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Via email: irrc@irrc.state.pa.us

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Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: 16A-66 (Consideration of Criminal Convictions)
Comments re: Proposed Final Regulations Implementing Act 53 of 2020
Occupational Licensing Reform Bill – IRCC No. 3361

To the Members of the Commission:

We only recently learned of the filing on June 4, 2024, by the Bureau of Professional and Occupational Affairs of its final set of proposed regulations regarding the consideration and use of criminal convictions in evaluating applications for licenses. We further understand that the Commission is scheduled to vote on the proposals during its meeting on June 20, 2024.

We write to express our continuing, strong support for the regulations. We incorporate herein the letter of the Pennsylvania Association of Pardon Projects (of which we are a member) sent to the Commission on March 6, 2024. That letter is attached for your convenience because it does not appear on the IRRC's website as having been received.

More than expressing our support, we write with regard to one aspect of the proposals: that the Acting Commissioner has again included in the final rulemaking "a requirement that the commission of an offense will no longer be considered "directly related" to a profession or occupation and, therefore, will no longer create a rebuttable presumption that the applicant is unfit for licensure, if at least 5 years have passed since the individual was convicted of the offense."

We want you to be aware that the United States Department of Housing and Urban Development (HUD) is currently soliciting comments on its proposed rules and regulations regarding criminal records and public housing. The proposed rules would include a "lookback period" limiting the reliance on old criminal convictions and would provide, for all programs, that prohibiting admission for a period of time longer than *three years* following any particular criminal activity is "presumptively unreasonable." <https://www.federalregister.gov/d/2024-06218/p-19>
Specifically, HUD proposes that "prohibiting admission for a period of time longer than three years following any particular criminal activity is presumptively unreasonable." The section would permit a housing provider to impose a longer period of time for a lookback, but only after a determination, based on empirical evidence, that a longer period of time is "necessary to ensure the health, safety, and peaceful enjoyment of other tenants or property employees."
<https://www.federalregister.gov/d/2024-06218/p-243>

Explaining the three-year “lookback period,” HUD notes that “Research indicates that recidivism rates drop significantly after three years for all types of offenses”⁶⁹ (at fn. 69, citing Bureau of Justice Statistics. “ *Recidivism and Reentry* ” available at <https://bjs.ojp.gov/topics/recidivism-and-reentry>]. Earlier, HUD had examined the issues of public safety and recidivism in these words:

Research indicates that a person's prior criminal justice system involvement taken at face value is not a reliable or accurate predictor of their risk to public safety. Moreover, the relationship between a past conviction and the risk of future criminal justice system involvement declines over time and with age. Most people who are released from incarceration never return to prison.^[66] Studies have shown that a person with a prior criminal conviction that has not committed a subsequent offense within four to seven years is no more likely to be arrested for a crime than a person in the general population.^[67] As time passes, a person's criminal history becomes less likely to determine their risk of future criminal justice system involvement. After a period of time, a person with a criminal history is no more likely to commit another offense than a person of the same age without a criminal history. Specifically, there is little difference in offending likelihood after an individual reaches their mid-20's.

<https://www.federalregister.gov/d/2024-06218/p-144> (footnotes omitted).

In its Final Regulations, the Acting Commissioner is proposing not a three-year lookback as HUD is proposing, but a more conservative five-year lookback. The data and actions of HUD in considering the safety of its residents when considering applicants for housing and concluding that three years protects those interests support the decision of the Acting Commissioner herein and confirm that the Acting Commissioner’s decision is both reasonable and very much in the public interest.

Thank you for considering these comments.



Director, The Pardon Project

Encl.

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