



Housing and Criminal Records: A Resource

Stable and affordable housing is one of the most basic human needs and a key to successfully rebuilding a life after incarceration. As many as one in six Ohioans—or 1.92 million people—have a misdemeanor or felony conviction.¹ That means that one in six Ohioans face barriers to safe, stable housing due to any criminal record. And the number of people unable to obtain housing is greater when arrest records are considered, even when those arrests did not result in prosecution. Without stable housing, returning citizens are twice as likely to become involved with the criminal justice system again than those living in stable housing.² The Ohio Poverty Law Center is committed to its belief that every person should have the opportunity to succeed after serving their sentence. Public Housing Authorities (PHAs) are critical to addressing this key need. In April of 2016, the U.S. Department of Housing and Urban Development (HUD) issued guidance clarifying HUD's position on the use of criminal records to screen applicants and residents – and how using criminal records in screening policies and procedures may result in fair housing violations. A brief overview of HUD's strong concern with fair housing implications related to the housing industry's use of criminal records is below.

- **An arrest alone is not evidence of criminal activity and does not support an adverse admission, termination, or eviction decision.**
 - “The fact that there has been an arrest for a crime is not a basis for the requisite determination that the relevant individual engaged in criminal activity warranting denial of admission, termination of assistance, or eviction.”³
 - Citing the U.S. Supreme Court, HUD states that “[a]n arrest shows nothing more than that someone probably suspected the person apprehended of an offense... For that reason, a housing provider cannot prove that the exclusion actually assists in protecting resident safety and/or property.”⁴
- **HUD regulations support only two permanent “one strike” policies.**
 - In most cases, PHAs and owners have discretion to decide whether or not to deny admission to an applicant with certain types of criminal history . . .” **but**
 - Automatic, permanent denials should occur *only* when applicants have a criminal record of:
 - Sex-offender offenses under 24 CFR 982.553(a)(2)(i), **OR**
 - Methamphetamine Manufacturing under 24 CFR 982.553(a)(1)(ii)(C).
- **HUD regulations support other, temporary denials based on certain criminal convictions only if they are applied for a reasonable amount of time after conviction and serve a defined and legally-justifiable interest.**
 - Such convictions include the following: drug-related criminal activity; violent criminal activity; criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; and criminal activity that would threaten the health or safety of the owner or local housing agency staff or contractors.
 - The PHA must determine that the conduct is current or occurred within a *reasonable period of time* prior to the admission decision.⁵
 - For certain programs, there is a mandatory three-year ban on admission for families if any member has been evicted from federally assisted housing for drug-related criminal activity.⁶

¹ See Ohio Justice & Policy Center, <http://www.ohiojpc.org/about/>.

² Weiss, Elayne. *Housing Access for People with Criminal Records*, NATIONAL LOW INCOME HOUSING COALITION. Available at http://nlihc.org/sites/default/files/2016AG_Chapter_6-6.pdf.

³ *Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions*, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF PUBLIC AND INDIAN HOUSING (Nov. 2, 2015). (“*Guidance for Public Housing Agencies*”) available at <https://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf>.

⁴ See *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*, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (Apr. 4, 2016) (“April HUD Guidance”).

⁵ Congress did not define “reasonable.” See page 2.

⁶ The ban applies to those in public housing, the Housing Choice Voucher program, Project-based Section 8, and other federally assisted housing, excluding LIHTC and RD housing. The rule does not apply to those with evictions from non-federal housing and permits admission after rehabilitation and changed circumstances of the household member who engaged in drug-related activity.

- **Look-back periods should be reasonable.**
 - Although not defined by HUD, *reasonable* times are those that are finite, not overly-long, and decrease in relevance over time.⁷
 - “A policy or practice that does not consider the amount of time that has passed since the criminal conduct occurred is unlikely to satisfy this standard, especially in light of criminological research showing that, over time, the likelihood that a person with a prior criminal record will engage in additional criminal conduct decreases until it approximates the likelihood that a person with no criminal history will commit an offense.”⁸
- **To comply with Fair Housing law, housing providers (public and private) should be able to show that policies excluding people based on particular convictions are necessary to serve a “substantial, legitimate, nondiscriminatory interest.”⁹**
 - Screening, eviction, or termination of assistance policies and procedures must “comply with all applicable civil rights requirements contained in the Fair Housing Act, ... and other equal opportunity provisions listed in 24 CFR 5.105.”¹⁰
 - Neutral policies and practices may have a greater impact on African-Americans and Latinos because they are arrested, prosecuted, and incarcerated at a higher rate than whites,¹¹ despite engaging in the same or lower rates of criminal activity. Exclusions based on criminal records, therefore, disproportionately affect the ability of African-Americans and Latinos to secure housing.
 - Housing providers, therefore, should be able to show that their policies and practices are supported by a legally sufficient justification, e.g., a *fact-based* connection between the policies and practices and protecting the safety and property of residents.
 - Policies and practices should take into account the nature and severity of an individual’s conviction and must connect with a demonstrable risk to resident safety or property.¹²
 - The Fair Housing Act exempts housing providers from liability based on disparate impact when the criminal records are for convictions for manufacturing or distributing controlled substances – but does not exempt disparate impact claims based on arrests for these charges, possession of controlled substances, or differing treatment of people with the same conviction. See Section 807(b)(4) of the Act.
- **Housing providers should review applicants’ criminal convictions and materials explaining rehabilitation and other factors before denying housing.**
 - “Federal law requires that PHAs provide public housing, project-based Section 8, and Section 8 HCV applicants with notification and the opportunity to dispute the accuracy and relevance of a criminal record *before* admission or assistance is denied on the basis of such record.”¹³
 - Recent HUD guidance emphasizes that blanket denials raise serious fair housing concerns, and that all applicants for housing – both public and private – should be given an opportunity to submit information that explains or reduces the effect of their criminal records before denying housing. This will also allow for incorrect records to be corrected.
- **For additional information and resources, contact Janet Hales at jhales@ohiopoverty.org.**

⁷ See Tran-Leung, Marie Claire, *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing*, SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW (Feb. 2015). Available at <http://poverty.org/sites/default/files/images/publications/WDMD-final.pdf>.

⁸ (“April HUD Guidance”).

⁹ (“April HUD Guidance”).

¹⁰ *Guidance for Public Housing Agencies*, *supra* note 3 at 5.

¹¹ (“April HUD Guidance”).

¹² (“April HUD Guidance”).

¹³ *Id.*

The work that provided the basis for this publication was supported by funding under a grant with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Federal Government.