

Proposed Rule for Housing and Urban Development

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[Federal Register Link](#)



Brief:

The U.S. Department of Housing and Urban Development (HUD) has proposed a rule to eliminate tester restrictions for Fair Housing Initiatives Program (FHIP) grantees and Fair Housing Assistance Program (FHAP) agencies. This rule seeks to remove barriers to the use of fair housing testers with prior felony convictions or convictions of crimes involving fraud or perjury. The amendment aligns with Secretary Marcia Fudge's April 12, 2022 Memorandum, promoting inclusivity in HUD programs. The proposed changes aim to ensure FHIP and FHAP funded entities can fully investigate potentially discriminatory criminal background screening policies.

I. Policy Objectives and Economic Mobility Nexus

This proposed rule has determined a deliberate policy objective—fostering economic mobility, especially for individuals navigating the complexities of a criminal record. Acknowledging the intrinsic link between economic justice and housing opportunities, this policy endeavor is calibrated to dissolve barriers, ensuring wider societal participation for system-impacted individuals. The strategic realignment mirrors ongoing efforts to cultivate an environment that propels economic advancement for these individuals, their families, and, by extension, their communities.

A. History and Impact of Tester Restrictions

The proposed rule provides a comprehensive historical background on the Fair Housing Initiatives Program (FHIP) and the Fair Housing Assistance Program (FHAP). It scrutinizes the impact of tester restrictions, especially considering advancements in technology and evidence collection in fair housing testing. The acknowledgment of overbroad and outdated restrictions is in line with the JCC's commitment to addressing systemic barriers.

B. Overcoming Outdated Restrictions

HUD recognizes the evolution of evidence collection in fair housing testing, emphasizing the diminishing reliance on a tester's testimony due to technological advancements. The proposed amendment acknowledges the modern landscape of criminal records policies and the necessity of using testers with actual criminal records to investigate discriminatory practices effectively.

II. Economic and Racial Implications

The proposed amendment reveals a heightened sensitivity to the economic and racial dimensions intertwined with the perpetuation of antiquated regulations. By addressing these implications, particularly the disproportionate exclusion of people of color from opportunities within FHIP- and FHAP-funded entities, the amendment emerges as a policy instrument that actively contributes to overarching equity objectives. This discerning consideration aligns with the imperative of constructing a more just society by dismantling systemic impediments.

III. Additional Considerations:

A. Potential Shortcomings and Consequences: While the intent is to eliminate barriers for individuals with criminal records, there might be unintended consequences. For instance, the rule focuses primarily on felony convictions and crimes involving fraud or perjury, potentially leaving

out individuals with other types of criminal records. A comprehensive evaluation of the impact on various types of convictions is essential to address potential oversights.

- B. **Educational Outreach:** The shift in policy necessitates comprehensive educational outreach to stakeholders, including FHIP and FHAP funded entities, about the amended regulations. Ensuring a clear understanding of the changes, potential risks, and responsible implementation is crucial to avoid unintended misinterpretations or misapplications.
- C. **Discretionary Background Checking:** Although the proposed rule removes specific restrictions on tester convictions, it maintains the allowance for background checks at the discretion of entities involved in fair housing testing. This discretion might introduce variability in the application of the amended regulations, potentially leading to inconsistencies or unintentional biases in background checking practices.
- D. **Inclusive Economic Mobility Measures:** While the proposed rule aligns with the broader economic mobility goals, there is a need to ensure that it directly translates into tangible economic opportunities for impacted individuals. A strategic plan for inclusive economic mobility measures should accompany the rule to maximize its positive impact on the targeted population.
- E. **Ongoing Evaluation and Adaptation:** The changing landscape of criminal records policies and fair housing practices requires a commitment to ongoing evaluation and adaptation. HUD should consider implementing mechanisms for continuous assessment to address emerging challenges, evolving legal frameworks, and advancements in technology that may impact equitable housing testing practices.