



May 24th, 2021

The House Committee on Housing
Oregon State House of Representatives
900 Court St NE
Salem, OR 97301

Submitted Electronically Re: The Fair Housing Council of Oregon Supports SB 291 in its Original Form and FHCO Opposes House Amendments A-5, A-6, and A-7

Dear Chair Fahey, Vice-Chair Morgan, Vice-Chair Campos, and Members of the Committee on Housing,

The Fair Housing Council of Oregon (FHCO) supports Senate Bill 291 in its original form which will increase housing access for protected class individuals impacted by the criminal justice system.

It is crucial to understand the original purpose of individualized assessments as a term coined by the Department of Housing and Urban Development (HUD). In 2016, HUD released the criminal history guidance which shares that “[b]ecause of widespread racial and ethnic disparities in the U.S. criminal justice system, criminal history-based restrictions on access to housing are likely disproportionately to burden African Americans and Hispanics.”¹ The guidance warns that failure to be aware of the criminal history based screening criteria and its impact on protected class individuals based on race, national origin, and disability could lead to disparate impact claims against housing providers. As such, the guidance coins the concept of individualized assessment as a best practice for housing providers to ensure they are not creating a disparate impact. The HUD guidance provides that individualized assessments should include allowing applicant supplemental evidence *and* the consideration or weighing of information such as “the facts or circumstances surrounding criminal conduct, the age of the individual at the time of the conduct, evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct, and evidence of rehabilitation efforts.”² The guide also provides that housing providers should be considering whether the crime is of such nature that would pose a threat to person or property.

We want to be very clear, nothing in SB 291 in its original form conflicts with or contradicts the 2016 HUD guidance as a best practice for landlords to avoid disparate impact liability. If anything, SB 291 in its original form codifies a practice that HUD suggests is the best way to

¹ U.S. Department of Housing and Urban Development. *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*. April 4, 2016, available at: https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF

² *Id.*



ensure equal access to housing for protected class individuals while also helping housing providers avoid disparate impact legal claims.

Further, there is still great need in the state to ensure protected class individuals with criminal histories have access when applying to housing which makes the codification of individualized assessments valuable. At FHCO, we continue to see large impacts on the African American and Latinx communities as well as on individuals with disabilities when it comes to access to housing and the ongoing barrier of criminal history screening criteria across the state. Between 2019-2020, at FHCO we received more than 100 inquiries to our office from across the state related to people experiencing barriers to housing related to criminal history. This does not account for people across the state who, for various reasons, do not report their experiences of criminal history barriers. There is vital need in the state of Oregon to ensure that people of color and individuals with disabilities maintain fair access to housing.

We are gravely concerned that A-5 and A-6 remove the codification of requiring an individualized assessment. Instead, A-5 and A-6 require an individualized assessment only if the applicant provides supplemental evidence, which confuses the 2016 HUD guidance by prioritizing supplemental evidence over individualized assessment rather than including supplemental evidence as only one important component to individualized assessments. This proposed change to supplemental evidence triggering individualized assessments is problematic for multiple reasons. First, it places the burden on applicants to know and have to provide supplemental evidence to initiate an individualized assessment; this is unrealistic and creates even more burden on populations already struggling to access housing. Second, it is more restrictive than the HUD guidance and contradictory to the purpose of fair housing criminal history protections. Lastly, it could create loopholes whereby housing providers could avoid an individualized assessment in instances where applicants did not initially provide supplemental evidence.

From the perspective of our fair housing expertise with the use of criminal history in screening criteria, individualized assessments, and individuals needs in applying to housing, this change in language requiring supplemental evidence to trigger the individualized assessment is confusing, misguided, and could hurt our attempts at future advocacy.

FHCO also opposes A-6 and A-7 because taking out the requirement to create screening criteria and disclosure to applicants, could hurt the ability of protected class individuals to receive clear information about their rights in accessing housing in an environment where that is already confusing and burdensome on the applicant.

We urge the House Committee on Housing to support and pass SB 291 in its original form and to oppose House Amendments A-5, A-6, and A-7. The codification of individualized assessments at

1221 SW Yamhill Street, Portland, Oregon 97205



the state level and the adoption of screening criteria followed by the required disclosure thereof to applicants is a small but tangible and crucial start to a much larger issue of addressing access to housing in Oregon.

Sincerely,

A handwritten signature in black ink that reads "Allan Lazo". The signature is written in a cursive, flowing style.

Allan Lazo, Executive Director

A handwritten signature in black ink that reads "Kirsten Blume". The signature is written in a cursive, flowing style.

Kirsten Blume, Director of Enforcement & Public Policy