



CITY OF LAS VEGAS
1700 N. GRAND AVE. LAS VEGAS, NEW MEXICO 87701
505-454-1401 FAX: 505-425-7335

**CITY OF LAS VEGAS
PUBLIC HOUSING AUTHORITY WORK SESSION BOARD MEETING
AGENDA
FEBRUARY 14, 2018 –WEDNESDAY– 4:30 P.M.
City Council Chambers
1700 North Grand Avenue**

**(The City Council is the Housing Authority Board of Commissioner
on any matters concerning the Housing Department.)**

I. CALL TO ORDER

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. MOMENT OF SILENCE

V. APPROVAL OF AGENDA

**VI. PUBLIC INPUT ** (not to exceed 3 minutes per person and persons
must sign up at least fifteen (15) minutes prior to meeting)**

VII. DISCUSSION ITEMS

1. Resolution No. 18-11 to adopt the City of Las Vegas Housing Authority's Crime Free Policy for Residents Living in Public Housing.

Barbara Padilla, Interim Housing Director The Las Vegas Housing Authority (LVHA) is required to adhere to all Federal Regulations and Notices Published regarding Public Housing. Compliance Monitoring Review, Finding #12 states: "The LVHA policy to deny applicants for drug-related criminal activity is out of date. The policy references the One Strike rule, which was replaced in 1998. Questions on the application for admission and recertification cover use of illegal drugs, but omit questions about the presence of sex offenders in the household". As a corrective action, the City of Las Vegas Housing Authority would like to adopt the "Crime Free Policy" for Residents Living in Public Housing.

2. Resolution No. 18-02 to adopt the City of Las Vegas Housing Authority's Non-Smoking Policy for Residents Living in Public Housing.

Natasha Martinez-Padilla, Finance Specialist The City of Las Vegas Housing Authority is required to adhere to the updates and notices published by the US Department of Housing and Urban Development. Notice 2017-03 provided guidance to PHA's on Instituting and Enforcing Smoke-Free Public Housing Policies.

3. Resolution No. 18-03 Amending the Las Vegas Housing Authority's Residential Lease Agreement.

Barbara Padilla, Interim Director The City of Las Vegas Housing Authority is required to adhere to all Federal Regulations and Notices Published regarding Public Housing. The LVHA must include the policy's being updated in the Residential Lease Agreement to include the Crime Free Policy and the Non-Smoking Policy.

4. Resolution No. 18-12 to amend the City of Las Vegas Housing Authority's Admissions and Continued Occupancy Policy (ACOP), to include Crime Free Requirements for Residents Living in Public Housing.

Natasha Martinez-Padilla, Finance Specialist The City of Las Vegas Housing Authority is required to adhere to all Federal Regulations and Notices Published regarding Public Housing. Compliance Monitoring Review, Finding #12 states: "The LVHA policy to deny applicants for drug-related criminal activity is out of date. The Policy references the One Strike rule, which was replaced in 1998". As part of a corrective action, the City of Las Vegas Housing Authority would like to amend the LVHA's ACOP Chapter 13.

5. Resolution No. 18-10 to adopt the Las Vegas Housing Authority's Income Targeting Requirements Policy and Procedures.

Barbara Padilla, Interim Director The City of Las Vegas Housing Authority is required to abide by Federal Regulatory Requirements. 24 CFR 906.202(b) requires that Extremely Low-Income (ELI) families make up at least 40% of the families admitted to Public Housing during the LVHA's fiscal year. As a corrective action for Compliance Monitoring Review, Finding #18, the LVHA has developed policy and procedures for Income Targeting Requirements.

6. Resolution No. 18-08 to adopt the Las Vegas Housing Authority's Utility Allowance Schedule.

Natasha Martinez-Padilla, Finance Specialist The Las Vegas Housing Authority (LVHA) is relied upon for an annual review to establish a utility allowance schedule for tenant paid utilities.

7. Resolution No. 18-09 to adopt the City of Las Vegas Housing Authority's Flat Rent Schedule for Residents Living in Public Housing.

Natasha Martinez-Padilla, Finance Specialist The Las Vegas Housing Authority (LVHA) is required to adhere to all Federal Regulations and Notices Published regarding Public Housing. Compliance Monitoring Review, Finding #17 states:

"Tenants must be offered the opportunity to choose between the current flat rent established according to HUD regulations, and the income based rent at each annual recertification (The flat rent rate was last updated 2014)". As a corrective action, the City of Las Vegas Housing Authority would like to adopt the 2018 Flat Rent Schedule.

8. Replacement Housing Factor Funds (RHFF) 2016 and 2017.

Natasha Martinez-Padilla, Finance Specialist The Las Vegas Housing Authority (LVHA) would like to obligate the 2016 and 2017 by utilizing them to do construction services on the Sagebrush site. These funds can only be used for construction of buildings. Compliance Monitoring Review, Finding #15 states: "The 2016 Capital Fund and Modernization grant and Replacement Housing Factor fund grant obligation deadline is only 4 months away (3 ½), and steps have not been taken by the Board and ED to ensure these funds are obligated". As a corrective action, the City of Las Vegas Housing Authority would like to adopt the 2016 and 2017 Budgets to start the procurement process for obligation certainty

VIII. EXECUTIVE SESSION/CLOSED SESSION

THE HOUSING AUTHORITY BOARD OF COMMISSIONERS MAY CONVENE INTO EXECUTIVE SESSION IF SUBJECT MATTER OF ISSUES ARE EXEMPT FROM THE OPEN MEETINGS REQUIREMENT UNDER §(H) OF THE OPEN MEETINGS ACT.

- i. **Personnel matters, as permitted by Section 10-15-1(H) (2) of the New Mexico Open Meetings Act, NMSA 1978.**
- ii. **Matters subject to the attorney client privilege pertaining to threatened or pending litigation in which the City of Las Vegas is or may become a participant, as permitted by Section 10-15-1(H) (7) of the New Mexico Open Meetings Act, NMSA 1978.**
- iii. **Matters pertaining to the discussion of the sale and acquisition of real property, as permitted by Section 10-15-1(H) (8) of the Open Meetings Act, NMSA 1978.**

IX. ADJOURN

ATTENTION PERSONS WITH DISABILITIES: The meeting room and facilities are accessible to persons with mobility disabilities. If you plan to attend the meeting and will need an auxiliary aid or service, please contact the City Clerk's Office prior to the meeting so that arrangements may be made.

NOTE: A final Agenda will be posted 72 hours prior to the meeting. Copies of the Agenda may be obtained from City Hall, Office of the City Clerk, 1700 North Grand Avenue, Las Vegas, New Mexico 87701.

Work Session

HOUSING COMMISSION MEETING AGENDA REQUEST

DATE:FEBRUARY 2, 2018 **DEPT:**HOUSING **MEETING DATE:**FEBRUARY14, 2018

DISCUSSION ITEM/TOPIC:

Resolution No. 18-11 to adopt the City of Las Vegas Housing Authority's Crime Free Policy for Residents Living in Public Housing.

BACKGROUND/RATIONALE:

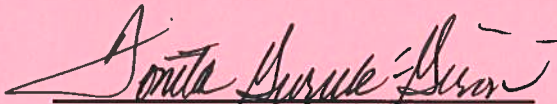
The Las Vegas Housing Authority (LVHA) is required to adhere to all Federal Regulations and Notices Published regarding Public Housing. Compliance Monitoring Review, Finding #12 states: "The LVHA policy to deny applicants for drug-related criminal activity is out of date. The policy references the One Strike rule, which was replaced in 1998. Questions on the application for admission and recertification cover use of illegal drugs, but omit questions about the presence of sex offenders in the household". As a corrective action, the City of Las Vegas Housing Authority would like to adopt the "Crime Free Policy" for Residents Living in Public Housing.

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.



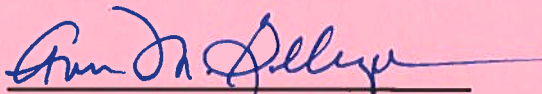
SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:



TONITA GURULE-GIRON
MAYOR

TANA VEGA
INTERIM FINANCE DIRECTOR
(PROCUREMENT)



ANN MARIE GALLEGOS
INTERIM CITY MANAGER

CITY ATTORNEY
(ALL CONTRACTS, ORDINANCES
AND RESOLUTIONS MUST BE
REVIEWED)

**CITY OF LAS VEGAS HOUSING AUTHORITY
RESOLUTION NO. 18-11**

A RESOLUTION TO ADOPT THE CITY OF LAS VEGAS HOUSING AUTHORITY'S
CRIME FREE POLICY FOR RESIDENTS LIVING IN PUBLIC HOUSING

WHEREAS, the Las Vegas Housing Authority (LVHA) is required to adhere to all Federal Regulations and Notices Published regarding Public Housing; and

WHEREAS, 24 CFR 960.204 provides guidance as to policies and procedures Housing Authorities must adhere to and;

WHEREAS, Notice 2015-19 also gives guidance as to how to Housing Authorities should distinguish between application denials and lease termination in regards to criminal backgrounds; and

THEREFORE, Be it Resolved, by the Board of Commissioners of the Housing Authority of the City of Las Vegas approves and adopts this resolution and Crime Free Policy attached :

Passed, Approved and Adopted this _____ day of February 2018.

MAYOR TONITA GURULÉ-GIRÓN

ATTEST:

CASANDRA FRESQUEZ, CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY ONLY

CITY ATTORNEY

City of Las Vegas Housing Authority

Crime Free Policy

A. PURPOSE

The mission of the Las Vegas Housing Authority ("LVHA") is to provide safe, adequate, and affordable housing to low-income families, in an environment that fosters cultural preservation, self-sufficiency and community pride. The LVHA also has to abide by federal regulatory requirements, 24 CFR 960.204 requires denial of admission for criminal activity or drug abuse by household members.

B. ADMINISTRATION

All screening and eviction procedures shall be administered fairly and in such a manner as not to discriminate on the basis of race, color, nationality, religion, sex, familial status, disability or other legally protected groups, and not to violate right to privacy.

To the maximum extent possible, the LVHA will involve other community and governmental entities in the promotion and enforcement of this policy. This policy will be posted on the LVHA's Bulletin Board and copies made readily available to applicants and tenants upon request.

C. SCREENING

In an effort to prevent future drug-related and other criminal activity, as well as other patterns of behavior that pose a threat to health, safety or the right to peaceful enjoyment of the premises by other residents, the LVHA will endeavor to screen applicants as thoroughly and fairly as possible.

The LVHA will check criminal history for all applicants who are 18 years of age or older, using the PI Landlord History Report which includes a nation wide background check.

The LVHA may initiate a lease termination, which may or may not have result in eviction for criminal activity by Tenant, household member, guest, or other person under Tenant's control, including criminal activity that threatens the health, safety or right to peaceful enjoyment of the Authority's public housing premises by other residents or employees, or any drug related criminal activity on or off the premises.(Lease Section XIV(a)(9)). The LVHA shall have the discretion to consider all circumstances of the case regarding the extent of participation by non-involved family members.

The LVHA may permit eligibility for occupancy and impose conditions that the involved family member(s) who do not reside in the unit. The LVHA will consider evidence that the person is no longer in the household such as divorce decree, incarceration, death, or other sustaining evidence.

D. HUD DEFINITIONS

Drug-related criminal activity is the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell distribute or use a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)). Drug related criminal activity means on or off the premises, not just on or near the premises.

Criminal activity includes any criminal activity that may threaten or threatens the health, safety or right to peaceful enjoyment of the LVHA residents or employees by other residents of the LVHA.

E. STANDARD FOR VIOLATION

Persons evicted from public housing, Indian housing, Section 23, or any Section 8 program because of drug-related criminal activity regardless of whether there has been a conviction, are ineligible for admission to Public Housing for a seven-year period beginning on the date of such eviction.

The LVHA will deny admission to public housing units and will immediately and permanently terminate tenancy of persons convicted of manufacturing or producing methamphetamine on the premises of assisted housing project in violation of any Federal or State law, and will establish a lifetime ban on the individual. The LVHA will deny admission to public housing units and will immediately and permanently terminate tenancy of sex offenders subject to a lifetime registration requirement under a State sex offender registration program, and will establish a lifetime ban on the individual.(24CFR960.204,24CFR982.553).

The LVHA will deny participation in the program to applicants and terminate assistance to participants in cases where the LVHA determines there is reasonable cause to believe that the person is illegally using a controlled substance or engages in drug related or other criminal activity or if the person abuses alcohol in a way that may interfere with the health, safety or right to peaceful enjoyment of premises by other residents. This includes cases where the LVHA determines that there is a pattern of illegal use of a controlled substance or pattern of alcohol abuse. The LVHA will consider the use of a controlled substance or alcohol to be a pattern if there is more than 1 incident during the previous 12 months.

"Engaged in or engaging in or recent history of" drug related criminal activity means any act within the past 7 years by applicants or participants, household members, or guests which involved drug-related criminal activity including, without limitation, drug-related criminal activity, possession and/or use of narcotic paraphernalia, which did or did not result in the arrest and/or conviction of the applicant or participant, household members, or guests.

"Engaged in or engaging in or recent history of" criminal activity means any act within the past 7 years by the applicants or participants, household members, or guests which involved criminal activity that would threaten the health, safety or right to peaceful enjoyment of the public housing premises by other residents or employees of the LVHA, which did or did not result in the arrest and/or conviction of the applicant or participant, household members, or guests.

In evaluating evidence of negative past behavior, the LVHA will give fair consideration to the seriousness of the activity with respect to how it would affect other residents, and/or likelihood of favorable conduct in the future which could be supported by evidence of rehabilitation.

The LVHA may waive the requirement regarding drug-related criminal activity if:

The person demonstrates successful completion of a credible rehabilitation program approved by the LVHA, or

The circumstances leading to the eviction no longer exist. For example, the individual involved in drugs is no longer in the household because the person is incarcerated.

F. EVIDENCE

The LVHA must have evidence of the violation.

Preponderance of evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. The intent is not to prove criminal liability, but to establish that the act(s) occurred.

Preponderance of evidence is not determined by the number of witnesses, but by the greater weight of all evidence.

Credible evidence may be obtained from police and/or court records. Testimony from neighbors, when combined with other factual evidence can be considered credible evidence. Other credible evidence includes legal documentation of criminal activity.

G. CONFIDENTIALITY OF CRIMINAL RECORDS

The LVHA will ensure that any criminal record received is maintained confidentially, not misused or improperly disseminated, and destroyed once the purpose for which it was requested is accomplished.

All criminal reports, while needed by Security for screening for criminal behavior, will be housed in a locked file with access restricted to individuals responsible for such screening.

If the family is determined eligible for initial or continued assistance, the LVHA's copy of the criminal report shall be shredded as soon as the information is no longer needed for eligibility or continued assistance determination. If the family's assistance is denied or terminated, the criminal record information shall be shredded immediately upon completion of the review or hearing procedures and a final decision has been made. The LVHA will document in the family's file that the family was denied admission or the tenancy was terminated due to the criminal activity or drug use by household members.

H. DISCLOSURE OF CRIMINAL RECORDS TO FAMILY

Before the LVHA takes any adverse action based on a criminal conviction record, the applicant or tenants will be provided with a copy of the criminal record and an opportunity to dispute the record. Applicants will be provided an opportunity to dispute the record at an informal hearing. Tenants may contest such records at the court hearing in the case of evictions.

I. TERMINATION OF TENANCY

If the family violates the lease by engaging in drug-related or criminal activity or for abuse of alcohol, which threatens the health, safety or right to peaceful enjoyment of the premises by other residents, the LVHA may terminate tenancy.

In appropriate cases, the LVHA may permit the family to continue receiving assistance provided that family members determined to have engaged in the proscribed activities will not reside in the unit.

J. HEARINGS

See Grievance Policy

Tenant Signature _____ Date _____

Tenant Signature _____ Date _____

Housing Manager _____ Date _____



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

Public and Indian Housing

Special Attention of:

Public Housing Agency Directors
Public Housing Hub Offices Directors
Public Housing Field Office Directors
Resident Management Corporations
All Multifamily Hub Directors
All Multifamily Program Center Directors

Notice PIH 2015-19

Issued: November 2, 2015

Expires: This notice remains in effect until amended, superseded, or rescinded.

Subject: Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions

1. Background

For the past five years HUD has been an active member of the Federal Interagency Reentry Council. This Council, made up of more than 23 Federal Agencies, meets on a regular basis to act on issues that affect the lives of those released from incarceration. An important aspect of the Reentry Council's work has been to have each Federal Agency identify and address "collateral consequences" that individuals and their families may face because they or a family member has been incarcerated or has had any involvement with the criminal justice system.¹

In 2011, former HUD Secretary Shaun Donovan issued a letter to public housing authorities (PHAs) across the country emphasizing the importance of providing "second chances" for formerly incarcerated individuals.² Secretary Donovan urged PHAs to adopt admission policies that achieve a sensible and effective balance between allowing individuals with a criminal record to access HUD-subsidized housing and ensuring the safety of all residents of such housing. A year later, Secretary Donovan encouraged owners of HUD-assisted multifamily properties ("owners") to do the same and reiterated HUD's goal of "helping ex-offenders gain access to one of the most fundamental building blocks of a stable life – a place to live." HUD has also previously stressed the troubling relationship between housing barriers for individuals with criminal records and homelessness, stating that "the difficulties in reintegrating into the community increase the risk of homelessness for released prisoners, and homelessness in turn

¹ For more information on the initiatives of the Council members, see <https://csgjusticecenter.org/nrrc/projects/firc/snapshots/>.

² Letter from Shaun Donovan, Secretary, United States Department of Housing and Urban Development, to Public Housing Authority Executive Directors (June 17, 2011), available at http://usich.gov/resources/uploads/asset_library/Rentry_letter_from_Donovan_to_PHAs_6-17-11.pdf.

increases the risk of subsequent re-incarceration.”³

At a time when an estimated 100 million (or nearly one in three) Americans have some type of criminal record,⁴ HUD remains committed to the goal of providing second chances to formerly incarcerated individuals where appropriate and to ensuring that individuals are not denied access to HUD-subsidized housing on the basis of inaccurate, incomplete, or otherwise unreliable evidence of past criminal conduct. With those aims, and in response to requests from housing providers and prospective tenants for guidance from HUD regarding the proper use of criminal records in housing decisions, HUD is issuing this notice.

2. Purpose

The purpose of this Notice is to inform PHAs and owners of other federally-assisted housing that arrest records may not be the basis for denying admission, terminating assistance or evicting tenants, to remind PHAs and owners that HUD does not require their adoption of “One Strike” policies, and to remind them of their obligation to safeguard the due process rights of applicants and tenants.

The Notice also reminds PHAs and owners of their obligation to ensure that any admissions and occupancy requirements they impose comply with applicable civil rights requirements contained in the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act of 1990, and the other equal opportunity provisions listed in 24 CFR 5.105.

Finally, the Notice provides best practices and peer examples for PHAs and owners to review.

3. HUD Does Not Require PHAs and Owners to Adopt “One Strike” Policies

HUD does not require that PHAs and owners adopt or enforce so-called “one-strike” rules that deny admission to anyone with a criminal record or that require automatic eviction any time a household member engages in criminal activity in violation of their lease. Instead, 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, or terminate assistance or evict a household if a tenant, household member, or guest engages in certain drug-related or certain other criminal activity on or off the premises (in the case of public housing) or on or near the premises (in the case of Section 8 programs).⁵

³ Guidance on Housing Individuals and Families Experiencing Homelessness Through the Public Housing and Housing Choice Voucher Programs, HUD PIH Notice 2013-15 (HA), 8 (June 10, 2013), available at <http://1.usa.gov/1afx3VY>.

⁴ Bureau of Justice Statistics, U.S. Dep’t of Justice, *Survey of State Criminal History Information Systems*, 2012, 3 (Jan. 2014), available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

⁵ HUD regulations outline the limited instances where denial of admission or termination of assistance is required in the public housing, Housing Choice Voucher and Section 8 multifamily programs. See 24 CFR Part 5, subpart I; Part 960, subpart B; Part 966, subpart A; Part 982, subpart L.

In deciding whether to exercise their discretion to admit or retain an individual or household that has engaged in criminal activity, PHAs and owners may consider all of the circumstances relevant to the particular admission or eviction decision, including but not limited to: the seriousness of the offending action; the effect that eviction of the entire household would have on family members not involved in the criminal activity; and the extent to which the leaseholder has taken all reasonable steps to prevent or mitigate the criminal activity. Additionally, when specifically considering whether to deny admission or terminate assistance or tenancy for illegal drug use by a household member who is no longer engaged in such activity, a PHA or owner may consider whether the household member is participating in or has successfully completed a drug rehabilitation program, or has otherwise been rehabilitated successfully.⁶

4. An Arrest is Not Evidence of Criminal Activity that Can Support an Adverse Admission, Termination, or Eviction Decision

Subject to limitations imposed by the Fair Housing Act and other civil rights requirements,⁷ PHAs and owners generally retain broad discretion in setting admission, termination of assistance, and eviction policies for their programs and properties. Even so, such policies must ensure that adverse housing decisions based upon criminal activity are supported by sufficient evidence that the individual engaged in such activity. Specifically, before a PHA or owner denies admission to, terminates the assistance of, or evicts an individual or household on the basis of criminal activity by a household member or guest, the PHA or owner must determine that the relevant individual engaged in such activity.

HUD has reviewed relevant case law and determined that the fact that an individual was arrested is not evidence that he or she has engaged in criminal activity. Accordingly, 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.

An arrest shows nothing more than that someone probably suspected the person apprehended of an offense. In many cases, arrests do not result in criminal charges, and even where they do, such charges can be and often are dismissed or the person is not convicted of the crime alleged. In fact, in the 75 largest counties in the country, approximately one-third of felony arrests did not result in conviction, with about one-quarter of all cases ending in dismissal.⁸

Moreover, arrest records are often inaccurate or incomplete (e.g., by failing to indicate whether

⁶ See 24 CFR 5.852, 960.203(d), 966.4(l)(5)(vii), 982.310(h) (describing PHA and owner discretion in screening and evictions actions related to criminal activity).

⁷ See 24 CFR 5.852(e) ("admission and eviction decisions must be consistent with fair housing and equal opportunity provisions of [24 CFR 5.105]"); see also 24 CFR 960.202(c)(3), 966.6(l)(vii)(F), 982.310(h)(4), 982.552(c)(2)(v).

⁸ Brian A. Reaves, Bureau of Justice Statistics, U.S. Dep't of Justice, *Felony Defendants in Large Urban Counties, 2009*, at 22, Table 21 (2013), <http://www.bjs.gov/content/pub/pdf/fdluc09.pdf>.

the individual was prosecuted, convicted, or acquitted), such that reliance on arrests not resulting in conviction as the basis for denying applicants or terminating the assistance or tenancy of a household or household member may result in unwarranted denials of admission to or eviction from federally subsidized housing.⁹

With respect to the Section 8 tenant-based and moderate rehabilitation programs, HUD regulations specifically provide that termination of assistance for criminal activity must be based on a “preponderance of the evidence” that the tenant, or other household member, or guest engaged in such activity. For public housing as well, applicants or tenants may not be denied admission or evicted based on mere suspicion that they, a household member, or guest has engaged in criminal activity. Where PHAs or owners seek eviction, they should be prepared to persuade a court that the eviction is justified based on sufficient evidence of criminal activity in violation of the lease.

For these reasons, a PHA or owner may not base a determination that an applicant or household engaged in criminal activity warranting denial of admission, termination of assistance, or eviction on a record of arrest(s).

Although a record of arrest(s) may not be used to deny a housing opportunity, PHAs and owners may make an adverse housing decision based on the conduct underlying an arrest if the conduct indicates that the individual is not suitable for tenancy and the PHA or owner has sufficient evidence other than the fact of arrest that the individual engaged in the conduct. The conduct, not the arrest, is what is relevant for admissions and tenancy decisions.

An arrest record can trigger an inquiry into whether there is sufficient evidence for a PHA or owner to determine that a person engaged in disqualifying criminal activity, but is not itself evidence on which to base a determination. PHAs and owners can utilize other evidence, such as police reports detailing the circumstances of the arrest, witness statements, and other relevant documentation to assist them in making a determination that disqualifying conduct occurred. Reliable evidence of a conviction for criminal conduct that would disqualify an individual for tenancy may also be the basis for determining that the disqualifying conduct in fact occurred.

5. Protecting the Due Process Rights of Applicants and Tenants

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. Public housing and Section 8 applicants also must be afforded the right to request an informal hearing

⁹ See, e.g., U.S. Dep’t of Justice, *The Attorney General’s Report on Criminal History Background Checks* at 3, 17 (June 2006), http://www.justice.gov/olp/ag_bgchecks_report.pdf (reporting that the FBI’s Interstate Identification Index system, which is the national system designed to provide automated criminal history record information and “the most comprehensive single source of criminal history information in the United States,” is “still missing final disposition information for approximately 50 percent of its records”).

or review *after* an application for housing assistance is denied.

As with admissions decisions, federal law requires that PHAs provide public housing, project-based Section 8, and Section 8 HCV tenants with notice and the opportunity to dispute the accuracy and relevance of a criminal record before they evict or terminate the tenant's assistance on the basis of such record. Moreover, PHAs and owners may only terminate the tenancy or assistance of a public housing or project-based Section 8 tenant through either a judicial action in state or local court, or, in the case of a Section 8 HCV participant, through an administrative grievance hearing before an impartial hearing officer appointed by the PHA. In either case, the tenant must be afforded the basic elements of due process, including the right to be represented by counsel, to question witnesses, and to refute any evidence presented by the PHA or owner.

6. Civil Rights Requirements and Consistent Application of Procedures and Standards

PHAs and owners must ensure that any screening, eviction, or termination of assistance policies and procedures comply with all applicable civil rights requirements contained in the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act of 1990, and the other equal opportunity provisions listed in 24 CFR 5.105. To that end, a PHA or owner should institute protocols that assure that its procedures and standards are consistently applied and that decisions are made based on accurate information. Inconsistent application of standards or decisions based on partial or inaccurate information may result in liability under federal civil rights laws. See, e.g., *Allen v. Muriello*, 217 F. 3rd 517 (7th Cir. 2000) (allegation that African American applicant for federal housing assistance was given less opportunity to contest erroneous record of criminal activity than two similarly situated white applicants established a prima facie case of discrimination under the Fair Housing Act).

7. Best Practices and Peer Examples

PHAs and owners are encouraged to adopt admissions and continuing occupancy policies based on the best practices highlighted below to guard against unwarranted denial of assistance, termination from program participation, or eviction from federally assisted housing. These best practices incorporate clear standards for using information about criminal history in an admission or continuing participation decision. PHAs and owners are also encouraged to read the Shriver Report entitled "When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing."

Examples of PHA Best Practices on the Use of Criminal Records

A. Many PHAs have adopted written admission policies that limit their criminal record screening to assessments of conviction records.

Examples of PHA Best Practices on Screening for Criminal Activity

A. Some PHAs allow public housing and Housing Choice Voucher applicants to address and present mitigating circumstances regarding criminal backgrounds prior to admission decisions. In some cases, doing so has produced cost savings due to fewer decision appeals.

B. Some PHAs have adopted lookback periods that limit what criminal conduct is considered during the screening process based on when the conduct occurred and/or the type of conduct. For example, when screening HCV applicants, one PHA has adopted a twelve-month lookback period for drug-related criminal activity and a twenty-four month lookback period for violent and other criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

C. Some PHAs have adopted admission policies that enumerate the specific factors that will be considered when the PHA evaluates an individual's criminal record, including:

- a. Whether the applicant's offense bears a relationship to the safety and security of other residents;
- b. The level of violence, if any, of the offense for which the applicant was convicted;
- c. Length of time since the conviction;
- d. The number of convictions that appear on the applicant's criminal history;
- e. If the applicant is now in recovery for an addiction, whether the applicant was under the influence of alcohol or illegal drugs at the time of the offense; and
- f. Any rehabilitation efforts that the applicant has undertaken since the time of conviction.

D. Some PHAs have implemented pilot programs that allow formerly incarcerated persons who have been released from prison within the past two or three years to be added to an existing voucher of a family member if all involved agree to participate and the formerly incarcerated individual agrees to six months to one year of supportive services with nonprofit partners.

E. One PHA has hired an offender reentry housing specialist who collaborates with a formerly incarcerated individual's parole officer, landlord, and treatment provider to ensure successful reentry into the community.

Example of PHA Best Practices on Evicting and Terminating Assistance for Criminal Activity

A. Some PHAs have adopted policies that list the circumstances that will be considered prior to a termination of the lease on the basis of criminal activity, including:

- a. The seriousness of the offending action, especially with respect to how it would affect other residents;
- b. The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or a victim of domestic violence, dating violence, sexual assault, or stalking;
- c. The effects that the eviction will have on other family members who were not involved in the action or failure to act;

- d. The effect on the community of the termination, or of the PHA's failure to terminate the tenancy;
- e. The effect of the PHA's decision on the integrity of the public housing program;
- f. The demand for housing by eligible families who will adhere to lease responsibilities;
- g. The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action; and
- h. The length of time since the violation occurred, the family's recent history, and the likelihood of favorable conduct in the future.

8. Paperwork Reduction Act

The information collection requirements contained in this Notice were approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C 3501-3520). Compliance and Enforcement are covered by OMB controls numbers 2502-0205, 2577-0232, 2577-0220, 2577-0230, and 2577 - 0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

9. Contact Information

If you have questions regarding this Notice, please contact your local HUD Field Office.

/s/

Lourdes Castro Ramirez
Principal Deputy Assistant Secretary for
Public and Indian Housing

/s/

Edward Golding
Principal Deputy Assistant Secretary for
Housing

5/3/13

U.S. Department of Housing and Urban Development
Admissions/Eviction Policies for Public Housing/Voucher Lease Holders

Admissions to Public Housing and Housing Choice Voucher Programs

What are the federal policies governing admission of individuals with a criminal record to Public Housing and Housing Choice Voucher programs?

The U.S. Department of Housing and Urban Development (HUD) explicitly requires two bans based on criminal activity. HUD requires that all Public Housing Authorities (PHAs) establish lifetime bans on the admission to the Public Housing and Housing Choice Voucher (Tenant-Based Section 8) programs for:

- Individuals found to have manufactured or produced methamphetamine on the premises of federally assisted housing (24 CFR 960.204, 24 CFR 982.553); and
- Sex offenders subject to a lifetime registration requirement under a State sex offender registration program (24 CFR 960.204, 24 CFR 982.553)

PHAs must also prohibit admission if (24 CFR 960.204, 24 CFR 982.553):

- The PHA determines that any household member is currently engaged in illegal drug use;
- The PHA has reasonable cause to believe that a household member's illegal drug use, alcohol use, or pattern of drug or alcohol abuse may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents ; or
- A household member of the applicant was evicted from federally assisted housing for drug-related criminal activity in the past three years. In this case, however, PHAs have the discretion to consider the circumstances and may admit households if:
 - the PHA determines that the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program, including those supervised by drug courts; or
 - that the circumstances that led to the eviction no longer exist (for example, the household member who engaged in criminal activity is now in prison).

When do Public Housing Authorities (PHAs) have discretion to set local admission policies?

PHAs have a great deal of discretion to set admission policies for the public housing and Housing Choice Voucher programs. When screening family behavior and suitability for admission, PHAs may consider all relevant information, including negative factors (such as past drug criminal activity or violent criminal activity) and positive factors (such as evidence of rehabilitation or a family's willingness to participate in social services).

Where can I find my local PHA's admissions policy?

A specific PHA's policy can be found in their Administrative Plan (Housing Choice Voucher program) and the Admission and Continued Occupancy Plan, or ACOP (Public Housing Program). You can request a copy of the Administrative Plan and ACOP directly from your PHA. Please note that a PHA may have different admissions policies for public housing and Housing Choice Voucher programs.

Related Public Housing Program Rules

What happens after I am admitted to Public Housing?

After you are admitted to public housing, it is your responsibility to make sure that you, your household members, your guests, and any other person under your control follow public housing rules.

Among other things, public housing tenants must ensure that no tenant, household member, or guest engages in (24 CFR 966.4(l)(5)):

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, or;
- Any drug-related criminal activity on or off the premises;

For example, this means that a tenant and their household members may be evicted if a guest is staying at their apartment for the week and during that week is arrested for using illegal drugs on the other side of town. In this case, the tenant and their household members could be evicted for their guest's drug use even if they did not know the guest was using drugs. PHAs can choose to consider circumstances such as if the tenant knew about the drug use, but they can also choose not to consider these circumstances. Tenants should be cautious about who they allow as guests or household members and make guests and household members aware of these rules.

In addition to being responsible for the behavior of household members, other tenants, and current guests, public housing tenants are also responsible for ensuring that no other person under their control engages in:

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, or;
- Any drug-related criminal activity on the premises;

For example, if an acquaintance stops by the apartment for an hour and engages in criminal activity during that time, the public housing tenant could potentially be evicted for that friend's behavior.

What happens if I am being evicted from Public Housing for criminal activity?

The PHA must send by mail or hand deliver a written notice of lease termination (eviction) to you. This notice must tell you why you are being evicted, that you can examine any documents directly relevant to the lease termination, and whether you have the right to request a grievance hearing. (24 CFR 966.4(l)(3))

In this case, a grievance hearing is a hearing in which the tenant and the PHA present arguments to a third party, who decides whether to evict or not evict the tenant. Tenants must request the grievance hearing in writing within the time stated in the PHA's grievance procedures, which may be as short as three days in the case of expedited grievance procedures. (24 CFR 966.55) You can ask the PHA for a copy of the grievance procedures and how to request a grievance hearing. During the grievance hearing, the tenant has certain rights including the right to be represented by counsel, such as a legal aide advocate. (24 CFR 966.56)

In some cases of eviction for criminal activity, tenants will not be eligible for a grievance hearing; instead their case will be determined by a court hearing. During this hearing, the tenant has the right to be represented by counsel, including legal aide or a public defender, and will have an opportunity to present a defense. (24 CFR 966.51(a)(2), 24 CFR 966.53(c)).

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CFR › Title 24 › Subtitle B › Chapter IX › Part 960 › Subpart B › Section 960.204

24 CFR 960.204 - Denial of admission for criminal activity or drug abuse by household members.

§ 960.204 Denial of admission for criminal activity or drug abuse by household members.

(a) Required denial of admission -

(1) *Persons evicted for drug-related criminal activity.* The PHA standards must prohibit admission of an applicant to the PHA's public housing program for three years from the date of the eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

- (i)** The evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or
- (ii)** The circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(2) *Persons engaging in illegal use of a drug.* The PHA must establish standards that prohibit admission of a household to the PHA's public housing program if:

- (i)** The PHA determines that any household member is currently engaging in illegal use of a drug (For purposes of this section, a household member is "currently engaged in" the criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current); or
- (ii)** The PHA determines that it has reasonable cause to believe that a household member's illegal use or pattern of illegal use of a drug may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(3) *Persons convicted of methamphetamine production.* The PHA must establish standards that permanently prohibit admission to the PHA's public housing program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(4) *Persons subject to sex offender registration requirement.* The PHA must establish standards that prohibit admission to the PHA's public housing program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In the screening of applicants, the PHA must perform necessary criminal history background checks in the State where the housing is located and in other States where household members are known to have resided. (See part 5, subpart J of this title for provisions concerning access to sex offender registration records.)

(b) *Persons that abuse or show a pattern of abuse of alcohol.* The PHA must establish standards that prohibit admission to the PHA's public housing program if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(c) *Use of criminal records.* Before a PHA denies admission to the PHAs public housing program on the basis of a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record. (See part 5, subpart J of this title for provisions concerning access to criminal records.)

(d) *Cost of obtaining criminal record.* The PHA may not pass along to the applicant the costs of a criminal records check.

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CFR › Title 24 › Subtitle B › Chapter IX › Part 960 › Subpart B › Section 960.205

24 CFR 960.205 - Drug use by applicants: Obtaining information from drug treatment facility.

§ 960.205 Drug use by applicants: Obtaining information from drug treatment facility.

(a) Purpose. This section addresses a PHA's authority to request and obtain information from drug abuse treatment facilities concerning applicants. This section does not apply to information requested or obtained from drug abuse treatment facilities other than under the authority of section 6(t).

(b) Additional terms used in this section are as follows:

(1) Currently engaging in illegal use of a drug. Illegal use of a drug occurred recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member.

(2) Drug abuse treatment facility. An entity:

- (i) That holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use; and
- (ii) That is either an identified unit within a general care facility; or an entity other than a general medical care facility.

(c) Authorization by household member for PHA to receive information from a drug abuse treatment facility.

(1) The PHA may require each applicant to submit for all household members who are at least 18 years of age, and for each family head or spouse regardless of age, one or more consent forms signed by such household member that:

- (i) Requests any drug abuse treatment facility to inform the PHA only whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use;
- (ii) Complies with the form of written consent required by 42 CFR 2.31; and

(iii) Authorizes the PHA to receive such information from the drug abuse treatment facility, and to utilize such information in determining whether to prohibit admission of the household member to the PHA's public housing program in accordance with § 960.203. (See the Public Health Service Act, 42 U.S.C. 290dd-2, and implementing regulations at 42 CFR part 2, with respect to responsibilities of the drug abuse treatment facility.)

(2) The consent form submitted for a proposed household member must expire automatically after the PHA has made a final decision to either approve or deny the admission of such person.

(d) PHA request for information from drug use treatment facility.

(1) The PHA may request that a drug abuse treatment facility disclose whether the drug abuse treatment facility has reasonable cause to believe that the proposed household member is currently engaging in the illegal use of a drug (as defined in § 5.100 of this title).

(2) The PHA's request to the drug abuse treatment facility must include a copy of the consent form signed by the proposed household member.

(3) A drug abuse treatment facility is not liable for damages based on any information required to be disclosed under this section if such disclosure is consistent with section 543 of the Public Health Service Act (42 U.S.C. 290dd-2).

(4) The PHA is not obligated to request information from a drug treatment facility under this section, and is not liable for damages for failing to request or receive such information.

(5) A drug abuse treatment facility may charge the PHA a reasonable fee for information provided under this section. The PHA may not pass along to the applicant or tenant the costs of obtaining this information.

(e) Prohibition of discriminatory treatment of applicants.

(1) A PHA may request information from a drug abuse treatment facility under paragraph (d) of this section only if the PHA has adopted and has consistently implemented either of the following policies, obtaining a signed consent form from the proposed household members:

(i) Policy A - Request for all families. Under Policy A, the PHA must submit a request for information to a drug abuse treatment facility in accordance with paragraph (d) of this section before admitting any family to

the PHA's public housing program. For each such family, the request must be submitted for each proposed household member described in paragraph (c)(1) of this section.

(ii) Policy B - Request for certain household members. Under Policy B, the PHA must submit a request to a drug abuse treatment facility only with respect to each proposed household member:

(A) Whose criminal record indicates prior arrest or conviction for any criminal activity that may be a basis for denial of admission under § 960.205; or

(B) Whose prior tenancy records indicate that the proposed household member:

(1) Engaged in the destruction of property;

(2) Engaged in violent activity against another person; or

(3) Interfered with the right of peaceful enjoyment of the premises of other residents.

(4) The policy adopted by the PHA must be included in the PHA administrative plan and the PHA plan.

(f) Records management and confidentiality. Each PHA that receives information from a drug abuse treatment facility under this section must establish and implement a system of records management that ensures that any information which the PHA receives from the drug abuse treatment facility about a person:

(1) Is maintained confidentially in accordance with section 543 of the Public Health Service Act (12 U.S.C. 290dd-2);

(2) Is not misused or improperly disseminated; and

(3) Is destroyed, as applicable:

(i) Not later than 5 business days after the PHA makes a final decision to admit the person as a household member under the PHA's public housing program; or

(ii) If the PHA denies the admission of such person as a household member, in a timely manner after the date on which the statute of limitations for the commencement of a civil action based upon that denial of admissions has expired without the filing of a civil action or until final disposition of any such litigation.



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.

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*.

Work Session

HOUSING COMMISSION MEETING AGENDA REQUEST

DATE:FEBRUARY 2, 2018 DEPT:HOUSING MEETING DATE:FEBRUARY 14, 2018

DISCUSSION ITEM/TOPIC:

Resolution No. 18-02 to adopt the City of Las Vegas Housing Authority's Non-Smoking Policy for Residents Living in Public Housing.

BACKGROUND/RATIONALE:

The City of Las Vegas Housing Authority is required to adhere to the updates and notices published by the US Department of Housing and Urban Development. Notice 2017-03 provided guidance to PHA's on Instituting and Enforcing Smoke-Free Public Housing Policies.

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.



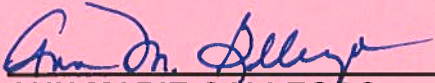
SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:



TONITA GURULÉ-GIRON
MAYOR

TANA VEGA
INTERIM FINANCE DIRECTOR
(PROCUREMENT)



ANN MARIE GALLEGOS
INTERIM CITY MANAGER

CITY ATTORNEY
(ALL CONTRACTS, ORDINANCES
AND RESOLUTIONS MUST BE
REVIEWED)

**CITY OF LAS VEGAS HOUSING AUTHORITY
RESOLUTION NO. 18-02**

**A RESOLUTION TO ADOPT THE CITY OF LAS VEGAS HOUSING AUTHORITY'S
NON-SMOKING POLICY FOR RESIDENTS LIVING IN PUBLIC HOUSING**

WHEREAS, the Las Vegas Housing Authority (LVHA) is required to adhere to the updates and notices published by The US Department of Housing and Urban Development (HUD); and

WHEREAS, Notice 2017-03 issued February 15, 2017 provides guidance to Public Housing Agencies on Instituting and Enforcing Smoke-Free Public Housing Policies; and

WHEREAS, Implementation of the policy will commence on May 31, 2018; and

THEREFORE, BE IT RESOLVED, by the City of Las Vegas Housing Authority's (LVHA's) Board of Commissioners that it approves and adopts the LVHA's Non-Smoking Policy for Residents Living in Public Housing, attached hereto and incorporated by reference hereby:

Passed, Approved and Adopted this _____ day of February 2018.

MAYOR TONITA GURULÉ-GIRÓN

ATTEST:

CASANDRA FRESQUEZ, CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY ONLY

CITY ATTORNEY

City of Las Vegas Housing Authority
Non-Smoking Policy
For
Residents Living in Public Housing

1. Effective May 31, 2018, the City of Las Vegas Housing Authority ("LVHA") has become a Smoke Free Housing Authority. prohibits the use of tobacco products including Electronic Nicotine Delivery Systems ("E-cigs") in all public housing living units, interior areas, and outdoor areas as well as outside common areas and administrative office buildings.
2. Burning Tobacco products are defined as items that involve the ignition and burning of tobacco, such as: cigarettes, cigars, pipes and water pipes also known as hookas (water pipes or hookas are smoking devices that use coal or charcoal to heat tobacco and then draw the smoke through water hose to the user. Both heating source and burning of tobacco are sources of contaminant emissions) (PIH-2017-03) Electronic Delivery Nicotine Systems also called e-cigarettes, personal vaporizers, vape pens, e-cigars, e-hookah, or vaping devices, are products that produce an aerosolized mixture containing flavored liquids and nicotine that is inhaled by the user.
3. Tenant shall be obligated to assure that Tenant, any member of the household, a guest, or another person under the Tenant's control, shall not engage in any smoking of prohibited tobacco products, as defined by 24 CFR 965.653(a), in all public housing living units, interior areas, and outdoor areas as well as outside common areas and administrative office buildings.
4. Tenant will be issued three (3) Warning Notices prior to proceeding with eviction according the Residential Lease Agreement, See XVI (a)(2).

TENANT CERTIFICATION

I have read and understand the above smoking policy and I agree to comply fully with the provisions. I understand that failure to comply with this policy may constitute cause for termination of my lease with the City of Las Vegas Housing Authority.

Resident Name (please print): _____

Resident Unit Address: _____

Resident Signature: _____ Date: _____



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

SPECIAL ATTENTION OF:

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Housing Agencies; Healthy Homes
Representatives

Notice PIH-2017-03

Issued: February 15, 2017

This Notice remains in effect until
amended, superseded or rescinded

Cross Reference:

SUBJECT: HUD Guidance on Instituting and Enforcing Smoke-Free Public Housing Policies

A. Purpose

This Notice provides guidance for “Instituting Smoke-Free Public Housing” (FR-5597-F-03) (the “Smoke-Free Rule” or “Rule”). The Rule is intended to improve indoor air quality, benefit the health of public housing residents and PHA staff, reduce the risk of fires, and lower overall maintenance costs. The Rule becomes effective 60 days after publication in the Federal Register. Once effective, PHAs will have 18 months to implement their smoke-free policies. PHAs must design and implement a policy barring the use of **prohibited tobacco products** in all public housing living units, **interior common areas** and outdoor areas within 25 feet from public housing and administrative office buildings (collectively, “restricted areas”). The Rule does not prohibit smoking by residents; rather, it requires that residents who smoke do so at least 25 feet away from the buildings.

- **Prohibited tobacco products** are defined as items that involve the ignition and burning of tobacco leaves, such as: cigarettes, cigars, pipes and water pipes¹ (also known as hookahs)
- **Interior common areas** include but are not limited to: hallways, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures

PHAs should begin the process of implementing smoke-free policies as soon as possible. PHAs are strongly encouraged to work with resident councils, provide residents with information on cessation assistance, post notices, and distribute information to residents about the smoke-free

¹ Water pipes (hookahs) are smoking devices that use coal or charcoal to heat tobacco, and then draw the smoke through water and a hose to the user. Both the heating source and burning of tobacco are sources of contaminant emissions.

policy. Waiver requests of Rule requirements will be considered with appropriate justification, pursuant to 24 CFR 5.110.

B. Applicability

The Smoke-Free Rule applies to all public housing units other than dwelling units in mixed-finance buildings. Under this Rule, “public housing” means low-income housing, such as, community facilities, public housing offices, day care centers, and laundry rooms assisted under the U.S. Housing Act of 1937 (the 1937 Act), other than assistance under section 8 of the 1937 Act.

C. Implementation

1. Amendments to PHA Plans

PHAs are required to:

- obtain board approval when creating their individual smoke-free policies and document their smoke-free policies in their PHA plans, and
- determine whether an adoption of their smoke-free policies constitutes a significant amendment or modification to the PHA Plan. If it is determined to be a significant amendment, the PHA must conduct public meetings according to standard amendment procedures.

2. Lease Amendments

PHAs are required to:

- amend individual resident leases; all residents must sign the lease amendment as a condition of their continuing occupancy,
- incorporate the requirement that residents in public housing, members of a resident's household, resident's guest, or other person under the resident's control must not engage in any smoking of specified prohibited tobacco products in restricted areas, or in other outdoor areas that the PHA has designated as smoke-free, and
- notify a resident of a written revision to an existing lease at least 60 days before the lease revision is to take place, and give residents a reasonable amount of time for the resident to accept the revision

Additionally, PHAs may provide a specific date that the policy will take effect. Lease amendments may be processed anytime during the 18-month required timeframe; lease amendments should note the availability and location of any designated smoking areas (DSAs).

PHAs will have flexibility as to how the lease amendment process occurs during the 18-month implementation period after the Rule's effective date.

3. PHA Flexibility

The Smoke-Free Rule allows PHAs the flexibility to implement their smoke-free policies. PHAs are encouraged to utilize their flexibility as appropriate; however, they should be aware that adoption of stricter smoke-free policies may expose them to legal risk under State or local law. The following list, while not exhaustive, contains some examples of PHA flexibilities:

- Prohibition on Electronic Nicotine Delivery Systems (ENDS)
- Limitation on smoking to Designated Smoking Areas (DSAs) only
- Requirement of a smoke-free perimeter greater than 25 feet
- Requirement for an entire campus to be smoke-free

4. Signage

PHAs are strongly encouraged to post signs that reference the new smoke-free policy. These signs must be accessible to all residents and visitors (including persons with disabilities), and must be posted in multiple languages consistent with the Department's current guidance on Limited English Proficiency, issued in accordance with Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency, signed August 11, 2000, and published in the Federal Register on August 16, 2000, at 65 FR 50121) (24 CFR 5.2005(a)(3)). PHAs are also encouraged to use various communication methods (e.g., letters, flyers, seminars, etc.) to share this information.

5. Funding

Costs of implementing smoke-free policies may be covered through operating reserves and eligible capital fund activities. All PHAs may request insurance premium allowances from their insurance providers after implementing smoke-free policies due to decreased fire risk. Budget flexibility is also permitted to the extent provided under arrangements such as the Moving to Work program.

6. ENDS

The use of ENDS in public housing is not prohibited. However, research on ENDS is emerging and evidence has revealed that the aerosol exhaled by ENDS users contain nicotine and potentially harmful ingredients but generally at much lower levels than tobacco smoke. PHAs have the flexibility to prohibit ENDS in their individual smoke-free policies as they deem appropriate. For example, PHAs may prohibit ENDS in all developments and common

areas or PHAs may allow the use of ENDS, within the unit, but prohibit ENDS in common areas or campus-wide. Residents should always be considered prior to adopting stricter smoke-free policies than the standards in the Rule. PHAs that choose to prohibit ENDS must amend all individual resident leases as mentioned in section C.2. of this notice.

7. DSAs

PHAs may provide DSAs to accommodate smoking residents. All DSAs must be outside of restricted areas, and may include partially enclosed structures. DSAs should include suitable wellness and safety features, such as appropriate seating and shade and must be accessible for persons with disabilities, in accordance with section 504 of the Rehabilitation Act of 1973 (and HUD's implementing regulations at 24 CFR part 8), Title II of the Americans with Disabilities Act, and the Fair Housing Act. This may include a flat or paved pathway, ramp, and adequate lighting. DSAs are not required under the Rule, however if provided, PHAs are encouraged to include DSA funding in future capital needs planning. PHAs without sufficient space may work with their local municipalities to identify nearby public areas where residents may smoke safely. If available, PHAs may provide smoking residents the option to move to an alternate site with greater access to outdoor smoking.

D. Enforcement and Monitoring Tools

Lease and appropriate PHA Plan amendment(s) are the primary policy enforcement mechanisms. PHAs must enforce smoke-free policies when a resident is violating the policy. When enforcing the lease, PHAs must provide due process and allow residents to exercise right to an informal settlement process and a formal hearing, pursuant 24 CFR § 966 Subpart B. PHAs may not evict for a single incident of smoking, in violation of a smoke-free policy.

1. Graduated Enforcement Approach and Monitoring Tools

PHAs are encouraged to adopt a graduated enforcement framework that includes escalating warnings with documentation to the tenant file. Under this approach PHAs would take specific, progressive monitoring and enforcement actions, while educating tenants and providing smoking cessation resources or referrals, prior to pursuing tenant eviction for smoke-free policy violations. A graduated enforcement framework may include the following:

- lease amendment by the PHA that identifies the actions that constitute a policy "violation"
- agreement between the PHA and Resident Council that quantifies the number of documented, verified violations that warrant enforcement action
- pursuit by PHA of one or more monitoring and enforcement actions in combination or in sequence that allows the tenant time to address violation
- documentation of noncompliance if there are repeated violations, persistent non-responsiveness, or non-compliance with disciplinary actions. The PHA Plan should note

how many non-compliances with the Smoke Free policy would constitute a violation of the lease.

- eviction proceedings initiated by the PHA, though tenancy termination and eviction should only be pursued as a last resort.

PHAs have the discretion to employ a range of techniques and tools to monitor and enforce compliance with their smoke-free policies. The following monitoring and enforcement tools appear below in the order of increasing severity.

a. Intensified Compliance Monitoring

Increased Inspection Frequency. Upon issuance of a written warning from the property manager and/or a documented complaint, the PHA may increase the frequency of unit inspections for a suspected policy violator.

Violator Rehabilitation. To the extent a violation has been confirmed, the PHA may provide information and resources on smoking cessation. PHAs may consider a policy that automatically clears or resets the record of a resident if they do not have any new policy violations for a specified period of time.

b. Lease Terminations/Transfers

Termination of Tenancy. The PHA may terminate the tenancy at any time—including violations of the Lease Addenda and failure otherwise to fulfill household obligations if resident behaviors disturb other residents' peaceful enjoyment of their accommodations and are not conducive to maintaining the property in a decent, safe and sanitary condition.

"Other good cause" Termination. Repeated violations of the Smoke Free Rule could rise to the level of other good cause for termination of tenancy pursuant to 24 CFR § 966.4(l)(2)(iii). For instance, the PHA might determine that it is in the best interest of all the parties to offer a resident other assistance under the PHA's control (e.g., section 8) and allow the resident to move from the property.

c. Eviction

Eviction. The PHA may pursue resident eviction after unsuccessfully pursuing resident compliance with the policy over a reasonable period of time, and subject to grievance procedures.

2. Reasonable Accommodation Requests

Addiction to nicotine or smoking is not a disability. A PHA must still provide reasonable accommodations to persons with disabilities who smoke that are in compliance with the requirements of the PHA's smoke-free policies. Under section 504 of the Rehabilitation Act

of 1973 (and HUD's implementing regulations at 24 CFR part 8), Title II of the Americans with Disabilities Act, and the Fair Housing Act, PHAs are prohibited from discriminating, excluding from participation in a program, or denying the benefits of a program on the basis of disability and must make reasonable accommodations in their rules, policies, practices, and services. A reasonable accommodation is a change, adaptation or modification to a policy, rule, program, service, practice, or workplace which will allow a qualified person with a disability to participate fully in a program, take advantage of a service, or perform a job. In order to show that a requested accommodation may be necessary, there must be an identifiable relationship, between the requested accommodation and the individual's disability. This relationship must be determined on a case-by-case basis by the PHA.

When a reasonable accommodation is requested, the PHA must make the accommodation unless the PHA can demonstrate that doing so would result in a fundamental alteration in the nature of its program or an undue financial and administrative burden. For example, an individual with a mobility disability may request a reasonable accommodation in order to move to a floor which provides close proximity to the door. This would allow the resident easier access to a smoking area as required by the rule. Such a request would need to be evaluated on a case-by-case basis in order to make a determination. However, a PHA may not permit continued smoking in restricted areas.

General guidance on the reasonable accommodation process can be found at <http://go.usa.gov/cJBBC>. The Department also issued reasonable accommodation guidance entitled, "Joint Statement of the Department of Housing and Urban Development and the Department of Justice on Reasonable Accommodations under the Fair Housing Act," which can be found at http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf. The Department's guidance, "Change is in the Air," (see Resources below), provides examples of how PHAs have approached and managed smoke-free policies for residents with disabilities. For instance, PHAs have allowed residents to move to the first floor or closer to an exit door, and provided designated smoking areas with an accessible walkway, cover, lighting, and seating. The Smoke-Free Rule does not require that reasonable accommodation language be contained in the lease amendment, but HUD encourages PHAs to include this information. Public housing residents who suspect they are victims of housing discrimination can call (800) 669-9777. Smokers with certain health conditions (e.g., cognitive impairment) may require special attention to ensure they understand the policy and available cessation resources, as well as reasonable accommodation request procedures; however, these residents must comply with the policy.

E. Community Building

PHAs are strongly encouraged to engage residents early in the development of smoke-free policies. Best practices have indicated that resident engagement in policy development, implementation, and enforcement are less likely to result in evictions. The Resources section (below) provides best practices and examples on resident engagement.

F. Resources

1. Best Practices

- Change is in the Air can be found at <http://portal.hud.gov/hudportal/documents/huddoc?id=smokefreeactionguide.pdf>
- Toolkits for Owners/Management Agents and Residents can be found at <http://portal.hud.gov/hudportal/HUD?src=/smokefreetoolkits1>

2. Smoking Cessation

PHAs are encouraged to partner with outside organizations for cessation support. Medicaid recipients may be eligible to receive financial assistance for cessation services and prescription cessation medications depending on the state Medicaid program. Cessation resources are currently available at http://www.cdc.gov/tobacco/quit_smoking/index.htm. Residents and PHAs may also contact national quit lines (1-800-QUIT-NOW) and community health centers to ask what services are available through them.

3. PHA and Resident Training

Training resources on Smoke-Free Rule strategies and effective enforcement of smoke-free policies are available in the form of video- and print-based materials, as well as in-person training for select PHAs. PHAs are responsible for providing resident training.

G. Further Information

PHAs that have questions regarding smoke-free public housing can email those questions to SmokeFreePublicHousing@hud.gov. PHAs are also reminded that, with good cause, they may request waivers. For further information about this Notice, please contact Leroy Ferguson, Housing Program Specialist, Office of Public Housing Programs, Management and Occupancy Division, 202-402-2411.

_____/s/_____
Jemine A. Bryon
General Deputy Assistant Secretary
for Public and Indian Housing

Work Session

HOUSING COMMISSION MEETING AGENDA REQUEST

DATE:FEBRUARY 2, 2018 DEPT:HOUSING MEETING DATE:FEBRUARY 14, 2018

DISCUSSION ITEM/TOPIC:

Resolution No. 18-03 amending the Las Vegas Housing Authority's Residential Lease Agreement.

BACKGROUND/RATIONALE:

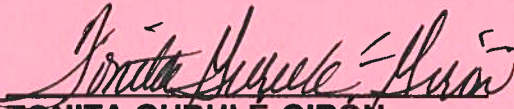
The City of Las Vegas Housing Authority is required to adhere to all Federal Regulations and Notices Published regarding Public Housing. The LVHA must include the policy's being updated in the Residential Lease Agreement to include the Crime Free Policy and the Non-Smoking Policy.

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.



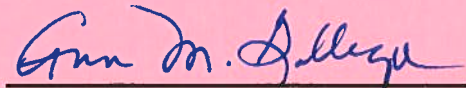
SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:



TONITA GURULE-GIRON
MAYOR

TANA VEGA
INTERIM FINANCE DIRECTOR
(PROCUREMENT)



ANN MARIE GALLEGOS
INTERIM CITY MANAGER

CITY ATTORNEY
(ALL CONTRACTS, ORDINANCES
AND RESOLUTIONS MUST BE
REVIEWED)

**CITY OF LAS VEGAS HOUSING AUTHORITY
RESOLUTION NO. 18-03**

**A RESOLUTION AMENDING THE LAS VEGAS HOUSING AUTHORITY'S
RESIDENTIAL LEASE AGREEMENT.**

WHEREAS, the Las Vegas Housing Authority (LVHA) is required to adhere to all Federal Regulations and Notices Published regarding Public Housing; and

WHEREAS, 24 CFR 960.204 provides guidance as to policies and procedures Housing Authorities must adhere to and;

WHEREAS, Notice 2015-19 also gives guidance as to how Housing Authorities should distinguish between application denials and lease termination in regards to criminal backgrounds; and

WHEREAS, Notice 2017-03 provides guidance to Public Housing Agencies on Instituting and Enforcing Smoke-Free Public Housing Policies; and

WHEREAS, The LVHA must also include the policy's with LVHA's Residential Lease Agreement; and

THEREFORE, Be it Resolved, by the Board of Commissioners of the Housing Authority of the City of Las Vegas accepts and approves this Resolution and the attached revised Residential Lease Agreement.

Passed, Approved and Adopted this _____ day of February 2018.

MAYOR TONITA GURULÉ-GIRÓN

ATTEST:

CASANDRA FRESQUEZ, CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY ONLY

CITY ATTORNEY

PART I of the RESIDENTIAL LEASE AGREEMENT: TERMS AND CONDITIONS

THIS LEASE AGREEMENT (called the "Lease") is between the **CITY OF LAS VEGAS HOUSING AUTHORITY** and Tenant named in Part II of this lease (called "Tenant").

I. Description of the Parties and Premises:

- (a) The Authority, using verified data about income, family composition, and needs, leases to Tenant, the property (called "premises" or "dwelling unit") described in Part II of this Lease Agreement, subject to the terms and conditions contained in this lease.
- (b) Premises must be used only as a private residence, solely for Tenant and the household members named on Part II of the Lease. The Authority may, by prior written approval, consent to Tenant's use of the unit for legal profit making activities incidental to the residential use subject to the Authority's policy on such activities.
- (c) Any additions to the household members named on the lease, including Live-in Aides and foster children, but excluding natural births, require the advance written approval of the Authority. Such approval will be granted only if the new family members pass the Authority's screening criteria and a unit of the appropriate size is available. Permission to add Live-in Aides and foster children shall not be unreasonably refused.

Tenant agrees to wait for the Authority's approval before allowing additional persons to move into the Premises. Failure on the part of Tenant to comply with this provision is a serious violation of the material terms of the lease, for which the Authority may terminate the lease.

- (d) Deletions (for any reason) from the household members named on the lease shall be reported by the Tenant to the Authority in writing, within 10 days of the occurrence.

II. Lease and Amount of Rent

- (a) Unless otherwise modified or terminated in accordance with Section XIV, or unless not renewed for noncompliance with community service requirement, this Lease shall automatically be renewed for successive terms of one calendar month. For compliance with community service only, the term of the lease is twelve (12) months.

The rent amount is stated in Part II of this Lease. Rent shall remain in effect unless adjusted by the Authority in accordance with Section VII herein.

Tenant has the option, upon admission to public housing and annually thereafter, whether to pay flat rent (market value) or income-based rent.

The flat rent for the dwelling unit listed above is \$.00 .

The amount of the income-based rent (Total Tenant Payment and Tenant Rent) shall be determined by the Authority in compliance with HUD regulations and requirements and in accordance with the Authority's Admissions and Occupancy Policy.

- (b) Rent is DUE and PAYABLE in advance on the first day of each month and shall be considered delinquent after the 5th calendar day of the month. Income-based rent may include utilities as described in Section VII below, and includes all maintenance services due to normal wear and tear. Flat rent does not include a utility allowance, and includes all maintenance services due to normal wear and tear.

When the Authority makes any change in the amount of Total Tenant Payment or Tenant Rent, the Authority shall give written notice to Tenant. The notice shall state the new amount, and the date the new amount is applicable. Rent redeterminations are subject to the Administrative Grievance Procedure. The notice shall also state that Tenant may ask for an explanation of how the amount is computed by the Authority. If Tenant asks for an explanation, the Authority shall respond in a reasonable time.

- (c) The PHA's Minimum Rent (Minimum TTP) is \$50.00. Provision is made for exemption due to financial hardship as defined in the Housing Authority's Admissions and Continued Occupancy Policy.

III. Other Charges

In addition to rent, Tenant is responsible for the payment of certain other charges specified in this lease. The type(s) and amounts of other charges are specified in Part II of this Lease Agreement. Other charges can include:

- (a) Maintenance costs - The cost for services or repairs due to intentional or negligent damage to the dwelling unit, common areas or grounds beyond normal wear and tear, caused by Tenant, household members or by guests. When the Authority determines that needed maintenance is not caused by normal wear and tear, Tenant shall be charged for the cost of such service, either in accordance with the Schedule of Maintenance Charges posted by the Authority or (for work not listed on the Schedule of Maintenance Charges) based on the actual cost to the Authority for the labor and materials needed to complete the work. If overtime work is required, overtime rates shall be charged.
- (b) Excess Utility Charges - At developments where utilities are provided by the Authority, a charge shall be assessed for excess utility consumption due to the operation of major tenant-supplied appliances. This charge does not apply to Tenants who pay their utilities directly to a utility supplier.
- (c) Late Charges - A charge of \$5 will be charged if the tenant fails to make payment by the end of the 5th calendar day of the month. The Authority shall provide written notice of the amount of any charge in addition to Tenant Rent, and when the charge is due. Charges in addition to rent are due no sooner than two weeks after Tenant receives the Authority's written notice of the charge. A check returned for non-sufficient funds shall be considered non-payment of rent. The PHA will no longer accept personal checks from any tenant who has previously presented a dishonored check for payment.
- (d) Broken window(s) will be charged to tenant, regardless of how the window(s) got damaged, the tenant is responsible for the replacement/repair of window(s), Tenant will be charged according to the actual cost the vendor invoiced the PHA.

IV. Payment Location

Rent and other charges can be paid at the Main Office located at 2400 Sagebrush, Las Vegas, New Mexico or at other locations specified in Part II of this Residential Lease. However, if needed as a reasonable accommodation, the Authority shall make other arrangements for payment of rent. The Authority will not accept cash.

V. Security Deposit

- (a) Tenant Responsibilities: Tenant agrees to pay an amount equal to 150.00 or one month's Total Tenant Payment, whichever is greater. The dollar amount of the security deposit is noted on Part II of this Residential Lease.

Elderly, handicapped, disabled tenants will be charged a security deposit equal to \$100.00.

(b) **Authority's Responsibilities:** The Authority will use the Security Deposit at the termination of this Lease:

- (1) To pay the cost of any rent or any other charges owed by Tenant at the termination of this lease.
- (2) To reimburse the cost of repairing any intentional or negligent damages to the dwelling unit caused by Tenant, household members or guests.

(c) The Authority shall not charge a higher security deposit for tenants with disabilities who use wheelchairs and/or have service or companion animals necessary as a reasonable accommodation.

The Security Deposit may not be used to pay rent or other charges while Tenant occupies the dwelling unit. No refund of the Security Deposit will be made until Tenant has vacated, and the dwelling unit has been inspected by the Authority.

The return of a security deposit shall occur within 30 days after Tenant moves out. The Authority agrees to return the Security Deposit plus accrued interest (subject to applicable laws), if any, to Tenant when he/she vacates, less any deductions for any costs indicated above, so long as Tenant furnishes the Authority with a forwarding address. If any deductions are made, the Authority will furnish Tenant with a written statement of any such costs for damages and/or other charges deducted from the Security Deposit.

VI. Utilities and Appliances

(a) **Authority-Supplied Utilities:** If indicated by an (X) on Part II of the Lease Agreement, the Authority will supply the indicated utility for Tenants choosing to pay income-based rent: electricity, natural gas, heating fuel, water, sewer service. The Authority will not be liable for the failure to supply utility service for any cause whatsoever beyond its control. Utility allowance is not included in flat rents.

If indicated by an (X) on Part II of the Lease Agreement, the Authority will provide a cooking range and refrigerator. Other major electrical appliances, air conditioners, freezers, extra refrigerators, washers, dryers, etc., may be installed and operated only with the written approval of the Authority.

(b) **Tenant-paid Utilities:** If Tenant resides in a development where the Authority does not supply electricity, natural gas, or heating fuel, an Allowance for Utilities shall be established, appropriate for the size and type of dwelling unit, for utilities Tenant pays directly to the utility supplier. Tenants paying flat rent pay utility costs directly to the utility supplier. In income-based rent, the Total Tenant Payment less the Allowance for Utilities equals Tenant Rent. If the Allowance for Utilities exceeds the Total Tenant Payment, the Authority will pay a Utility Reimbursement to the Tenant each month.

The Authority may change the Allowance at any time during the term of the lease, and shall give Tenant 60 days written notice of the revised Allowance along with any resultant changes in Tenant Rent or Utility Reimbursement.

If Tenant's actual utility bill exceeds the Allowance for Utilities, Tenant shall be responsible for paying the actual bill to the supplier. If Tenant's actual utility bill is LESS than the Allowance for Utilities, Tenant shall receive the benefit of such saving.

(c) **Tenant Responsibilities:** Tenant agrees not to waste the utilities provided by the Authority and to comply with any applicable law, regulation, or guideline of any governmental entity regulating utilities or fuels. Tenant also agrees to abide by any local ordinance or House rules restricting or prohibiting the use of space heaters in multi-dwelling units.

VII. Terms and Conditions

The following terms and conditions of occupancy are made a part of the Lease:

(a) **Use and Occupancy of Dwelling:** Tenant shall have the right to exclusive use and occupancy of the dwelling unit for Tenant and other household members listed on the lease. With the prior written consent of the Authority, members of the household may engage in legal profit making activities in the dwelling unit incidental to the residential use.

This provision permits accommodation of Tenant's guests or visitors for a period not exceeding **14 consecutive or a total of 30 cumulative days each year**. Permission may be granted, upon written request to the Manager, for an extension of this provision.

(b) **Ability to comply with Lease terms:** If, during the term of this Lease, Tenant, by reason of physical or mental impairment, is no longer able to comply with the material provisions of this lease and cannot make arrangements for someone to aid him/her in complying with the lease, and the Authority cannot make any reasonable accommodation that would enable Tenant to comply with the lease; THEN, the Authority will assist Tenant, or designated member(s) of Tenant's family, to find more suitable housing and move Tenant from the dwelling unit. If there are no family members who can or will take responsibility for moving Tenant, the Authority will work with appropriate agencies to secure suitable housing and will terminate the Lease in accordance with Section XIV of this lease.

At the time of admission, all Tenants must identify the family member(s) to be contacted if they become unable to comply with lease terms.

(c) **Redetermination of Rent, Dwelling Size, and Eligibility.** The rent amount as fixed in Part II of the Lease Agreement is due each month until changed as described below.

(1) The family composition is to be re-examined at least once a year. The Authority shall re-examine the income of the family at least once a year if Tenant chooses to pay income-based rent or flat rent.

(2) Tenant promises to supply the Authority, when requested, with accurate information about: family composition, age of family members, income and source of income of all family members, assets, and related information necessary to determine eligibility, annual income, adjusted income, and rent.

(3) Non-compliance with Non-Citizen Rule requirements, determination that a family member has knowingly permitted an ineligible non-citizen not listed on the lease to permanently reside in their public housing unit.

Failure to supply such information when requested is a serious violation of the terms of the lease, and the Authority may terminate the lease.

All information must be verified. Tenant agrees to comply with the Authority's requests for verification by signing releases for third-party sources, presenting documents for review, or providing other suitable forms of verification.

The Authority shall give Tenant reasonable notice of what actions Tenant must take and of the date by which any such action must be taken for compliance under this section. This information will be used by the Authority to decide whether the amount of the rent should be changed, and whether the dwelling size is still appropriate for Tenant's needs.

This determination will be made in accordance with the Admissions and Occupancy Policy, which is publicly posted in the Project Office. A copy of the policies can be furnished on request at the expense of the person making the request.

(3) Rent will not change during the period between regular re-examinations, UNLESS during such period:

a) For families paying income-based rent:

- (1) A person with income joins the household.
- (2) Tenant can verify a change in his/her circumstances (such as decline in or loss of income) that would justify a reduction in rent.

If a reduction is granted, Tenant must report subsequent increases in income within 10 days of the occurrence, until the next scheduled re-examination. Failure to report within the 10 days may result in a retroactive rent charge.

- (3) Tenant experiences a change in income that would justify an increase in rent.
- (4) It is found that the Tenant has misrepresented the facts upon which the rent is based so that the rent Tenant is paying is less than the rent that he/she should have been charged.

The Authority then may apply an increase in rent retroactive to the first of the month following the month in which the misrepresentation occurred.

- (5) Rent formulas or procedures are changed by Federal law or regulation.
- (6) Income changes to be reported must be reported to the Housing Manager within 10 days of the occurrence. Failure to report within the 10 days may result in a retroactive rent charge.

b) For families paying flat rent:

- (1) the housing authority determines that the family is unable to pay the flat rent because of financial hardship.

i. Upon such a determination, the housing authority shall immediately provide for the family to pay rent in the amount determined under income-based rent.

ii. Hardship is defined in the housing authority's Admissions and Continued Occupancy Policy.

- (2) If the family has switched from paying flat rent to income-based rent because of financial hardship, the family will be given the option at the next annual reexamination whether to choose income-based or flat rent.

- (4) All changes in family composition must be reported to the Housing Manager within 10 days of the occurrence. Failure to report within the 10 days may result in a retroactive rent charge.

This Lease will NOT be revised to permit a change of family composition resulting from a request to allow adult children to move back into the unit. An exception will be made if it is determined that the move-in of a single adult child is essential for the mental or physical health of Tenant

- (d) Rent Adjustments: Tenant will be notified in writing of any rent adjustment due to the situations described above. All notices will state the effective date of the rent adjustment.

- (1) In the case of a rent decrease, the adjustment will become effective, for families paying income-based rent and for families switching from flat rent to income-based rent because of financial hardship, on the first day of the month following the reported change in circumstances or change in Federal law or regulations, provided Tenant reported the change in a timely manner, as specified above (when change is based on new circumstances).

- (2) In the case of a rent increase, when an increase in income occurs after a prior rent reduction and is reported within 10 days of the occurrence, the increase will become effective the first day of the 2nd month following the month in which the change was reported.

- (3) In the case of a rent increase due to a change in Federal law or regulations, the increase will become effective the first day of the second month following the month in which the Authority notifies the tenant of the law or regulatory change.

- (4) In the case of a rent increase due to misrepresentation, failure to report a change in the family composition, or failure to report an increase in income (after a reduction in rent per the fixed rent policy), the Authority shall apply the increase in rent retroactive to the first of the month following the month in which the misrepresentation occurred.

(e) Transfers

- (1) Tenant agrees that if the Authority determines that the size or design of the dwelling unit is no longer appropriate to Tenant's needs, the Authority shall send Tenant written notice. Tenant further agrees to accept a new lease for a different dwelling unit of the appropriate size or design.
- (2) The Authority may move a Tenant into another unit if it is determined necessary to rehabilitate or demolish Tenant's unit.
- (3) If a Tenant makes a written request for special unit features in support of a documented disability, the Authority shall modify Tenant's existing unit. If the cost and extent of the modifications needed are tantamount to those required for a fully accessible unit, the Authority may transfer Tenant to another unit with the features requested at the Authority's expense.
- (4) A tenant without disabilities who is housed in an accessible or adaptable unit must transfer to a unit without such features should a Tenant with disabilities need the unit.
- (5) In the case of involuntary transfers, Tenant shall be required to move into the dwelling unit made available by the Authority. Tenant shall be given 15 days time in which to move following delivery of a transfer notice. If Tenant refuses to move, the Authority may terminate the Lease.
- (6) Involuntary transfers are subject to the Grievance Procedure, and no such transfers may be made until either the time to request a Grievance has expired or the procedure has been completed.
- (7) The Authority will consider any Tenant requests for transfers in accordance with the transfer priorities established in the Admissions and Occupancy Policies.

The Authority will consider de-concentration of poverty and income-mixing goals when offering Transfers; including skipping families on the transfer list and offering rent incentives to higher income families moving into lower income developments.

VIII. Authority Obligations

The Authority shall be obligated:

- (a) To maintain the dwelling unit and the project in a condition that is decent, safe, sanitary, and in good repair;
- (b) To comply with the requirements of applicable building codes, housing codes, Uniform Physical Condition Standards and other HUD regulations materially affecting health and safety;
- (c) To make necessary repairs to the dwelling unit;
- (d) To keep project building, facilities, and common areas, not otherwise assigned to Tenant for maintenance and upkeep, in a clean and safe condition;
- (e) To maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and other facilities and appliances, supplied or required to be supplied by the Authority;

- (f) To provide and maintain appropriate receptacles and facilities (except container for the exclusive use of an individual tenant family) for the deposit of garbage, rubbish, and other waste removed from the premise by Tenant as required by this Lease, and to provide disposal service for garbage, rubbish and other solid waste;
- (g) To supply running water and reasonable amounts of hot water and reasonable amount of heat at appropriate times of the year according to local custom and usage; EXCEPT where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or where heat or hot water is generated by an installation within the exclusive control of Tenant and supplied by a direct utility connection;
- (h) To notify Tenant of the specific grounds for any proposed adverse action by the Authority. (Such adverse action includes, but is not limited to, a proposed lease termination, transfer of Tenant to another unit, or imposition of charges for maintenance and repair). When the Authority is required to afford Tenant the opportunity for a hearing under the Authority's grievance procedure for a grievance concerning a proposed adverse action:
 - (1) The Notice of the proposed adverse action shall inform Tenant of the right to request such hearing. In the case of lease termination, a notice of lease termination that complies with CFR 966.4(1)(3) shall constitute adequate notice of proposed adverse action.
 - (2) In the case of a proposed adverse action other than a proposed lease termination, the Authority shall not take the proposed action until time to request such a hearing has expired and (if hearing was timely requested) the grievance process has been completed.

(i) Reasonable Accommodations for Residents with Disabilities:

Housing providers must make reasonable accommodations in lease and other policy requirements when requested by a qualified resident with disabilities. The concept of reasonable accommodation involves helping a resident meet essential lease requirements; it does not require the lowering or waiving of essential requirements. Accommodations are not reasonable if they require a fundamental alteration in the nature of the program or impose undue financial and administrative burdens on the housing provider.

- (j) To not reduce Tenant's rent due to a reduction in welfare assistance when the welfare reduction is a result of:
 - (1) Fraud; or
 - (2) Failure to participate in an economic self-sufficiency program; or
 - (3) Failure to participate in a work activities requirement.

The housing authority will verify the above circumstances through the local welfare department through a local agreement with the welfare department to verify such circumstances as quickly as possible.

Refusal to reduce Tenant's rent is not applicable if the welfare reduction results from:

- (1) The expiration of a lifetime limit on receiving welfare benefits; or
- (2) When the family has sought but cannot find employment; or
- (3) The family has complied with welfare program requirements but loses welfare because of a durational time limit.

IX. Tenant's Obligations

Tenant shall be obligated:

- (a) Not to assign the Lease, nor sublease the dwelling unit.
 - (1) Not to give accommodation to boarders or lodgers;
 - (2) Not to give accommodation to long term guests (in excess of 14 days) without the advance written consent of the Authority.
- (b) To use the dwelling unit solely as a private dwelling for Tenant and Tenant's household as identified in PART II of the Lease, and not to use or permit its use for any other purpose.
- (c) This provision does not exclude the care of foster children or live-in care of a member of Tenant's family, provided the accommodation of such persons conforms to the Authority's Occupancy standards, and so long as the Authority has granted prior written approval for the foster child(ren), or live-in aide to reside in the unit.
- (d) To abide by necessary and reasonable regulations promulgated by the Authority for the benefit and well-being of the housing project and Tenants. These regulations shall be posted in a conspicuous manner in the project office and incorporated by reference in this Lease. Violation of such regulations constitutes a violation of the Lease.
- (e) To comply with the requirements of applicable state and local building or housing codes, materially affecting health and/or safety of Tenant and household.
- (f) To keep the dwelling unit and other such areas as may be assigned to Tenant for exclusive use in a clean and safe condition. This includes keeping front and rear entrances and walkways for the exclusive use of Tenant, free from hazards and trash and keeping the yard free of debris and litter. Exceptions to this requirement may be made for Tenants who have no household members able to perform such tasks because of age or disability.
- (f.1) In an effort to improve the livability and conditions of the dwelling units owned and managed by the PHA, uniform standards for resident housekeeping have been developed for all resident families. All residents must comply with the Housekeeping Standards.
- (g) To dispose of all garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner only in containers approved or provided by the Authority. To refrain from, and cause members of Tenant's household or guest to refrain from, littering or leaving trash and debris in common areas.
- (h) To use only in reasonable manner all electrical, sanitary, heating, ventilating, air-conditioning, and other facilities. In no case shall the tenant attach any forms of device to any other unit to obtain the use of any utility.
- (i) To refrain from, and to cause household and guests to refrain from destroying, defacing, damaging, or removing any part of dwelling unit or project
- (j) To pay reasonable charges (other than for wear and tear) for the repair of damages to the dwelling unit, project buildings, facilities, or common areas caused by Tenant, household members or guests
- (k) To act, and cause household members or guests to act in a manner that will:
 - (1) No external gatherings will be allowed within the housing premises after 10:00 p.m.; act or allow household members or guests to act in a manner that will disturb the rights or comfort of neighbors.
 - (2) Not disturb other residents' peaceful enjoyment of their accommodations; and
 - (3) Be conducive to maintaining all Authority projects in a decent, safe, and sanitary condition.
- (l) To ensure that all members of the family who are subject to the community service requirement are complying with the community service requirement, or are no longer residing in the unit (Section 12, U.S. Housing Act).
 - (1) Community service requires that each non-exempt adult resident shall contribute 8 hours per month of community service (not including political activities), or participate in an economic self-sufficiency program for 8 hours per month.
 - a) Exemption is provided subject to specific requirements as described in the Housing Authority's Admissions and Continued Occupancy Policy, upon verification.
 - b) Tenant must immediately notify the Housing Authority of any change that affects a household member's exemption from the community service requirement, specifically if the household member no longer meets the exemption requirements.
 - (2) Noncompliance: The Housing Authority shall determine annually if non-exempt adult residents are in compliance. This Lease shall not be renewed or extended unless the head of household and the noncompliant adult, before the lease expiration date, enter into an agreement to make up the hours within the next twelve (12) month period.
- (m) To assure that Tenant, any member of the household, a guest, or another person under Tenant's control, shall not engage in:
 - (1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the Authority's public housing premises by other residents or employees of the Authority, or;
 - (2) Any drug-related criminal activity on or off the premises. Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy, and for eviction from the unit. (For the purposes of this lease, the term drug-related criminal activity means the illegal possession, manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use, of a controlled substance as defined in Section 102 of the Controlled Substances Act.), or;
 - (3) Any abuse (or pattern of abuse) of alcohol that affects the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the Authority.

- (n) To make no alterations or repairs or redecoration's to the interior of the dwelling unit or to the equipment, nor to install additional equipment or major appliances without written consent of the Authority. To make no changes to locks or install new locks on exterior doors without the Authority's written approval. To use no nails, tacks, screws, brackets, or fasteners on any part of the dwelling unit (a reasonable number of picture hangers excepted) without authorization by the Authority.
- (o) To give prompt prior notice to the Authority of Tenant's leaving dwelling unit unoccupied for any period exceeding one calendar week.
- (p) To act in a cooperative manner with neighbors and the Authority's Staff. To refrain from and cause members of Tenant's household or guests to refrain from acting or speaking in an abusive or threatening manner toward neighbors and the Authority's staff.
- (q) Not to display, use, or possess or allow members of Tenant's household or guests to display, use or possess any firearms, (operable or inoperable) or other offensive weapons as defined by the laws and courts of the State of **New Mexico** anywhere in the unit or elsewhere on the property of the Authority.
- (r) To take reasonable precautions to prevent fires and to refrain from storing or keeping flammable materials upon the premises.
 - (1) To not disconnect any smoke alarm in the dwelling unit. Tenant disconnection of any smoke alarm is a health and safety violation.
 - (2) To notify the housing authority immediately when any smoke alarm is not operable.
- (s) To avoid obstructing sidewalks, areaways, galleries, passages, or stairs, and to avoid using these for purposes other than going in and out of the dwelling unit.
 - (1) To refrain from erecting or hanging radio or television antennas on or from any part of the dwelling unit, except that roof antennas may be installed in accordance with regulations set forth by the Authority with the written approval of the Authority.
 - (2) Shed's are only allowed upon prior written approval from the PHA. Approved sheds will consist of a manufactured shed and the measurements shall not exceed 10X12.
- (t) To refrain from placing signs of any type in or about the dwelling except those allowed under applicable zoning ordinances and then only after having received written permission of the Authority.
- (u) To insure that no member of their household keeps, maintains, harbors, or boards any dog, cat, livestock, or pet of any nature in the dwelling unit or on the grounds of any Authority development except in accordance with the Authority's pet policy.

However, in any development, a person with a disability may keep a companion or service animal that is needed as a reasonable accommodation for his or her disability. An animal needed as a reasonable accommodation is not subject to the Authority's pet policy, although it is subject to reasonable health and safety rules.

- (v) All motor vehicles registered to the Resident must be in running condition and currently licensed and insured as per NM State laws. Any inoperable vehicle disabled or not functioning longer than two weeks will be towed at Tenant's expense. Automobile repairs, blocking or jacking of vehicles are not permitted on housing property. Residents will not be allowed to park any vehicle on the yards for any reason. Residents with more than two vehicles and/or recreational equipment shall be required to make parking arrangements other than Housing property. Motor vehicles will be operated in a safe, quiet and subdued manner so as not to create a hazard or a nuisance for the residents or the neighbors. Speed limit for all housing property shall not exceed 15 MPH. Vehicle radios shall not be loud particularly at night.

- (w) To remove any personal property left on Authority property when Tenant leaves, abandons or surrenders the dwelling unit. Property left for more than 30 days shall be considered abandoned and will be disposed of by the Authority. Costs for storage and disposal shall be assessed against the former Tenant. The Landlord will consider the unit abandoned when a resident has fallen behind in rent and has clearly indicated by words and actions an intention not to continue living in the unit. The Landlord has a claim against the Resident for reasonable costs and expenses incurred in removing the property, in storing and caring for the property, and in selling the property. The Landlord can collect from the Resident all these costs.
- (x) To use reasonable care to keep the dwelling unit in such condition as to ensure proper health and sanitation standards for Tenant, household members and neighbors. TENANT SHALL NOTIFY THE AUTHORITY PROMPTLY OF KNOWN NEED FOR REPAIRS TO THE DWELLING UNIT, and of known unsafe or unsanitary conditions in the dwelling unit or in common areas and grounds of the Project. Tenant's failure to report the need for repairs in a timely manner shall be considered to contribute to any damage that occurs.
- (y) Not to:
 - (1) commit any fraud in connection with any Federal housing assistance program, or
 - (2) receive assistance for occupancy of any other unit assisted under any Federal housing assistance program during the term of the lease.
- (z) To pay promptly any utility bills for utilities supplied to Tenant by a direct connection to the utility company, and to avoid disconnection of utility service for such utilities.

X. Defects Hazardous to Life, Health or Safety

In the event that the dwelling unit is damaged to the extent that conditions are created which are hazardous to the life, health, or safety of the occupants:

Authority Responsibilities:

- (a) The Authority shall be responsible for repair of the unit within a reasonable period of time after receiving notice from Tenant, provided, if the damage was caused by Tenant, household members, or guests, the reasonable cost of the repairs shall be charged to Tenant.
- (b) The Authority shall offer Tenant a replacement dwelling unit, if available, if necessary repairs cannot be made within a reasonable time. The Authority is not required to offer Tenant a replacement unit if the hazardous condition was caused by Tenant, household members, or guests.
- (c) Tenant shall accept any replacement unit offered by the Authority.
- (d) In the event repairs cannot be made by the Authority, as described above, or alternative accommodations are not provided, then rent shall abate in proportion to the seriousness of the damage and loss in value as a dwelling. No abatement of rent shall occur if Tenant rejects alternative accommodations or if the damage was caused by Tenant, household members, or guests.
- (e) If the Authority determines that the dwelling unit is uninhabitable because of imminent danger to the life, health, and safety of Tenant, and alternative accommodations are refused by Tenant, this Lease shall be terminated, and any rent paid will be refunded to Tenant.

Tenant Responsibilities:

- (a) Tenant shall immediately notify the Project Manager of the damage and intent to abate rent, when the damage is or becomes sufficiently severe that Tenant believes he/she is justified in abating rent.
- (b) Tenant agrees to continue to pay full rent, less the abated portion agreed upon by the Authority, during the time in which the defect remains uncorrected.

XI. Inspections

- (a) Move-in Inspection: The Authority and Tenant or representative shall inspect the dwelling unit prior to occupancy by Tenant. The Authority will give Tenant a written statement of the condition of the dwelling unit, both inside and outside, and note any equipment provided with the unit. The statement shall be signed by the Authority and Tenant and a copy of the statement retained in Tenant's folder. Any deficiencies noted on the inspection report will be corrected by the Authority, at no charge to Tenant.
- (b) Other Inspections - The Authority will inspect the unit at least annually to check needed maintenance, tenant housekeeping, and other lease compliance matters. Tenant will receive a written statement of the charges, if any, for repairs or removal of non-approved alterations to the unit.
- (c) Move-out Inspection - The Authority will inspect the unit at the time Tenant vacates and give Tenant a written statement of the charges, if any, for which Tenant is responsible. Tenant and/or representative may join in such inspection, unless Tenant vacates without notice to the Authority.

XII. Entry of Premises During Tenancy

(a) Tenant Responsibilities

- (1) Tenant agrees that the duly authorized agent, employee, or contractor of the Authority will be permitted to enter Tenant's dwelling during reasonable hours (8:00 AM to 5:00 PM) for the purpose of performing routine maintenance, making improvements or repairs, inspecting the unit, or showing the unit for releasing.
- (2) When Tenant calls to request maintenance on the unit, the Authority shall attempt to provide such maintenance at a time convenient to Tenant. If Tenant is absent from the dwelling unit when the Authority comes to perform maintenance, Tenant's request for maintenance shall constitute permission to enter.

(b) Authority's Responsibilities

- (1) Authority shall give Tenant at least 48 hours written notice that the Authority intends to enter the unit. Authority may enter only at reasonable times.
- (2) The Authority may enter Tenant's dwelling unit at any time without advance notification when there is reasonable cause to believe that an emergency exists.

XIII. Notice Procedures

- (a) If the Tenant and all adult members of the household are absent from the dwelling unit at the time of entry, Authority shall leave in the dwelling unit a written statement specifying the date, time and purpose of entry prior to leaving the dwelling unit.

- (b) Tenant Responsibility - Any notice to Authority must be in writing, delivered to the Project Office or to Authority's central office, or sent by prepaid first-class properly addressed.
- (c) Authority Responsibility - Notice to Tenant must be in writing, delivered to Tenant or to any adult member of the household residing in the dwelling unit, or sent by prepaid first-class mail addressed to Tenant.
- (d) Unopened, canceled, first class mail resumed by the Post Office shall be sufficient evidence that notice was given, whether signed or unsigned.
- (e) If Tenant is visually impaired, all notices must be in an accessible format.

XIV. Termination of the Lease

In terminating the Lease, the following procedures shall be followed by the Authority and Tenant:

- (a) This Lease may be terminated only for serious or repeated violations of material terms of the Lease, such as failure to make payments due under the lease or to fulfill Tenant obligations set forth in section IX above, or for other good cause. Such serious or repeated violation of terms shall include but not be limited to:
 - (1) The failure to pay rent or other payments when due;
 - (2) After Receiving three (3) written Warning Notices for any violation including the non-smoking policy;
 - (3) Repeated late payment, which shall be defined as failure to pay the amount of rent or other charges due by the 5th of the month. Four such late payments within a 12 month period shall constitute a repeated late payment;
 - (4) Failure to pay utility bills when Tenant is responsible for paying such bills directly to the supplier of utilities;
 - (5) Misrepresentation of family income, assets, or composition;
 - (6) Failure to supply, in a timely fashion, any certification, release, information, or documentation on Family income or composition needed to process annual reexaminations or interim redeterminations;
 - (7) Refusal to accept and execute an amendment or written rider to lease after the Authority provides at least 60 days notice of the proposed effect of the amendment or written rider and provides the tenant a reasonable time to respond to the offer to accept and execute the amendment or written rider;
 - (8) Serious or repeated damage to the dwelling unit, creation of physical hazards in the unit, common areas, grounds, or parking areas of any project site;
 - (9) Criminal activity by Tenant, household member, guest, or other person under Tenant's control, including criminal activity that threatens the health, safety or right to peaceful enjoyment of the Authority's public housing premises by other residents or employees, or any drug-related criminal activity on or off the premises;

- (10) Alcohol abuse that the Authority determines interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;
- (11) Fleeing to avoid prosecution or custody confinement after conviction, for a felony;
- (12) Violating a condition of probation or parole imposed under Federal or State law;
- (13) Weapons or illegal drugs seized in an Authority unit by a law enforcement officer;
- (14) Any fire on Authority premises caused by the tenant, household members or guests' neglect.
- (15) Determination or discovery that a resident is a registered sex offender.
- (16) When PHA receives a Discrepancy Report from the Upfront Income Verification (UIV) System and the PHA determines that the Resident failed to report income; unreported income which exceeds \$2,500 will be grounds for termination.
- (17) Continued noncompliance of the community service requirement, on the part of any non-exempt adult resident.
- (a) Continued noncompliance is defined as the 12-month period after the head of household and noncompliant non-exempt adult has signed an agreement that the noncompliant non-exempt adult shall cure the noncompliance by making up the community service hours in the subsequent 12 months.
- (b) This continued noncompliance will result in eviction of the entire family, unless the noncompliant family member is no longer part of the household.
- (b) The Authority shall terminate assistance permanently for persons convicted of manufacturing or producing methamphetamine on premises.
- (1) "Premises" is building or complex in which the dwelling unit is located, including common areas and grounds.
- (c) The Authority shall give written notice of the proposed termination of the Lease of:
- (1) 14 days in the case of failure to pay rent;
- (2) A reasonable time, but not to exceed 30 days, considering the seriousness of the situation when the health or safety of other tenants or Authority staff is threatened;
- (3) 30 days in any other case.
- (d) The notice of termination:
- (1) The notice of termination to Tenant shall state specific reasons for the termination, shall inform Tenant of his/her right to make such reply as he/she may wish, and of Tenant's right to examine Authority documents directly relevant to the termination or eviction.
- (2) When the Authority is required to offer Tenant the opportunity for a grievance hearing, the notice shall also inform Tenant of the right to request such a hearing in accordance with the Authority's grievance procedures.
- (3) Any notice to vacate (or quit) which is required by State or local law may be combined with, or run concurrently, with the notice of lease termination under this section. The Notice to Vacate must be in writing, and specify that if Tenant fails to quit the premises within the applicable statutory period, appropriate action will be brought against Tenant, and Tenant may be required to pay the costs of court and attorney's fees.
- (4) When the Authority is required to offer Tenant the opportunity for a grievance hearing under the Authority's grievance procedure for a grievance concerning the lease termination, the tenancy shall not terminate (even if any Notice to Vacate under State or local law has expired) until the period to request a hearing has expired, or (if a hearing is requested) the grievance process has been completed.
- (5) When the Authority is not required to offer Tenant the opportunity for a hearing under the grievance procedure and the Authority has decided to exclude such grievance from Authority grievance procedure, the notice of lease termination shall:
- (a) state that Tenant is not entitled to a grievance hearing on the termination;
- (b) specify the judicial eviction procedure to be used by the Authority for eviction and state that HUD has determined that this eviction procedure provides the opportunity for a hearing in a court that contains the basic elements of due process as defined in HUD regulations; and
- (c) state whether the eviction is for a criminal activity that threatens health or safety of residents or staff or for drug-related criminal activity.
- (6) The Authority may evict a Tenant from the unit either by bringing a court action; or as an alternative, the Authority may evict by bringing an administrative action if law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties. In order to evict without bringing a court action, the Authority must afford the Tenant the opportunity for a pre-eviction hearing in accordance with the PHA grievance procedure. The hearing notice will advise persons with disabilities of their rights to request a reasonable accommodation.
- (e) Tenant may terminate this Lease at any time by giving 30 days written notice as described in Section XIII, above.
- (f) In deciding to evict for criminal activity, except for conviction for manufacturing or producing methamphetamine on the premises, the Authority shall have discretion to consider all of the circumstances of the case, including the seriousness of the offense, the extent of participation by or awareness of family members, and the effects that the eviction would have both on family members not involved in the proscribed activity and on the family's neighbors. In appropriate cases, the Authority may permit continued occupancy by remaining family members and may impose a condition that family members who engaged in the proscribed activity will neither reside in nor visit the unit. The Authority may require a family member who has engaged in the illegal use of drugs to present credible evidence of successful completion of a treatment program as a condition to being allowed to reside in the unit. When the Authority evicts a tenant from a dwelling unit for criminal activity, the Authority shall notify the local post office serving that dwelling unit that such individual or family is no longer residing in the unit so the post office will stop mail delivery for such persons and they will have no reason to return to the unit.
- (g) **Termination of lease upon death or incapacity of resident.** Upon the death of the Resident, or if there is more than one Resident, Upon the death of all Residents, either the Landlord or the personal representative of the Resident's estate may terminate this Lease upon 15 days written notice, to be effective on the last day of a calendar month. If full notice is not given, the Resident's estate shall be liable rent to the end of the notice period or to the date the unit is re-rented, whichever date comes first. The termination of a Lease under this section shall not relieve the Resident's estate from liability either for payment of rent or other amounts owed prior to or during the notice period, or for the payment of amounts necessary to restore the premises to their condition at the beginning of the Resident's occupancy, normal wear and tear excepted. If during the term of this Lease the Resident, by reason of physical or mental impairment, is no longer able to comply with this Lease and the Landlord cannot make a Reasonable accommodation to enable the Resident to comply with the Lease; then action shall be taken. The Landlord will assist the Resident or designated member(s) of the Resident's family to move the Resident to more suitable housing. If there are no family members, the Landlord will work with appropriate agencies to secure suitable housing. This Lease will terminate upon the Resident moving from the unit.

XV. Prohibition Against Terminating Tenancy of Victims of Domestic Violence, Dating Violence, and Stalking

The Violence Against Women Reauthorization Act of 2005 (VAWA), provides that "criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights if the tenant or immediate family member of the tenant's family is the victim or threatened victim of that abuse. " VAWA further provides that incidents of actual or threatened domestic violence, dating violence, or stalking may not be construed either as serious or repeated violations of the lease by the victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence.

VAWA does not limit the PHA's authority to terminate the tenancy of any tenant if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property. Specific guidelines and requirements pertaining to VAWA are described in the Housing Authority's Admissions and Continued Occupancy Policy.

XVI. Waiver

No delay or failure by the Authority in exercising any right under this lease agreement, and no partial or single exercise of any such right shall constitute a waiver (post or prospective) of that or any other right, unless otherwise expressly provided herein.

TENANT AGREES THAT ALL THE PROVISIONS OF THIS LEASE HAVE BEEN READ AND ARE UNDERSTOOD AND FURTHER AGREES TO BE BOUND BY ITS PROVISIONS AND CONDITIONS AS WRITTEN.

PART II of the RESIDENTIAL LEASE AGREEMENT:

This Agreement is executed between the **City of Las Vegas Housing Authority** (herein called the "Authority"), and _____ (herein called "tenant"), effective _____

- (1) **Unit:** The Authority, relying upon the representations of the Tenant as to Tenant's income, household composition and housing need, leases to the Tenant (upon Terms and Conditions set forth in Part I of this Lease Agreement) the dwelling unit located at _____ (and hereinafter called the "premises") to be occupied exclusively as a private residence by Tenant and household.
- (2) **Household Composition:** The Tenant's household is composed of the following individuals:

Member of Tenant Household	Relationship	DOB	Social Security Number

- (3) **Term:** The term of this lease shall be one calendar month, renewed as stipulated in Part I of the Lease.

- (4) **Rent:**

- ☐ Tenant Chooses to pay income-based rent. Initial rent (prorated for partial month) shall be \$____. Thereafter, rent in the amount of \$_____per month shall be payable on the first day of each month, and shall be delinquent after the 5th day of said month.

If applicable, the Tenant shall receive a utility reimbursement in the amount of \$_____ per month.

- ☐ Tenant chooses to pay flat rent. Initial rent (prorated for partial month) shall be \$_____. Thereafter, flat rent in the amount \$_____ per month shall be payable on the first day of each month and shall be delinquent after the 5th day of said month. Flat rent does not include a utility allowance.

- (5) **Utilities and Appliances:**

The Authority shall provide the following utilities:

Site 7-1	Site 7-4	Site 7-6
Water/Sewer	Water/Sewer	Water/Sewer
Trash/Gas	Trash/Gas	Trash/Gas

The Authority shall provide the following appliances:

Refrigerator, Stove

(6) **Utility Allowances: Tenant Paid Utilities**

The Authority shall provide Tenants paying income-based rent a monthly utility allowance in the amount of \$_____ for the following utilities paid directly by the Tenant to the utility supplier.

Site 7-7	Site 7-1, Site 7-4	Site 7-6
Electric	Electric	Electric
Gas		
Water		

(7) **Security Deposit:** Tenant agrees to pay \$_____ as a security deposit. See Part I of this lease for information on treatment of the Security Deposit.

(8) **Execution:** By the Tenant's signature below, Tenant and household agree to the terms and conditions of Parts I and II of this lease and all additional documents made a part of the lease by reference.

By the signature(s) below I/we also acknowledge that the Provision of Part I of this Lease Agreement have been received and thoroughly explained to me/us.

TENANT:_____

DATE:_____

CO-TENANT:_____

DATE:_____

CO-TENANT:_____

DATE:_____

HOUSING MANAGER:_____

DATE:_____

TENANT'S CERTIFICATION

I, _____ hereby certify that I, and other members of my Household, have not committed any fraud in connection with any federal housing assistance program, unless such fraud was fully disclosed to the Authority before execution of the lease, or before the Authority's approval for occupancy of the unit by the Household member.

I further certify that all information or documentation submitted by myself or other Household members to the Authority in connection with any federal housing assistance program (before and during the lease term) are true and complete to the best of my knowledge and belief.

Tenant's Signature _____ Date _____

ATTACHMENTS:

If indicated by an (X) below, the Authority has provided the tenant with the following attachments and information:

- | | |
|--|---|
| <input type="checkbox"/> Part I of this Lease | <input type="checkbox"/> Housekeeping Standards |
| <input type="checkbox"/> Standard Maintenance Charges (May be updated) | <input type="checkbox"/> Pet Policy |
| <input type="checkbox"/> Lawn Care Policy | <input type="checkbox"/> Watch Out for Lead Paint Poisoning |
| <input type="checkbox"/> Smoke Free Policy | <input type="checkbox"/> Crime Free Policy |
| <input type="checkbox"/> Other: _____ | |

STATEMENT ON RECEIPT OF INFORMATION

We have received a copy of the above information including information regarding Lead Based Paint. The above information has been thoroughly explained to me/us.

Tenant's Signature _____ Date _____

OFFICE ADDRESS: 2400 SAGEBRUSH, LAS VEGAS, NM 87701 HOURS MON-FRI, 8:00AM- 5:00PM
CLOSED 12:00PM-1:00PM

TELEPHONE NUMBER: (505)425-9463 or (505)454-1401 ext. 258 or 259

EMERGENCY MAINTENANCE TELEPHONE NUMBER: 425-7504.

(Monday through Friday after 5:00 p.m. and weekends and holidays.)



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

Public and Indian Housing

Special Attention of:
Public Housing Agency Directors
Public Housing Hub Offices Directors
Public Housing Field Office Directors
Resident Management Corporations
All Multifamily Hub Directors
All Multifamily Program Center Directors

Notice PIH 2015-19

Issued: November 2, 2015

Expires: This notice remains in effect until amended, superseded, or rescinded.

Subject: Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions

1. Background

For the past five years HUD has been an active member of the Federal Interagency Reentry Council. This Council, made up of more than 23 Federal Agencies, meets on a regular basis to act on issues that affect the lives of those released from incarceration. An important aspect of the Reentry Council's work has been to have each Federal Agency identify and address "collateral consequences" that individuals and their families may face because they or a family member has been incarcerated or has had any involvement with the criminal justice system.¹

In 2011, former HUD Secretary Shaun Donovan issued a letter to public housing authorities (PHAs) across the country emphasizing the importance of providing "second chances" for formerly incarcerated individuals.² Secretary Donovan urged PHAs to adopt admission policies that achieve a sensible and effective balance between allowing individuals with a criminal record to access HUD-subsidized housing and ensuring the safety of all residents of such housing. A year later, Secretary Donovan encouraged owners of HUD-assisted multifamily properties ("owners") to do the same and reiterated HUD's goal of "helping ex-offenders gain access to one of the most fundamental building blocks of a stable life – a place to live." HUD has also previously stressed the troubling relationship between housing barriers for individuals with criminal records and homelessness, stating that "the difficulties in reintegrating into the community increase the risk of homelessness for released prisoners, and homelessness in turn

¹ For more information on the initiatives of the Council members, see <https://csgjusticecenter.org/nrrc/projects/firc/snapshots/>.

² Letter from Shaun Donovan, Secretary, United States Department of Housing and Urban Development, to Public Housing Authority Executive Directors (June 17, 2011), available at http://usich.gov/resources/uploads/asset_library/Reentry_letter_from_Donovan_to_PHAs_6-17-11.pdf.

increases the risk of subsequent re-incarceration.”³

At a time when an estimated 100 million (or nearly one in three) Americans have some type of criminal record,⁴ HUD remains committed to the goal of providing second chances to formerly incarcerated individuals where appropriate and to ensuring that individuals are not denied access to HUD-subsidized housing on the basis of inaccurate, incomplete, or otherwise unreliable evidence of past criminal conduct. With those aims, and in response to requests from housing providers and prospective tenants for guidance from HUD regarding the proper use of criminal records in housing decisions, HUD is issuing this notice.

2. Purpose

The purpose of this Notice is to inform PHAs and owners of other federally-assisted housing that arrest records may not be the basis for denying admission, terminating assistance or evicting tenants, to remind PHAs and owners that HUD does not require their adoption of “One Strike” policies, and to remind them of their obligation to safeguard the due process rights of applicants and tenants.

The Notice also reminds PHAs and owners of their obligation to ensure that any admissions and occupancy requirements they impose comply with applicable civil rights requirements contained in the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act of 1990, and the other equal opportunity provisions listed in 24 CFR 5.105.

Finally, the Notice provides best practices and peer examples for PHAs and owners to review.

3. HUD Does Not Require PHAs and Owners to Adopt “One Strike” Policies

HUD does not require that PHAs and owners adopt or enforce so-called “one-strike” rules that deny admission to anyone with a criminal record or that require automatic eviction any time a household member engages in criminal activity in violation of their lease. Instead, 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, or terminate assistance or evict a household if a tenant, household member, or guest engages in certain drug-related or certain other criminal activity on or off the premises (in the case of public housing) or on or near the premises (in the case of Section 8 programs).⁵

³ Guidance on Housing Individuals and Families Experiencing Homelessness Through the Public Housing and Housing Choice Voucher Programs, HUD PIH Notice 2013-15 (HA), 8 (June 10, 2013), available at <http://1.usa.gov/1afx3VY>.

⁴ Bureau of Justice Statistics, U.S. Dep’t of Justice, *Survey of State Criminal History Information Systems*, 2012, 3 (Jan. 2014), available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

⁵ HUD regulations outline the limited instances where denial of admission or termination of assistance is required in the public housing, Housing Choice Voucher and Section 8 multifamily programs. See 24 CFR Part 5, subpart I; Part 960, subpart B; Part 966, subpart A; Part 982, subpart L.

In deciding whether to exercise their discretion to admit or retain an individual or household that has engaged in criminal activity, PHAs and owners may consider all of the circumstances relevant to the particular admission or eviction decision, including but not limited to: the seriousness of the offending action; the effect that eviction of the entire household would have on family members not involved in the criminal activity; and the extent to which the leaseholder has taken all reasonable steps to prevent or mitigate the criminal activity. Additionally, when specifically considering whether to deny admission or terminate assistance or tenancy for illegal drug use by a household member who is no longer engaged in such activity, a PHA or owner may consider whether the household member is participating in or has successfully completed a drug rehabilitation program, or has otherwise been rehabilitated successfully.⁶

4. An Arrest is Not Evidence of Criminal Activity that Can Support an Adverse Admission, Termination, or Eviction Decision

Subject to limitations imposed by the Fair Housing Act and other civil rights requirements,⁷ PHAs and owners generally retain broad discretion in setting admission, termination of assistance, and eviction policies for their programs and properties. Even so, such policies must ensure that adverse housing decisions based upon criminal activity are supported by sufficient evidence that the individual engaged in such activity. Specifically, before a PHA or owner denies admission to, terminates the assistance of, or evicts an individual or household on the basis of criminal activity by a household member or guest, the PHA or owner must determine that the relevant individual engaged in such activity.

HUD has reviewed relevant case law and determined that the fact that an individual was arrested is not evidence that he or she has engaged in criminal activity. Accordingly, 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.

An arrest shows nothing more than that someone probably suspected the person apprehended of an offense. In many cases, arrests do not result in criminal charges, and even where they do, such charges can be and often are dismissed or the person is not convicted of the crime alleged. In fact, in the 75 largest counties in the country, approximately one-third of felony arrests did not result in conviction, with about one-quarter of all cases ending in dismissal.⁸

Moreover, arrest records are often inaccurate or incomplete (e.g., by failing to indicate whether

⁶ See 24 CFR 5.852, 960.203(d), 966.4(l)(5)(vii), 982.310(h) (describing PHA and owner discretion in screening and evictions actions related to criminal activity).

⁷ See 24 CFR 5.852(e) (“admission and eviction decisions must be consistent with fair housing and equal opportunity provisions of [24 CFR 5.105]”); see also 24 CFR 960.202(c)(3), 966.6(l)(vii)(F), 982.310(h)(4), 982.552(c)(2)(v).

⁸ Brian A. Reaves, Bureau of Justice Statistics, U.S. Dep’t of Justice, *Felony Defendants in Large Urban Counties, 2009*, at 22, Table 21 (2013), <http://www.bjs.gov/content/pub/pdf/fdluc09.pdf>.

the individual was prosecuted, convicted, or acquitted), such that reliance on arrests not resulting in conviction as the basis for denying applicants or terminating the assistance or tenancy of a household or household member may result in unwarranted denials of admission to or eviction from federally subsidized housing.⁹

With respect to the Section 8 tenant-based and moderate rehabilitation programs, HUD regulations specifically provide that termination of assistance for criminal activity must be based on a “preponderance of the evidence” that the tenant, or other household member, or guest engaged in such activity. For public housing as well, applicants or tenants may not be denied admission or evicted based on mere suspicion that they, a household member, or guest has engaged in criminal activity. Where PHAs or owners seek eviction, they should be prepared to persuade a court that the eviction is justified based on sufficient evidence of criminal activity in violation of the lease.

For these reasons, a PHA or owner may not base a determination that an applicant or household engaged in criminal activity warranting denial of admission, termination of assistance, or eviction on a record of arrest(s).

Although a record of arrest(s) may not be used to deny a housing opportunity, PHAs and owners may make an adverse housing decision based on the conduct underlying an arrest if the conduct indicates that the individual is not suitable for tenancy and the PHA or owner has sufficient evidence other than the fact of arrest that the individual engaged in the conduct. The conduct, not the arrest, is what is relevant for admissions and tenancy decisions.

An arrest record can trigger an inquiry into whether there is sufficient evidence for a PHA or owner to determine that a person engaged in disqualifying criminal activity, but is not itself evidence on which to base a determination. PHAs and owners can utilize other evidence, such as police reports detailing the circumstances of the arrest, witness statements, and other relevant documentation to assist them in making a determination that disqualifying conduct occurred. Reliable evidence of a conviction for criminal conduct that would disqualify an individual for tenancy may also be the basis for determining that the disqualifying conduct in fact occurred.

5. Protecting the Due Process Rights of Applicants and Tenants

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. Public housing and Section 8 applicants also must be afforded the right to request an informal hearing

⁹ See, e.g., U.S. Dep’t of Justice, *The Attorney General’s Report on Criminal History Background Checks* at 3, 17 (June 2006), http://www.justice.gov/olp/ag_bgchecks_report.pdf (reporting that the FBI’s Interstate Identification Index system, which is the national system designed to provide automated criminal history record information and “the most comprehensive single source of criminal history information in the United States,” is “still missing final disposition information for approximately 50 percent of its records”).

or review *after* an application for housing assistance is denied.

As with admissions decisions, federal law requires that PHAs provide public housing, project-based Section 8, and Section 8 HCV tenants with notice and the opportunity to dispute the accuracy and relevance of a criminal record before they evict or terminate the tenant's assistance on the basis of such record. Moreover, PHAs and owners may only terminate the tenancy or assistance of a public housing or project-based Section 8 tenant through either a judicial action in state or local court, or, in the case of a Section 8 HCV participant, through an administrative grievance hearing before an impartial hearing officer appointed by the PHA. In either case, the tenant must be afforded the basic elements of due process, including the right to be represented by counsel, to question witnesses, and to refute any evidence presented by the PHA or owner.

6. Civil Rights Requirements and Consistent Application of Procedures and Standards

PHAs and owners must ensure that any screening, eviction, or termination of assistance policies and procedures comply with all applicable civil rights requirements contained in the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act of 1990, and the other equal opportunity provisions listed in 24 CFR 5.105. To that end, a PHA or owner should institute protocols that assure that its procedures and standards are consistently applied and that decisions are made based on accurate information. Inconsistent application of standards or decisions based on partial or inaccurate information may result in liability under federal civil rights laws. See, e.g., *Allen v. Muriello*, 217 F. 3d 517 (7th Cir. 2000) (allegation that African American applicant for federal housing assistance was given less opportunity to contest erroneous record of criminal activity than two similarly situated white applicants established a prima facie case of discrimination under the Fair Housing Act).

7. Best Practices and Peer Examples

PHAs and owners are encouraged to adopt admissions and continuing occupancy policies based on the best practices highlighted below to guard against unwarranted denial of assistance, termination from program participation, or eviction from federally assisted housing. These best practices incorporate clear standards for using information about criminal history in an admission or continuing participation decision. PHAs and owners are also encouraged to read the Shriver Report entitled "When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing."

Examples of PHA Best Practices on the Use of Criminal Records

A. Many PHAs have adopted written admission policies that limit their criminal record screening to assessments of conviction records.

Examples of PHA Best Practices on Screening for Criminal Activity

A. Some PHAs allow public housing and Housing Choice Voucher applicants to address and present mitigating circumstances regarding criminal backgrounds prior to admission decisions. In some cases, doing so has produced cost savings due to fewer decision appeals.

B. Some PHAs have adopted lookback periods that limit what criminal conduct is considered during the screening process based on when the conduct occurred and/or the type of conduct. For example, when screening HCV applicants, one PHA has adopted a twelve-month lookback period for drug-related criminal activity and a twenty-four month lookback period for violent and other criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

C. Some PHAs have adopted admission policies that enumerate the specific factors that will be considered when the PHA evaluates an individual's criminal record, including:

- a. Whether the applicant's offense bears a relationship to the safety and security of other residents;
- b. The level of violence, if any, of the offense for which the applicant was convicted;
- c. Length of time since the conviction;
- d. The number of convictions that appear on the applicant's criminal history;
- e. If the applicant is now in recovery for an addiction, whether the applicant was under the influence of alcohol or illegal drugs at the time of the offense; and
- f. Any rehabilitation efforts that the applicant has undertaken since the time of conviction.

D. Some PHAs have implemented pilot programs that allow formerly incarcerated persons who have been released from prison within the past two or three years to be added to an existing voucher of a family member if all involved agree to participate and the formerly incarcerated individual agrees to six months to one year of supportive services with nonprofit partners.

E. One PHA has hired an offender reentry housing specialist who collaborates with a formerly incarcerated individual's parole officer, landlord, and treatment provider to ensure successful reentry into the community.

Example of PHA Best Practices on Evicting and Terminating Assistance for Criminal Activity

A. Some PHAs have adopted policies that list the circumstances that will be considered prior to a termination of the lease on the basis of criminal activity, including:

- a. The seriousness of the offending action, especially with respect to how it would affect other residents;
- b. The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or a victim of domestic violence, dating violence, sexual assault, or stalking;
- c. The effects that the eviction will have on other family members who were not involved in the action or failure to act;

- d. The effect on the community of the termination, or of the PHA's failure to terminate the tenancy;
- e. The effect of the PHA's decision on the integrity of the public housing program;
- f. The demand for housing by eligible families who will adhere to lease responsibilities;
- g. The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action; and
- h. The length of time since the violation occurred, the family's recent history, and the likelihood of favorable conduct in the future.

8. Paperwork Reduction Act

The information collection requirements contained in this Notice were approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C 3501-3520). Compliance and Enforcement are covered by OMB controls numbers 2502-0205, 2577-0232, 2577-0220, 2577-0230, and 2577 - 0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

9. Contact Information

If you have questions regarding this Notice, please contact your local HUD Field Office.

/s/

Lourdes Castro Ramirez
Principal Deputy Assistant Secretary for
Public and Indian Housing

/s/

Edward Golding
Principal Deputy Assistant Secretary for
Housing

5/3/13

U.S. Department of Housing and Urban Development
Admissions/Eviction Policies for Public Housing/Voucher Lease Holders

Admissions to Public Housing and Housing Choice Voucher Programs

What are the federal policies governing admission of individuals with a criminal record to Public Housing and Housing Choice Voucher programs?

The U.S. Department of Housing and Urban Development (HUD) explicitly requires two bans based on criminal activity. HUD requires that all Public Housing Authorities (PHAs) establish lifetime bans on the admission to the Public Housing and Housing Choice Voucher (Tenant-Based Section 8) programs for:

- Individuals found to have manufactured or produced methamphetamine on the premises of federally assisted housing (24 CFR 960.204, 24 CFR 982.553); and
- Sex offenders subject to a lifetime registration requirement under a State sex offender registration program (24 CFR 960.204, 24 CFR 982.553)

PHAs must also prohibit admission if (24 CFR 960.204, 24 CFR 982.553):

- The PHA determines that any household member is currently engaged in illegal drug use;
- The PHA has reasonable cause to believe that a household member's illegal drug use, alcohol use, or pattern of drug or alcohol abuse may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents ; or
- A household member of the applicant was evicted from federally assisted housing for drug-related criminal activity in the past three years. In this case, however, PHAs have the discretion to consider the circumstances and may admit households if:
 - the PHA determines that the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program, including those supervised by drug courts; or
 - that the circumstances that led to the eviction no longer exist (for example, the household member who engaged in criminal activity is now in prison).

When do Public Housing Authorities (PHAs) have discretion to set local admission policies?

PHAs have a great deal of discretion to set admission policies for the public housing and Housing Choice Voucher programs. When screening family behavior and suitability for admission, PHAs may consider all relevant information, including negative factors (such as past drug criminal activity or violent criminal activity) and positive factors (such as evidence of rehabilitation or a family's willingness to participate in social services).

Where can I find my local PHA's admissions policy?

A specific PHA's policy can be found in their Administrative Plan (Housing Choice Voucher program) and the Admission and Continued Occupancy Plan, or ACOP (Public Housing Program). You can request a copy of the Administrative Plan and ACOP directly from your PHA. Please note that a PHA may have different admissions policies for public housing and Housing Choice Voucher programs.

Related Public Housing Program Rules

What happens after I am admitted to Public Housing?

After you are admitted to public housing, it is your responsibility to make sure that you, your household members, your guests, and any other person under your control follow public housing rules.

Among other things, public housing tenants must ensure that no tenant, household member, or guest engages in (24 CFR 966.4(l)(5)):

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, or;
- Any drug-related criminal activity on or off the premises;

For example, this means that a tenant and their household members may be evicted if a guest is staying at their apartment for the week and during that week is arrested for using illegal drugs on the other side of town. In this case, the tenant and their household members could be evicted for their guest's drug use even if they did not know the guest was using drugs. PHAs can choose to consider circumstances such as if the tenant knew about the drug use, but they can also choose not to consider these circumstances. Tenants should be cautious about who they allow as guests or household members and make guests and household members aware of these rules.

In addition to being responsible for the behavior of household members, other tenants, and current guests, public housing tenants are also responsible for ensuring that no other person under their control engages in:

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, or;
- Any drug-related criminal activity on the premises;

For example, if an acquaintance stops by the apartment for an hour and engages in criminal activity during that time, the public housing tenant could potentially be evicted for that friend's behavior.

What happens if I am being evicted from Public Housing for criminal activity?

The PHA must send by mail or hand deliver a written notice of lease termination (eviction) to you. This notice must tell you why you are being evicted, that you can examine any documents directly relevant to the lease termination, and whether you have the right to request a grievance hearing. (24 CFR 966.4(l)(3))

In this case, a grievance hearing is a hearing in which the tenant and the PHA present arguments to a third party, who decides whether to evict or not evict the tenant. Tenants must request the grievance hearing in writing within the time stated in the PHA's grievance procedures, which may be as short as three days in the case of expedited grievance procedures. (24 CFR 966.55) You can ask the PHA for a copy of the grievance procedures and how to request a grievance hearing. During the grievance hearing, the tenant has certain rights including the right to be represented by counsel, such as a legal aide advocate. (24 CFR 966.56)

In some cases of eviction for criminal activity, tenants will not be eligible for a grievance hearing; instead their case will be determined by a court hearing. During this hearing, the tenant has the right to be represented by counsel, including legal aide or a public defender, and will have an opportunity to present a defense. (24 CFR 966.51(a)(2), 24 CFR 966.53(c)).

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CFR › Title 24 › Subtitle B › Chapter IX › Part 960 › Subpart B › Section 960.204

24 CFR 960.204 - Denial of admission for criminal activity or drug abuse by household members.

§ 960.204 Denial of admission for criminal activity or drug abuse by household members.

(a) Required denial of admission -

(1) Persons evicted for drug-related criminal activity. The PHA standards must prohibit admission of an applicant to the PHA's public housing program for three years from the date of the eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

- (i) The evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or
- (ii) The circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(2) Persons engaging in illegal use of a drug. The PHA must establish standards that prohibit admission of a household to the PHA's public housing program if:

- (i) The PHA determines that any household member is currently engaging in illegal use of a drug (For purposes of this section, a household member is "currently engaged in" the criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current); or
- (ii) The PHA determines that it has reasonable cause to believe that a household member's illegal use or pattern of illegal use of a drug may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(3) *Persons convicted of methamphetamine production.* The PHA must establish standards that permanently prohibit admission to the PHA's public housing program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(4) *Persons subject to sex offender registration requirement.* The PHA must establish standards that prohibit admission to the PHA's public housing program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In the screening of applicants, the PHA must perform necessary criminal history background checks in the State where the housing is located and in other States where household members are known to have resided. (See part 5, subpart J of this title for provisions concerning access to sex offender registration records.)

(b) *Persons that abuse or show a pattern of abuse of alcohol.* The PHA must establish standards that prohibit admission to the PHA's public housing program if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(c) *Use of criminal records.* Before a PHA denies admission to the PHAs public housing program on the basis of a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record. (See part 5, subpart J of this title for provisions concerning access to criminal records.)

(d) *Cost of obtaining criminal record.* The PHA may not pass along to the applicant the costs of a criminal records check.

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CFR › Title 24 › Subtitle B › Chapter IX › Part 960 › Subpart B › Section 960.205

24 CFR 960.205 - Drug use by applicants: Obtaining information from drug treatment facility.

§ 960.205 Drug use by applicants: Obtaining information from drug treatment facility.

(a) Purpose. This section addresses a PHA's authority to request and obtain information from drug abuse treatment facilities concerning applicants. This section does not apply to information requested or obtained from drug abuse treatment facilities other than under the authority of section 6(t).

(b) Additional terms used in this section are as follows:

(1) Currently engaging in illegal use of a drug. Illegal use of a drug occurred recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member.

(2) Drug abuse treatment facility. An entity:

- (i) That holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use; and
- (ii) That is either an identified unit within a general care facility; or an entity other than a general medical care facility.

(c) Authorization by household member for PHA to receive information from a drug abuse treatment facility.

(1) The PHA may require each applicant to submit for all household members who are at least 18 years of age, and for each family head or spouse regardless of age, one or more consent forms signed by such household member that:

- (i) Requests any drug abuse treatment facility to inform the PHA only whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use;
- (ii) Complies with the form of written consent required by 42 CFR 2.31; and

(iii) Authorizes the PHA to receive such information from the drug abuse treatment facility, and to utilize such information in determining whether to prohibit admission of the household member to the PHA's public housing program in accordance with § 960.203. (See the Public Health Service Act, 42 U.S.C. 290dd-2, and implementing regulations at 42 CFR part 2, with respect to responsibilities of the drug abuse treatment facility.)

(2) The consent form submitted for a proposed household member must expire automatically after the PHA has made a final decision to either approve or deny the admission of such person.

(d) PHA request for information from drug use treatment facility.

(1) The PHA may request that a drug abuse treatment facility disclose whether the drug abuse treatment facility has reasonable cause to believe that the proposed household member is currently engaging in the illegal use of a drug (as defined in § 5.100 of this title).

(2) The PHA's request to the drug abuse treatment facility must include a copy of the consent form signed by the proposed household member.

(3) A drug abuse treatment facility is not liable for damages based on any information required to be disclosed under this section if such disclosure is consistent with section 543 of the Public Health Service Act (42 U.S.C. 290dd-2).

(4) The PHA is not obligated to request information from a drug treatment facility under this section, and is not liable for damages for failing to request or receive such information.

(5) A drug abuse treatment facility may charge the PHA a reasonable fee for information provided under this section. The PHA may not pass along to the applicant or tenant the costs of obtaining this information.

(e) Prohibition of discriminatory treatment of applicants.

(1) A PHA may request information from a drug abuse treatment facility under paragraph (d) of this section only if the PHA has adopted and has consistently implemented either of the following policies, obtaining a signed consent form from the proposed household members:

(i) **Policy A - Request for all families.** Under Policy A, the PHA must submit a request for information to a drug abuse treatment facility in accordance with paragraph (d) of this section before admitting any family to

the PHA's public housing program. For each such family, the request must be submitted for each proposed household member described in paragraph (c)(1) of this section.

(ii) Policy B - Request for certain household members. Under Policy B, the PHA must submit a request to a drug abuse treatment facility only with respect to each proposed household member:

(A) Whose criminal record indicates prior arrest or conviction for any criminal activity that may be a basis for denial of admission under § 960.205; or

(B) Whose prior tenancy records indicate that the proposed household member:

(1) Engaged in the destruction of property;

(2) Engaged in violent activity against another person; or

(3) Interfered with the right of peaceful enjoyment of the premises of other residents.

(4) The policy adopted by the PHA must be included in the PHA administrative plan and the PHA plan.

(f) Records management and confidentiality. Each PHA that receives information from a drug abuse treatment facility under this section must establish and implement a system of records management that ensures that any information which the PHA receives from the drug abuse treatment facility about a person:

(1) Is maintained confidentially in accordance with section 543 of the Public Health Service Act (12 U.S.C. 290dd-2);

(2) Is not misused or improperly disseminated; and

(3) Is destroyed, as applicable:

(i) Not later than 5 business days after the PHA makes a final decision to admit the person as a household member under the PHA's public housing program; or

(ii) If the PHA denies the admission of such person as a household member, in a timely manner after the date on which the statute of limitations for the commencement of a civil action based upon that denial of admissions has expired without the filing of a civil action or until final disposition of any such litigation.



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.

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*.

Work Session

HOUSING COMMISSION MEETING AGENDA REQUEST

DATE:FEBRUARY 2, 2018 DEPT:HOUSING MEETING DATE:FEBRUARY 14, 2018

DISCUSSION ITEM/TOPIC:

Resolution No. 18-12 to amend the City of Las Vegas Housing Authority's Admissions and Continued Occupancy Policy (ACOP) to include Crime Free Requirements for Residents Living in Public Housing.

BACKGROUND/RATIONALE:

The Las Vegas Housing Authority (LVHA) is required to adhere to all Federal Regulations and Notices Published regarding Public Housing. Compliance Monitoring Review, Finding #12 states: "The LVHA policy to deny applicants for drug-related criminal activity is out of date. The Policy references the One Strike rule, which was replaced in 1998". As part of a corrective action, the City of Las Vegas Housing Authority would like to amend the LVHA's ACOP Chapter 13.

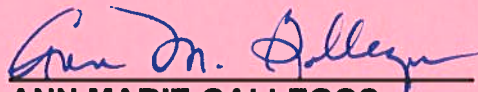
THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.


SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:


TONITA GURULÉ-GIRÓN
MAYOR

TANA VEGA
INTERIM FINANCE DIRECTOR
(PROCUREMENT)


ANN MARIE GALLEGOS
INTERIM CITY MANAGER

CITY ATTORNEY
(ALL CONTRACTS, ORDINANCES
AND RESOLUTIONS MUST BE
REVIEWED)

**CITY OF LAS VEGAS HOUSING AUTHORITY
RESOLUTION NO. 18-12**

**A RESOLUTION AMENDING THE CITY OF LAS VEGAS HOUSING AUTHORITY'S
ADMISSIONS AND CONTINUED OCCUPANCY POLICY (ACOP), CHAPTER 13
SECTION 13-II.F AND 13-II.G.**

WHEREAS, the Las Vegas Housing Authority (LVHA) is required to adhere to all Federal Regulations and Notices Published regarding Public Housing; and

WHEREAS, 24 CFR 960.204 provides guidance as to policies and procedures Housing Authorities must adhere to and;

WHEREAS, Notice 2015-19 also gives guidance as to how to Housing Authorities should distinguish between application denials and lease termination in regards to criminal backgrounds; and

THEREFORE, Be it Resolved, by the Board of Commissioners of the Housing Authority of the City of Las Vegas accepts and approves this Resolution and the attached revised ACOP, Methamphetamine Manufacturing in Public Housing 13-II.F and Sex Offenders Registration 13.II.G.

Passed, Approved and Adopted this _____ day of February 2018.

MAYOR TONITA GURULÉ-GIRÓN

ATTEST:

CASANDRA FRESQUEZ, CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY ONLY

CITY ATTORNEY

13-II.E. FAILURE TO ACCEPT THE PHA'S OFFER OF A LEASE REVISION [24 CFR 966.4(l)(2)(ii)(E)]

The PHA must terminate the lease if the family fails to accept the PHA's offer of a lease revision to an existing lease, provided the PHA has done the following:

- The revision is on a form adopted by the PHA in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.
- The PHA has made written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect.
- The PHA has specified in the offer a reasonable time limit within that period for acceptance by the family.

See Chapter 8 for information pertaining to PHA policies for offering lease revisions.

13-II.F. METHAMPHETAMINE MANUFACTURING IN PUBLIC HOUSING CONVICTION ~~[24 CFR 966.4(l)(5)(i)(A)]~~ [24 CFR 960.240, 24CFR 982.553]

The PHA must immediately terminate the lease if the PHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing. The PHA will establish a lifetime ban on the admissions to Public Housing.

See Part 13-III.B. below for the HUD definition of *premises*.

13-II.G. SEX OFFENDERS REGISTRATION [24 CFR 960.240, 24 CFR 982.553]

The PHA must immediately terminate the lease if the PHA determines that any household member is a sex offender subject to a lifetime registration under a State sex offender registration program. The PHA will establish a lifetime ban on the admissions to Public Housing.

13-II.H. NONCOMPLIANCE WITH COMMUNITY SERVICE REQUIREMENTS [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]

The PHA is prohibited from renewing the lease at the end of the 12 month lease term when the family fails to comply with the community service requirements as described in Chapter 11.



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

Public and Indian Housing

Special Attention of:

Public Housing Agency Directors
Public Housing Hub Offices Directors
Public Housing Field Office Directors
Resident Management Corporations
All Multifamily Hub Directors
All Multifamily Program Center Directors

Notice PIH 2015-19

Issued: November 2, 2015

Expires: This notice remains in effect until amended, superseded, or rescinded.

Subject: Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions

1. Background

For the past five years HUD has been an active member of the Federal Interagency Reentry Council. This Council, made up of more than 23 Federal Agencies, meets on a regular basis to act on issues that affect the lives of those released from incarceration. An important aspect of the Reentry Council's work has been to have each Federal Agency identify and address "collateral consequences" that individuals and their families may face because they or a family member has been incarcerated or has had any involvement with the criminal justice system.¹

In 2011, former HUD Secretary Shaun Donovan issued a letter to public housing authorities (PHAs) across the country emphasizing the importance of providing "second chances" for formerly incarcerated individuals.² Secretary Donovan urged PHAs to adopt admission policies that achieve a sensible and effective balance between allowing individuals with a criminal record to access HUD-subsidized housing and ensuring the safety of all residents of such housing. A year later, Secretary Donovan encouraged owners of HUD-assisted multifamily properties ("owners") to do the same and reiterated HUD's goal of "helping ex-offenders gain access to one of the most fundamental building blocks of a stable life – a place to live." HUD has also previously stressed the troubling relationship between housing barriers for individuals with criminal records and homelessness, stating that "the difficulties in reintegrating into the community increase the risk of homelessness for released prisoners, and homelessness in turn

¹ For more information on the initiatives of the Council members, see <https://csgjusticecenter.org/nrrc/projects/firc/snapshots/>.

² Letter from Shaun Donovan, Secretary, United States Department of Housing and Urban Development, to Public Housing Authority Executive Directors (June 17, 2011), available at http://usich.gov/resources/uploads/asset_library/Rentry_letter_from_Donovan_to_PHAs_6-17-11.pdf.

increases the risk of subsequent re-incarceration.”³

At a time when an estimated 100 million (or nearly one in three) Americans have some type of criminal record,⁴ HUD remains committed to the goal of providing second chances to formerly incarcerated individuals where appropriate and to ensuring that individuals are not denied access to HUD-subsidized housing on the basis of inaccurate, incomplete, or otherwise unreliable evidence of past criminal conduct. With those aims, and in response to requests from housing providers and prospective tenants for guidance from HUD regarding the proper use of criminal records in housing decisions, HUD is issuing this notice.

2. Purpose

The purpose of this Notice is to inform PHAs and owners of other federally-assisted housing that arrest records may not be the basis for denying admission, terminating assistance or evicting tenants, to remind PHAs and owners that HUD does not require their adoption of “One Strike” policies, and to remind them of their obligation to safeguard the due process rights of applicants and tenants.

The Notice also reminds PHAs and owners of their obligation to ensure that any admissions and occupancy requirements they impose comply with applicable civil rights requirements contained in the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act of 1990, and the other equal opportunity provisions listed in 24 CFR 5.105.

Finally, the Notice provides best practices and peer examples for PHAs and owners to review.

3. HUD Does Not Require PHAs and Owners to Adopt “One Strike” Policies

HUD does not require that PHAs and owners adopt or enforce so-called “one-strike” rules that deny admission to anyone with a criminal record or that require automatic eviction any time a household member engages in criminal activity in violation of their lease. Instead, 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, or terminate assistance or evict a household if a tenant, household member, or guest engages in certain drug-related or certain other criminal activity on or off the premises (in the case of public housing) or on or near the premises (in the case of Section 8 programs).⁵

³ Guidance on Housing Individuals and Families Experiencing Homelessness Through the Public Housing and Housing Choice Voucher Programs, HUD PIH Notice 2013-15 (HA), 8 (June 10, 2013), available at <http://1.usa.gov/1afx3VY>.

⁴ Bureau of Justice Statistics, U.S. Dep’t of Justice, *Survey of State Criminal History Information Systems*, 2012, 3 (Jan. 2014), available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

⁵ HUD regulations outline the limited instances where denial of admission or termination of assistance is required in the public housing, Housing Choice Voucher and Section 8 multifamily programs. See 24 CFR Part 5, subpart I; Part 960, subpart B; Part 966, subpart A; Part 982, subpart L.

In deciding whether to exercise their discretion to admit or retain an individual or household that has engaged in criminal activity, PHAs and owners may consider all of the circumstances relevant to the particular admission or eviction decision, including but not limited to: the seriousness of the offending action; the effect that eviction of the entire household would have on family members not involved in the criminal activity; and the extent to which the leaseholder has taken all reasonable steps to prevent or mitigate the criminal activity. Additionally, when specifically considering whether to deny admission or terminate assistance or tenancy for illegal drug use by a household member who is no longer engaged in such activity, a PHA or owner may consider whether the household member is participating in or has successfully completed a drug rehabilitation program, or has otherwise been rehabilitated successfully.⁶

4. An Arrest is Not Evidence of Criminal Activity that Can Support an Adverse Admission, Termination, or Eviction Decision

Subject to limitations imposed by the Fair Housing Act and other civil rights requirements,⁷ PHAs and owners generally retain broad discretion in setting admission, termination of assistance, and eviction policies for their programs and properties. Even so, such policies must ensure that adverse housing decisions based upon criminal activity are supported by sufficient evidence that the individual engaged in such activity. Specifically, before a PHA or owner denies admission to, terminates the assistance of, or evicts an individual or household on the basis of criminal activity by a household member or guest, the PHA or owner must determine that the relevant individual engaged in such activity.

HUD has reviewed relevant case law and determined that the fact that an individual was arrested is not evidence that he or she has engaged in criminal activity. Accordingly, 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.

An arrest shows nothing more than that someone probably suspected the person apprehended of an offense. In many cases, arrests do not result in criminal charges, and even where they do, such charges can be and often are dismissed or the person is not convicted of the crime alleged. In fact, in the 75 largest counties in the country, approximately one-third of felony arrests did not result in conviction, with about one-quarter of all cases ending in dismissal.⁸

Moreover, arrest records are often inaccurate or incomplete (e.g., by failing to indicate whether

⁶ See 24 CFR 5.852, 960.203(d), 966.4(l)(5)(vii), 982.310(h) (describing PHA and owner discretion in screening and evictions actions related to criminal activity).

⁷ See 24 CFR 5.852(e) ("admission and eviction decisions must be consistent with fair housing and equal opportunity provisions of [24 CFR 5.105]"); see also 24 CFR 960.202(c)(3), 966.6(l)(vii)(F), 982.310(h)(4), 982.552(c)(2)(v).

⁸ Brian A. Reaves, Bureau of Justice Statistics, U.S. Dep't of Justice, *Felony Defendants in Large Urban Counties, 2009*, at 22, Table 21 (2013), <http://www.bjs.gov/content/pub/pdf/fdluc09.pdf>.

the individual was prosecuted, convicted, or acquitted), such that reliance on arrests not resulting in conviction as the basis for denying applicants or terminating the assistance or tenancy of a household or household member may result in unwarranted denials of admission to or eviction from federally subsidized housing.⁹

With respect to the Section 8 tenant-based and moderate rehabilitation programs, HUD regulations specifically provide that termination of assistance for criminal activity must be based on a “preponderance of the evidence” that the tenant, or other household member, or guest engaged in such activity. For public housing as well, applicants or tenants may not be denied admission or evicted based on mere suspicion that they, a household member, or guest has engaged in criminal activity. Where PHAs or owners seek eviction, they should be prepared to persuade a court that the eviction is justified based on sufficient evidence of criminal activity in violation of the lease.

For these reasons, a PHA or owner may not base a determination that an applicant or household engaged in criminal activity warranting denial of admission, termination of assistance, or eviction on a record of arrest(s).

Although a record of arrest(s) may not be used to deny a housing opportunity, PHAs and owners may make an adverse housing decision based on the conduct underlying an arrest if the conduct indicates that the individual is not suitable for tenancy and the PHA or owner has sufficient evidence other than the fact of arrest that the individual engaged in the conduct. The conduct, not the arrest, is what is relevant for admissions and tenancy decisions.

An arrest record can trigger an inquiry into whether there is sufficient evidence for a PHA or owner to determine that a person engaged in disqualifying criminal activity, but is not itself evidence on which to base a determination. PHAs and owners can utilize other evidence, such as police reports detailing the circumstances of the arrest, witness statements, and other relevant documentation to assist them in making a determination that disqualifying conduct occurred. Reliable evidence of a conviction for criminal conduct that would disqualify an individual for tenancy may also be the basis for determining that the disqualifying conduct in fact occurred.

5. Protecting the Due Process Rights of Applicants and Tenants

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. Public housing and Section 8 applicants also must be afforded the right to request an informal hearing

⁹ See, e.g., U.S. Dep’t of Justice, *The Attorney General’s Report on Criminal History Background Checks* at 3, 17 (June 2006), http://www.justice.gov/olp/ag_bgchecks_report.pdf (reporting that the FBI’s Interstate Identification Index system, which is the national system designed to provide automated criminal history record information and “the most comprehensive single source of criminal history information in the United States,” is “still missing final disposition information for approximately 50 percent of its records”).

or review *after* an application for housing assistance is denied.

As with admissions decisions, federal law requires that PHAs provide public housing, project-based Section 8, and Section 8 HCV tenants with notice and the opportunity to dispute the accuracy and relevance of a criminal record before they evict or terminate the tenant's assistance on the basis of such record. Moreover, PHAs and owners may only terminate the tenancy or assistance of a public housing or project-based Section 8 tenant through either a judicial action in state or local court, or, in the case of a Section 8 HCV participant, through an administrative grievance hearing before an impartial hearing officer appointed by the PHA. In either case, the tenant must be afforded the basic elements of due process, including the right to be represented by counsel, to question witnesses, and to refute any evidence presented by the PHA or owner.

6. Civil Rights Requirements and Consistent Application of Procedures and Standards

PHAs and owners must ensure that any screening, eviction, or termination of assistance policies and procedures comply with all applicable civil rights requirements contained in the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act of 1990, and the other equal opportunity provisions listed in 24 CFR 5.105. To that end, a PHA or owner should institute protocols that assure that its procedures and standards are consistently applied and that decisions are made based on accurate information. Inconsistent application of standards or decisions based on partial or inaccurate information may result in liability under federal civil rights laws. See, e.g., *Allen v. Muriello*, 217 F. 3rd 517 (7th Cir. 2000) (allegation that African American applicant for federal housing assistance was given less opportunity to contest erroneous record of criminal activity than two similarly situated white applicants established a prima facie case of discrimination under the Fair Housing Act).

7. Best Practices and Peer Examples

PHAs and owners are encouraged to adopt admissions and continuing occupancy policies based on the best practices highlighted below to guard against unwarranted denial of assistance, termination from program participation, or eviction from federally assisted housing. These best practices incorporate clear standards for using information about criminal history in an admission or continuing participation decision. PHAs and owners are also encouraged to read the Shriver Report entitled "When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing."

Examples of PHA Best Practices on the Use of Criminal Records

A. Many PHAs have adopted written admission policies that limit their criminal record screening to assessments of conviction records.

Examples of PHA Best Practices on Screening for Criminal Activity

A. Some PHAs allow public housing and Housing Choice Voucher applicants to address and present mitigating circumstances regarding criminal backgrounds prior to admission decisions. In some cases, doing so has produced cost savings due to fewer decision appeals.

B. Some PHAs have adopted lookback periods that limit what criminal conduct is considered during the screening process based on when the conduct occurred and/or the type of conduct. For example, when screening HCV applicants, one PHA has adopted a twelve-month lookback period for drug-related criminal activity and a twenty-four month lookback period for violent and other criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

C. Some PHAs have adopted admission policies that enumerate the specific factors that will be considered when the PHA evaluates an individual's criminal record, including:

- a. Whether the applicant's offense bears a relationship to the safety and security of other residents;
- b. The level of violence, if any, of the offense for which the applicant was convicted;
- c. Length of time since the conviction;
- d. The number of convictions that appear on the applicant's criminal history;
- e. If the applicant is now in recovery for an addiction, whether the applicant was under the influence of alcohol or illegal drugs at the time of the offense; and
- f. Any rehabilitation efforts that the applicant has undertaken since the time of conviction.

D. Some PHAs have implemented pilot programs that allow formerly incarcerated persons who have been released from prison within the past two or three years to be added to an existing voucher of a family member if all involved agree to participate and the formerly incarcerated individual agrees to six months to one year of supportive services with nonprofit partners.

E. One PHA has hired an offender reentry housing specialist who collaborates with a formerly incarcerated individual's parole officer, landlord, and treatment provider to ensure successful reentry into the community.

Example of PHA Best Practices on Evicting and Terminating Assistance for Criminal Activity

A. Some PHAs have adopted policies that list the circumstances that will be considered prior to a termination of the lease on the basis of criminal activity, including:

- a. The seriousness of the offending action, especially with respect to how it would affect other residents;
- b. The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or a victim of domestic violence, dating violence, sexual assault, or stalking;
- c. The effects that the eviction will have on other family members who were not involved in the action or failure to act;

- d. The effect on the community of the termination, or of the PHA's failure to terminate the tenancy;
- e. The effect of the PHA's decision on the integrity of the public housing program;
- f. The demand for housing by eligible families who will adhere to lease responsibilities;
- g. The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action; and
- h. The length of time since the violation occurred, the family's recent history, and the likelihood of favorable conduct in the future.

8. Paperwork Reduction Act

The information collection requirements contained in this Notice were approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C 3501-3520). Compliance and Enforcement are covered by OMB controls numbers 2502-0205, 2577-0232, 2577-0220, 2577-0230, and 2577 - 0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

9. Contact Information

If you have questions regarding this Notice, please contact your local HUD Field Office.

/s/

Lourdes Castro Ramirez
Principal Deputy Assistant Secretary for
Public and Indian Housing

/s/

Edward Golding
Principal Deputy Assistant Secretary for
Housing

5/3/13

U.S. Department of Housing and Urban Development
Admissions/Eviction Policies for Public Housing/Voucher Lease Holders

Admissions to Public Housing and Housing Choice Voucher Programs

What are the federal policies governing admission of individuals with a criminal record to Public Housing and Housing Choice Voucher programs?

The U.S. Department of Housing and Urban Development (HUD) explicitly requires two bans based on criminal activity. HUD requires that all Public Housing Authorities (PHAs) establish lifetime bans on the admission to the Public Housing and Housing Choice Voucher (Tenant-Based Section 8) programs for:

- Individuals found to have manufactured or produced methamphetamine on the premises of federally assisted housing (24 CFR 960.204, 24 CFR 982.553); and
- Sex offenders subject to a lifetime registration requirement under a State sex offender registration program (24 CFR 960.204, 24 CFR 982.553)

PHAs must also prohibit admission if (24 CFR 960.204, 24 CFR 982.553):

- The PHA determines that any household member is currently engaged in illegal drug use;
- The PHA has reasonable cause to believe that a household member's illegal drug use, alcohol use, or pattern of drug or alcohol abuse may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents ; or
- A household member of the applicant was evicted from federally assisted housing for drug-related criminal activity in the past three years. In this case, however, PHAs have the discretion to consider the circumstances and may admit households if:
 - the PHA determines that the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program, including those supervised by drug courts; or
 - that the circumstances that led to the eviction no longer exist (for example, the household member who engaged in criminal activity is now in prison).

When do Public Housing Authorities (PHAs) have discretion to set local admission policies?

PHAs have a great deal of discretion to set admission policies for the public housing and Housing Choice Voucher programs. When screening family behavior and suitability for admission, PHAs may consider all relevant information, including negative factors (such as past drug criminal activity or violent criminal activity) and positive factors (such as evidence of rehabilitation or a family's willingness to participate in social services).

Where can I find my local PHA's admissions policy?

A specific PHA's policy can be found in their Administrative Plan (Housing Choice Voucher program) and the Admission and Continued Occupancy Plan, or ACOP (Public Housing Program). You can request a copy of the Administrative Plan and ACOP directly from your PHA. Please note that a PHA may have different admissions policies for public housing and Housing Choice Voucher programs.

Related Public Housing Program Rules

What happens after I am admitted to Public Housing?

After you are admitted to public housing, it is your responsibility to make sure that you, your household members, your guests, and any other person under your control follow public housing rules.

Among other things, public housing tenants must ensure that no tenant, household member, or guest engages in (24 CFR 966.4(l)(5)):

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, or;
- Any drug-related criminal activity on or off the premises;

For example, this means that a tenant and their household members may be evicted if a guest is staying at their apartment for the week and during that week is arrested for using illegal drugs on the other side of town. In this case, the tenant and their household members could be evicted for their guest's drug use even if they did not know the guest was using drugs. PHAs can choose to consider circumstances such as if the tenant knew about the drug use, but they can also choose not to consider these circumstances. Tenants should be cautious about who they allow as guests or household members and make guests and household members aware of these rules.

In addition to being responsible for the behavior of household members, other tenants, and current guests, public housing tenants are also responsible for ensuring that no other person under their control engages in:

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, or;
- Any drug-related criminal activity on the premises;

For example, if an acquaintance stops by the apartment for an hour and engages in criminal activity during that time, the public housing tenant could potentially be evicted for that friend's behavior.

What happens if I am being evicted from Public Housing for criminal activity?

The PHA must send by mail or hand deliver a written notice of lease termination (eviction) to you. This notice must tell you why you are being evicted, that you can examine any documents directly relevant to the lease termination, and whether you have the right to request a grievance hearing. (24 CFR 966.4(l)(3))

In this case, a grievance hearing is a hearing in which the tenant and the PHA present arguments to a third party, who decides whether to evict or not evict the tenant. Tenants must request the grievance hearing in writing within the time stated in the PHA's grievance procedures, which may be as short as three days in the case of expedited grievance procedures. (24 CFR 966.55) You can ask the PHA for a copy of the grievance procedures and how to request a grievance hearing. During the grievance hearing, the tenant has certain rights including the right to be represented by counsel, such as a legal aide advocate. (24 CFR 966.56)

In some cases of eviction for criminal activity, tenants will not be eligible for a grievance hearing; instead their case will be determined by a court hearing. During this hearing, the tenant has the right to be represented by counsel, including legal aide or a public defender, and will have an opportunity to present a defense. (24 CFR 966.51(a)(2), 24 CFR 966.53(c)).

CFR › Title 24 › Subtitle B › Chapter IX › Part 960 › Subpart B › Section 960.204

24 CFR 960.204 - Denial of admission for criminal activity or drug abuse by household members.

§ 960.204 Denial of admission for criminal activity or drug abuse by household members.

(a) *Required denial of admission* -

(1) *Persons evicted for drug-related criminal activity.* The PHA standards must prohibit admission of an applicant to the PHA's public housing program for three years from the date of the eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

(i) The evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(ii) The circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(2) *Persons engaging in illegal use of a drug.* The PHA must establish standards that prohibit admission of a household to the PHA's public housing program if:

(i) The PHA determines that any household member is currently engaging in illegal use of a drug (For purposes of this section, a household member is "currently engaged in" the criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current); or

(ii) The PHA determines that it has reasonable cause to believe that a household member's illegal use or pattern of illegal use of a drug may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(3) *Persons convicted of methamphetamine production.* The PHA must establish standards that permanently prohibit admission to the PHA's public housing program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(4) *Persons subject to sex offender registration requirement.* The PHA must establish standards that prohibit admission to the PHA's public housing program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In the screening of applicants, the PHA must perform necessary criminal history background checks in the State where the housing is located and in other States where household members are known to have resided. (See part 5, subpart J of this title for provisions concerning access to sex offender registration records.)

(b) *Persons that abuse or show a pattern of abuse of alcohol.* The PHA must establish standards that prohibit admission to the PHA's public housing program if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(c) *Use of criminal records.* Before a PHA denies admission to the PHAs public housing program on the basis of a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record. (See part 5, subpart J of this title for provisions concerning access to criminal records.)

(d) *Cost of obtaining criminal record.* The PHA may not pass along to the applicant the costs of a criminal records check.

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CFR › Title 24 › Subtitle B › Chapter IX › Part 960 › Subpart B › Section 960.205

24 CFR 960.205 - Drug use by applicants: Obtaining information from drug treatment facility.

§ 960.205 Drug use by applicants: Obtaining information from drug treatment facility.

(a) Purpose. This section addresses a PHA's authority to request and obtain information from drug abuse treatment facilities concerning applicants. This section does not apply to information requested or obtained from drug abuse treatment facilities other than under the authority of section 6(t).

(b) Additional terms used in this section are as follows:

(1) Currently engaging in illegal use of a drug. Illegal use of a drug occurred recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member.

(2) Drug abuse treatment facility. An entity:

- (i)** That holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use; and
- (ii)** That is either an identified unit within a general care facility; or an entity other than a general medical care facility.

(c) Authorization by household member for PHA to receive information from a drug abuse treatment facility.

(1) The PHA may require each applicant to submit for all household members who are at least 18 years of age, and for each family head or spouse regardless of age, one or more consent forms signed by such household member that:

- (i)** Requests any drug abuse treatment facility to inform the PHA only whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use;
- (ii)** Complies with the form of written consent required by 42 CFR 2.31; and

(iii) Authorizes the PHA to receive such information from the drug abuse treatment facility, and to utilize such information in determining whether to prohibit admission of the household member to the PHA's public housing program in accordance with § 960.203. (See the Public Health Service Act, 42 U.S.C. 290dd-2, and implementing regulations at 42 CFR part 2, with respect to responsibilities of the drug abuse treatment facility.)

(2) The consent form submitted for a proposed household member must expire automatically after the PHA has made a final decision to either approve or deny the admission of such person.

(d) PHA request for information from drug use treatment facility.

(1) The PHA may request that a drug abuse treatment facility disclose whether the drug abuse treatment facility has reasonable cause to believe that the proposed household member is currently engaging in the illegal use of a drug (as defined in § 5.100 of this title).

(2) The PHA's request to the drug abuse treatment facility must include a copy of the consent form signed by the proposed household member.

(3) A drug abuse treatment facility is not liable for damages based on any information required to be disclosed under this section if such disclosure is consistent with section 543 of the Public Health Service Act (42 U.S.C. 290dd-2).

(4) The PHA is not obligated to request information from a drug treatment facility under this section, and is not liable for damages for failing to request or receive such information.

(5) A drug abuse treatment facility may charge the PHA a reasonable fee for information provided under this section. The PHA may not pass along to the applicant or tenant the costs of obtaining this information.

(e) Prohibition of discriminatory treatment of applicants.

(1) A PHA may request information from a drug abuse treatment facility under paragraph (d) of this section only if the PHA has adopted and has consistently implemented either of the following policies, obtaining a signed consent form from the proposed household members:

(i) **Policy A - Request for all families.** Under Policy A, the PHA must submit a request for information to a drug abuse treatment facility in accordance with paragraph (d) of this section before admitting any family to

the PHA's public housing program. For each such family, the request must be submitted for each proposed household member described in paragraph (c)(1) of this section.

(ii) Policy B - Request for certain household members. Under Policy B, the PHA must submit a request to a drug abuse treatment facility only with respect to each proposed household member:

(A) Whose criminal record indicates prior arrest or conviction for any criminal activity that may be a basis for denial of admission under § 960.205; or

(B) Whose prior tenancy records indicate that the proposed household member:

- (1)** Engaged in the destruction of property;
- (2)** Engaged in violent activity against another person; or
- (3)** Interfered with the right of peaceful enjoyment of the premises of other residents.
- (4)** The policy adopted by the PHA must be included in the PHA administrative plan and the PHA plan.

(f) Records management and confidentiality. Each PHA that receives information from a drug abuse treatment facility under this section must establish and implement a system of records management that ensures that any information which the PHA receives from the drug abuse treatment facility about a person:

(1) Is maintained confidentially in accordance with section 543 of the Public Health Service Act (12 U.S.C. 290dd-2);

(2) Is not misused or improperly disseminated; and

(3) Is destroyed, as applicable:

(i) Not later than 5 business days after the PHA makes a final decision to admit the person as a household member under the PHA's public housing program; or

(ii) If the PHA denies the admission of such person as a household member, in a timely manner after the date on which the statute of limitations for the commencement of a civil action based upon that denial of admissions has expired without the filing of a civil action or until final disposition of any such litigation.



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.

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*.

Work Session

HOUSING COMMISSION MEETING AGENDA REQUEST

DATE:FEBRUARY 2, 2018 DEPT:HOUSING MEETING DATE:FEBRUARY14, 2018

DISCUSSION ITEM/TOPIC:

Resolution No. 18-10 Adopting the Las Vegas Housing Authority's Income Targeting Requirement Policy and Procedures.

BACKGROUND/RATIONALE:

The City of Las Vegas Housing Authority is required to abide by Federal Regulatory Requirements. 24 CFR 906.202(b) requires that Extremely Low-Income (ELI) families make up at least 40% of the families admitted to Public Housing during the LVHA's fiscal year. As a corrective action for Compliance Monitoring Review, Finding #18, the LVHA has developed policy and procedures for Income Targeting Requirements.

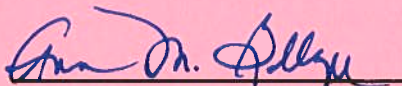
THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.


SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:


TONITA GURULE-GIRON
MAYOR

TANA VEGA
INTERIM FINANCE DIRECTOR
(PROCUREMENT)


ANN MARIE GALLEGOS
INTERIM CITY MANAGER

CITY ATTORNEY
(ALL CONTRACTS, ORDINANCES
AND RESOLUTIONS MUST BE
REVIEWED)

**CITY OF LAS VEGAS HOUSING AUTHORITY
RESOLUTION NO. 18-10**

**A RESOLUTION ADOPTING THE LAS LEGAS HOUSING AUTHORITY'S INCOME
TARGETING REQUIREMENT POLICY AND PROCEDURES**

WHEREAS, the Las Vegas Housing Authority ("LVHA") mission is to provide safe, adequate, and affordable housing to low-income families, in an environment that fosters cultural preservation , self-sufficiency and community pride; and

WHEREAS, the LVHA has adopted a statement of policies governing Admissions and Continued Occupancy Policy (ACOP) of its federally aided low rent public housing units; and

WHEREAS, the LVHA also has to abide by federal regulatory requirements, 24CFR 906.202(b) requires that extremely low-income (ELI) families make up at least 40% of the families admitted to public housing during the LVHA's fiscal year; and

WHEREAS, the LVHA has developed an Income Targeting Requirement Policy and Procedure; and

THEREFORE, Be it Resolved, by the Board of Commissioners of the Housing Authority of the City of Las Vegas that it accepts and approves this Resolution and the attached Policy and Procedure:

Passed, Approved and Adopted this _____ day of February 2018.

MAYOR TONITA GURULÉ-GIRÓN

ATTEST:

CASANDRA FRESQUEZ, CITY CLERK

APPROVED AS TO LEGAL SUFICIENCY ONLY

CITY ATTORNEY

City of Las Vegas Housing Authority

Income Targeting Requirement Policy and Procedures

A. Background

The mission of the Las Vegas Housing Authority is to provide safe, adequate, and affordable housing to low-income families, in an environment that fosters cultural preservation, self-sufficiency and community pride. The Las Vegas Housing Authority also has to abide by federal regulatory requirements, 24CFR906.202(b) requires that extremely low-income (ELI) families make up at least 40% of the families admitted to public housing during the PHA's fiscal year. ELI Families are those with annual incomes at or below 30% of the area median income. The Las Vegas Housing Authority has included this requirement in the Las Vegas Housing Authority's Admissions and Continued Occupancy Policy in Chapter 4 Part 4II(b) page 4-12. To ensure that this requirement is met the Las Vegas Housing Authority has developed the following Procedures.

B. Procedures

1. The Las Vegas Housing Authority Staff has developed the following procedures:
 - **Acceptance of Application:** Waiting List Manager or designee will review application with applicant to ensure application is complete and supplemental documentation is accurate and present.
 - **Program Entry:** Waiting List Manager will attest and enter applicant into the LVHA Waiting List System.
 - **Income Analysis:** Waiting List Manager analyzes all income verification provided as supplemental information to the Las Vegas Housing Authority. At this time the Waiting List Manager categorizes each application into the respective category and notes if the applicant qualifies as an ELI applicant. It is then noted on the respective waiting list cover sheet. (See Exhibits A-F). At this time all applicants stay on waiting list in an order of time and date application was received by the LVHA staff member.
 - **Biweekly Verification:** On a biweekly basis the Waiting List Manager will analyze the waiting list to ensure that the families being housed and on the waiting list follow the ELI requirement. To ensure that this requirement is followed the Las Vegas Housing Authority may skip a non-ELI family.
 - **Quarterly Quality Control Review:** The Las Vegas Housing Authority Executive Director or designee on a quarterly basis will review sample files and the waiting list master file. They will do an internal audit to ensure that 24CFR960.202(b), the Las Vegas Housing Authority's ACOP as well as the procedures in place are being followed.

[illegible]

EXHIBIT D

[illegible]

[illegible]

- ***Displaced person(s): Individuals or families displaced by government action or whose dwelling has been extensively damaged or destroyed as a result of disaster declared or otherwise formally recognized pursuant to Federal Disaster Relief Laws.***
- **Victims of domestic violence, dating violence, sexual assault and stalking in accordance with Public Law 109-162 (VAWA). Documentation supporting this preference must be from an Agency recognized as a legitimate/legal organization. Such as police reports, domestic violence organization or a hospital report.**
- **Income Targeting Requirement [24 CFR 960.202(b)]**

HUD requires that extremely low-income (ELI) families make up at least 40% of the families admitted to public housing during the PHA's fiscal year. ELI families are those with annual incomes at or below 30% of the area median income. To ensure this requirement is met, the PHA may skip non-ELI families on the waiting list in order to select an ELI family.

If a PHA also operates a housing choice voucher (HCV) program, admissions of extremely low-income families to the PHA's HCV program during a PHA fiscal year that exceed the 75% minimum target requirement for the voucher program, shall be credited against the PHA's basic targeting requirement in the public housing program for the same fiscal year. However, under these circumstances the fiscal year credit to the public housing program must not exceed the lower of: (1) ten percent of public housing waiting list admissions during the PHA fiscal year; (2) ten percent of waiting list admissions to the PHA's housing choice voucher program during the PHA fiscal year; or (3) the number of qualifying low-income families who commence occupancy during the fiscal year of PHA public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low-income family means a low-income family other than an extremely low-income family.

City of Las Vegas Housing Authority Policy

The City of Las Vegas housing Authority will monitor progress in meeting the ELI requirement throughout the fiscal year. ELI families will be selected ahead of other eligible families on an as-needed basis to ensure that the income targeting requirement is met.

Cornell Law School

CFR › Title 24 › Subtitle B › Chapter IX › Part 960 › Subpart B › Section 960.202

24 CFR 960.202 - Tenant selection policies.

§ 960.202 Tenant selection policies.

(a) *Selection policies, generally.*

- (1) The PHA shall establish and adopt written policies for admission of tenants.
- (2) These policies shall provide for and include the following:
 - (i) Targeting admissions to extremely low income families as provided in paragraph (b) of this section.
 - (ii) Deconcentration of poverty and income-mixing in accordance with the PHA Plan regulations (see 24 CFR part 903).
 - (iii) Precluding admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the residents or the project environment;
 - (iv) Objective and reasonable policies for selection by the PHA among otherwise eligible applicants, including requirements for applications and waiting lists (see 24 CFR 1.4), and for verification and documentation of information relevant to acceptance or rejection of an applicant, including documentation and verification of citizenship and eligible immigration status under 24 CFR part 5; and
 - (v) Policies of participant transfer between units, developments, and programs. For example, a PHA could adopt a criterion for voluntary transfer that the tenant had met all obligations under the current program, including payment of charges to the PHA.

(b) *Targeting admissions to extremely low income families -*

(1) *Targeting requirement.*

(i) Not less than 40 percent of the families admitted to a PHA's public housing program during the PHA fiscal year from the PHA waiting list shall be extremely low income families. This is called the "basic targeting requirement."

(ii) To the extent provided in paragraph (b)(2) of this section, admission of extremely low income families to the PHA's Section 8 voucher program during the same PHA fiscal year is credited against the basic targeting requirement.

(iii) A PHA must comply with both the targeting requirement found in this part and the deconcentration requirements found in part 903 of this chapter.

(2) Credit for admissions to PHA voucher program.

(i) If admissions of extremely low income families to the PHA's voucher program during a PHA fiscal year exceeds the 75 percent minimum targeting requirement for the PHA's voucher program (see 24 CFR 982.201 (b)(2)), such excess shall be credited (subject to the limitations in paragraph (b)(2)(ii) of this section) against the PHA's basic targeting requirement for the same fiscal year.

(ii) The fiscal year credit for voucher program admissions that exceed the minimum voucher program targeting requirement shall not exceed the lower of:

(A) Ten percent of public housing waiting list admissions during the PHA fiscal year;

(B) Ten percent of waiting list admission to the PHA's Section 8 tenant-based assistance program during the PHA fiscal year; or

(C) The number of qualifying low income families who commence occupancy during the fiscal year of PHA public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low income family means a low income family other than an extremely low income family.

(c) Adoption and availability of tenant selection policies. These selection policies shall:

(1) Be duly adopted and implemented;

(2) Be publicized by posting copies thereof in each office where applications are received and by furnishing copies to applicants or tenants upon request, free or at their expense, at the discretion of the PHA; and

- (3) Be consistent with the fair housing and equal opportunity provisions of § 5.105 of this title; and
- (4) Be submitted to the HUD field office upon request from that office.

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FY 2017 INCOME LIMITS DOCUMENTATION SYSTEM

[HUD.gov](#) [HUD User Home](#) [Data Sets](#) [Fair Market Rents](#) [Section 8 Income Limits](#) [MTSP Income Limits](#) [HUD LIHTC Database](#)

FY 2017 Income Limits Summary

FY 2017 Income Limit Area	Median Income Explanation	FY 2017 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
San Miguel County	\$42,200	Very Low (50%) Income Limits (\$) Explanation	18,350	20,950	23,550	26,150	28,250	30,350	32,450	34,550
		Extremely Low Income Limits (\$)* Explanation	12,060	16,240	20,420	24,600	28,250*	30,350*	32,450*	34,550*
		Low (80%) Income Limits (\$) Explanation	29,300	33,500	37,700	41,850	45,200	48,550	51,900	55,250

Selecting any of the buttons labeled "Explanation" will display detailed calculation steps for each of the various parameters.

* The FY 2014 Consolidated Appropriations Act changed the definition of extremely low-income to be the greater of 30/50ths (60 percent) of the Section 8 very low-income limit or the poverty guideline as established by the Department of Health and Human Services (HHS), provided that this amount is not greater than the Section 8 50% very low-income limit. Consequently, the extremely low income limits may equal the very low (50%) income limits.

Income Limit areas are based on FY 2017 Fair Market Rent (FMR) areas. For information on FMRs, please see our associated FY 2017 [Fair Market Rent documentation system](#).

For last year's Median Family Income and Income Limits, please see here:

FY2016 Median Family Income and Income Limits for San Miguel County

Select a different county or county equivalent in
New Mexico:

San Miguel County
Sandoval County ^

Select any FY2017 HUD Metropolitan FMR Area's
Income Limits:

Abilene, TX MSA

Select county or county equivalent

Select HMFA Income Limits Area

Or press below to start over and select a different state:

Select a new state

Update URL For bookmarking or E-Mailing

Prepared by the Economic and Market Analysis Division, HUD.

Work Session

HOUSING COMMISSION MEETING AGENDA REQUEST

DATE:FEBRUARY 2, 2018 DEPT:HOUSING MEETING DATE:FEBRUARY14, 2018

DISCUSSION ITEM/TOPIC:

Resolution No. 18-08 to adopt the City of Las Vegas Housing Authority's Utility Allowance Schedule.

BACKGROUND/RATIONALE:

The Las Vegas Housing Authority (LVHA) is relied upon for an annual review to establish a utility allowance schedule for tenant paid utilities.

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.



SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:



TONITA GURULE-GIRON
MAYOR

TANA VEGA
INTERIM FINANCE DIRECTOR
(PROCUREMENT)



ANN MARIE GALLEGOS
INTERIM CITY MANAGER

CITY ATTORNEY
(ALL CONTRACTS, ORDINANCES
AND RESOLUTIONS MUST BE
REVIEWED)

**CITY OF LAS VEGAS HOUSING AUTHORITY
RESOLUTION NO. 18-08**

**A RESOLUTION ADOPTING THE LAS LEGAS HOUSING AUTHORITY'S UTILITY
ALLOWANCE SCHEDULE**

WHEREAS, the Las Vegas Housing Authority is relied upon for the annual review and establishment of Utility Allowances for tenant paid utilities; and

WHEREAS, the Las Vegas Housing Authority has adopted a statement of policies governing Admissions and Continued Occupancy Policy (ACOP) of its federally aided low rent public housing units; and

WHEREAS, the Las Vegas Housing Authority is required to review the schedules for tenant paid utilities set forth in the aforementioned policy documents on an annual basis and update them if necessary; and

WHEREAS, the Las Vegas Housing Authority's Utility Allowance Schedule will be used in the operation of affordable rental housing programs/units within its jurisdiction, a copy of which is attached hereto; and

THEREFORE, Be it Resolved, by the Board of Commissioners of the Housing Authority of the City of Las Vegas accepts and approves this resolution and the attached schedule:

Passed, Approved and Adopted this _____ day of February 2018.

MAYOR TONITA GURULÉ-GIRÓN

ATTEST:

CASANDRA FRESQUEZ, CITY CLERK

APPROVED AS TO LEGAL SUFICIENCY ONLY

CITY ATTORNEY

City of Las Vegas Housing Authority
Utility Allowance Schedule
February 2018

Sites NM7-1 & 7-4 & 7-3 (Apache/Navajo/Zuni/HS/Delgado/Church/SB)

		<u>0-BDR</u>		<u>1-BDR</u>		<u>2-BDR</u>		<u>3-BDR</u>		<u>4-BDR</u>
Electric	\$	23.00	\$	34.00	\$	38.00	\$	37.00	\$	64.00

*The Las Vegas Housing Authority pays for the remaining utilities: gas, waster, sewer, and sanitation

NM 7-6 (Yucca/Cholla/Sandoval)

		<u>1-BDR</u>		<u>2-BDR</u>		<u>3-BDR</u>		<u>4-BDR</u>
Electric	\$	34.00	\$	38.00	\$	37.00	\$	64.00
Gas	\$	38.00	\$	41.00	\$	37.00	\$	56.00
Total	\$	72.00	\$	79.00	\$	74.00	\$	120.00

*The Las Vegas Housing Authority pays for the remaining utilities: waster, sewer, and sanitation

Hannah / Vigil (Calle Bonita/Calle Contenta/Louden)

		<u>1-BDR</u>		<u>2-BDR</u>		<u>3-BDR</u>		<u>4-BDR</u>		<u>5-BDR</u>
Electric	\$	34.00	\$	38.00	\$	37.00	\$	64.00	\$	43.00
Gas	\$	38.00	\$	41.00	\$	37.00	\$	56.00	\$	47.00
Water	\$	26.00	\$	30.00	\$	33.00	\$	55.00	\$	40.00
Total	\$	98.00	\$	109.00	\$	107.00	\$	175.00	\$	130.00

*The Las Vegas Housing Authority pays for the remaining utilities: sewer, and sanitation

New Flat Rent

<u>Bedroom Size</u>	<u>New</u>
0-BDR	\$ 450.00
1-BDR	\$ 459.00
2-BDR	\$ 579.00
3-BDR	\$ 733.00
4-BDR	\$ 931.00
5-BDR	\$ 1,070.00

Work Session

HOUSING COMMISSION MEETING AGENDA REQUEST

DATE:FEBRUARY 2, 2018 **DEPT:**HOUSING **MEETING DATE:**FEBRUARY 14, 2018

DISCUSSION ITEM/TOPIC:

Resolution No. 18-09 to adopt the City of Las Vegas Housing Authority's Flat Rent Schedule for Residents Living in Public Housing.

BACKGROUND/RATIONALE:

The Las Vegas Housing Authority (LVHA) is required to adhere to all Federal Regulations and Notices Published regarding Public Housing. Compliance Monitoring Review, Finding #17 states: "Tenants must be offered the opportunity to choose between the current flat rent established according to HUD regulations, and the income based rent at each annual recertification (The flat rent rate was last updated 2014)". As a corrective action, the City of Las Vegas Housing Authority would like to adopt the 2018 Flat Rent Schedule.

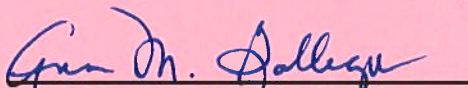
THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.


SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:


TONITA GURULÉ-GIRÓN
MAYOR

TANA VEGA
INTERIM FINANCE DIRECTOR
(PROCUREMENT)


ANN MARIE GALLEGOS
INTERIM CITY MANAGER

CITY ATTORNEY
(ALL CONTRACTS, ORDINANCES
AND RESOLUTIONS MUST BE
REVIEWED)

**CITY OF LAS VEGAS HOUSING AUTHORITY
RESOLUTION NO. 18-09**

**A RESOLUTION ADOPTING THE LAS LEGAS HOUSING AUTHORITY'S FLAT
RENTS**

WHEREAS, the Quality Housing and Work Responsibility Act of 1998 (QHWRA) Section 523, establishes Family Choice of rental payment, effective September 1, 1999; and

WHEREAS, each Public Housing Authority (PHA) must adopt a policy that gives Residents the choice between two types of rent payment – a flat rent or an income-based rent; and

WHEREAS, the City of Las Vegas Housing Authority has adopted Flat Rents in accordance with PHI Notice 2017-23; and

WHEREAS, the Las Vegas Housing Authority's Utility Allowance Schedule will be used in the operation of affordable rental housing programs/units within its jurisdiction, a copy of which is attached hereto; and

THEREFORE, Be it Resolved, by the Board of Commissioners of the Housing Authority of the City of Las Vegas accepts and approves this resolution and the attached schedule:

Passed, Approved and Adopted this _____ day of February 2018.

MAYOR TONITA GURULÉ-GIRÓN

ATTEST:

CASANDRA FRESQUEZ, CITY CLERK

APPROVED AS TO LEGAL SUFICIENCY ONLY

CITY ATTORNEY

City of Las Vegas Housing Authority
Flat Rent Schedule
February 2018

<u>Proposed New Flat Rent</u>				
<u>Bedroom Size</u>	<u>Current</u>		<u>New</u>	
0-BDR	\$	304.00	\$	450.00
1-BDR	\$	419.00	\$	459.00
2-BDR	\$	510.00	\$	579.00
3-BDR	\$	574.00	\$	733.00
4-BDR	\$	598.00	\$	931.00
5-BDR	\$	803.00	\$	1,070.00

<u>Sites NM7-1 & 7-4 & 7-3 (Apache/Navajo/Zuni/HS/Delgado/Church/SB)</u>				
<u>Bedroom Size</u>	<u>Flat Rent</u>	<u>Less Utility Allowance</u>		<u>New Rent</u>
0-BDR	\$ 450.00	\$	23.00	\$ 427.00
1-BDR	\$ 459.00	\$	34.00	\$ 425.00
2-BDR	\$ 579.00	\$	38.00	\$ 541.00
3-BDR	\$ 733.00	\$	37.00	\$ 696.00
4-BDR	\$ 931.00	\$	64.00	\$ 867.00

<u>NM 7-6 (Yucca/Cholla/Sandoval)</u>				
<u>Bedroom Size</u>	<u>Flat Rent</u>	<u>Less Utility Allowance</u>		<u>New Rent</u>
1-BDR	\$ 459.00	\$	72.00	\$ 387.00
2-BDR	\$ 579.00	\$	79.00	\$ 500.00
3-BDR	\$ 733.00	\$	74.00	\$ 659.00
4-BDR	\$ 931.00	\$	120.00	\$ 811.00

<u>Hannah / Vigil (Calle Bonita/Calle Contenta/Louden)</u>				
<u>Bedroom Size</u>	<u>Flat Rent</u>	<u>Less Utility Allowance</u>		<u>New Rent</u>
1-BDR	\$ 459.00	\$	98.00	\$ 361.00
2-BDR	\$ 579.00	\$	109.00	\$ 470.00
3-BDR	\$ 733.00	\$	107.00	\$ 626.00
4-BDR	\$ 931.00	\$	175.00	\$ 756.00
5-BDR	\$ 1,070.00	\$	130.00	\$ 940.00

Work Session

HOUSING COMMISSION MEETING AGENDA REQUEST

DATE:FEBRUARY 2, 2018 DEPT:HOUSING MEETING DATE:FEBRUARY14, 2018

DISCUSSION ITEM/TOPIC:

Replacement Housing Factor Funds (RHFF) 2016 and 2017.

BACKGROUND/RATIONALE:

The Las Vegas Housing Authority (LVHA) would like to obligate the 2016 and 2017 by utilizing them to do construction services on the sagebrush site. These funds can only be used for construction of buildings. Compliance Monitoring Review, Finding #15 states: "The 2016 Capital Fund and Modernization grant and Replacement Housing Factor fund grant obligation deadline is only 4 months away (3 ½), and steps have not been taken by the Board and ED to ensure these funds are obligated". As a corrective action, the City of Las Vegas Housing Authority would like to adopt the 2016 and 2017 Budgets to start the procurement process for obligation certainty.

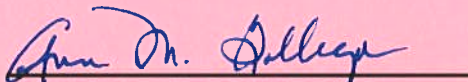
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SUBMITTER'S SIGNATURE

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Annual Statement/Performance and Evaluation Report
Capital Fund Program, Capital Fund Program Replacement Housing Factor and
Capital Fund Financing Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB No. 2577-0226
Expires 06/30/2017

Part I: Summary		Grant Type and Number		FFY of Grant: 2016	
PHA Name: City Of Las Vegas Housing Authority		Capital Fund Program Grant No: Replacement Housing Factor Grant No: NM02R007502-16 Date of CFP:		FFY of Grant Approval:	
Type of Grant		<input checked="" type="checkbox"/> Original Annual Statement <input type="checkbox"/> Performance and Evaluation Report for Period Ending:		<input type="checkbox"/> Revised Annual Statement (revision no:) <input type="checkbox"/> Final Performance and Evaluation Report	
Line	Summary by Development Account	Original	Total Estimated Cost	Obligated	Total Actual Cost ¹
			Revised ²		Expended
1	Total non-CFP Funds				
2	1406 Operations (may not exceed 20% of line 21) ³				
3	1408 Management Improvements				
4	1410 Administration (may not exceed 10% of line 21)				
5	1411 Audit				
6	1415 Liquidated Damages				
7	1430 Fees and Costs	25,000.00			
8	1440 Site Acquisition				
9	1450 Site Improvement				
10	1460 Dwelling Structures	77,133.00			
11	1465.1 Dwelling Equipment—Nonexpendable				
12	1470 Non-dwelling Structures				
13	1475 Non-dwelling Equipment				
14	1485 Demolition				
15	1492 Moving to Work Demonstration				
16	1495.1 Relocation Costs				
17	1499 Development Activities ⁴				

¹ To be completed for the Performance and Evaluation Report.

² To be completed for the Performance and Evaluation Report or a Revised Annual Statement.

³ PHAs with under 250 units in management may use 100% of CFP Grants for operations.

⁴ RHF funds shall be included here.

Annual Statement/Performance and Evaluation Report
Capital Fund Program, Capital Fund Program Replacement Housing Factor and
Capital Fund Financing Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB No. 2577-0226
Expires 06/30/2017

Part I: Summary		FFY of Grant: 2016 FFY of Grant Approval:	
PHA Name: City of Las Vegas Housing Authority	Grant Type and Number Capital Fund Program Grant No: Replacement Housing Factor Grant No: NM02R007502-16 Date of CFFP:		
Type of Grant <input checked="" type="checkbox"/> Original Annual Statement <input type="checkbox"/> Reserve for Disasters/Emergencies <input type="checkbox"/> Performance and Evaluation Report for Period Ending: <input type="checkbox"/> Revised Annual Statement (revision no:) <input type="checkbox"/> Summary by Development Account <input type="checkbox"/> Final Performance and Evaluation Report			
Line		Total Estimated Cost Original	Revised ²
18a	1501 Collateralization or Debt Service paid by the PHA		Obligated
18ba	9000 Collateralization or Debt Service paid Via System of Direct Payment		
19	1502 Contingency (may not exceed 8% of line 20)		Total Actual Cost ¹
20	Amount of Annual Grant: (sum of lines 2 - 19)	102,133.00	Expended
21	Amount of line 20 Related to LBP Activities		
22	Amount of line 20 Related to Section 504 Activities		
23	Amount of line 20 Related to Security - Soft Costs		
24	Amount of line 20 Related to Security - Hard Costs		
25	Amount of line 20 Related to Energy Conservation Measures		
Signature of Executive Director		Signature of Public Housing Director	
Date		Date	

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Part I: Summary		Grant Type and Number		FFY of Grant: 2017	
PHA Name: City Of Las Vegas		Capital Fund Program Grant No:		FFY of Grant Approval:	
Housing Authority		Replacement Housing Factor Grant No: NM02R007502-17			
		Date of CFFP:			

Line	Type of Grant <input checked="" type="checkbox"/> Original Annual Statement <input type="checkbox"/> Performance and Evaluation Report for Period Ending:	Summary by Development Account	Original	Total Estimated Cost		Obligated	Total Actual Cost ¹
				Revised ²	Expend		
1		Total non-CFP Funds					
2		1406 Operations (may not exceed 20% of line 21) ³					
3		1408 Management Improvements					
4		1410 Administration (may not exceed 10% of line 21)					
5		1411 Audit					
6		1415 Liquidated Damages					
7		1430 Fees and Costs					
8		1440 Site Acquisition					
9		1450 Site Improvement					
10		1460 Dwelling Structures	106,112.00				
11		1465.1 Dwelling Equipment—Nonexpendable					
12		1470 Non-dwelling Structures					
13		1475 Non-dwelling Equipment					
14		1485 Demolition					
15		1492 Moving to Work Demonstration					
16		1495.1 Relocation Costs					
17		1499 Development Activities ⁴					

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Type of Grant <input checked="" type="checkbox"/> Original Annual Statement <input type="checkbox"/> Reserve for Disasters/Emergencies <input type="checkbox"/> Performance and Evaluation Report for Period Ending:		<input type="checkbox"/> Revised Annual Statement (revision no:) <input type="checkbox"/> Final Performance and Evaluation Report	
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