



# Administrative and Legislative Recommendations on Rental Housing Issues

## *Transition Memo for the Biden-Harris Administration*

Community Legal Services of Philadelphia's Housing Unit (CLS) provides free legal advice and representation to over 3,000 low-income tenants living in private and subsidized housing each year, as well as engages in significant advocacy locally, statewide, and nationally around affordable housing and protection of tenant rights. These recommendations to the Transition Committee are informed by over 50 years of expertise advocating for vulnerable communities in Philadelphia in private and subsidized rental housing matters.

As part of the "Biden Plan for Investing in Our Communities through Housing," President-Elect Joseph Biden and Vice President-Elect Kamala Harris are committed to ensuring all Americans have access to affordable, stable, safe, healthy, and accessible housing. CLS suggests a list of urgent policy recommendations for the Transition Committee to consider that can be implemented to ensure the future of safe, accessible, affordable housing, particularly for the communities most impacted by the current pandemic and economic crises.

- **Reinstate the 2015 Affirmatively Furthering Fair Housing Rule**

As the Biden-Harris administration has recognized in its plan for advancing racial equity, segregation and housing discrimination remain a major issue in our country and in Philadelphia, the area that CLS serves. In one 2015 study, Philadelphia remained the 4<sup>th</sup> most segregated major city in the United States.<sup>1</sup> While Philadelphia is an incredibly diverse city with a majority minority population, its neighborhoods remain incredibly segregated with its black and brown residents often pushed to the poorest areas of the city and those with the least city resources and the least amount of safe habitable housing stock.<sup>2</sup> It also has wide ranging effects on the lives of Philadelphia's black and brown residents.

We strongly encourage the Biden-Harris administration to withdraw the Trump Administration's AFFH Rule and reinstate the 2015 AFFH rule. Whereas the Trump AFFH Rule grants too much deference to government entities receiving federal funds, the 2015 AFFH Rule provides a robust framework for communities to assess systemic barriers to fair housing as well as strategic solutions to those problems. It also emphasizes meaningful engagement with community and detailed data and maps to help communities make a fully informed fair housing analysis.

The effects of segregation on vulnerable peoples' lives are complex and wide reaching. It is a mistake not to provide federal grantees with a strong tool to analyze and mitigate the effects of segregation on the populations they serve. Without such a tool it will be virtually impossible for the United States to achieve true Housing Integration. The 2015 Affirmatively Furthering Fair Housing Rule provided concrete and practical tools and steps for federal grantees to meaningfully work towards the important goal of housing integration. In contrast the Trump AFFH Rule is a real threat to any progress made towards achieving integration and in fact, risks setting that goal back and leading to even more

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<sup>1</sup> Otterbein, Holly, "Philly the 4<sup>th</sup> Most Segregated Big City in the Country", Philadelphia Magazine (September 22, 2015).

<sup>2</sup> Pew Charitable Trusts. (2018, September 26). Philadelphia's Poor: Experiences From Below the Poverty Line. Retrieved March 16, 2020, from <https://www.pewtrusts.org/en/research-and-analysis/reports/2018/09/26/philadelphias-poor-experiences-from-below-the-poverty-line>



segregation and very real negative consequences for black and brown populations. It will leave us with a more entrenched system of segregation than where we began five years ago.

- **Increase access and remove barriers to housing for re-entering citizens**

An estimated 1 in 3 adults have a criminal record, one that bars them from accessing employment, housing, benefits, and other stabilizing measures, while Pennsylvania has a higher corrections population than all but eight states, resulting in large numbers of people whose backgrounds include past criminal convictions. Guidance released from HUD in 2016 states that policies which place blanket bans on tenants with criminal history may constitute potential violations of the Fair Housing Act. The HUD guidance supports amendments to existing laws that would ensure that arrests records or unrelated or remote convictions do not keep people from accessing affordable, stable housing, or rejoining with family members.

Housing admissions policies that exclude prospective tenants based on criminal records disproportionately impact African-Americans and Hispanics, who are more likely to have a criminal record; African American men, for example, are incarcerated at a rate more than six times that of white men. Because of Black and Hispanic overrepresentation in the criminal justice system, housing policies eliminating applicants based on criminal records create a discriminatory effect, absent any discriminatory intent on the part of the landlord.

Stable housing decreases the likelihood that previous offenders will reoffend, while research shows that recidivism declines over time. A criminal record is not predictive or indicative of successful tenancy, or future criminal activity, after 7 years of committing the offense, and therefore does not provide a legitimate basis for an automatic adverse housing decision. Other data shows that many arrest records are simply incorrect. The US Department of Justice has stated that the FBI's Interstate Identification Index system does not contain final disposition information for roughly half of its records, and it is the most comprehensive criminal records database in the country. FBI reports frequently fail to include the outcome of cases, resulting in cases being reported as pending that have been long resolved, often in the applicant's favor. Therefore, relying on arrests not resulting in conviction as a basis for denying applicants may result in unfair denials.

Segregation also leads to disproportionate justice system involvement for people of color. This, in turn, leads to an inability to find housing when providers refuse to rent to people with previous criminal justice involvement. Even in areas with an adequate supply of quality affordable housing, many prospective renters of color are shut out of the housing market due to their having a past criminal record.<sup>3</sup> People with criminal records do not have equal access to the affordable housing market, and are therefore unable to exercise a meaningful choice between housing options.

In addition to reinstating the 2015 AFFH rule, the HUD guidance supports the establishment of additional laws and protections that would ensure that arrests records or unrelated or remote convictions do not keep people from accessing affordable, stable housing, or rejoining with family

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<sup>3</sup> See Equal Rights Center, *Unlocking Discrimination: A DC Area Testing Investigation About Racial Discrimination and Criminal Records Screening Policies in Housing* 6 (2016) available at <https://equalrightscenter.org/impact/unlocking-discrimination-report/> (finding Black women with a criminal record searching for housing in the Washington D.C. area were treated differently 47% of the time); Greater New Orleans Fair Action Housing Center, *Locked Out: Criminal Background Checks as a Tool for Discrimination* 17-18 (2015), available at [http://www.gnofairhousing.org/wp-content/uploads/2015/09/Criminal\\_Background\\_Audit\\_FINAL.pdf](http://www.gnofairhousing.org/wp-content/uploads/2015/09/Criminal_Background_Audit_FINAL.pdf) (finding differential treatment toward Black testers posing as prospective tenants with a criminal record 50% of the time).



members. Housing is crucial to securing and maintaining employment, health care benefits, overcoming substance abuse, behavioral health, and other challenges. People who have already paid their debts to society should not face additional barriers to stability when they already have limited options. Stable housing for citizens with criminal records enhances the health and security of the community as a whole.

- **Increase federal emergency rental assistance**

The CARES act provided an additional \$17.4 billion to HUD which included funds for direct rental assistance to tenants. This assistance was a lifeline for tenants facing income loss because of the COVID-19 pandemic. However, many localities ran out of emergency rental assistance and were unable to provide funding to those who needed it most. The National Low Income Housing Coalition has estimated that at least \$100 billion would be needed to meet the need for emergency rental assistance as a result of the pandemic. There will be a new epidemic of evictions and families facing housing instability without a sizeable COVID-19 rental assistance program.

There are also many households that could benefit from emergency rental assistance outside of the pandemic. The pandemic is not the only time that households experience unexpected unemployment, high medical bills, or increased emergency expenses. The Federal Reserve reports that 39% of households do not have enough money to cover a \$400 unexpected expense. This means most households cannot afford the three months' rent that is often required to secure new rental housing. These same households are forced to make impossible choices between rent and other expenses when emergency expenses arise. Emergency rental assistance would provide funds for households to cover moving costs in case of an urgent issue like serious repair issues in a unit or help avoid forcible evictions for households with one-time financial crises.

- **Increase funding and support for public housing and other subsidized housing programs**

- Expand and fund subsidy programs other than Rapid Rehousing.
- Build and rehabilitate more public housing instead of just relying on the private market.
- Create more streamlined application process for Project-Based Section 8 developments as well as more accountability in admissions decisions. (e.g. getting rid of PMAM and returning oversight to HUD)

- **Address issues of housing habitability and health through federal measures that increase investment in healthy housing and enforcement of housing quality standards**

Among very low-income renters (defined as incomes up to 50 percent of their area median) HUD finds that 7.7 million households in 2013 were either living in substandard housing and/or paying more than half their monthly income in rent. Habitability and housing quality issues are most severe for the lowest income households; habitability expenses, medical expenses related to habitability, such as taking off work, legal expenses, and higher utility expenses because of repair issues and faulty equipment further impact upon a low-income tenant's ability to keep up with rent and other household expenses.<sup>4</sup>

Furthermore, housing segregation and historic disinvestment in communities of color has led to large disparities in neighborhood housing quality. As a result, people of color are more likely to be effected by home-based health hazards such as inability to regulate temperature and greater exposure to noxious

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<sup>4</sup> Projecting Trends in Severely Cost-Burdened Renters: 2015-2025; Joint Center for Housing Studies of Harvard University by Alston Charette, Chris Herbert, Andrew Jakabovics, Ellene Tracy Marya, Saniel T. McCue



pollutants and allergens (lead, smog, dust mites),<sup>5</sup> which can have immense negative health impacts – particularly on children. Residential segregation is also closely related to health and nutrition. Even when adjusting for individual education, income, and employment status, people living in racially and economically segregated neighborhoods have higher instances of heart disease<sup>6</sup> and cancer.<sup>7</sup>

Philadelphia recently saw its low-income communities losing access to one of their major healthcare providers when Hahnemann Hospital filed for bankruptcy and closed its doors. Another hospital in a predominately low-income and minority neighborhood recently announced that it would stop providing in-patient services.<sup>8</sup> Low-income Philadelphians, who are disproportionately black and brown will now have to travel farther or face longer wait times in the available hospitals in order to receive healthcare. CLS stands in strong support of recommendations made by the National Housing Law Project calling on the Biden-Harris Administration to take necessary steps to ensure habitability of housing in the private market and all federal programs and to ensure tenants’ full rights to remediate habitability concerns.

- **Establish federal “good” or “just” cause eviction laws, providing limited conditions under which a landlord can evict a tenant, such as failure to pay rent or breach of a condition of the lease**

Just cause eviction protections are important anti-displacement measures that help stabilize communities and affirmatively further fair housing. According to a recently released report on Just Cause Eviction laws and their effectiveness, such protections “preserve social and economic diversity, provide tenants with stable and affordable rents, [and] maintain a variety of housing types.” Other cities have recognized that “Evictions and other forms of displacement affect local businesses, school systems, and government agencies, as their employees, clients and constituents find themselves homeless, in new neighborhoods or cities, and/or with long commutes.” Housing stability for both renters and homeowners create better outcomes for families, neighborhoods and local governments. Stability should be a goal for both homeowners and renters.

Just cause eviction protections require landlords to provide a just or good reason prior to evicting tenants, clarifying and specifying under what circumstances a lease termination or eviction is legal and justified. It gives tenants a fair opportunity to understand what the issues with the tenancy are under the terms of the lease, and an opportunity to remedy alleged lease violations under the terms of the lease. These reasons are typically defined by statute, and many states and hundreds of municipalities have some form of just cause eviction protection, while certain types of federally subsidized leases automatically contain just cause protections. Since its passage in Santa Monica, a just cause protection

<sup>5</sup> See. David R. Williams & Chiquita Collins, Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health, *Public Health Reports* (2001), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1497358/pdf/12042604.pdf> See also. Heather Moody et al., *The Racial Wealth Gap in Childhood Blood Lead Levels Related to Socioeconomic Position of Residence in Metropolitan Detroit*, *Sociology of Race and Ethnicity* (2016), <https://www.asanet.org/sites/default/files/savvy/journals/SRE/Apr16SREFeature.pdf>

<sup>6</sup> Ana V. Diez Roux et al., *Neighborhood of Residence and Incidence of Coronary Heart Disease*, *New England Journal of Medicine* (2001), <https://www.nejm.org/doi/full/10.1056/NEJM200107123450205>

<sup>7</sup> See Chiquita A. Collins & David R. Williams, *Segregation & Mortality: The Deadly Affects of Racism?* *Sociological Forum* (1999), [https://deepblue.lib.umich.edu/bitstream/handle/2027.42/45655/11206\\_2004\\_Article\\_411172.pdf?sequence=1&isAllowed=y](https://deepblue.lib.umich.edu/bitstream/handle/2027.42/45655/11206_2004_Article_411172.pdf?sequence=1&isAllowed=y); See also Michael R. Kramer & Carol R. Hogue, *Is Segregation Bad for Your Health?* *Epidologic Reviews* (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4362512/>

<sup>8</sup> Special to the Capital Star. (2020, February 18). As a West Philadelphia hospital expects to end services, City Council wants to find solutions: Pennsylvania Capital. Retrieved March 16, 2020, from <https://www.penncapital-star.com/health-care/as-a-west-philaelphia-hospital-expects-to-end-services-city-council-wants-to-find-solutions/>



known as Measure RR has cut by half all evictions where the basis is for reasons other than non-payment of rent.

- **Fund and support eviction diversion, mediation, community courts, and other programs that provide alternatives to eviction court**

On September 1, 2020, the City of Philadelphia launched the Eviction Diversion Program, a groundbreaking initiative to help landlords and tenants come to agreements without having to go to Court. Modeled off of the nationally recognized Mortgage Foreclosure Diversion Program, the Eviction Diversion Program is staffed by highly trained counselors and volunteer mediators to resolve disputes. The Diversion Program brings together tenants, landlords, volunteer mediators and non-profit housing counselors to work out agreements. Housing Counselors work with tenants to apply for available resources including rental assistance and negotiate sustainable payment agreements.

Philadelphia's diversion program has only been around for two months and has already been successful. Since September, there were 134 mediation sessions where both landlords and tenants participated. In 86% of these mediations, the parties reached an agreement. With widespread job loss, a resurgence of COVID-19 infections and colder temperatures approaching, no tenant should face an eviction. We strongly encourage the Biden Harris administration to urge Congress to establish funding for creating and supporting local eviction diversion programs and other alternatives to court.

- **Establish federal policies restricting the use of eviction records in rental decisions, banning the use of “blanket ban” policies, and encourage Congress to create other policies that seal or limit the use of eviction records**

Each of the nearly 20,000 eviction complaints filed in Philadelphia Municipal Court each year carries a lifelong blemish on a person's tenancy records, regardless of the outcome of the case. Even when a tenant wins in court or enters an amicable agreement to preserve housing, the filing alone has already caused long-term harm, creating a negative tenancy record following a tenant wherever and whenever they try to obtain housing. Many landlords will refuse to rent to tenants with even one eviction filing on their record, regardless of the outcome of the case or other details that may offer additional context on a prospective tenant's past rental circumstances. Landlords may create additional barriers to access by employing “blacklisting” practices with blanket denials of applicants with eviction records.

The consequences of eviction records go far beyond temporary displacement and loss of shelter. Eviction records mean loss of housing subsidy vouchers, ineligibility for other public housing programs, and being screened out of private housing, leading to dangerous cycles of poverty and instability. Unlike a criminal record, which can now automatically be sealed in many categories after a certain period of time, there is currently no possibility of getting the record of an eviction filing sealed or expunged from a tenant's record in Pennsylvania, even when a tenant wins their case, gets their case withdrawn, or is able to fulfill a court-ordered agreement. Regardless of whether a tenant did anything wrong or was evicted, the mere fact that the landlord filed an eviction case is unfairly held against tenants when they try to rent a new place. Even cases that are decades old, with outdated or irrelevant information, are used to deny tenants access to senior housing and other subsidized housing. And, unlike a credit report which documents trends of changes, a tenant has no ability to improve their eviction records. The absence of current evictions filings does not remove the stain of previous ones. Such filings usually only tell one side of the story, despite having the power to create lifelong housing instability.



The COVID-19 pandemic has significantly exacerbated the difficulties facing Black communities and other communities of color, seniors, people with disabilities, queer and transgender people. When you consider that these populations were already disproportionately affected by housing instability the current epidemic has hit these communities like a sledgehammer. In June 2020, the Philadelphia Inquirer reported that in Philadelphia, Black patients are dying from COVID-19 at rates over 30% higher than white patients, and that Black and Hispanic women in Philadelphia are infected at rates five times higher than white women.<sup>9</sup> Not surprisingly, early data from the Reinvestment Fund shows that areas with elevated eviction rates fall within zip codes with the highest COVID-19 positivity and hospitalization rates, and that zip codes with higher COVID-19 positivity and hospitalization rates have predominantly Black renters.<sup>10</sup>

As we look ahead toward recovery from the COVID-19 pandemic, it is urgent for state and local actors to implement measures that will give tenants the ability to access housing opportunities, and secure and maintain safe, affordable housing now and into the far future. Restricting the use of eviction records in housing decisions is a measure that could go a long way toward helping keep tenants stable and reducing the long-term consequences of evictions during the pandemic and beyond.

- **Support the adoption of legislation and creation of funding that would provide a right to civil legal counsel for low income tenants facing eviction, and access to free legal services**

Access to justice is a moral imperative - one's ability to access the justice system and defend their shelter, their home, cannot be based on who can afford a lawyer. It is an unfortunate fact that in our country, access to basic needs and opportunities is racialized. Housing exclusion, instability, and segregation are all racial in nature, sewn into the very fabric of our institutions, policies, and our value systems. Although roughly 3 million people around the country are evicted each year, it is not a coincidence that who gets evicted falls along racial and gender lines - most frequently impacting Black women and their children, and in Philadelphia, impacting Black families disproportionately in spite of their level of income.

Jurisdictions with right to counsel and other tenant legal representation pilot programs, such as Philadelphia, have shown that tenants with attorneys are far less likely to be evicted, while other studies and housing experts have widely acknowledged that providing legal aid to families and individuals facing eviction, lock-out, or substandard housing conditions can significantly prevent homelessness by allowing tenants stay in their homes, secure repairs or negotiate smooth transitions to safe, affordable housing.”

Legal aid is a cost-effective way of preventing homelessness and can help provide outcomes for families that minimize disruptions to health and safety, and employment and education. An independent Economic Impact Study commissioned by the Pennsylvania Interest on [MZ1] Lawyers Trust Account (IOLTA) Board, found that for each dollar spent on legal aid, there is an \$11 return to Pennsylvania and its residents, saving costs associated with domestic violence, foster care, child custody, housing, health care, crime and imprisonment. This study also estimated that legal aid saved taxpayers \$111 million in emergency shelter costs by helping 7,534 families avoid homelessness between 2007 and 2011.

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<sup>9</sup> Coronavirus has exposed deep race inequity in health care. Can Philadelphia change the trend? (May 2, 2020) <https://www.inquirer.com/health/coronavirus/coronavirus-covid-19-race-disparities-african-american-hispanic-deaths-20200502.html>; Black, Hispanic women infected with coronavirus 5 times as often as whites in Philly, Penn study suggests <https://www.inquirer.com/health/coronavirus/coronavirus-covid19-black-hispanic-test-positive-vaccine-update-offit-20200709.html> (July 9, 2020) See also: <https://penntoday.upenn.edu/news/covid-19s-assault-black-and-brown-communities>

<sup>10</sup> Affidavit of Expert Witness Ira Goldstein, HAPCO v. City of Philadelphia, No. 2:20-cv-3300



Beyond the substantial benefits of legal aid for individual low-income renters, legal aid also benefits our neighborhoods, improves the efficiency of our court system, and saves taxpayer money. Representing tenants in housing conditions cases prevents neighborhood disrepair by helping to enforce laws that require landlords to maintain their properties. Effective tenant representation improves courtroom efficiency by holding landlords accountable for frivolous or unconscionable agreements and cutting down on procedural delays caused by pro se tenants filing inappropriate or inadequate petitions.

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