

Congress of the United States
Washington, DC 20515

September 23, 2016

The Honorable Julián Castro
Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Room 10120
Washington, D.C. 20410

Dear Secretary Castro:

On April 4, 2016, the U.S. Department of Housing and Urban Development (HUD or Department) issued guidance entitled the “Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions.” We appreciate that the guidance represents development in HUD’s efforts to address the housing needs of individuals with criminal histories, and recognize that it has implications for housing providers. Accordingly, we write to request additional information regarding the formation of the guidance along with consequent compliance and enforcement efforts.

We are primarily concerned that HUD’s guidance raises considerable legal and operational questions for property owners, managers and tenants. The Department’s guidance focuses on ending blanket exclusions of prospective residents based on criminal history for a more individualized approach. This entails narrowly-tailored criminal screening policies aimed at achieving property safety and security goals. The guidance also details HUD’s framework for analyzing Federal Housing Administration (FHA) violations based on disparate treatment methods relating to criminal screening.

In doing so, we fear that the guidance leaves unanswered questions concerning the underlying legal theories involved and acceptable compliance strategies for housing providers. Additionally, we are concerned that this rule could ultimately lead to an invasion of privacy for tenants by putting property owners and managers in the position of posing invasive questions in order to make an interpretive decision on whether or not an applicant should be housed. We are also concerned that the final rule is not entirely in step with recent judicial decisions including the U.S. Supreme Court’s decision in *Texas Department of Housing and Community Affairs v. the Inclusive Communities Project*.

For these reasons, we request that you provide us with additional information as to the steps HUD has taken to reconcile the guidance with judicial

decisions. Additionally, we ask that you provide us with additional information on efforts of the Department to ensure uniformity in FHA compliance and enforcement efforts pursuant to the final rule. Finally, we request information on the research, analysis and data sources used by the Department in conceiving, drafting and finalizing this guidance, along with the information that HUD will use to support criminal screening policies and practices in HUD-supported housing.

To be clear, we agree that discrimination should be eradicated from the system, and while we support your goal to ensure that all Americans have equal access to housing, we believe the Department should advance clear policies that protect both tenants and housing providers.

Thank you for your cooperation in this matter. We look forward to your prompt response.

Sincerely,



Blaine Luetkemeyer
Chairman
Subcommittee on Housing
and Insurance



Lynn Westmoreland
Vice Chairman
Subcommittee on Housing
and Insurance



Steve Stivers
Member of Congress



Dennis A. Ross
Member of Congress



Andy Barr
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Sean P. Duffy
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Randy Hultgren
Member of Congress



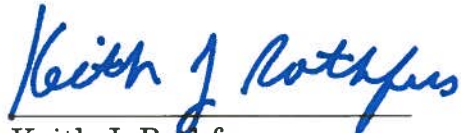
Bill Huizenga
Member of Congress



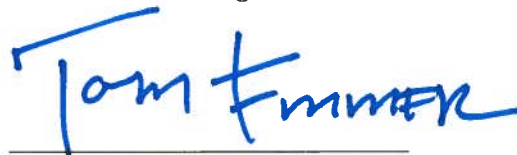
Peter T. King
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