



Public Housing Authorities and Re-Entry Populations: Eligibility of Persons with Criminal Histories and/or Drug Involvement for Public Housing and Section 8/Housing Choice Voucher Programs

Note: This document represents the Corporation for Supportive Housing's best interpretation of the policies and regulations described, but it is not intended for use in lieu of legal advice or expert opinion regarding these policies and regulations. Individuals and organizations with questions regarding these issues should consult with the U.S. Department of Housing and Urban Development and/or seek legal counsel with relevant expertise.

OVERVIEW OF THE ISSUE

Studies have shown that individuals with a stable place to live upon release from correctional settings are less likely to be re-incarcerated. Access to affordable housing opportunities is critically important to the successful re-entry of ex-offenders leaving incarceration. For some ex-offenders, including many individuals with serious mental health and substance use issues, access to supportive housing programs that integrate affordable housing with essential supportive services, is an essential strategy for reducing their likelihood of recidivism and preventing their return to incarceration.

Many affordable and supportive housing opportunities are supported by resources provided through HUD-funded programs administered by local Public Housing Authorities (PHAs), such as conventional public housing projects, tenant-based Section 8/Housing Choice Vouchers (HCVs), and units supported by operating subsidies provided by Project-Based Section 8/Housing Choice Vouchers (PBVs). Access for ex-offenders to housing opportunities provided through such programs is therefore subject to the interpretation and implementation of federal laws and regulations by local Public Housing Authorities (PHAs) - these laws and regulations are often referred to collectively as "One Strike" policies.¹

The HUD regulations provide both directives and guidelines to PHAs for their screening and admission policies and for their policies for eviction or termination of assistance, with regard to criminal histories, criminal activity, and drug involvement. A small number of these directives are dictate mandatory actions by PHAs, but many provide PHAs with substantial discretionary authority - blanket exclusions for all individuals with histories of criminal and/or drug activities are not required by the federal regulations.

Organizations, including PHAs, interested in addressing the affordable and/or supportive housing needs of ex-offenders re-entering their communities need an understanding of the requirements of the federal law and regulations – including both the mandatory restrictions and the discretionary authority granted to PHAs.

¹ In 1996, President Clinton expressed concern in his State of the Union Address about increases in crime in public housing communities, and announced a "one strike and you're out" policy for public and Section 8 housing, requiring housing authorities to enforce stricter screening and eviction policies related to drug and alcohol abuse and criminal activity. The President's "one strike and you're out" remarks served as the impetus for laws enacted by Congress addressing criminal behavior and drug and alcohol abuse in public housing and the regulations adopted by HUD for enforcement purposes. Some of the regulations which still govern eligibility and termination policies, however, pre-date Clinton's State of the Union Address, such as the Anti-Drug Abuse Act of 1988.

POLICIES REGARDING ELIGIBILITY FOR ADMISSION

- While PHAs' admission policies are clearly bound by federal law, discretion exists for PHAs to house people with histories of incarceration based on individual circumstances.

For applicants for conventional public housing and/or for Section 8/Housing Choice Voucher programs, PHAs are required to perform criminal history background checks. **All persons with criminal records are not precluded by federal law or HUD regulations from accessing public housing or Section 8/HCV assistance** - PHAs are required to prohibit admission to public housing and/or deny Section 8/HCV assistance only for individuals with criminal histories who fall into two categories:

- Individuals subject to lifetime registration under a state sex offender registration program.
- Individuals convicted of the manufacture or production of methamphetamine in federally assisted housing.

Such individuals are subject to a lifetime bar from accessing these programs. In evaluating the eligibility of persons with criminal histories who do not fall into either of these categories, however, HUD encourages PHAs to consider applications for residence by persons with such criminal histories on a case-by-case basis:

"... focusing on the concrete evidence of the seriousness and recentness of criminal activity as the best indicators of tenant suitability. PHAs should also take into account the extent of criminal activity and any additional factors that might suggest a likelihood of favorable conduct in the future, such as evidence of rehabilitation." [HUD Notice PIH 96-16 \(HA\), April 29, 1996](#) and attached "one strike" guidelines: HUD, *'One Strike and You're Out' Screening and Eviction Guidelines for Public Housing Authorities*, April 12, 1996.

PHAs are permitted to deny admission to any household who has been evicted from public, federally assisted, or Section 8 housing because of drug-related criminal activity² of a household member – such households may be deemed ineligible for public or federally assisted housing for a period of three years beginning from the date of the eviction. PHAs have the discretionary authority, however, to reduce or waive the three-year period if the person who engaged in the drug-related criminal activity has successfully completed a rehabilitation program approved by the PHA or the circumstances leading to the eviction no longer exist (such as the person who engaged in the drug-related criminal activity is no longer a member of the household).

In their screening and eligibility processes, PHAs must also determine whether "reasonable cause" exists to believe that abuse of illegal drugs or alcohol (or a pattern of such abuse), or a household member's involvement in drug-related criminal activity, violent activity, or other criminal activity may threaten the health, safety, and right to peaceful enjoyment of the premises of other tenants – if such "reasonable cause" exists, the PHA must deny admission. PHAs are granted the authority, however, to determine whether such reasonable cause exists, and can consider factors such as the recentness of documented activities, completion of a rehabilitation program, and other factors, in making such a determination. Denial of admission decisions can be appealed by program applicants, and PHAs are also granted broad discretion to reconsider an applicant who has previously been denied admission.

² The term "drug-related criminal activity" means the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sale, distribute, or use, of a controlled substance (as such term is defined in section 802 of Title 21). 42 U.S.C. § 1437a(b)(9) (2000). *See also* 55 Fed. Reg. 28,540 (July 11, 1990).

POLICIES REGARDING EVICTION OR TERMINATION OF ASSISTANCE

- PHAs are granted discretionary authority over their responses to criminal activity and drug and alcohol use by tenant households within their public housing and Section 8/HCV programs.

In addition to shaping PHAs' screening and admission policies, federal policies also provide directives and guidance for PHAs' policies regarding evictions (from public housing) or termination of assistance (from Section 8/HCV rental assistance) in response to criminal activity (including illegal drug use), and lease violations resulting from alcohol abuse. As with the regulations governing screening and eligibility criteria, however, **PHAs have substantial discretionary authority in responding to such criminal activity, and eviction or termination is not a required response to every instance of illegal drug use, criminal activity, or lease violation.**

HUD regulations require PHAs to include in their public housing and Section 8/HCV leases clauses prohibiting any member of a household, guest or other person under the tenant's control from engaging in criminal activity, including drug-related criminal activity, on or off the premises. Important aspects of this policy are that: a) entire tenant households can be evicted or terminated from assistance for the activities of one member of the household or a non-household member; b) tenants can be evicted or terminated for activities that occur on or off of the premises; and c) tenants can be evicted or terminated regardless of whether the person has been arrested or convicted of such activity. Further, on March 26, 2002, the United States Supreme Court ruled in the case of *Department of Housing and Urban Development v. Rucker*, a class action case brought by Oakland Housing Authority tenants in response to these regulations. The Supreme Court ruled in favor of HUD that, "public housing authorities have the discretion to terminate the lease of a tenant when a member of the household or a guest engaged in drug-related activity, regardless of whether tenant knew, or should have known, of the drug-related activity." PHAs are also required to include in their leases clauses making possible the termination of the tenancy if any member of the household has engaged in abuse of alcohol that threatens the health, safety or right to peaceful enjoyment of the premises by other tenants.

While such provisions are required elements of PHA lease documents, PHAs have discretion regarding their responses to violations of such provisions – even within its ruling in favor of HUD, the Supreme Court reinforced that PHAs are granted considerable discretion when making decisions regarding evictions or termination of assistance, including seeking alternatives to eviction or termination. HUD also reinforced PHAs' discretionary authority in a [letter \(dated June 6, 2002\) from Assistant Secretary Michael Liu following the HUD v. Rucker](#) ruling, including the following language (*emphasis added*):

"... the Court unanimously affirmed the right of public housing authorities, under a statutorily-required lease clause, to evict entire public housing households whenever any member of the household, or any household guest, engages in drug-related or certain other criminal activity. The *Rucker* decision upholds HUD regulations that, since 1991, have made it clear both that the lease provision gives PHAs such authority and that **PHAs are not required to evict an entire household - or, for that matter, anyone - every time a violation of the lease clause occurs.... PHAs remain free, as they deem appropriate, to consider a wide range of factors in deciding whether, and whom, to evict as a consequence of such a lease violation.** Those factors include, among many other things, the seriousness of the violation, the effect that eviction of the entire household would have on household members not involved in the criminal activity, and the willingness of the head of household to remove the wrongdoing household member from the lease as a condition for continued occupancy. ..."

ADDITIONAL RESOURCES

Readers interested in gaining a more complete understanding of these issues may find the following materials useful:

CSH Publications and Materials (all publications are available at www.csh.org/publications)

- [CSH Re-Entry Supportive Housing Webpage](#): This page contains links to a number of resources created in 2009, including legislative updates, research briefs, case studies and a concept paper. The webpage can be found by visiting www.csh.org then selecting the following menus: PolicyAdvocacy / Our Policy Priorities / Re-entry Supportive Housing.
- [New Beginnings: The Need for Supportive Housing for Previously Incarcerated People \(2004\)](#): This report examines the housing and service needs of formerly incarcerated people, particularly those with special needs, and presents a national survey of existing models of re-entry housing: new models of supportive housing models adapted to the specific needs of returning ex-prisoners.
- [A Guide to Re-Entry Supportive Housing: A Three-Part Primer for Non-Profit Supportive Housing Developers, Social Services Providers, and their Government Partners \(2002\)](#): This guide is divided into three parts which provide: 1) an overview of re-entry supportive housing; 2) an overview of the criminal justice system; and 3) an overview of project financing for re-entry supportive housing.
- [Between the Lines: A Question and Answer Guide on Legal Issues in Supportive Housing - National Edition \(2001\)](#): This manual offers some basic information about the laws that pertain to supportive housing - see Chapter 5 and Chapter 6 especially for information relevant to screening, eligibility, and eviction issues.

Other Organizations' Publications and Materials:

- Legal Action Center's [Safe at Home: A Reference Guide for Public Housing Officials on the Federal Housing Laws Regarding Admission and Eviction Standards for People with Criminal Records](#): This guidebook provides an overview of what the federal housing laws require, highlights those areas where PHAs have discretion to craft their own admission and eviction policies related to people with criminal records, and offers comprehensive recommendations for principles to guide PHAs when adopting and implementing their policies and procedures. www.lac.org
- [The Report of the Re-Entry Policy Council \(2005\)](#): Authored by the Council of State Governments and ten project partners, including CSH, this report reflects the results of a series of meetings among 100 of the most respected workforce, health, housing, public safety, family, community, and victim experts in the country. Additional housing resources from the Re-Entry Policy Council include: [Public Housing Authorities and Prisoner Re-Entry](#) (including brief descriptions of PHAs with innovative approaches) and [Homelessness and Prisoner Re-Entry](#) (including brief profiles of re-entry supportive housing projects). www.reentrypolicy.org
- AIDS Housing of Washington's [From Locked Up to Locked Out: Creating and Implementing Post-release Housing for Ex-prisoners \(2005 Update\)](#): This guide is a starting point for planning and improving post-release housing and related services to support the transition of individuals out of prison. It includes examples of housing and service programs that are serving this population and offers references to numerous resources for further reading and research. www.aidshousing.org