



VIA FACSIMILE, ELECTRONIC MAIL & U.S. MAIL

July 25, 2011

Shaun Donovan, Secretary
United States Department of Housing and Urban Development
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Dear Secretary Donovan:

On behalf of advocates across the country, we would like to thank you for your June 2011 letter urging public housing authorities (PHAs) to exercise discretion when evaluating applicants with criminal records. Since there has been little authoritative guidance for PHAs regarding admitting people with criminal records, HUD's commitment to increasing housing access for this community is significant. The letter has already served as an important advocacy tool for organizations to start dialogues with PHAs on this issue. The leadership you have taken will help improve the lives of people with criminal records and reunite them with their families, decrease the risk of recidivism, and promote second chances.

We write on behalf of legal aid attorneys and advocates across the country who work day in and day out with people with criminal records and help them with the struggles they face in trying to reunite with their families, find affordable housing and employment, and reintegrate with society. As noted in your June 2011 letter, formerly incarcerated individuals are less likely to return to crime if they are able to secure stable housing. By this letter, HUD has taken an important first step towards making safe, decent, and affordable housing a reality for this population, and we write to offer suggestions about next steps to expand this initiative.

A. A letter to cover all HUD-assisted housing programs

The June 2011 letter offered important guidance for PHAs regarding admissions policies and helping people with criminal records gain access to stable and affordable housing. However, the June 2011 letter only covered the public housing and Housing Choice Voucher programs, even though criminal records barriers exist in other HUD-assisted housing programs. The following case from a legal aid attorney in Minneapolis demonstrates an example of such barriers in the project-based Section 8 program:

Ms. K is a 47 year old single woman with mental health disabilities and traumatic brain injury. Wishing to move from transitional housing to a more independent setting, Ms. K

has applied to several project-based Section 8 buildings in the Minneapolis area from which her employer would provide free transportation to her work and which is close to her daughter's family.

Ms. K's criminal history consists of (1) a 2007 theft of a library book; (2) a 2006 ticket for possession of marijuana in small enough quantity to "not be classified as a criminal offense;" and (3) and a 2004 dismissed misdemeanor charge for writing a bad check. Despite its minor nature, two different project owners have used her criminal history to deny her application, particularly because of her non-criminal ticket for possession. Moreover, even though the criminal background checks obtained by the project owners inaccurately reported the dates and severity of her offenses, the first project owner has refused to consider the accurate criminal history information provided by Ms. K, choosing instead "to stand on the tenant screening report received." The second project owner, meanwhile, is currently deciding on whether it will consider the accurate criminal history information.

Ironically, as part of her employment, Ms. K handles confidential financial documents, which means that her employer has also scrutinized her criminal history. In spite of the sensitive nature of this employment, however, the employer – unlike the project owners – did not find her criminal history to be sufficiently severe to deny her employment.

Like others in her situation, Ms. K will continue her diligent search for housing. Unless HUD intervenes and issues a letter urging the exercise of discretion in all HUD-assisted programs, however, people like Ms. K will not benefit from the type of discretion that your June 2011 letter to public housing authorities envisions.

To ensure that Ms. K and others like her are not left out of HUD's renewed commitment to people with criminal records, HUD should take the next logical step of sending similar letters that would apply to all other HUD-assisted housing programs, such as project-based Section 8 and Shelter Plus Care. We urge HUD to send a similar letter to the program administrators, owners, and managers of all HUD-assisted housing programs reminding them of the discretion they have in accepting people with criminal records into their programs.

A follow-up letter would address the program administrators, owners, and managers of all HUD-assisted housing programs. Similar to PHAs, these housing providers have discretion in admitting individuals with criminal records. To this letter, we have attached a chart from the National Housing Law Project's manual, *An Affordable Home on Reentry*, which shows the various areas where program administrators have discretion when it comes to admitting people with criminal records.¹ For example, the property owners administering the Section 236 Rental Program are not barred from admitting applicants with a history of drug-related criminal activity, violent criminal activity, or other criminal activity that threaten health, safety or peaceful enjoyment. See 42 U.S.C. §13661(c). HUD should also remind program administrators, owners, and managers to consider individual circumstances of applicants with criminal records, such as

¹ A copy of the manual is available at <http://nhlp.org/resourcecenter?tid=86>.

evidence of rehabilitation or a willingness to participate in social services, as mentioned in your June 2011 letter.

By simply expanding the scope of this letter to include all HUD-assisted programs, this letter will help people with criminal records and their ability to secure stable housing and avoid homelessness. A letter addressed to all HUD-assisted housing programs would also be a step towards consistent treatment of all people with criminal records, who often suffer from unfair eviction procedures and unnecessarily restrictive policies. This outcome would align with HUD's goal of focusing on the people served rather than compartmentalizing them according to the program they participate in, as described in HUD's most recent strategic plan:

HUD faces serious operational and cultural challenges that limit the agency's effectiveness and impact. From a rigid, hierarchical, and bureaucratic organizational structure to rules that constrain staff and grantees, the result is an agency that focuses all too often on programs and policies rather than the people and places that rely on them. ... To transform HUD into the nimble, responsive partner our challenges require, HUD will [among other things] simplify programs, rules, and regulations.

See HUD Strategic Plan FY2010-2015, 7 (May 2010). A letter that urges the exercise of discretion in *all* HUD-assisted programs will ensure that silos among the different housing programs do not stand in the way of second chances for all applicants with criminal records, no matter what program they are applying to.

B. Federal limitations on discretion: HUD regulations & the Fair Housing Act

In addition to reminding program administrators, owners, and managers of the discretion they have in drafting admissions policies, HUD should also remind them of the limitations imposed on that discretion by HUD regulations and particularly the Fair Housing Act.

As stated in your letter, HUD requires PHAs to impose only two permanent bans, one for lifetime registered sex offenders and the other for people who have been convicted of manufacturing methamphetamine on federally-assisted property. Notably, however, for criminal activity that is drug-related, violent, or creates a threat to the health and safety of others, the PHA's decision to admit is discretionary. HUD requires PHAs to limit their inquiries to criminal activity that occurred during a "reasonable time." *See* 42 U.S.C. § 13663(a). Although this time period is not defined in the statute or regulations, HUD has advised PHAs on how to consider applicants after this reasonable time period expires, suggesting that these time periods should be limited rather than unlimited. *See* Notice H 2002-22 (HUD), Screening and Eviction for Drug Abuse and Other Criminal Activity – Final Rule, 5-6 (Oct. 29, 2002). Given how frequently PHAs and other housing providers use unreasonably long lookback periods, the time to remind them of this limit on their discretion is now. In the next section, however, we offer suggestions on ways that HUD can clarify this limit, such as by setting a maximum, as opposed to a minimum, of three years on all lookback periods.

Another limitation on PHAs and owners in crafting admissions policies and practices is the Fair Housing Act (FHA), which prohibits housing discrimination on the basis of race. In addition to intentionally discriminatory policies, FHA prohibits facially neutral policies that have an unjustified disparate impact on racial minorities. Making admissions decisions based on a person's criminal record can implicate the FHA because of the disproportionate contact that racial minorities, such as African-Americans and Latinos, have with the criminal justice system. By reminding PHAs, project owners, and other HUD-assisted program administrators of this limitation on their discretion, HUD will help to ensure that people with criminal records are not subjected to unwarranted discrimination. Furthermore, since the FHA applies to all housing, whether federally-assisted or not, we urge the HUD to remind housing providers on the private rental market of their FHA implications of their criminal records admissions policies as well.

C. Long-term recommendations

As HUD considers long-term solutions that comport with HUD regulations and the FHA, promote second chances, and support family reunification for people with criminal records, you may want to consider the following recommendations. National People's Action offered recommendations in a letter to you in September 2010 to address challenges with family reunification and homelessness faced by people with criminal records. We thank you for adopting two of those recommendations, particularly explaining the rehabilitative value of access to housing and family reunification and urging PHAs and owners to consider mitigating circumstances in reviewing applicants with criminal records.

Shortly thereafter, we wrote a letter in support of those recommendations, and we re-affirm that support today. In particular, we urge HUD to issue guidance to PHAs and HUD-assisted owners that incorporates the following specific recommendations:

- HUD should clarify that a “reasonable time” period for considering past criminal activity begins at the date of conviction, rather than the date of release, and probation or parole status alone should not be grounds for denial of admission.
- HUD should impose a three-year maximum, as opposed to a minimum, on the “reasonable time” period.
- HUD should remind PHAs and project owners to consider only convictions directly related to “the health, safety, or right to peaceful enjoyment of the premises by other residents.”
- HUD should remind PHAs and project owners not to deny admissions to individuals for behavior that a court has determined non-criminal, such as unproven allegations, arrests without convictions, and non-criminal offenses. Nor should PHAs consider convictions that have been expunged, purged, or sealed.
- HUD should endorse model policies for PHAs and project owners (such as the policy developed by the National Housing Law Project) that comply with federal statutes

and regulations while avoiding counterproductive barriers to housing and family reunification for people with criminal records.

- HUD should require PHAs to collect data on and report the number of applicants denied to federally-assisted housing as well as the specific reasons they were denied.

We also offer this additional recommendation:

- HUD should require, rather than simply urge, PHAs and owners to take mitigating evidence into account when reviewing applicants with criminal records and to meaningfully consider people who can demonstrate rehabilitation.

Our final note returns to your June 2011 letter. Given the importance of its message, we respectfully request that HUD post the letter on its website to make the letter accessible not only to public housing authorities, but also to residents, applicants, and their advocates. This accessibility will increase the likelihood that PHAs treat the letter like it would any other posted document containing HUD guidance, such as regulations, handbooks, and notices, thus strengthening HUD's message about its commitment to increasing access to affordable housing for people with criminal records.

Again, we thank you for recognizing the importance of increasing housing opportunities for people with criminal records and for taking much-needed leadership in this area. If you have any questions or would be interested in speaking with this group of advocates further about these recommendations, please contact Marie Claire Tran-Leung, Staff Attorney, Sargent Shriver National Center on Poverty Law either by phone (312-268-3308) or by email (marieclairetran@povertylaw.org).

Sincerely,

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Chapter 2: Exhibit 3

Federally-Assisted Housing Programs: Admissions for Applicants with Certain Criminal Backgrounds¹

	Convicted of producing methamphetamine at federally-assisted housing	Lifetime registered sex offender	Prior eviction from federally-assisted housing for drug-related activity	History of drug-related criminal activity	History of violent criminal activity	History of crimes that threaten health, safety, or peaceful enjoyment	Current user of illegal substances
Public Housing	Permanent ban on admission. 42 U.S.C. § 1437n(f); 24 C.F.R. § 960.204(a)(3).	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 960.204(a)(4).	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661(a) and 13664; 24 C.F.R. § 960.204(a)(1).	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 960.203(d).	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 960.203(d).	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 960.203(d).	PHA must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 960.204(a)(2).
Voucher Program	Permanent ban on admission. 42 U.S.C. § 1437n(f); 24 C.F.R. § 982.553.	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 982.553.	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661 and 13664; 24 C.F.R. § 982.553.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 982.553.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 982.553.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 982.553.	PHA must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 982.553.
Section 8 Mod Rehab	Permanent ban on admission. 42 U.S.C. § 1437n(f); 24 C.F.R. § 882.518.	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 882.518.	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661 and 13664; 24 C.F.R. § 882.518.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 882.518.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 882.518.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 882.518.	PHA must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 882.518.

¹ There are no federal requirements regarding admission of individuals with criminal background to Low Income Housing Tax Credit (LIHTC) housing, Shelter Plus Care (S+C) (see generally 24 C.F.R. §§ 582.325 and 582.330), Supportive Housing Program (SHP) (see generally 24 C.F.R. § 583.325) or Housing Opportunities or People with Aids (HOPWA) (see generally 24 C.F.R. § 574.603).

² Federally-assisted housing is defined, in this context, to include, public housing, Section 8, Section 202, Section 811, Section 221(d)(3), Section 236, Section 515 and Section 514.

Chapter 2: Exhibit 3

	Convicted of producing methamphetamine at federally-assisted housing	Lifetime registered sex offender	Prior eviction from federally-assisted ³ housing for drug-related activity	History of drug-related criminal activity	History of violent criminal activity	History of crimes that threaten health, safety, or peaceful enjoyment	Current user of illegal substances
Section 8 SRO Mod. Rehab. for homeless	Current funds are appropriated for homeless individuals. 42 U.S.C. §11401. Regulations may require a ban. 24 C.F.R. §§ 882.805(c) and 882.808(b)(2); <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	Current funds are appropriated for homeless individuals. 42 U.S.C. §11401. Regulations may require a ban. 24 C.F.R. §§ 882.805 (c) and 882.808(b)(2); <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	Current funds are appropriated for homeless individuals. 42 U.S.C. §11401. Regulations may require a ban. 24 C.F.R. §§ 882.805 (c); <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	PHA or owner has discretion to admit applicant. 24 C.F.R. §§ 882.805 (c) and 882.808(b)(2); <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	PHA or owner has discretion to admit applicant. 24 C.F.R. §§ 882.805 (c) and 882.808(b)(2); <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	PHA or owner has discretion to admit applicant. 24 C.F.R. §§ 882.805 (c) and 882.808(b)(2); <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	Current funds are appropriated for homeless individuals. 42 U.S.C. §11401. Regulations may deny admission. 24 C.F.R. §§ 882.805 (c) and 882.808(b)(2); <i>see also</i> provisions cited above under Section 8 Mod. Rehab.
Project-based Section 8	No requirement imposed by federal law. Owner has discretion to admit applicant. 42 U.S.C. § 1437n(f); 24 C.F.R. § 5.855.	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 5.856.	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661 and 13664; 24 C.F.R. § 5.854.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 5.854

³ Federally-assisted housing is defined, in this context, to include, public housing, Section 8, Section 202, Section 811, Section 221(d)(3), Section 236, Section 515 and Section 514.

Chapter 2: Exhibit 3

	Convicted of producing methamphetamine at federally-assisted housing	Lifetime registered sex offender	Prior eviction from federally-assisted ⁴ housing for drug-related activity	History of drug-related criminal activity	History of violent criminal activity	History of crimes that threaten health, safety, or peaceful enjoyment	Current user of illegal substances
Sections 202, 811, 221(d)(3), 236	No requirement imposed by federal law. Owner has discretion to admit applicant. 42 U.S.C. § 1437n(f); 24 C.F.R. § 5.855.	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 5.856.	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661 and 13664; 24 C.F.R. § 5.854.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.854.	Owner must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 5.854.
USDA Housing	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154; <i>but see</i> 42 U.S.C. §§ 13663 and 13664, which extend to Section 515 and 514 housing.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154; <i>but see</i> 42 U.S.C. §§ 13661 and 13664, which extend to Section 515 and 514 housing.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154; <i>see also</i> 42 U.S.C. § 13661(b) and 24 C.F.R. § 5.850(c).	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154; <i>see also</i> 42 U.S.C. § 13661(b) and 24 C.F.R. § 5.850(c).

⁴ Federally-assisted housing is defined, in this context, to include, public housing, Section 8, Section 202, Section 811, Section 221(d)(3), Section 236, Section 515 and Section 514.

Chapter 2: Exhibit 3

HOME	Convicted of producing methamphetamine at federally-assisted housing	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	Lifetime registered sex offender	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	Prior eviction from federally-assisted⁵ housing for drug-related activity	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	History of drug-related criminal activity	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	History of violent criminal activity	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	History of crimes that threaten health, safety, or peaceful enjoyment	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	Current user of illegal substances	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).
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⁵ Federally-assisted housing is defined, in this context, to include, public housing, Section 8, Section 202, Section 811, Section 221(d)(3), Section 236, Section 515 and Section 514.