HUD should limit the lookback period for all offenses to one year. By limiting the lookback period for all, HUD would ensure survivors of trafficking, and other forms of violence, are able to access lifesaving and necessary housing resources, with a less significant burden on those who have recently fled a trafficking situation. HUD should not establish a longer lookback period for any type of criminal record.

### **III. “Currently engaging in” standard**

For survivors in the process of or who have recently left a trafficking situation, looking back 12 months to establish “current engagement” in criminal activity will likely bring up criminal activity caused by trafficking. Some PHAs use a shorter time frame of 3 months, which would be more appropriate to establish criminal activity applicants are “currently engaging in.” Fewer survivors would face denials based on this activity if the period were shortened. As discussed in the section above, trafficking is a traumatizing experience for survivors, many will not have the language to describe coerced criminal activity, and most will not have the assistance of an advocate, which present barriers to housing access even with an individualized assessment.

**Recommendations:** HUD should restrict how far back a HUD-funded housing provider or PHA can look to establish if an applicant is “currently engaging in” criminal activity. HUD should restrict that period so that housing providers cannot consider criminal activity that happened 3 months ago or longer as a sole basis for denial. Mitigating circumstances for survivors should be included in training and technical assistance for HUD-funded housing providers and PHAs.

### **IV. Denial challenges**

The proposed rule suggests a 15-day period in which applicants can challenge the accuracy and relevance of information and provide mitigating information before an admissions decision. This time period is insufficient to allow applicants to provide appropriate documentation to challenge a denial. For survivors, a 15-day challenge period would present significant hurdles. Survivors may not have documentation of criminal record relief to share immediately and may need to request one from the court. Many may need more time due to working long hours, experiencing housing instability, or lacking consistent access to a cell phone or internet services.

**Recommendations:** HUD should extend the dispute period to 30 days to provide ample time for applicants to gather the necessary documents and seek assistance in challenging denials. To make the challenge process accessible to survivors and all applicants, the process needs to be simple and clearly laid out for applicants. We encourage HUD to ensure materials that plainly explain the rights of applicants, what criminal activity can be considered for a denial, fair housing rights, and the VAWA notice, as well as a reporting mechanism for wrongful denials are provided to applicants alongside a denial notice.

We thank you for taking up this critical rulemaking and appreciate your consideration of this comment. Please reach out to Emma Ecker at [emma@freedomnetworkusa.org](mailto:emma@freedomnetworkusa.org) if you have any questions.

Sincerely,

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