

July 2, 2021

Richmond Redevelopment & Housing Authority
901 Chamberlayne Parkway
Richmond, Virginia 23220

Re: FY 2021-2022 Annual Agency Draft Plan Public Comments

The Legal Aid Justice Center (“LAJC”) and the Virginia Poverty Law Center (“VPLC”) jointly submit these comments on the Richmond Redevelopment and Housing Authority’s (“RRHA”) Annual Agency Plan (“Agency Plan”), the Admissions and Continued Occupancy Policy (“ACOP”), and the Admin Plan for the Housing Choice Voucher Program (“Admin Plan”) for Fiscal Year 2021-2022.¹ The comments below address three main areas:

- 1) Concerns regarding RRHA’s Agency Plan’s proposal to significantly shrink its housing stock;
- 2) Concerns regarding RRHA’s exclusionary criminal policies in the ACOP; and
- 3) Concerns Regarding RRHA’s Admin Plan.

Our main concerns are the disparate impact that RRHA’s redevelopment and criminal screening/lease termination policies have on low-income communities of color in Richmond.

Despite Richmond’s overwhelming need for affordable housing for extremely low-income families (those making less than 30% of the Area Median Income), RRHA is proposing to significantly reduce its housing stock, beginning with the demolition of a part of Creighton Court. In the first phase of Creighton Court’s redevelopment, 192 public housing units will be

¹ LAJC is one of two civil legal aid programs serving the Greater Richmond area. LAJC provides legal representation to individual RRHA tenants in eviction and other matters and has provided legal representation to tenant organizations composed of RRHA residents. Additionally, LAJC brings impact litigation on behalf of RRHA tenants to protect tenants’ rights under federal and state law. VPLC is the state support center for all the civil legal aid programs in Virginia. Usually, VPLC does not represent individuals in evictions and other matters. Instead, VPLC’s advocacy focuses on housing policy generally, with an emphasis on legislation in the Virginia General Assembly. Also, VPLC provides technical assistance to legal aid organizations interested in bringing impact litigation to enforce tenants’ rights under federal and state law.

reduced to approximately 66 units affordable to extremely low-income families. Other current residents will, or already have been, relocated or given housing vouchers.

We call on RRHA to commit to one-for-one replacement of any public housing unit slated for demolition, where residents' rents are capped at 30% of their incomes. RRHA can and should build new deeply subsidized housing units, in addition to providing housing vouchers, to ensure broad housing choice for its current residents while also offering housing stability to the thousands of families across the city who are in need of a home.

We commend RRHA for improving its criminal screening policies for public housing and housing choice voucher applicants, but we call on RRHA to go farther so that its policies do not exclude applicants from communities impacted by discriminatory over-policing. Screening or housing termination for individuals with non-violent criminal histories or criminal records that do not implicate any current safety concerns and long criminal look back periods disproportionately prevent residents of color from maintaining stable housing.

On behalf of the low-income tenants we represent, we ask that RRHA amend its Annual Agency Plan, Admissions and Continued Occupancy Policy, and Administrative Plan as recommended in the enclosed comments. We would be happy to discuss these comments further.

Sincerely,

/s/

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**COMMENTS OF THE LEGAL AID JUSTICE CENTER,
THE VIRGINIA POVERTY LAW CENTER ON
RICHMOND REDEVELOPMENT AND HOUSING AUTHORITY'S
ANNUAL AGENCY PLAN (FY 2021-22) AND INCORPORATED ADMISSIONS AND
CONTINUED OCCUPANCY PLAN AND ADMINISTRATIVE PLAN**

I. RRHA Redevelopment Plans

There is a critical need for more, not less, deeply affordable housing in Richmond, Virginia, especially for the most vulnerable families making less than 30% of the Area Median Income (“AMI”). The Richmond Redevelopment and Housing Authority (“RRHA”) runs Richmond’s public housing communities, which are home to thousands of extremely low-income families, elderly individuals, and individuals with disabilities. Despite the desperate need for housing, and RRHA’s central role in providing it, RRHA plans to significantly shrink its housing stock. The harmful effects of this reduction will disproportionately fall on low-income communities of color. We call on RRHA to commit to one-for-one replacement of any public housing unit it demolishes, where residents’ rents are capped at 30% of their incomes. RRHA can and should build new deeply subsidized housing units, in addition to providing housing vouchers, to ensure broad housing choice for its current residents while also offering housing stability to the thousands of families across the city who are in need of a home.

1. The Problem

The National Low Income Housing Coalition estimates that Richmond lacks 27,262 affordable housing units for extremely low-income households, those households making less

30% of the Area Median Income.² RRHA’s own agency plan shows that there are over 11,000 families on its public housing waiting list, 82.4% of whom are extremely low-income.³ These numbers show the high need for housing among the lowest-income families in Richmond. Not even all housing that is commonly called “affordable” is actually affordable to these families. For example, the Low Income Housing Tax Credit program is often only affordable to families that earn up to 60% of the Area Median Income.⁴ A family of four in the Richmond area with household income at 30% of the area median makes less than \$27,000 a year, but the same size family at 60% of the area median income makes \$48,600.⁵ Extremely low-income families need housing that is not just generally “affordable” but for which the rent is capped at 30% of their income, the vast majority of which is available only through programs run by RRHA.

This is not only an issue of housing supply; it is also a racial justice issue. Historic inequities have led to significant racial disparities when it comes to housing need. For example, nationally, 20% of Black families, 14% of Latinx families, and 10% of Asian families are extremely low-income renters compared with 6% of white families.⁶ Of the families waiting for RRHA housing, 88% are Black.⁷

2. Negative Impact on Communities of Color

² NAT’L LOW INCOME HOUS. COAL. (NLIHC) , THE GAP: A SHORTAGE OF AFFORDABLE HOMES, Appendix B (2021) https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2021.pdf. Extremely low-income renter households have incomes at or below 30% of the Area Median Income. *Id.* at 9.

³ RRHA Draft Annual Agency Plan-2021-22 at 9 (available at <https://www.rrha.com/about/reports-plans/>).

⁴ See Virginia Housing Qualified Action Plan Information (available at <https://www.vhda.com/about/Planning-Policy/Pages/LIHTC-QAP.aspx>).

⁵ HUD Median Income for FY2021 (available at <https://www.vhda.com/BusinessPartners/PropertyOwnersManagers/Income-Rent-Limits/Pages/HUDMedianIncome.aspx>).

⁶ *Id.* at 13.

⁷ RRHA Draft Annual Agency Plan-2021-22 at 9.

Because the need for deeply subsidized housing exists disproportionately within low-income communities of color, any reduction in the deeply subsidized housing stock will necessarily have a disparate impact on those communities. Policies that have such effects are a barrier to justice in Richmond and likely violate the federal Fair Housing Act. RRHA itself acknowledges that the lack of affordable housing units for families making less than 50% of the Area Median Income is a major impediment to fair housing choice and has pledged to increase the number of affordable housing units in the City.⁸

Reduction in “Hard” Affordable Housing Units

Despite this commitment to increasing housing units, RRHA is actually doing the opposite. It plans to significantly reduce the number of units affordable to extremely low-income households in Richmond as it redevelops its public housing. For example, as part of the Creighton Court redevelopment, an area that was recently home to as many as 192 public housing families will be converted to a mixed-income community with only 66-68 units where tenants pay 30% of their income (the rent calculation for public housing).⁹ All other units in the redeveloped Creighton Court will be either market rate or only “affordable” to renters making up to 80% of the Area Median Income (“AMI”) (with rents that may be income based but not capped at 30% of renter household income).¹⁰ RRHA’s own waiting list data for both public housing and housing choice vouchers shows that only 2-3% of people are between 50-80% AMI, while the vast majority in

⁸ RRHA Draft Annual Agency Plan-2021-22 at 17-18.

⁹ According to the United States Department of Housing and Urban Development (HUD) Special Applications Center (SAC) Approval Letter for Creighton Court Phase 1 (hereinafter HUD SAC Approval Letter) there will be 66 housing units subsidized through the Project Based Voucher program which sets rent at 30% of household income (at 7). RRHA has made public statements indicating there will be 68 affordable units in this section.

¹⁰ HUD SAC Approval Letter at 7.

need of housing are below 30% AMI.¹¹ Thus, housing for renters making up to 80% AMI does little to address Richmond's most critical housing needs. This runs counter to RRHA's prior commitments to redevelopment with one-for-one unit replacement in public housing.¹²

The Problem with Vouchers

Many of the displaced families from Creighton Court have been, or will be, offered housing vouchers or moved to privately-run subsidized complexes. It is indisputable that RRHA's public housing stock needs rehabilitation, and that many families should be given housing vouchers so that they can choose where they want to live. Even so, a drastic reduction in the number of hard deeply subsidized units with conversion to vouchers has the potential to significantly shrink the already scarce supply of affordable housing in Richmond for those living below 50% of AMI.

Vouchers provide great flexibility for some renters but have some significant draw backs that can make them difficult to use for other families. In 2021, Virginia outlawed housing discrimination against voucher holders by large landlords, which is a great step toward making vouchers easier to use. However, challenges persist. First, RRHA can only pay a certain amount of rent based on the Fair Market Rent for the Richmond area. Currently, for a two bedroom, the rent limit is \$1,163; that cap prices families out of certain areas of the city, such as the West End

¹¹ RRHA Draft ACOP-2021-2022 at 9-10, available at <https://www.rrha.com/about/reports-plans/>.

¹² See, e.g., One Richmond: An Equitable Affordable Housing Plan, September 2020, available at http://www.ci.richmond.va.us/HousingCommunityDevelopment/documents/20200928_Informal-An-Equitable-Affordable-Housing-Plan-Draft.pdf ("Co-partner with the Richmond Redevelopment and Housing Authority (RRHA) to allow for a unified approach in transforming public housing into mixed-income communities of choice and homeownership opportunities with a commitment to no loss in the number of "public housing units"....); Mayor's Anti-Poverty Commission Report, January 2013, available at https://chpn.net/wp-content/uploads/2013/01/Antipovetycommissionfinal1_17_2013c-printready.pdf ("Specifically, redevelopment should not lead to a net loss of public housing units. Offering Section 8 vouchers to displaced residents while reducing the net number of housing units is not acceptable, because it decreases the supply of deeply subsidized housing units in the city.")

(where the Small Area Fair Market Rent is \$1,430).¹³ Second, private landlords may have more stringent tenant screening criteria than the public housing authority, such as credit requirements, that effectively keep out low-income families. Third, voucher funding can be easily reduced depending on federal and local government policies, while hard physical deeply subsidized housing units guarantee a long term supply of units that are affordable to extremely low-income renters.

3. Lack of Transparency and Tenant Involvement

It is critical that RRHA have a plan to improve the conditions in its public housing communities, but any such plans must be resident-led. RRHA is making increasing efforts to engage tenants in the redevelopment process, but issues with transparency and access to critical information, that are required for tenants to participate, continue.

Agency Plan

This Agency Plan Comment Period is meant to be one of the ways that RRHA informs its communities about redevelopment. However, RRHA submitted the plan to its Board of Directors on June 16, 2021, more than two weeks before the end of the written comment period on July 2, 2021. RRHA also failed to provide the required 45 days' notice before it held a public hearing on its Agency Plan.¹⁴ Further, the information about redevelopment contained in the Agency Plan does not match RRHA's actual redevelopment activities.

¹³ RRHA Housing Choice Voucher Payment Standards effective January 2021 (available at <https://www.rrha.com/wp-content/uploads/2021/01/RRHA-HCVP-PaymentStandards-20201.pdf>); HUD FY201 Small Area FMRs for Richmond City, VA (searchable at: https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2021_code/select_Geography_sa.odn).

¹⁴ According to RRHA's website notice of the Public Hearing was provided on May 18, 2021 (available at <https://www.rrha.com/news/2021/05/18/rrha-annual-agency-plans> - last visited on June 28, 2021) and the hearing was held on June 9, 2021- short of the 45 days required by 42 U.S.C.A. §1437c-1(f)(2) (west 2018); 24 CFR §903.17(b) (2018).

For example, the Annual Agency plan states that Creighton Court will undergo redevelopment through the Rental Assistance Demonstration (“RAD”) – a program that includes heightened tenant rights – and, upon completion of redevelopment, will have 176 more affordable housing units than currently exist on the site. However, that information is contrary to the redevelopment plans that RRHA submitted to HUD (and that HUD approved), which do not indicate that the redevelopment is part of the RAD program and which states that a far lower number of affordable units will be constructed.¹⁵ Tenants cannot meaningfully participate in the redevelopment process if they cannot gain accurate information about it, and if many avenues for participation, such as the Agency Plan comment period, are functionally cut short.

General Resident Engagement Regarding Redevelopment at Creighton Court

As stated above, RRHA has increased its efforts to engage Creighton residents about the future of their community, but by the time RRHA began its assessments of current resident priorities for redevelopment in 2020, there were already hundreds of vacant units in Creighton Court. By May 2021, 47% of the units in Creighton Court were vacant. RRHA engaged only a fraction of Creighton residents, and it does not appear that the identified needs of the thousands of applicants for RRHA housing are being considered at all.

Conclusion

RRHA must redevelop its communities in a way that prioritizes the needs of its current residents, as well as other eligible families across Richmond, and guarantees a long-term supply of housing that is affordable for extremely low-income families. It is critical that RRHA

¹⁵ See HUD SAC Approval Letter.

implement one-for-one replacement in its redevelopment plans so that the overall stock of deeply subsidized housing in the City of Richmond is not reduced.

II. Leasing & Application Policies

RRHA's treatment of current residents and prospective tenants remain critical to providing safe and affordable housing for all. Its Admissions and Continued Occupancy Plan ("ACOP") contain RRHA's policies for public housing residents. RRHA's major revisions concern criminal background screening, as well as lease termination procedures for lease violations and criminal activity.

1. Criminal Background Screening Policy

As RRHA revises its criminal background screening policy, there is a big opportunity to transform its admissions standards to be more equitable, promoting best practices for Fair Housing and giving families the opportunity to thrive. HUD has expressed the importance of housing providers using their broad discretion to adopt policies that would allow formerly incarcerated individuals to obtain housing upon re-entry.¹⁶ In 2015, HUD re-emphasized that housing authorities can take the totality of circumstances into account when considering admitting someone, such as seriousness of the offense, impact of the eviction on the household members not involved with the activity at issue, steps taken to mitigate or prevent criminal activity, and rehabilitation.¹⁷ In 2016, HUD's Office of General Counsel issued further guidance on the relationship between the use of criminal records in housing decisions and the Fair

¹⁶ Letter from Shaun Donovan, HUD Secretary, to PHA Executive Directors, at 1 (June 17, 2011).

¹⁷ Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions, H 2015-10 (Nov. 2, 2015) [hereinafter "HUD Notice 2015-10"]; Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions, PIH 2015-19 (Nov. 2, 2015) [hereinafter "HUD Notice PIH 2015-19"].

Housing Act.¹⁸ The Guidance observes that “African Americans and Hispanics are arrested, convicted, and incarcerated at rates disproportionate to their share of the general population,” and, thus, “criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers.”¹⁹

Lookback periods

In light of the disparate impact considerations balanced against concerns for the safety of other public housing residents, all of the lookback and re-application periods in Chapter 5’s Eligibility & Screening should be limited to a maximum of five years for the most serious offenses, and further limited or removed entirely for other crimes (except for crimes which explicitly require a lifetime ban under the United States Code).²⁰ Limiting lookback periods allows an applicant to be eligible after demonstrating rehabilitation, which serves to protect the community while minimizing the discriminatory effects of mass incarceration.

Alcohol-Related Crimes

Furthermore, we urge RRHA to eliminate crimes involving the unlawful consumption, distribution, or sale of alcohol and crimes involving actions taken under the influence of alcohol or other intoxicating substances from the list of unacceptable criminal records.²¹ As RRHA has already noted in previous sections, applicants should only be screened for crimes which suggest that their tenancy would threaten the health and safety of other members of the community. Most alcohol-related offenses, taken alone, do not indicate such risk. Individuals who have committed

¹⁸ 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 (Apr. 2016).

¹⁹ *Id.* at 2.

²⁰ 24 CFR § 982.553(A)(2).

²¹ RRHA Draft ACOP-2021-2022 at 59-60.

serious violent crimes under the influence of alcohol would likely be made ineligible under one of the other sections. Moreover, many of the crimes listed in Virginia's Alcoholic Beverage Control Act are minor in nature and may also disproportionately affect the homeless population that is in need of housing.²²

Rehabilitation Policy

RRHA is introducing a rehabilitation policy for crimes involving alcohol consumption and other controlled substances, but the policy is overly strict.²³ The federal Fair Housing Act protects individuals who have previously suffered from substance abuse disorder but are not currently abusing drugs or alcohol.²⁴ This section allows applicants who are denied admission due to conviction of possession of controlled substances or alcohol-related crimes to submit evidence that those convictions were related to a substance abuse disability from which the applicant has been rehabilitated. RRHA's rehabilitation requirements are overly strict and could still result in the denial of admission for individuals protected under Fair Housing. RRHA requires evidence that the person has participated in specific programs or that the person has not abused alcohol or a controlled substance in 12 months. The Fair Housing Act includes no such specific test for measuring rehabilitation and these strict requirements do not take individual circumstances into account. The applicant should be able to submit other mitigating evidence such as a lack of any recent convictions, good tenant history, or employment history, in place of

²² Va. Code § 4.1-300 et seq.

²³ RRHA Draft ACOP-2021-2022 at 65-66.

²⁴ 29 U.S.C.A. § 706(8)(C); 42 U.S.C.A. § 3602(h); *United States v. Southern Mgmt. Corp.*, 955 F.2d 914, 918 (4th Cir. 1992) (recovering addicts who have not engaged in drug use for "some (undefined) period of time" must not be denied housing based on addiction because recovering addicts are within Fair Housing Act definition of handicap).

evidence of completion of a formal program. Formal programs can be costly and are not the only evidence of rehabilitation.

Other Criminal Background Screening Provisions

Safety should always be RRHA's main concern when screening for prior offenses, and, therefore, RRHA should consider eliminating the Crimes Against Property section.²⁵ Turning someone away from a home because of a crime that only involved material items does little to promote safety and fails to recognize the individual's capacity for rehabilitation.

We support RRHA's policy detailing the crimes not considered in its screening process but suggest adding trespass and traffic crimes to the list so as to be transparent and explicit about those offenses not affecting an applicant's eligibility.²⁶

RRHA should eliminate the inclusion of any juvenile records in its screening policy.²⁷ Because all juvenile records are sealed in Virginia and RRHA's lookback policy is limited to one year, this policy only serves to unfairly exclude 18- and 19-year-old offenders.

We applaud RRHA for including a mechanism under which an applicant's individual circumstances can be considered.²⁸ However, we suggest that provision be expanded such that RRHA independently considers any such circumstances it already possesses evidence of (such as age of the applicant at the time of criminal conduct, length of time since commission of the crime, or subsequent good rental/employment history), without requiring the person to actively assert them. Furthermore, RRHA's requirement that individuals asserting mitigating circumstances based on disability or medical conditions show evidence that they applied for

²⁵ RRHA Draft ACOP-2021-2022 at 63-64.

²⁶ *Id.* at 64.

²⁷ *Id.*

²⁸ *Id.* at 66-67.

social security is overly burdensome and discriminatory.²⁹ The standard for disability under the Fair Housing Act is significantly broader than the definition of disabilities for Social Security purposes. Many individuals might qualify for protection and be entitled to a reasonable accommodation under the Fair Housing Act but not qualify for SSI, SSA, or VA benefits. Making those individuals needlessly apply for benefits before asserting their housing rights is an unlawful burden.

RRHA should remove its policy of denying all waiting list preferences to individuals who are currently under the supervision of the Department of Pardon and Parole or have been released from such supervision within the last 12 months.³⁰ This policy is an overly broad blanket ban with no consideration of individual factors and therefore fails to promote Fair Housing.

Overall, RRHA has made important strides on its criminal screening policies, but there continue to be policies in the latest ACOP draft that could have a disparate impact on protected classes. In order to combat this systemic issue, we suggest making some of the minor edits mentioned above, especially as they relate to consideration of mitigating circumstances and limiting background screening to crimes that directly relate to community safety.

2. Virginia's Decriminalization & RRHA

Starting July 1, 2021, anyone 21 years of age or older can legally possess up to 1 ounce of cannabis for personal use while in the Commonwealth of Virginia.³¹ Misdemeanor possession and possession with intent to distribute convictions will be sealed by the Virginia State Police on

²⁹ *Id.*

³⁰ *Id.* at 76.

³¹ HB 2312/SB 1406.

July 1, but the court records will remain public until October 1, 2025.³² We strongly support RRHA's choice to exclude these crimes from its criminal background screening denial list.³³

We continue to be unclear, though, on whether marijuana possession will constitute grounds for lease termination.³⁴ RRHA has the discretion to refrain from lease terminations for simple marijuana possession. Very recently, the issue of federal housing authorities' discretion with drug related activity came up in Pennsylvania, and there, the court held that Section 13661(b)(1)(A) of the Quality Housing and Work Responsibility Act (QHWRA), which provides that PHAs shall establish standards that prohibit admission to the program for anyone determined to be illegally using a controlled substance, allows for flexibility in "determin[ing] when and on what basis admission is prohibited, rather than mandating an outright prohibition."³⁵ The court also noted that the standards that PHAs establish should "take into account factors such as the nature of the substance, i.e. whether it is clearly unlawful or in an unclear legal state . . . the reason for such use; whether it is being used in accordance with legal requirements."³⁶

Given Virginia's recent decriminalization, we encourage RRHA to remove marijuana from its definition of "drug-related" activity for purposes of lease termination, which unfairly treats public housing residents distinctly from other Virginians.

3. Public Safety Conferences & Tenant Grievances

We were very supportive when RRHA recently implemented its new "Public Safety Interdiction Conference," which gives residents accused of criminal activity an opportunity to

³² HB 2113.

³³ RRHA Draft ACOP-2021-2022 at 59.

³⁴ *Id.* at 279 ("drug-related criminal activity" does not specify whether or not de-criminalized marijuana possession is included).

³⁵ 42 U.S.C. § 13661(b)(1)(A); *Cease v. Hous. Auth. of Ind. Cnty.*, 247 A.3d 57, 61–62 (Pa. Commw. Ct. 2021).

³⁶ *Id.* at 62.

find alternative solutions to eviction through mediation with a committee composed of RRHA staff and the director of public safety.³⁷ Unfortunately, since implementation, we have been disappointed to see several residents denied this opportunity, despite the ACOP's clear language that *whenever* RRHA believes a public safety violation has occurred, a committee panel *shall* meet and the "head of household of the family believed to have committed the violation *must* be afforded an opportunity to attend the Conference and to present arguments and evidence on the family's behalf."³⁸ RRHA also included a provision that failure to hold a conference can never be used as a defense in an eviction proceeding, which makes the interdiction conference practically unenforceable.³⁹ We understand that RRHA wishes to preserve its ability to take a case to court where they feel necessary, but RRHA could easily remedy that procedural defect before the court date by simply holding a conference. Without some enforceability, we fear this policy may be unevenly applied based on individual preferences and thereby lack due process.

We are, however, supportive of RRHA's proposed edit regarding grievance hearings.⁴⁰ Last year a change had been made to exclude any new matter from a grievance hearing if it was not brought up in the original informal conference. Now, the language is more flexible and clarifies that a new matter may be dealt with in the formal grievance hearing if the hearing officer allows it, but if the hearing officer chooses to deny the new matter, the tenant will be directed to file a new grievance on the new issue and offered the opportunity to bring the new matter forward. Grievances serve as an important mediation tool between RRHA and residents, and this revision is in line with that purpose. Grievances are one of the major benefits that

³⁷ *Id.* at 281-285.

³⁸ *Id.* at 282.

³⁹ *Id.*

⁴⁰ *Id.* at 297-298.

traditional public housing residents are afforded to assert their rights and other subsidized tenants do not have access to this same level of protection.⁴¹ As all the public housing neighborhoods are being redeveloped, we hope that RRHA considers the public housing specific protections such as these that could be lost in the process if the total public housing stock is reduced.

III. Comments on RRHA's Housing Choice Voucher Program Administrative Plan

Our comments on RRHA's proposed Housing Choice Voucher Program's ("HCVP") Administrative Plan for FY 2021-22 ("Proposed RRHA Admin. Plan") largely relate to RRHA's admission standards regarding applicants with criminal records found in Chapter 3 of the Plan. At the outset, we note that the following statement found on page 3-26 of the Proposed RRHA Admin Plan makes it unclear whether these are the actual changes to the said Plan, or are a draft of changes that might still change:

This version of RRHA's LIPH and HCVP criminal background admissions eligibility criteria is a DRAFT being developed for RRHA's 2021-22 ACOP and Administrative Plan. It has been prepared by counsel based on recommendations from the COO and Directors of LIPH, HCVP, TSO, and Public Safety, but this proposed draft has not yet been reviewed or discussed with the responsible team members. It is intended to illustrate the character of the proposed changes (particularly, the classification of offenses by felony or misdemeanor class within a charge category), and specific items such as penalty/re-apply dates are subject to revision.

We reserve the right to comment on any other proposed changes to this portion of RRHA's Admin. Plan and note that if there are any such changes, those changes should be subject to the same kind of public notice and comment period for amendments to RRHA's Annual Plan, as those changes constitute a "significant amendment or modification" as set forth on page 28 of RRHA's proposed Annual Agency Plan for FY 2021-22.

⁴¹ 24 CFR § 966.4.

1. RRHA's definition of "Unacceptable Criminal Record" Excludes Applicants With Criminal Records That HUD Regulations Permit for Admission to the HCVP

The Proposed RRHA Admin. Plan for HCVP applicants includes the same or similar criminal background screening policies as that in the draft ACOP, and thus our comments are substantially similar. We once again request that RRHA remove discriminatory policies that have a disparate impact on low-income communities of color in Richmond as laid out in our comments above on page 7, *supra*.

More specifically, the Proposed RRHA's Admin. Plan lists as a permissive denial a list of criminal offenses under the heading "Unacceptable Criminal Record," that neither the U.S. Housing Act nor HUD regulations authorize a PHA to deny a HCVP application, unless the offense involved conduct that threatened either other tenants or persons residing in the immediate vicinity or the owner or persons working for the owner or the PHA⁴² The list of criminal offenses that comprise an "Unacceptable Criminal Record" begins on Page 3-27 of the Proposed RRHA's Admin. Plan. Said Plan defines "Unacceptable Criminal Record" as "one wherein the applicant or any member of the household has been convicted of a crime, within the time period specified below, **or** triggers an inquiry that produces an inquiry that produces sufficient evidence that admission of the applicant would jeopardize the health, safety and welfare of the community."⁴³ (Emphasis Added). Thus, RRHA's Admin. Plan contradicts both the U.S. Housing Act and HUD regulation 24 C.F.R. § 982.553, by rendering an applicant ineligible for RRHA's HCVP if the applicant merely commits one of the listed crimes **regardless** of whether the underlying conduct threatened either the health, safety, or right to

⁴² See, 42 U.S.C. § 13661(c); 24 C.F.R. § 982.553(a)(2)(ii)(A)(3 & 4)

⁴³ Proposed RRHA Admin. Plan, at 3-27.

peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or the health or safety of the owner (here RRHA), property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA.⁴⁴

We propose the following change to the definition of “unacceptable criminal record”:

3. Unacceptable Criminal Record

An unacceptable criminal record is one wherein the applicant or any member of the household has been convicted of a crime, within the time period specified below, and the applicant’s or household member’s conduct underlying the offense would jeopardize either the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA.

2. RRHA cannot deny HCVP Applicants for the Crime of Simple “Possession of Controlled Substances.”

The Proposed RRHA Admin. Plan’s inclusion of the offense “Possession of Controlled Substances Other than Marijuana” on page 3-28 as one of the offenses listed under “Unacceptable Criminal Records” is not a permitted basis for denying applicants to the HCVP under federal law. The U.S. Housing Act authorizes PHA’s to deny HCVP applicants for drug related criminal activity, violent criminal activity, or other criminal activity that affects health, safety, welfare of other residents.⁴⁵ The U.S. Housing Act defines “drug related criminal activity” as the illegal manufacture, sale, distribution, use, **or** possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as such term is defined in section

⁴⁴ Id.

⁴⁵ 42 USC §13661

802 of title 21).” (Emphasis Added).⁴⁶ Similarly, HUD regulations authorize PHA’s to deny for “drug related criminal activity.”⁴⁷ HUD defines “drug related criminal activity” as “the illegal manufacture, sale, distribution, or use of a drug, **or** the possession of a drug with intent to manufacture, sell, distribute or use the drug”. (Emphasis Added)⁴⁸ The term “Drug related criminal activity” as defined by the U.S. Housing Act and HUD regulations does not include the crime of simple possession of a controlled substance. Furthermore, while HUD regulations do authorize PHA’s to deny HCVP applicants for committing other criminal activities, those activities must involve violent conduct or conduct that threatens either other tenants or persons residing in the immediate vicinity or the owner or persons working for the owner or the PHA.⁴⁹ We propose that the category “Possession of Controlled Substances Other than Marijuana” be removed, unless the definition of “Unacceptable Criminal Record” is changed as we propose herein.⁵⁰

3. Denial Notices Due to Criminal History must contain sufficient information for tenant to understand the reason for denial.

The Due Process clause of the Fourteenth Amendment to the U.S. Constitution requires that denial notice for government benefits such as those afforded by RRHA’s HCVP contain sufficient info for the applicant to understand reason(s) for denial. Otherwise, applicants cannot

⁴⁶ 42 U.S.C. § 1437a(b)(9)

⁴⁷ 24 CFR §982.553

⁴⁸ 24 CFR §5.100

⁴⁹ 24 C.F.R. 982.553(a)(2)(ii)(A)

⁵⁰ We note that several other criminal offenses listed under “Unacceptable Criminal Record” are not lawful grounds for denying HCVP applicants unless the underlying conduct would jeopardize either the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA. These offenses include “Weapons Offenses” on page 3-29 and “Crimes Against Property” on page 3-32.

know whether a challenge to an agency's action is warranted, much less formulate an effective challenge, if they are not provided with sufficient information to understand the basis for the agency's action.⁵¹ HUD regulations, also, require a PHA to explain the reasons for its decision when denying a HCVP application. The applicable HUD regulation provides as follows: “The PHA must give an applicant for participation prompt notice of a decision denying assistance to the applicant. The notice must contain a brief statement of the reasons for the PHA decision. The notice must also state that the applicant may request an informal review of the decision and must describe how to obtain the informal review.”²⁴ C.F.R. §982.554(a).

Although the initial denial notice need not state the precise and detailed reasoning for the applicant's rejection, RRHA is required to adequately explain its rationale for denying a HCVP application.⁵² We propose that the language beginning on the bottom of page 3-34 be changed to read as follows:

Prior to making a determination of ineligibility due to criminal history, RRHA will notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant a copy of such information, provide the applicant with sufficient information to understand the reason of the determination ineligibility that includes an explanation why the offense contained in the record renders the applicant ineligible, and an

⁵¹ See, e.g., *Goldberg v Kelly*, 397 U.S. 254, 267–68 (“a recipient [must] have timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend [against the proposed termination]”); *Kapps v. Wing*, 404 F.3d 105, 124 (2d Cir. 2005) (“[C]laimants must, therefore, be afforded enough information to understand the basis for the agency's action in all instances.”); *Vargas v. Trainor*, 508 F.2d 485, 490 (7th Cir.1974) (“before public assistance benefits can be reduced or terminated the recipient be given a notice stating the reasons for the proposed actions.”); *Escalera v. New York City Hous. Auth.*, 425 F.2d 853, 862 (2d Cir.1970) (“[S]ummary notice such as th[e one sentence notice] sent to the tenants here of the non-desirable conduct under consideration by the TRB is inadequate.”).

⁵² See *Bratcher v. Hous. Auth. of City of Milwaukee*, 787 N.W.2d 418 (2010) (interpreting HUD regulation 24 C.F.R. § 982.554(a)). In *Bratcher*, a tenant applied for admission to the HCV administered by the Milwaukee Housing Authority. That PHA denied the tenant’s application for two reasons: “1. You were arrested for Battery...by the Milwaukee Police Department. 2. You were found guilty of Disorderly Conduct... in Milwaukee Municipal Court, Case No. 03132433.” *Id.*, at 420. The *Bratcher* Court ruled that the PHA’s notice “failed to provide Bratcher with a sufficient explanation of the reason her application was being rejected . . . [specifically] any details about the arrest and forfeiture, and did not even attempt to explain the legal significance of those events to an application for rent assistance.” *Id.*, at 426.

opportunity to dispute the accuracy and relevance of the information. [24 C.F.R. § 5.903 (f)] If determination of ineligibility is premised on conviction of possession of a controlled substance or an alcohol crime, as described in paragraphs (f) and (g) hereinabove (respectively), such notice shall state that the applicant may rebut the determination with evidence of rehabilitation.

4. Additional Review within Annual Criminal Background Check Procedures

Page 3-37 of the Proposed RRHA Admin. Plan states: “Annual criminal background checks will receive additional review if the background check reveals an unacceptable police record.” However, the Plan gives no description or outline as to what this “additional review” entails and what the consequences of such “additional review” to a participant might be. We are concerned with RRHA’s comment the questions: “Does this suggest that we might terminate an existing participant based on criminal background criteria which are different from the admissions criteria?”

Any termination of a HCVP participant for criminal activity of either the participant or member of the participant’s household must be done by RRHA in compliance with 24 CFR 982.553(b). The definition of the term “unacceptable criminal record” on page 3-37, as with the definition of that term on page 3-27, exceeds the grounds for which a HCVP participant may be terminated from the program under the aforementioned HUD regulation.⁵³ The Proposed Admin. Plan states, “An unacceptable police record is one wherein the head of household or any member of the household has been convicted of a crime within the last five (5) years, **or** has a history of criminal activity that would jeopardize the health, safety or welfare of the community.” (Emphasis Added). The commission of any crime within the last five years should

⁵³ We presume that the reason RRHA seeks to conduct an “additional review” is to identify participants who should be terminated from the HCVP for engaging in criminal activity.

not trigger additional review or result in termination of a participant. because HCVP participants and household members are required to refrain from only certain kinds of criminal activity:

Crime by household members. The members of the household may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises (see § 982.553). Under 24 CFR 5.2005(b)(2), criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking, engaged in by a member of a tenant's household, or any guest or other person under the tenant's control, shall not be cause for termination of tenancy, occupancy rights, or assistance of the victim, if the tenant or an affiliated individual of the tenant, as defined in 24 CFR 5.2003, is the victim.

24 C.F.R. §982.551(l)

We propose that the definition of “unacceptable criminal record” language on page 3-37 reads as follows:

An unacceptable police record is one wherein the head of household or any member of the household has been convicted within the last five years of drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises; provided that criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking, engaged in by a member of a tenant's household, or any guest or other person under the tenant's control, shall not constitute an unacceptable police record if the tenant or an affiliated individual of the tenant, as defined in 24 CFR 5.2003, is the victim.

5. Notice Provision within Inspection Process remains problematic.

Page 8-12 of the Proposed RRHA Admin Plan states: “RRHA **may** notify participants and landlords of a scheduled inspection by email, by postal mail, or through the online participant portal.” This language suggests that RRHA has reserved the right to notify tenants of important inspection information in the manner that is in the best interest of the Housing Authority, not the tenant. This remains problematic as many tenants do not have regular access

to computers or smartphones that they can use to access RRHA's online portal. Also, RRHA takes for granted that many residents, especially those within its the senior communities, do not have the technological savvy or knowledge to navigate through the online portal successfully. RRHA should allow the tenant to choose their own preferred method of notification. This would lessen the likelihood of tenants missing out on vital information regarding inspections.

IV. Summary of Recommendations

We call on RRHA to commit to one-for-one replacement of all of its deeply subsidized housing (in which residents' rents are capped at 30% of their incomes). RRHA can and should build new deeply subsidized affordable housing, in addition to providing housing vouchers, to ensure broad housing choice for its current residents while also offering housing stability to the thousands of families across the city who are in need of a home.

We commend RRHA for improving its criminal screening policies for public housing and housing choice voucher applicants, but we call on RRHA to go farther so that its policies do not exclude applicants from communities impacted by discriminatory over-policing. Screening or housing termination for individuals with non-violent criminal histories or criminal records that do not implicate any current safety concerns and long criminal look back periods disproportionately prevent residents of color from maintaining stable housing.

Sincerely, /s/

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