

"Reducing Barriers to HUD-Assisted Housing": HUD NPR for Use of Criminal History in Tenant Screening and Termination At HUD-Assisted Properties

April 17, 2024 | [Jay Harris](#)

Under a Department of Housing and Urban Development (HUD) proposed rule published April 10, new procedural protections would apply to criminal history screening of rental applicants to HUD-assisted housing. 89 FR 25332 Borrowing from applicant protections found in state and local laws, the proposed rule would largely impact HUD's public housing and Sections 202, 811, 236, and 221(d)(3) below market rate programs. Section 8 (Project-Based and Housing Choice Voucher) screening procedures are addressed in the proposed rule to a small degree. Comments are due by June 10.

The proposed rule:

- Narrows the type and recency of relevant criminal history that may be grounds to prohibit admission - The types of prior offenses that a Public Housing Agency (PHA) or HUD-assisted owner may use to prohibit admission are narrowed. Covered agencies and owners may prohibit admission only for drug-related or violent criminal activity, or criminal activity that would threaten the health, safety, or quiet enjoyment of residents or the health or safety of an owner, contractor, or agent. As for recency, screening criteria that provide for a "lookback" period of more than 3 years (i.e., disqualifying for a conviction occurring more than 3 years before the application) are "presumptively unreasonable."
- Clarifies procedural steps - Before a proposed denial, assisted owners and PHAs are to give applicants a copy of the record and 15 days to dispute or provide mitigating information. Also, the rule would prohibit the consideration of arrest records alone as the basis for a denial and require that criminal conduct that is the basis for a denial of admission or exclusion be based on a preponderance of the evidence.
- Individualized Assessment When declining an applicant, an individualized assessment must be conducted, considering relevant mitigating circumstances such as the age of the offense, mitigating subsequent conduct, and completion of alcohol or drug treatment programs.

Covered entities would have 6 months to update their tenant selection plans to conform

to the rule.

"Most of the changes in the proposed rule," HUD emphasizes, "would not apply to owners who participate in the [Housing Choice Voucher] or [Project Based Voucher] programs...in order to avoid discouraging owner participation." Owners subject to HCV and PBV rules, including those who must accept vouchered residents under state or local source of income protections, may continue to screen for criminal activity that is drug-related, violent, or a threat to the health and safety or property of others. No limit on lookback periods applies. State and local rules must (still) be followed.

The rule affirms that HCV/PBV screening is subject to the Fair Housing Act, which has been interpreted by HUD's Office of General Counsel ([2016](#)) and Office of Fair Housing and Equal Opportunity ([2022](#)) to apply individualized assessment concepts.

Housing providers may be able to access an applicant's prior tenancy information from a PHA, at the PHA's discretion. And, to terminate a tenant and/or evict a resident for criminal violations, a PHA or PBV/HCV owner must rely on more than an arrest alone - a basis for eviction for criminal violations must be demonstrated by a preponderance of evidence. The rule enumerates factors an owner or PHA may consider in evaluating whether to evict or terminate an HCV/PBV household or member where criminal activity is involved.

The proposed rule follows recent March [guidance](#) from HUD and other federal agencies to rental housing applicants about "Tenant Background Checks and Your Rights" and [guidance](#) from the Federal Trade Commission about "Disputing Errors on your Tenant Background Check Report."

Hudson Cook, LLP provides articles, webinars and other content on its website from time to time provided both by attorneys with Hudson Cook, LLP, and by other outside authors, for information purposes only. Hudson Cook, LLP does not warrant the accuracy or completeness of the content, and has no duty to correct or update information contained on its website. The views and opinions contained in the content provided on the Hudson Cook, LLP website do not constitute the views and opinion of the firm. Such content does not constitute legal advice from such authors or from Hudson Cook, LLP. For legal advice on a matter, one should seek the advice of counsel.

SUBSCRIBE TO INSIGHTS

HUDSON COOK

Hudson Cook, LLP is a national law firm representing the financial services industry in compliance, privacy, litigation, regulatory and enforcement matters.

7037 Ridge Road, Suite 300, Hanover, Maryland 21076
410.684.3200

hudsoncook.com

© Hudson Cook, LLP. All rights reserved. Privacy Policy | Legal Notice
Attorney Advertising: Prior Results Do Not Guarantee a Similar Outcome

