

Memorandum

August 14, 2015

To: Michelle M. Aronowitz and Jeanine Worden, Office of the General Counsel
Department of Housing and Urban Development
From: Kate Walz and Jenna Prochaska, Housing Justice Unit
Sargent Shriver National Center on Poverty Law
Re: **Crime Free Housing Ordinances and Federal Tenant Protections**

In recent years, an increasing number of local governments have enacted ordinances that penalize landlords on the basis of alleged unlawful activity occurring on rental properties—often called crime free housing or nuisance property ordinances.¹ These ordinances frequently require the attachment of lease addendum, which have the effect of subjecting tenants to eviction for a broad range of offenses and presents several conflicts with the “good cause” eviction protections to which tenants living in federally assisted housing programs are entitled.² These ordinances and lease addenda also create conflicts with the Violence Against Women Act (VAWA), which was enacted to protect survivors of domestic violence, dating violence, sexual assault and stalking from facing eviction based on the actions of their abusers, and the federal Fair Housing Act (FHA), which protects tenants from discriminatory housing policies and practices.³

Several local governments have faced legal challenges to their crime free and nuisance property ordinances, and the Department of Housing and Urban Development (HUD) has taken an active role in preventing local governments from penalizing survivors of domestic violence through the enforcement of their ordinances.⁴ However, HUD has not yet issued an opinion clarifying that, to the extent they conflict with the federal laws and regulations protecting tenants who live in subsidized properties, housing

¹ The Shriver Center has documented over 125 crime free and nuisance property ordinances in Illinois alone, and that number continues to grow. See Emily Werth, Sargent Shriver Nat’l Ctr. on Poverty Law, The Cost of Being Crime Free: Legal and Free Rental Housing and Nuisance Property Ordinances (Aug. 2013), available at <http://povertylaw.org/sites/default/files/files/housingjustice/cost-of-being-crime-free> (detailing the widespread and harmful impact of crime free ordinances in Illinois); See also ACLU Women’s Rights Project, Silenced: How Nuisance Ordinances Punish Crime Victims in New York (June 2015), available at <https://www.aclu.org/report/silenced-how-nuisance-ordinances-punish-crime-victims-new-york> (detailing the widespread and harmful impact of crime free ordinances in New York State).

² The term “federally assisted housing”, as used in this memorandum, will refer to all federally subsidized housing programs, including, but not limited to, the Housing Choice Voucher Program, 42 U.S.C. § 1437(f); HUD Section 811 housing program, 42 U.S.C. § 8013; Low Income Housing Tax Credit Program (LIHTC) Housing, 26 U.S.C. § 42, and the United States Department of Agriculture (USDA) Rural Housing Section 515 program, 42 U.S.C. § 1490(c).

³ See 42 U.S.C. § 141411; 24 C.F.R. § 100.500.

⁴ See, e.g., Release and Settlement Agreement, Briggs v. Borough of Norristown, No. 2:13-cv-02191-ER (E.D. Pa. Sept. 18, 2014), available at <https://www.aclu.org/legal-document/briggs-v-borough-norristown-et-al-release-and-settlement-agreement>; Stipulation of Settlement and Discontinuation, Peeso v. City of Hornell, No. 6:11-cv-06306 (W.D.N.Y. filed Nov. 14, 2011); Conciliation Agreement between Assistant Secretary of the Office of Fair Housing and Equal Opportunity and Municipality of Norristown, Nos. 03-13-0277-8 and 03-13-0277-9 (Dep’t of Hous. & Urban Dev. Sept. 17, 2014), available at <https://www.aclu.org/legal-document/hud-v-norristown-hud-conciliation-agreement>; Conciliation Agreement between Assistant Secretary of the Office of Fair Housing & Equal Opportunity and City of Berlin, New Hampshire, No. 01-15-0017-8 (Dep’t of Hous. & Urban Dev., Jan. 29, 2015), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=TownBerlin.pdf>.

authorities and project owners should not be enforcing these ordinances against their tenants or executing any crime-free lease addendum proposed or required by local governments. An opinion to this effect is critical to ensure that federal tenant protections are not undermined at a local level, particularly in communities where enforcement appears to disproportionately affect federally assisted housing. The city of DeKalb, Illinois, for example, recently requested that a large project-based Section 8 property add DeKalb's crime free lease addendum to its HUD model lease for the project-based Section 8 program, and comply with all terms of its crime free housing program in exchange for a zoning variance. Although only 8 percent DeKalb's housing stock is subsidized,⁵ at least 18 percent of the notices issued under its crime free ordinance from July 2013 to August 2014 were sent to properties with project-based housing subsidies.⁶

While this memo highlights enforcement data available from DeKalb and other Illinois cities, these ordinances operate in a similar manner nationwide.⁷ Furthermore, although we have broader concerns with the enforcement of crime free housing ordinances on tenants living in all private rental housing, the information highlighted in this memorandum is limited to the impact of crime free housing ordinances and lease addenda on tenants living in HUD assisted housing. The broader issues will be addressed in forthcoming comments to the Office of Fair Housing and Equal Opportunity.

1. Congress has enacted a comprehensive scheme of good cause eviction protections to ensure that tenants living on federally assisted housing properties will not be subject to unfair or arbitrary eviction.

Where a local or state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,” it will be preempted by federal law.⁸ Federal law displaces local laws under this prong of the preemption analysis whenever it poses a substantial obstacle to the Congressional objective, regardless of “whether the “obstacle” goes by the name of conflicting; contrary to; . . . repugnance; difference; irreconcilability; inconsistency; violation; curtailment; . . . interference, or the like.”⁹ Because landlord-tenant relations in federally funded projects are a matter of extensive regulation by both federal and state authorities, “[s]hould those regulations conflict it is clear beyond peradventure that . . . the federal statutory and regulatory

⁵ According to data from the HUD Picture of Subsidized Households in 2010, there were 16,436 total housing units in the City of DeKalb and 1,384 subsidized units.

⁶ This figure does not include any housing units occupied by tenants with tenant-based housing subsidies, so the percentage of notices sent to tenants living in federally assisted housing in DeKalb is likely significantly higher. Enforcement data is based on Freedom of Information requests the Shriver Center sent to the City of DeKalb between August 23, 2013 to July 30, 2014. We are able to provide additional information or copies of this documentation upon request.

⁷ See, e.g. Matthew Desmond & Nicol Valdez, Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women, 78 Am. Sociological Rev. 4–18 (2013), available at http://scholar.harvard.edu/files/mdesmond/files/unpolicing.asr2013.online.supplement_0.pdf (containing an appendix listing some crime free and nuisance property ordinances scattered throughout the country); Silenced: How Nuisance Ordinances Punish Crime Victims in New York 3-4, *supra*, note 1 (defining the national scope of the problems caused by the enforcement of crime free and nuisance property ordinances).

⁸ *Michigan Canners & Freezers Ass'n v. Ag. Marketing & Bargaining Bd.*, 467 U.S. 461, 470 (1984) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)); see also *Feldman v. Lederle Labs*, 125 N.J. 117, 135 (1991).

⁹ *Geier v. Am. Honda Motor Co., Inc.*, 529 U.S. 861, 873 (2000) (internal quotations omitted).

scheme must prevail.”¹⁰ The question of whether a local law is preempted is “essentially a question of Congressional intent.”¹¹

Congress has developed and funded numerous federally funded housing programs to provide low-income families with an opportunity to secure “a decent place to live,” which in turn helps them secure employment, improve health outcomes, and escape poverty.¹² To achieve this goal, Congress has incorporated “good cause” eviction protections into each federally assisted housing program to ensure that tenants will not be displaced for mere allegations or minor lease violations.¹³ These protections typically require evidence of *material* non-compliance with a lease before a housing authority or private owner may terminate a subsidized tenancy.¹⁴ Examples of material non-compliance that may be sufficient include *substantial* lease violations, fraud, *repeated* minor lease violations, non-payment of rent, drug abuse and other criminal activity.¹⁵

The types of alleged criminal activity that constitute good cause to evict tenants in federally assisted properties are limited. While the protections afforded to tenants accused of criminal activity vary by program, good cause eviction typically requires evidence that the alleged unlawful activity posed a threat to other tenants on the property, which is defined to include certain drug related crimes, violent criminal activity, and threats.¹⁶ Eviction from HUD-subsidized multifamily housing, for example, is permitted where the criminal activity “threatens the health, safety, or right to peaceful enjoyment either of the premises by other residents or the residences by persons residing in the immediate vicinity. . . .”¹⁷

Housing authorities and private owners are generally given more leeway to terminate tenancies based on drug-related criminal activity, but good cause eviction protections apply even in these circumstances. For example, eviction for drug-related criminal activity is permitted under the HUD-subsidized multifamily housing program only where a tenant, household member, or guest engages in the activity “on or near the premises”, or where any other person under the tenant’s control engages in the activity “on the premises.”¹⁸ Tenants living in Rural Housing Service subsidized housing programs are provided with more extensive protections and cannot be evicted where they did not admit to or were not convicted for illegal drug activity, did not conduct the drug

¹⁰ Skinner v. Boston Hous. Auth., 690 F.Supp. 109, 110 (D.Mass. 1988) (rev’d and remanded on other grounds, 873 F.2d 1433 (1989)), citing Champion Int’l Corp. v. Brown, 731 F.2d 1406, 1408 (9th Cir. 1984).

¹¹ Guyton v. FM Lending Servs., Inc., 199 N.C. App. 30, 45 (2009) (citing N.W. Cent. Pipeline Corp. v. State Corp. Comm’n of Kan., 489 U.S. 493, 509 (1989)).

¹² See, e.g., 26 U.S.C. § 42; 42 U.S.C. § 1490(c); 42 U.S.C. § 1437f(a) (stating that the Housing Act was enacted with “the purpose of aiding low-income families in obtaining a decent place to live . . .”).

¹³ See 24 C.F.R. 247; 24 C.F.R. 966.4(l); 24 C.F.R. 891.770(b); 24 C.F.R. 982.310, 24 C.F.R. 983.257; and 42 U.S.C. 1437d(l)(5).

¹⁴ See id.

¹⁵ See 24 C.F.R. 982.310; 24 C.F.R. 247.

¹⁶ See, e.g., 24 C.F.R. 982.310; 24 C.F.R. 5.858-60

¹⁷ 842 U.S.C. § 1437f(d)(1)(B)(iii); 24 C.F.R. § 5.859(a).

¹⁸ See Id.; See also U.S. Department of Housing and Urban Development, HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs, Rev. 1, § 8-14 (2003), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=43503c8HSGH.pdf> www.hudclips.org/cgi/index.cgi; 42 U.S.C. §§ 1437f(d)(1)(B)(iii) and (d)(1)(B)(v); 24 C.F.R. §§ 5.858, 5.859, 247.3(a)(3).

activity *on the premises*, or “took reasonable steps to prevent or control illegal drug activity.”¹⁹

Because of the importance of these protections and the need to ensure that they are not undermined, Congress has given HUD an active role in enforcement. Initially, property owners were obligated to receive approval from the local public housing authority prior to commencing eviction proceedings against tenants with Section 8 vouchers.²⁰ Although Congress ultimately eliminated that requirement, it did so only after ensuring that good cause protections would continue to protect tenants against unfair evictions.²¹ HUD continues to play an active role in regulating termination procedures for HUD-subsidized multi-family housing properties. For example, the HUD Handbook prohibits modification of the provisions in HUD’s model lease relating to termination of tenancy, and the model lease incorporates strong good cause eviction protections, mirroring those described above.²²

This range of good cause eviction protections and associated termination procedures is intended as a minimum level of protection, which must be provided to tenants living in federally funded housing programs. For this reason, where state and local laws provide for *increased* protections, courts have concluded that federal good cause protections did not interfere with their enforcement. As the 9th Circuit has held, “**[b]y enacting the federal good cause requirement, [the Federal government] desired to maintain a uniform federal floor below which protections for tenants could not drop, not a ceiling above which they could not rise.**” ...”²³

2. Crime free housing ordinances, which are typically extremely broad and subject tenants to eviction for a wide range of minor offenses, conflict with the laws and regulations protecting tenants who live in federally assisted housing.

Crime free housing ordinances typically operate by specifying a broad list of conditions or behaviors, which are deemed to constitute a violation. Most ordinances also mandate the adoption of a crime free housing lease addendum for all residential rental properties. Crime free housing lease addenda typically define an expansive list of violations of federal, state, or local laws as “material” breaches of the lease, regardless of

¹⁹ The regulations for Rural Housing Service programs contain the most protection for tenants facing allegations of criminal activity. 47 C.F.R. §§ 3560.156(b)(15) (lease provision regarding drug violations), 3560.159(a)(1)(iii) (termination of tenancy for drug violations on the premises), 3560.159(d) (criminal activity); 69 Fed. Reg. 69032 (Nov. 26, 2004) (revision of regulations).

²⁰ See *Swann v. Gastonia Housing Auth.*, 502 F.Supp. 362, 364-65 (W.D.N.C. 1980).

²¹ See 1981 WL 21358 (Leg.Hist.), H. Conf. Rep. 97-208 (stating that HUD shall “also require that the owner shall not terminate the tenancy except for serious or repeated violation of the lease, applicable state, local, or federal law, or for other good cause”).

²² See, e.g. Handbook 4350.3, paragraph C.3 (stating that “HUD will not permit modifications to the following nine provisions of the model lease: ... h. Termination of Tenancy”)(emphasis in original); HUD Model Lease for Subsidized Programs, paragraph 23 (limiting termination to the list of included offenses or other good cause).

²³ See *Barrientos v. 1801-1825 Morton LLC*, 583 F.3d 1197, 1215 (9th Cir. 2009); See also *Rosario v. Diagonal Realty, LLC*, 803 N.Y.S.2d 343, 348 (N.Y. Sup. Ct. 2005) (concluding that New York rent control law requiring renewal of leases on existing terms applies to Section 8 tenancies and is not preempted by federal statute, because the local rent control law advanced a common goal, affordable, decent housing for lower income families).

whether the alleged violations involve a threat to the health or safety of other tenants. This list often includes minor and non-criminal violations of local ordinances, such as noise complaints, overgrown lawns, improperly stored garbage, abandoned vehicles, and other minor infractions. Some addenda go so far as to specify that *any* criminal offense or code violation constitutes a material breach. The addendum required in Lynwood, Illinois, for example, prohibits tenants from engaging in “any quasi-criminal or criminal activity as defined by local, state or federal law.”²⁴

Additionally, as summarized in Section 1, the geographic proximity necessary to categorize an offense as “material” under federal law varies by program type and alleged offense. While some offenses must occur “on the premises” to constitute good cause, others may occur “on or near the premises.” In some very limited occasions involving violent criminal activity and drug-related criminal activity on public housing, the offense may occur “on or off” the rental property.” However, in general, the unlawful activity must be geographically linked with the unit or premises to constitute good cause. Many crime free housing ordinances and lease addenda demand the eviction of a tenant for activity well beyond these geographical limitations. The required lease addendum in Calumet City, Illinois, for example, makes it a material violation for a tenant (or a range of third parties associated with the tenant) to engage “in any criminal activity, including any drug-related criminal activity, on or off the leased premises.”²⁵

Beyond requiring the adoption of these broad lease addenda, most crime free housing ordinances subject landlords to penalties for failing to evict tenants accused of committing one of the listed offenses, and for otherwise failing to take steps to “abate” the alleged unlawful activity. This can incentivize landlords to evict the entire household to avoid the risk of incurring penalties by allowing the activity to continue. Because of the breadth of these ordinances—and typically aggressive enforcement by police officers, who are unfamiliar with civil rights and landlord-tenant laws that restrict when and how landlords may properly evict tenants—crime free ordinances have significant harmful effects on tenants.²⁶ Many of these ordinances not only permit, but actually require property owners to evict tenants for a broad range of offenses—extending far beyond the good cause protections ensured to tenants living on federally assisted housing properties.

3. Because crime free housing ordinances (and the lease addenda they impose) place domestic or sexual violence survivors at a heightened risk of harm, their enforcement conflicts with the Violence Against Women Act

Beyond the federal good cause protections provided by each federally assisted housing program, through the provisions of VAWA Congress has afforded increased protections to tenants living in federally assisted housing who are survivors of domestic violence, dating violence, sexual assault, and stalking (hereinafter “domestic and sexual

²⁴ See Village of Lynwood, Illinois Code of Ordinances, Sec. 18-275(h); see also Cost of Being Crime Free, *supra*, Note 1 at 17 (discussing the breadth of crime free housing and nuisance property ordinances) and Appendix A (listing citations to those ordinances in place in Illinois).

²⁵ Calumet City, Illinois Code of Ordinances, Sec. 54-2234.

²⁶ Police officials are not only often formally charged with ordinance enforcement, but may also use the existence of the ordinances to pressure landlords to get rid of “problem” tenants. See Desmond & Valdez, *supra* Note 8 at 122.

violence survivors”).²⁷ VAWA protects domestic and sexual violence survivors from losing their housing or being denied housing due to their status as survivors, or based on incidents of actual or threatened violence. It further prohibits victims from being denied occupancy rights solely on the basis of criminal activity directly related to the violence.²⁸ These provisions are aimed at protecting domestic and sexual violence survivors—who face escalated risks of economic, social, and psychological consequences from eviction—from being harmed arbitrarily or as a result of the actions of their abusers.²⁹

The enforcement of crime free housing ordinances frequently places survivors at risk of eviction based on the actions of their abusers.³⁰ Many ordinances base enforcement on the number of calls for police service made from particular rental properties. In Illinois alone, at least 35 local governments have enacted ordinances that subject owners to penalties based on police calls by, for example, making it a violation for a landlord to allow a tenant to make an “unreasonably high number” of calls for police service or setting a threshold number of calls that constitutes a violation.³¹ These provisions are rarely coupled with carve outs for domestic and sexual violence survivors or additional requirements ensuring that officials will evaluate the reason for, or outcome of, the calls. For this reason, the person who called 911 may be cited and threatened with eviction as a result. Beyond placing property owners in a position of needing to violate the protections assured by VAWA, provisions that link enforcement with police contact violate the First Amendment, which guarantees the right “to petition the government for a redress of grievances”, including by calling 911 to seek municipal assistance.³²

Even where the local government is not seeking to penalize victims for calling the police, overbroad drafting and aggressive enforcement of these ordinances frequently leads to harmful, unintended consequences for domestic and sexual violence survivors. In DeKalb, Illinois, for example, the local crime free housing ordinance is enforced by a local police officer who issues notices to property owners each time there is an alleged violation of a broad list of offenses. This notice requests that the offending landlord return a signed form demonstrating that they have met with the tenant and adequately warned them of the violation, evicted them, or taken another action to abate the alleged nuisance activity. Enforcement data between August 2013 and July 2014, based on a

²⁷ 42 U.S.C. § 141411

²⁸ 42 U.S.C. § 1437c-1(d)(13).

²⁹ See Richard R. Bebout, *Trauma-Informed Approaches to Housing* (2001); Sandra L. Bloom, *Revised Trauma Theory: Understanding the Traumatic Nature of Sexual Assault*, in *Sexual Assault Victimization Across the Lifespan: A Clinical Guide* 405–32 (Angelo P. Giardino et al. eds., 2003); Rebecca Campbell, *Mental Health Services for Rape Survivors: Current Issues in Therapeutic Practice* (Oct. 2001) (paper commissioned by Violence Against Women Online Resources).

³⁰ See Desmond & Valdez, *supra* Note 8 at 4-18 (finding that domestic violence was the third most commonly cited offense under a nuisance ordinance in Milwaukee, Wisconsin).

³¹ See, e.g., Sec. 124.34(d)(2) of the Bellwood, Illinois Code of Ordinances; Sec. 7-11-9(a)(2) of the Thornton, Illinois Code of Ordinances (stating that a property owner may violate the ordinance by permitting the tenant to make an “unreasonably high number of calls for police service”).

³² See Tamara L. Kuennen, *Recognizing the Right to Petition for Victims of Domestic Violence*, 81 *Fordham L. Rev.* 837, 843 & n.20, 849-52 (2012); Lenora M. Lapidus, *Doubly Victimized: Housing Discrimination Against Victims of Domestic Violence*, 22 *J. of Gender, Soc. Pol. & the Law* 377, 383 (2003); see also *Complaint, Briggs v. Borough of Norristown*, No. 2:13-cv-02191-ER (E.D. Pa.), available at https://www.aclu.org/sites/default/files/field_document/2013.04.29_-_verified_first_amended_complaint.pdf.

series of Freedom of Information Requests sent by the Shriver Center to the City of DeKalb, revealed that of the 397 notices issued, 187 were related to an incident of domestic violence—47 percent of the total number of notices issued during this timeframe. In many of these instances, the triggering offense was criminal trespass, damage to property, or a noise violation, which the police reports indicate are related to domestic violence. This data suggests that the City of DeKalb is casting a dangerously broad net with the enforcement of its crime free housing ordinance, and is likely harming domestic and sexual violence survivors as a result. Local service providers have also confirmed that survivors of domestic violence who live in DeKalb report reluctance to call the police out of a fear they might be evicted as a result.

In Illinois, the vast majority of crime free and nuisance ordinances contain no carve outs protecting domestic and sexual violence survivors, and even those that do contain carve outs or protections present ongoing risks. For example, when a victim calls the police seeking protection, the abuser may be arrested for another offense that would trigger enforcement, such as resisting arrest, criminal damage to property, trespassing, violations of parole or probation, or noise violations, which would not necessarily be exempted even with ordinances that purport to contain carve-outs for incidents related to domestic violence. Sanctioning the enforcement of these flawed ordinances to tenants living on subsidized properties could have serious, harmful effects on survivors of domestic violence, and directly conflict with the protections provided by VAWA.

4. Crime free housing ordinances may also conflict with the Federal Fair Housing Act, as they are likely to disproportionately harm racial minorities, female-headed households, and individuals with disabilities.

By enacting or enforcing ordinances that have a disproportionate effect on one or more protected groups local governments may be violating the federal Fair Housing Act (FHA), unless the ordinances are justified as necessary to achieve an important municipal objective.³³ As the Supreme Court recently clarified, the FHA prohibits housing discrimination based on race, sex, or disability, regardless of whether that discrimination is intentional or unintentional.³⁴ The enforcement of crime free housing ordinances raises several significant fair housing concerns.

As detailed in Section 3, many ordinances are enforced in ways that have disproportionately harmful impacts on domestic and sexual violence survivors. In addition to creating conflicts with VAWA, they may violate the FHA as a result. The Office of Fair Housing and Equal Opportunity has clarified that the protections prohibiting housing discrimination on the basis of sex extend to domestic and sexual violence survivors, the vast majority of whom are women.³⁵ Crime free housing and

³³ See 24 C.F.R. § 100.500 (the Fair Housing Act prohibits practices that have an unjustified disparate impact on a protected group); Texas Department of Housing & Community Affairs v. The Inclusive Communities Project, Inc., 576 U. S. ____ (2015) (affirming disparate impact theory under the Fair Housing Act); See also Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, 641 F. Supp. 2d 563, 567-68, 577-78 (E.D. La. 2009) (finding disparate impact caused by a reduction of rental housing).

³⁴ Texas Dep't of Hous. and Comm. Affairs v. The Inclusive Communities Project, *supra*, Note 33.

³⁵ See Sarah K. Pratt, U.S. Dep't of Hous. & Urban Dev., Office of Fair Hous. & Equal Opportunity, Assessing Claims of Housing Discrimination Against Victims of Domestic Violence Under the Fair Housing Act and the Violence Against Women Act (2011).

nuisance property ordinances may also disproportionately impact individuals with mental and physical disabilities, interfering with their fair housing right to be free from discrimination. In many jurisdictions, the police are the first to respond to psychiatric emergencies, which often lead to minor citations for non-criminal conduct.³⁶ As these ordinances rarely provide tenants with notice of the alleged violation or an opportunity to contest the allegations or present mitigating factors, their enforcement may also deprive individuals with disabilities of their right to a reasonable accommodation.³⁷

Crime free housing and nuisance property ordinances may also violate the fair housing rights of racial and ethnic minorities by disproportionately impacting tenants living in low-income and minority communities or by relying on arrest data as a primary basis of enforcement.³⁸ Basing enforcement on arrest data is likely to disproportionately harm minorities, who have more frequent contact with the police.³⁹ The enforcement of these ordinances may also reduce the supply of affordable rental housing—particularly in jurisdictions with aggressive enforcement. This creates additional risks of FHA violations, as several protected classes, including racial and ethnic minorities and female-headed households, are more likely to live in rental housing.⁴⁰

As described above, crime free housing and nuisance property ordinances pose significant risks of harm to innocent tenants and create several conflicts with federal law, including good cause eviction protections, VAWA, the First Amendment, and the FHA. For these reasons, HUD should instruct housing authorities and project owners not to enforce crime free housing or nuisance property ordinances against their tenants or execute any crime-free lease addendum proposed or required by local governments in their community.

³⁶ See Silenced: How Nuisance Ordinances Punish Crime Victims in New York, *supra*, Note 1 at 4-5 (describing a low-income property that houses a number of people with mental health disabilities, which was cited under the local nuisance property ordinance for minor non-criminal offenses). Disability providers in Illinois have similarly received citations under local ordinances for calls made by or on behalf of their clients. In at least one instance, a provider was required to move a tenant away from a property and terminate service, despite the fact that no charges were brought against the tenant himself.

³⁷ See, e.g., 775 ILCS 5/3-102.1; 42 U.S.C. § 3604(f); Joint Statement of the Department of Housing and Urban Development (HUD) and the Department of Justice: Reasonable Accommodations under the Fair Housing Act (2004); available at http://www.justice.gov/crt/about/hce/jointstatement_ra.php (clarifying that individuals with disabilities have a right to a reasonable accommodation when such accommodations may be necessary to afford them with equal opportunity to use and enjoy a dwelling and that an individualized assessment is necessary to determine where such accommodations are necessary).

³⁸ See Desmond & Valdez, *supra* Note 8 (finding that the enforcement of the nuisance property ordinance in place in was disproportionately harmful to low-income, minority women in Milwaukee, WI).

³⁹ See The Illinois Disproportionate Justice Impact Study Commission, Final Report 3-4 (2010), available at http://www.centerforhealthandjustice.org/DJIS_FullReport_FINAL.pdf.

⁴⁰ In Illinois only 25% of non-Hispanic white households rent, while 59.1% of African American households, 47.4% of Hispanic households, and 38.3% of Asian households rent. 2010 Census Summary File 1 (Table QT-H1). Female-headed households are more than twice as likely to rent as the general population. 2010 Census Summary File 1 (Table QT-H3). Nationally, 41.8% of households with a nonelderly person with a disability rent as compared to just 31.6% of households overall. Office of Pol. Dev. And Research, U.S. Dep't of Hous. And Urban Dev., 2009 Worst Case Housing Needs of People with Disabilities: Supplemental Findings of the Worst Case Housing Needs 2009: Report to Congress 17 (2011), available at http://www.huduser.org/portal/publications/WorstCaseDisabilities03_2011.pdf.