

New York City Housing Authority Changes to Policies Related to Criminal Justice

New York City Housing Authority (NYCHA) is considering changes to several current admission and occupancy policies related to criminal justice. These policies are being made available for a 30-day open public comment period. Please submit your comments to cjus.comments@nycha.nyc.gov by **October 14, 2020**. Please also provide comments on any other policies you would like NYCHA to consider changing.

<i>Individualized Reviews</i>	
<i>Legal Requirement(s)</i>	<p>Public housing regulations require notification to applicants of criminal background check results, if any, before the Public Housing Authority (PHA) makes an ineligibility determination, as well as the opportunity to dispute or otherwise respond to that record. <i>See</i> 24 CFR § 960.204(c).</p> <p>In compliance with the regulations, NYCHA sends the notice and gives applicants the opportunity to submit evidence of rehabilitation, evidence of inaccuracy, or anything else they wish to provide in response before finding the applicant ineligible. Assuming an applicant is found ineligible, the applicant may seek administrative review in a <i>McNair</i> hearing before a NYCHA hearing officer. If the applicant remains aggrieved, the applicant may seek further review in an Article 78 appeal.</p>
<i>Current</i>	<p>NYCHA’s current public housing applicant admissions process for criminal history and use of illegal drugs is as follows:</p> <ol style="list-style-type: none"> 1. Pending Ineligible Notification is sent to the applicant. 2. If the applicant provides documentation, it will be reviewed before an eligibility determination is made. 3. If documentation is not received or the applicant is found ineligible, an Ineligibility Letter is sent along with the instructions for appealing the decision. The applicant has 90 days to submit the Request for an Informal Hearing. 4. If the Request for an Informal Hearing is submitted along with documentation or an error in ineligibility is detected, ineligibility can be revoked, and the case will continue to be processed. If not, the case is scheduled for a Pre-Hearing Conference. 5. At the Pre-Hearing Conference, the applicant meets with an Applications and Tenancy Administration (ATAD) Appeals staff member to provide additional documentation and discuss the findings of ineligibility. 6. After review, if sufficient documentation is received, Ineligibility is withdrawn, and the case will continue to be processed. 7. If not, the case is scheduled for an Informal Hearing. 8. At the Informal Hearing, the applicant appears before an Impartial Hearing Officer to provide documentation and plead their case for eligibility. 9. If the Hearing Officer finds that there is sufficient evidence to reverse the original finding of ineligibility, the case will continue to be processed. 10. If the Hearing Officer does not find that there is sufficient evidence, the original finding of Ineligibility is sustained. <p>The determination by the Impartial Hearing Officer is final but the applicant may challenge the hearing officer’s decision in a Article 78 proceeding.</p>

<i>Proposed</i>	<p>In cases of an applicant (new admission or Returning Family Member) facing denial on the basis of their Criminal Background Check NYCHA will utilize a committee to conduct an in-depth review of the application. The committee will conduct such review before the Pending Ineligible Notification is sent to the applicant. The committee structure will mimic the structure piloted under the NYCHA Family Reentry Program, which has been effective in conducting holistic screening of persons reentering from jails and prisons. The review includes interviews with the applicant and household, evidence of rehabilitation, and other conditions. The committee will meet weekly , will include a representative from NYCHA’s Law, Admissions and Tenancy, and Management teams and will be led by Family Reentry staff.</p>
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<u><i>Criminal History Lookback Period and Scope for Applicants</i></u>	
<i>Legal Requirement(s)</i>	<p>PHAs are required to create admission policies and must screen applicants for, among other things, a history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants. (24 CFR §960.203(c)(3)). here are two instances, set out below, where a PHA has no discretion and must deny admission or require removal of the offending household member.</p> <p>Federal law requires denial of admission in these two situations:</p> <p>(1) Persons Convicted of Production of Methamphetamines in Public Housing - 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. 24 CFR §960.204(a)(3). A conviction results in a lifetime ban from public housing and other federally assisted housing.</p> <p>(2) Persons on the Lifetime Registry for Sex Offenses: if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. §960.204(a)(4). A life-time registration results in a lifetime ban from public housing.</p> <p>A PHA has discretion in terms of determining eligibility for most other types of criminal activity. However, in cases where a household member was previously evicted from federally-assisted housing for drug-related criminal activity, the PHA must deny admission for at least three years unless the offending household member is removed from the household or successfully completed a supervised drug rehabilitation program approved by the PHA. (24 CFR §960.204(a)(1)).</p> <p>If the PHA receives unfavorable information about an applicant, the PHA must consider the time, nature and extent of the applicant’s conduct and the seriousness of the offense. (§960.203(d)). PHAs may also consider factors which might indicate a reasonable probability of favorable future conduct, such as evidence of rehabilitation and evidence of participation in or willingness to participate in social service or other appropriate counseling service programs. (§960.203(d)).</p>

	<p>HUD gives PHAs discretion to consider the following factors in adopting admission standards: the safety and security of other residents, the level of violence of the offense, time since conviction, number of convictions, and evidence of recovery and rehabilitation.</p> <p>HUD considers that five years may be a reasonable period for serious offenses, depending on the offense, though PHAs have discretion to make these decisions in the best interests of their communities.</p>														
<i>Current</i>	<p>Current Eligibility Lookback Periods for Types of Offenses:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;"><i>Ineligible Offense</i></th> <th style="text-align: center;"><i>End of Eligibility Period</i></th> </tr> </thead> <tbody> <tr> <td>Registered Sex Offender - Offending member is a sex offender subject to a lifetime registration under a state sex offender registration program.</td> <td>Until the offending member is no longer required to register as a sex offender</td> </tr> <tr> <td>Persons Convicted of the Manufacture of Methamphetamine on the Premises of Federally Assisted Housing</td> <td>Lifetime ban from public housing</td> </tr> <tr> <td>Felonies - Class A, B, or C</td> <td>6 years from the date the convicted person has served his or her sentence (not including parole or probation), and has no further convictions or pending charges</td> </tr> <tr> <td>Felonies - Class D or E</td> <td>5 years</td> </tr> <tr> <td>Misdemeanor - Class A</td> <td>4 years</td> </tr> <tr> <td>Misdemeanor - Class B or Unclassified</td> <td>3 years</td> </tr> </tbody> </table>	<i>Ineligible Offense</i>	<i>End of Eligibility Period</i>	Registered Sex Offender - Offending member is a sex offender subject to a lifetime registration under a state sex offender registration program.	Until the offending member is no longer required to register as a sex offender	Persons Convicted of the Manufacture of Methamphetamine on the Premises of Federally Assisted Housing	Lifetime ban from public housing	Felonies - Class A, B, or C	6 years from the date the convicted person has served his or her sentence (not including parole or probation), and has no further convictions or pending charges	Felonies - Class D or E	5 years	Misdemeanor - Class A	4 years	Misdemeanor - Class B or Unclassified	3 years
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<p>NYCHA’s current ineligibility screenings result in 2% of applicants with criminal justice involvement (135 out of 7500 in 2019). Of the numbers of applicants found ineligible, 65% were admitted via additional review or a favorable result at an informal McNair Hearing. Similar outcomes were found after reviewing ineligibility screenings for 2017 and 2018.</p>															
<i>Proposed</i>	<p>NYCHA proposes bolstering the applicant screening process with the individualized review model described in “Individualized Reviews” above.</p>														

<i>Criminal History Lookback Period and Scope for Additions to Participating Families</i>	
<i>Legal Requirement(s)</i>	Same as admissions with respect to criminal backgrounds.
<i>Current</i>	<p>An existing tenant of record may submit a permanent permission request to Property Management to add a household member that falls into an eligible familial category. Property Management has 60 days to review and approve or deny the request in writing.</p> <p>Criminal background screenings for additions to participating families are performed by ATAD. In 2019, 150 out of 3,500, or 4%, of permanent permission request were denied due to criminal justice involvement.</p> <p>The tenant of record may challenge a permanent permission denial with Property Management by filing a grievance for review by the Property Manager, Borough, and if denied, the Office of Impartial Hearings.</p> <p>NYCHA’s Family Re-Entry Program allows its participants who fall within the criminal history lookback period to join a NYCHA household temporarily while enrolled in the program. After successful completion of the program, the participant may receive permission to join a NYCHA household permanently.</p>
<i>Proposed</i>	Same as for Applicants.

<i>Eligibility Based on Current Drug Use</i>	
<i>Legal Requirement(s)</i>	<p>PHAs are required to deny admission for applicants (1) currently engaging in illegal use of a drug, or (2) whose 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. (24 CFR §960.204(a)(2)).</p> <p>The regulation does not define “current” drug use and PHAs have discretion to determine the lookback period for drug use. Similarly, the regulation gives PHAs discretion to determine whether there is a reasonable basis for determining that illegal use or a pattern of illegal use should bar admission.</p>
<i>Current</i>	<p>Applicants are asked whether they have used an illegal drug in the last three years. The applicant may provide (1) written verification from a state-licensed drug treatment facility that they have been drug-free for 12 months and (2) a current, clean toxicology report.</p> <p>Alternatively, the applicant may provide substantial evidence that they are no longer engaging in the illegal use of a controlled substance and have been rehabilitated successfully so as not to interfere with the health, safety, or welfare of other tenants.</p> <p>The same process described in the individualized review section is used when an applicant is found ineligible due to current drug use.</p>
<i>Proposed</i>	<p>Change the lookback period from three years to one year.</p> <p>Additionally, NYCHA proposes bolstering the applicant screening process with the individualized review model described in “Individualized Reviews” above.</p>

<i>Permanent Exclusion</i>	
<i>Legal Requirement(s)</i>	<p>Federal law requires PHAs to assure that no tenant, member of the tenant’s household, or guest engages in (1) criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents, or (2) drug-related criminal activity on or off the premises. (24 CFR § 966.4).</p> <p>In an attempt to preserve the tenancy of a household, Permanent Exclusion (PE) was created as a remedy in the <i>Tyson-Randolph</i> and <i>Escalera</i> Federal consent decrees. PE may be imposed by NYCHA’s impartial hearing officers to resolve a tenancy termination administrative proceeding or may be part of a negotiated settlement of tenancy termination charges. Federal court proceedings to modify the consent decrees would be required to eliminate PE as a disposition or remedy.</p>
<i>Current</i>	<p>Permanent Exclusion (PE) requires that the Excluded individual may not live in, visit, or return to the household at any time. There is no minimum age for exclusion, but cases involving minors are not referred to NYCHA.</p> <p>Cases involving violent crime and drug offenses are referred to the Law Department from NYPD. The Cases for Legal Action (CFLA) Program was updated in collaboration with the Mayor’s Office of the Criminal Justice Coordinator (MOCCJ), NYPD and NYCHA in 2017. The referral categories were updated as follows:</p> <ul style="list-style-type: none"> • (Category I) – All residents arrested as the result of a search warrant where contraband is recovered. • (Category II) – All residents arrested for a felony narcotics related charge including those related to marijuana. • (Category III) – All residents charged with one or more of the following charges including Murder 1st, 2nd degree or attempt, Rape 1st degree or attempt, Robbery 1st or 2nd degree, Assault 1st degree, Burglary 1st, Arson 1st, 2nd or 3rd degree, Criminal Sexual Act 1st or attempt, Course of Sexual Conduct Against a Child 1st or attempt, Aggravated Sexual Abuse 1st or attempt, and all firearms offenses listed in Article 265 of the N.Y.S. Penal Law. • (Category IV) – Any other case deemed appropriate by a Commanding Officer after conferral with the CFLA coordinator and with the approval of the Chief of Housing Bureau. <p>Settlements of tenancy termination charges: Permanent exclusions are a stipulated agreement between NYCHA and the tenant of record. It is the tenant’s responsibility to ensure the excluded person is kept out of the tenant’s apartment. The tenant agrees to visits from a NYCHA investigator as a means of enforcement of the settlement agreement. The tenancy remains in place and subject to these requirements.</p> <p>Hearing Officer Decisions: PE as a resolution in lieu of termination is in the independent hearing officer’s discretion and serves the same purpose as the settlement, but without investigator visits.</p> <p>An attorney’s offer of settlement or a hearing officer’s decision are made case by case on the particular facts, taking into account the whole tenancy and family</p>

	<p>situation. In 2017, NYCHA revamped its Case Handling Guidelines in consultation with the Vera Institute of Justice and tenancy advocates.</p> <p>Lifting Permanent Exclusion NYCHA has a program to lift exclusions. The program allows tenants to apply to the Office of Impartial Hearings to remove an individual’s PE status based on look-back periods. This program was re-vamped, also in collaboration with the Vera Institute, in 2017. A second path, as an alternative to look back periods, was added to allow tenants to submit evidence of the excluded individual’s positive life changes for the hearing officer’s review. If the application is granted, the excluded individual is allowed visits to the apartment again. An application may be denied when the Law Department submits an objection, or where the hearing officer determines there is insufficient evidence to warrant PE lift.</p> <p>NYCHA implemented the two paths to lift PE based on evidence of reduced risk of future violence and modified the lift application to reflect this change in 2018. The PE lift application was simplified and updated again in June of 2020, made into a document that can be submitted electronically and remains available on the NYCHA website.</p> <p>Moreover, NYCHA created a mechanism whereby Law conducts a file review independent of any application to lift and, if the PE’d individual would be eligible for a lift based on look-back periods, contacts the head of household by letter to let him or her know that lifting PE on the grounds of “passage of time” alone may be a viable option. NYCHA has reviewed files for PE Lift eligibility and notified tenants about the PE Lift program.</p>
<p><i>Proposed</i></p>	<p>Permanent Exclusion stipulations would be amended to include language automatically lifting the exclusion after five crime-free years if the TOR so desires.</p> <ul style="list-style-type: none"> • If the PE’d individual has been crime free for a five-year period from the date of release or, if there was no incarceration, the date of final resolution of the last criminal matter, Law will send TOR a letter advising the PE is extinguished for that individual. It would then be the TOR’s choice whether they wish to invite that person to visit their home again. • This program would not be applicable to PE’s that arose from a Hearing Officer decision as only the Hearing Officer can lift those. <p>The PE Lift application will still be available for all purposes both within the five-year period and after that period assuming Law found the person ineligible based on continued criminal activity. As for existing PEs, Law will continue its review of old cases and send letters to the Tenant of Record (TOR) advising that they may be eligible to have the PE lifted. Assuming this new proposal is adopted, those letters would change to letters advising the person the PE is extinguished.</p> <p>Consistent with HUD regulations, persons on the lifetime sex offender registry and those convicted of manufacture of methamphetamines in subsidized units would remain ineligible for PE lift.</p> <p>Minimum age for exclusion will be 18.</p>