



FAQs: Excluding the Use of Arrest Records in Housing Decisions

These FAQs are issued by HUD's Office of Public and Indian Housing ("PIH"), Office of Housing, and Office of General Counsel to address questions raised by *Notice PIH 2015-19 / H 2015-10*, which was issued on November 2, 2015, and is entitled *Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions*.

These FAQs are intended as a supplemental resource to *Notice PIH 2015-19 / H 2015-10*.

Q1: What does *Notice PIH 2015-19 / H 2015-10* do?

A1: The *Notice* clarifies that the fact that someone has been arrested does not itself prove that the person has engaged in criminal activity. As a result, the fact of an arrest is not itself an acceptable reason for denying that person admission, terminating their assistance, or evicting tenants in public or federally-assisted housing.

The *Notice* also reminds PHAs and owners of HUD-assisted multifamily properties ("owners") that HUD does not require the adoption of "one-strike" policies and that PHAs and owners have an obligation to safeguard the due process and civil rights of applicants and tenants.

In addition, the *Notice* provides some best practices for PHAs and owners interested in revising their admissions and occupancy policies to improve housing opportunities for persons who, despite past criminal activity, do not pose a threat to the health or safety of residents or staff.

Q2: Why is the fact of an arrest not itself a permissible basis for making a housing decision?

A2: The fact that someone was arrested means only that the person was suspected of having committed an offense. Further investigation may have shown that no criminal activity actually occurred, or that the arrested individual did not in fact commit an offense.

Consequently, the fact of the arrest itself does not prove that a person engaged in disqualifying criminal activity, poses a threat, or has otherwise violated admission standards or lease terms relating to criminal activity.

Q3: Does *Notice PIH 2015-19 / H 2015-10* completely exclude the review of arrest records in housing decisions?

A3: No. Although the fact that an individual was arrested is not grounds to deny a housing opportunity, a record of an arrest might properly trigger an inquiry by a PHA or owner into whether a person actually engaged in disqualifying criminal activity. As part of such an inquiry, a PHA or owner may continue to obtain and review the police report, record of disposition of any criminal charges, and other evidence associated with the arrest to inform its eligibility determination.

Q4: If an individual has an arrest history, what kind of evidence of criminal activity is needed before disqualifying that person from housing assistance?

A4: In determining whether a person who was arrested for disqualifying criminal activity actually engaged in such activity, PHAs and owners may consider, among other things: police reports that detail the circumstances of the arrest; statements made by witnesses or by the applicant or tenant that are not part of the police report; whether formal criminal charges were filed; whether any charges were ultimately withdrawn, abandoned, dismissed, or resulted in an acquittal; and any other evidence relevant to whether the applicant or tenant engaged in the disqualifying criminal activity. The best evidence of a person's involvement in criminal activity is an official record of the person's conviction in a court of law for disqualifying criminal activity.

Q5: In considering evidence of a person's criminal activity, what is the threshold that must be met before a PHA or owner *may* disqualify that person from housing assistance?

A5: Public housing and Section 8 applicants may not be denied admission or assistance based on the mere suspicion that they or a household member engaged in disqualifying criminal activity. There must be enough evidence to be able to reasonably conclude that the applicant engaged in criminal activity. Thus, the fact that an individual was arrested is not an adequate basis for disqualifying an applicant for admission or assistance.

When terminating assistance for participants of Section 8 tenant-based and moderate rehabilitation programs due to disqualifying criminal activity, HUD regulations specifically provide that disqualifying criminal activity by a tenant, other household member, or guest must be demonstrated by a "preponderance of the evidence." In other words, when taking all the evidence together and considering its reliability or unreliability, it must be more likely than not that the person in question engaged in the disqualifying criminal activity. The same preponderance of the evidence standard applies to public housing evictions as well.

As a reminder, only in limited and specific cases of criminal activity do HUD statutes and regulations *require* denial of admission or termination of assistance (and in only two cases—where someone has been convicted of producing methamphetamine in federally-assisted housing or must register as a lifetime sex offender—is someone permanently barred). In all other cases, PHAs and owners have discretion to consider any mitigating circumstances in making admission and eviction decisions.

Q6: What is an example of an admissions policy that complies with Section 4 of *Notice PIH 2015-19 / H 2015-10*?

A6: An admissions policy that complies with Section 4 of the *Notice* and recognizes the interests of applicants who need access to affordable housing while guarding the safety interests of current residents might include the following statement:

"The fact that an applicant or tenant was arrested for a disqualifying offense shall not be treated or regarded as proof that the applicant or tenant engaged in disqualifying criminal activity. The arrest may, however, trigger an investigation to determine whether the applicant or tenant actually engaged in disqualifying criminal activity. As part of its investigation, [the PHA or owner] may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The PHA may also consider any statements made by witnesses or the applicant or tenant not included in the police report; whether criminal charges were filed; whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal; and any other evidence relevant to determining whether or not the applicant or tenant engaged in disqualifying activity."

Q7: Does *Notice PIH 2015-19* require a PHA to rewrite its (1) Admissions and Continued Occupancy Policies (ACOP), or (2) Section 8 Administrative Plan (Admin Plan) if the ACOP or Admin Plan does not include the same language used in the previous answer's example?

A7: Maybe. All PHAs must comply with *Notice PIH 2015-19*. PHAs should therefore review their ACOPs and Admin Plans and revise them where a policy treats the fact that someone was arrested as a reason to deny admission, terminate assistance, or evict tenants in public or federally-assisted housing.

At the same time, a PHA is not required to use the same language used in the previous example to comply with the *Notice*. Where a PHA's ACOP and Admin Plan are completely consistent with the example policy set forth in the previous answer and do not permit relying on the fact of an arrest (or arrests) to prove disqualifying criminal activity, it may be that no revisions are required.

HUD encourages PHAs to revise their ACOP and Admin Plans as they relate to criminal records in order to better facilitate access to HUD-assisted housing for applicants who, despite their criminal history, do not pose a threat to the health or safety of residents or staff.

Q8: If, during an applicant's admissions screening process, the applicant is arrested for violent or other disqualifying criminal activity, must a PHA or owner wait until the arrest disposition to determine the applicant's eligibility for housing?

A8: No. While it may be advisable to wait until the arrest disposition—especially if the disposition is imminent—PHAs and owners have discretion to go ahead and use the available evidence to make an eligibility determination according to the standards in the applicable written admissions policies of the PHA or owner.

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Q9: Must a PHA or owner provide an applicant with notice and the opportunity to dispute the accuracy or relevance of a criminal record *before* denying admission on the basis of that record?

A9: Yes. Before a PHA denies admission to the public housing or Section 8 program on the basis of a criminal record, the PHA must notify the applicant of the proposed decision and provide the applicant and the subject of the record with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record. In addition, public housing and Section 8 applicants have the right to request an informal review of the decision after their application has been denied. For further guidance, please consult 24 C.F.R. §§ 960.204(c), 960.208(a), 982.553(d), 982.554.

Similarly, when owners make the decision to reject an applicant on the basis of a criminal record, the owner must provide the applicant with a written rejection notice. This notice must state the reason for the rejection, advise of the applicant's right to respond to the owner in writing or to request a meeting within 14 days to dispute the rejection, and advise that persons with disabilities have the right to request reasonable accommodations to participate in the informal hearing process. For further guidance, please consult HUD Handbook 4350.3, REV-1, paragraphs 4–9.

Q10: May PHAs or owners contact HUD if they have questions about *Notice PIH 2015-19 / H 2015-10*?

A10: Yes. If assistance is needed, PHAs and owners can contact their local field office, which can put them in touch with HUD regional counsel to answer any questions about the *Notice*.