

ACTION ALERT: [Submit Comments](#) on Proposed Criminal Records Rule by Monday, June 10

Information and Samples Provided to Help Prepare Your Input *Excerpted from PHADA*

Based on information and examples provided by PHADA, Minnesota NAHRO urges our members to submit comments by Monday, June 10th to HUD. This memorandum provides information on the proposed rule as well as possible key points that can be used to draft your input.

A key theme raised to consider: does this rule make public housing safer? Housing Authority (HA) leaders are encouraged to engage employees, residents, and other stakeholders to submit their own comments as individuals, organizations, or anonymously. All are urged to include specific examples and scenarios in their comments.

The public may submit comments on the rule [here](#) until June 10, 2024.

Major Provisions of the Proposed Rule “Reducing Barriers to HUD-assisted Housing”

- The proposed rule continues to allow discretion to HAs and owners for their admissions and continued occupancy policies while providing direction on adopting and implementing “fair, effective, and comprehensive admissions and termination policies.”
- Formally prohibits categorical, blanket exclusions of people with criminal records.
- Limits the look-back period to three years. Criminal records older than three years would generally not be considered without more recent criminal activity, some exceptions allowed.
- Limits consideration of criminal history records that do not have a ‘nexus’ (a connection or link) to the health, safety, and right of peaceful enjoyment of other tenants and safety of staff, contractors, etc., or fitness for tenancy.
- Generally excludes consideration of “victimless” crimes including fraud and financial crimes that cannot be linked to the health, safety, and right to peaceful enjoyment language of the proposed rule.
- Requires completion of a “fact-based and individualized assessment” including consideration of mitigating factors whenever criminal history records are a factor in a decision regarding eligibility for assistance, admittance to a specific property, or in lease enforcement.
- Requires the HA to provide applicants a copy of criminal records that may contribute to a denial, and provide 15 days for applicants to provide additional information and/or dispute accuracy or relevance of the information.
- Requires corroborating evidence if utilizing arrest records, preferring convictions.
- Continue use of the preponderance of the evidence standard (more likely than not that the conduct occurred (51%)) when making a discretionary exclusion decision.
- Prohibits HA re-screening of port-in voucher holders, but otherwise does not apply to the HCV program, nor does it apply to the LIHTC program or to private rental housing.
- Requires substantial changes to formal plans and policies (Admissions and Continued Occupancy Policies, Tenant Selections Plans, Agency Annual Plans, HCV Administrative Plans, etc.).

Questions Raised on the Proposed Rule:

- Is a 3-year look-back limitation the appropriate time period? If not, what would be an appropriate look-back period? HUD asks for data or research to support suggestions. Are there specific crimes for which a longer look-back period should be considered?
- How will the re-screening prohibition negatively impact or create risk for your agency?
- Does the Individualized Assessment requirement create additional confusion? Are you concerned about implementation, staff capacity and legal costs?
- Do you think the proposed rule would make your properties less safe?
- What do you think about application of this rule to public housing and project-based rental assistance, but not HCV or other federal housing assistance programs?
- How else are you engaged in attempting to meet the housing needs of those with criminal histories or exiting incarceration that are more effective than relaxing screening requirements?

Possible Comments

- **One size does not fit all**, and different contexts, local laws and conditions, should be accounted for through more flexibility.
- The **three-year look-back** period restricting consideration of older information is too short for many crimes. Specifically, the Minnesota study cited by HUD finds that property offenses, major drug offenses, fraud, and assault have housing impacts for up to 5 years. Thus, documenting patterns of behavior requires more than 36 months of information.
- **Excluding consideration** of a variety of financial crimes (such as fraud) from consideration prevents HAs and operators from considering all available information when making decisions.
- **Re-screening** of port-in voucher holders may be necessary as agencies and landlords cannot legally or otherwise rely on the screening practices of another agency.
- **Creates potential legal liabilities** for HAs regarding protecting the safety of other residents, staff, and contractors and their financial and management obligations to protect their properties.
- Requirements for an **Individualized Assessment** may add substantial administrative burden, increased legal fees, additional processing delays, and slowed unit occupancy.
- Required **changes to the ACOP, Administrative Plan, and Annual Plan documents** are burdensome.
- The proposed requirements will **strain staff capacity and add to legal fees** as agencies attempt to modify and implement revised policies and procedures to be in compliance.
- Without information on how HUD will **monitor and enforce compliance**, the potential for inconsistent action by HUD is high, with additional and unreasonable burdens placed on HUD and HAs.
- This proposed rule **would impose requirements and burdens** on all public housing agencies to address the practices of some housing authorities and some HUD-assisted multifamily property owners.
- Risks the creation of a **two-tiered rental housing market** – one for households with extremely low incomes and criminal histories, and one for everyone else, a potential discriminatory disparate impact itself.
- With ongoing implementation of HIP, HOTMA, NSPIRE, and other system and policy changes, this change would add yet another **burden to already badly underfunded agencies**.

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