

Public Housing Authority Admissions and Continued Occupancy Policy

Model Policy Section Regarding Family Members with Criminal Histories

Formerly Incarcerated & Convicted People's Movement

A copy of "Communities, Evictions, and Criminal Convictions" can be found at:
<http://ficpmovement.wordpress.com/2013/04/18/new-report-on-public-housing-communities-evictions-and-criminal-convictions/>

This FICPM report outlines the relevant Civil Rights laws and HUD policies being implemented by local PHAs.

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Preamble

The Public Housing Authority (PHA) recognizes that mental illness, addiction, unemployment, and homelessness are among the leading causes of criminal activity in America. Healthy communities exist where these social issues are being treated in a comprehensive manner, therefore the PHA will make every reasonable effort to contribute to a positive community response to these ailments. Past practices and myths regarding the exclusion of people with criminal records now requires the PHA to make a broad notification and awareness of revised standards to potential applicants.

I. DENIAL FOR DRUG-RELATED & CRIMINAL ACTIVITY

A. Purpose

All federally assisted housing is intended to provide a safe place to live and raise families in a drug-free community. The PHA recognizes that the rise in arrest and incarceration rates have increased dramatically since the 1980s, and blanket policies barring families with a member who has been arrested and/or convicted would likely contribute to systemic homelessness.

Arrest and incarceration rates have disparately impacted African-American and Hispanic men, who are arrested at a rate that is 2 to 3 times their proportion of the general population. Assuming the current incarceration rates continue, White men have a 1 in 17 chance of incarceration in their lifetimes. The rate climbs to 1 in 7 for Hispanic men, and 1 in 3 for African Americans.

The Federal Interagency Council, which includes HUD and the Equal Employment Opportunity Commission have documented the challenges, and disparities, created by effects of the criminal justice system. Most importantly, they have taken a proactive approach to foster more successful rehabilitation and reentry. Stable housing and family reunification are a foundation of strong communities.

It is the intention of the PHA and its agents to implement a policy designed to:

1. Help create and maintain a safe and drug-free community;
2. Keep our residents free from threats to their safety;
3. Support efforts to instill values of personal responsibility and hard work;
4. Help maintain an environment where children can live safely, learn and grow up to be productive citizens;
5. Assist families in their vocational/educational goals in the pursuit of self-sufficiency;
6. Encourage and assist residents seeking rehabilitative treatment;
7. Further community goals regarding prison diversion and reentry; and
8. Deny admission, or evict, persons only where there is a reasonable connection to a specific community goal.

B. Administration

(1) This policy shall apply equally to programs implemented directly by the PHA, and also to those agents and private contractors who rent units under HUD's public housing programs. Where the policy refers to "PHA," all such Agents may be substituted.

All screening procedures shall be administered fairly and in such a way as not to discriminate based on race, color, nationality, religion, sex, familial status, sexual orientation, disability or against other legally protected groups, and not to violate privacy.

To the maximum extent possible, the PHA will involve other community and governmental entities in the promotion and enforcement of this policy.

(2) The PHA may request an adult criminal background check from a law enforcement agency after receiving a signed consent form from the household member over 18 years old. The request must include this policy's standards for prohibiting admission and/or eviction. Fees may not be passed along to the applicant or tenant. *See: 24 C.F.R. § 5.903.*

(3) The PHA will perform the screen as part of the overall application processing. Whereas the PHA can reasonably calculate the approximate waiting period for the requested housing, the Administrators shall notify applicants of their eligibility *at the time of* housing being available. For example, the PHA can inform a family that, although a particular crime is an issue at the present time, they will be eligible in two years- when the next unit is expected to be available; provided there are no new convictions. This process will allow families to plan ahead and not be surprised by an adverse ruling in two years.

(4) This policy will be prominently posted on the PHA's website and bulletin board. Copies will be readily available to applicants and residents upon request.

C. Permanent Denial of Admission

Pursuant to federal law, the PHA must permanently deny admission to:

- 1) Persons convicted of manufacturing or producing methamphetamine on the premises of an assisted housing project. *See: 42 U.S.C. § 1437n(f)(1).*
- 2) Any family in which a household member is subject to a *lifetime* sex offender registration requirement. The PHA shall perform necessary criminal history background checks in any state in which the applicant is known to have resided. *See: 42 U.S.C.A. § 13663; 24 C.F.R. § 5.856.*

D. Potential Denial of Admission

(1) Prior Lease Termination

The PHA will deny an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity, *unless* the PHA is able to verify that the household member who engaged in the criminal activity has completed a

supervised drug rehabilitation program, or the person who committed the crime is no longer living in the household. *See:* **42 U.S.C.A. § 13661; 24 C.F.R. 5.854(a).**

(2) Prior Abuse of Federal Housing Program

The PHA may deny someone who has engaged in criminal activity that particularly threatens PHA personnel at any time within the past 3 years. *See:* **24 C.F.R. § 5.855(a)4.**

The PHA may deny someone who has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program in the last 3 years.

(3) Recent Drug-Related or Violent Criminal Convictions

(a) The PHA may conduct a criminal background check on household members over the age of 18. The period of review shall be limited to the previous three years. The scope of review will be limited to drug-related or violent criminal activity. The PHA has the discretion to admit or deny applicants, after considering all of the circumstances, pursuant to **42 U.S.C.A. § 13661; 24 C.F.R. §§ 5.852(a) and 960.204.**

(b) HUD permits, but does not require, local PHAs to deny admission to those who have committed disqualifying behavior within a “reasonable time,” under **24 C.F.R. 5.855(b).**

(c) Household members convicted of drug-related or violent felonies, during the previous three years, may be denied admission after the PHA has reviewed all evidence in accordance with this policy. The PHA also has authority to admit them, pursuant to **24 C.F.R. § 5.852(d).**

(d) “Violent criminal activity” means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage. **24 C.F.R. § 5.100.**

(4) Current Drug or Alcohol Abuse, or Criminal Activity

The PHA may deny admission where they determine there is a reasonable cause to believe that a member of the applicant household is currently:

- a) Illegally using a controlled substance, or alcohol, in a way that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (See: **24 C.F.R. §§5.854(b) and 5.857**);
- b) Engages in drug-related or criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (See: **24 C.F.R. 5.855(a)**).

In cases where the PHA has received credible evidence of any of the previously named categories, they will make a decision after reviewing evidence, including rehabilitation, in

accordance with this policy below. **42 U.S.C.A. § 13662.**

A review of “current” activity shall not extend beyond the previous six months. *See below.*

II. Reviewing Evidence

A. Conviction Records

(1) Conviction records certified by a state or federal agency will be given a presumption of correctness, subject to rebuttal by the person challenging their accuracy. Conviction records will not be considered binding until the named person has been presented with the record and given an opportunity to challenge, as it is not uncommon to produce an incorrect record. **24 C.F.R. § 5.903(f).**

(2) Expunged or Overturned convictions shall not be considered.

(3) Where convictions during the past three years are considered for admission eligibility, or for eviction proceedings, the PHA (in accordance with **24 C.F.R. § 5.852**) shall:

- a) Make a written determination of how the act committed is reasonably related to the community at large;
- b) Consider all mitigating evidence, including (but not limited to):
 1. The determination by the court;
 2. Completion of, or ongoing satisfaction of, the sentence; and
 3. Completion of relevant rehabilitative programming, whether inside or outside of prison;
- c) Recognize that where the Court orders an offender to remain in the community, the Court has not ordered that offender, or their family, to homelessness;
- d) The seriousness of the offending action;
- e) The effect on the community by denial or eviction;
- f) The effect on the family regarding separation or reunification;
- g) The extent of participation by the leaseholder in the offending action;
- h) The effect of denial of admission or termination of tenancy on household members not involved in the offending action;
- i) The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action

B. Arrest Records

(1) Arrests not followed by convictions during the previous six months shall only be considered when assessing:

- a) Current illegal drug or alcohol abuse, or
- b) Current criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

(2) The PHA recognizes that people are innocent until proven guilty, and allegations by law enforcement or private citizens fail to satisfy clear and convincing standard that behavior is both actual and current.

(3) Arrests without convictions, resulting in deferment to a substance abuse program, may prompt the PHA to ensure the person is adhering to the program.

(4) Any policy driven primarily by arrest records will risk producing discriminatory impact among otherwise-qualified households. *See: EEOC Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, 915.002 (4/25/2012).*

(5) The PHA recognizes that mental illness is a federally protected disability, one that also leads to a disproportionate number of arrests. The PHA shall make every effort to incorporate the professional assessments of the mental health community regarding individual applicants. These assessments will relate to how an applicant stands to threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

C. Defining “Current”

(1) The PHA may consider all credible evidence, limited to the previous six months, for a pattern of disqualifying behavior that would indicate that this behavior would continue. Where the evidence is clear and convincing, leading a reasonable person to believe that the behavior would continue, the evidence shall be presented to the applicant for an opportunity to rebut and/or provide mitigating evidence in response. *See: 24 C.F.R. 5.853(d).*

(2) Completion of, or successful current participation in, a supervised drug or alcohol counseling program shall be considered mitigating evidence. *See: 24 C.F.R. 5.852(c).*

(3) The PHA, in furtherance of creating safe and healthy communities for families, will strive to work with other agencies and organizations that promote and provide substance abuse rehabilitative services.

(4) The PHA shall consider other evidence, such as employment and mentoring programs, in relation to youthful criminal activity. The PHA recognizes that early positive intervention is a healthy and sustainable manner of curbing negative behavior.

III. Action Upon Disqualification

(1) In the event that a family member is barred, the PHA shall give the household an opportunity to remove the member from the application. The household will reasonably satisfy the PHA that the person will not be living in the unit. *See: 24 C.F.R. § 5.852(b).*

(2) The PHA shall also provide the disqualified applicant with a pathway to admission,

unless permanently barred under the methamphetamine or lifetime sex offender registration requirement. See: **24 C.F.R. § 5.855(c)**.

IV. Additions to Lease

A. Family Reunification

(1) Following receipt of a family's request for approval, Management will conduct a pre-admission screening, including Criminal History (subject to the within guidelines regarding Admissions and criminal histories) of the proposed new member. Only new members approved by the PHA will be added to the household.

(2) The PHA will seek to promote, wherever possible and consistent with federal law, reunification of families that have been separated by the criminal justice system.

B. Absence Due to Incarceration

(1) If any resident is incarcerated for more than 30 consecutive days, he/she will be considered permanently absent, except in cases where the person remains innocent of the alleged crime.

(2) If the resident is the sole household member, their assistance will be terminated in accordance with the PHA's "Absence of Entire Family" policy. If the resident is part of a household, they alone will be terminated from the lease after 30 consecutive days incarceration, except in cases where they remain innocent of the alleged crime.

(3) The PHA will determine all reapplications by those terminated under this provision in accordance with the policy regarding Admissions and/or Additions to Lease.

V. Lease Terminations

(1) The following criminal and substance abuse activity will subject the household to possible termination, pursuant to **24 C.F.R. §§ 5.858, 5.859, 5.860**:

- a) Tenants shall not engage in a pattern of drug or alcohol abuse that threatens the health, safety, or right of peaceful enjoyment of the premises by other residents;
- b) Tenants and their guests shall not engage in any criminal activity that threatens the health, safety, or right of peaceful enjoyment of the premises by other residents; nor any drug-related criminal activity on or near the premises;
- c) Tenants shall ensure that persons under their control do not engage in any drug-related criminal activity on the premises;
- d) A tenant shall not be fleeing to avoid prosecution, custody, or confinement after

conviction; nor in violating terms of their probation or parole.

(2) Leases shall indicate that the above activities may subject them to eviction. **24 C.F.R. § 966.4(I)(5).**

(3) The term “drug-related criminal activity” means the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use a controlled substance (*See: Controlled Substances Act, 21 U.S.C. 802*).

(4) The term “guest” means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. **24 C.F.R. § 5.100.** Tenants shall be allowed reasonable accommodation of their guests. **24 C.F.R. § 966.4(d)(1).**

(5) “Person under the tenant's control” means that the person, although not staying as a guest (as defined in this section) in the unit, is, or was at the time of the activity in question, on the premises (as premises is defined in this section) because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not under the tenant's control. **24 C.F.R. § 5.100.**

(6) A visitor to a tenant, family member or otherwise, shall not be presumed to be under the tenant's control; nor shall a person on the premises, although related to a tenant, be presumed to be a guest or under the tenant's control without further evidence of being in the tenant's unit.

(7) The PHA shall make reasonable accommodation for formerly evicted tenants to visit their immediate family members on the premises. Trespass by someone lawfully prohibited from PHA premises shall not be grounds for a tenant's eviction unless it is clear and convincing that the tenant aided and abetted the trespass, *and* the termination is serving a legitimate community purpose.

(8) “Premises” means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds. **24 C.F.R. § 5.100.**

(9) If contraband or controlled substance is seized on the above premises, incidental to a lawful search or arrest, and the District Attorney's Office notifies the PHA, an unlawful detainer action may be commenced in accordance with this policy.

(10) The PHA will establish by clear and convincing evidence that a lease violation has occurred, in accordance with this policy's chapter on Denial of Admission for Drug-Related or Other Criminal Activity. The PHA shall not base a decision solely upon allegations contained in an arrest, and shall specifically look to whether the action(s) are part of a pattern, and threaten the health, safety, and right to peaceful enjoyment of the premises by

other residents. See: **24 C.F.R. § 5.861.**

(11) The PHA may work in conjunction with Courts, Agencies, and Non-Government Organizations focused on assisting the development and/or rehabilitation of the PHA resident. The PHA should, when possible, encourage and assist residents who may need substance abuse, mental health, or vocational counseling as it may be connected to criminal behavior and/or arrest.

(12) Where the action(s) in question are disputed by the resident, the PHA shall not render a presumption of guilt, nor insert its decision over that of a judge or jury. The PHA shall await the findings of the courts, and, *where an immediate danger is feared*, may provide factual information that is relevant to a bail hearing.

(13) Where the PHA has properly evicted a tenant, they shall not evict an entire household unless the remaining household members are also found to:

- a) Exhibit a pattern of disqualifying behavior, or
- b) Have knowledge of the disqualifying behavior, and failed to seek help or intervene.

VI. Recordkeeping

(1) The PHA shall periodically review the admissions and termination data in order to further the creation of stable communities for families, and nondiscrimination based on race, color, nationality, religion, sex, familial status, sexual orientation, disability or against other legally protected groups.

(2) The PHA will keep a detailed account of admissions and terminations that are related to criminal activity as described in this policy.