

The Limit Does Not Exist

Myth Busting Common and Persistent Housing Barrier
Misconceptions

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Who We Are



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- HUD technical assistance providers for HomeBase, a San Francisco-based nonprofit public interest law firm dedicated to the social problem of homelessness
- We work at the federal, state, and local levels to support communities in implementing responses to homelessness while fostering collaboration in addressing the socioeconomic causes of homelessness



Today's Goals

- Break down myths about perceived housing barriers for households with histories that include arrests, convictions, alcohol and substance use, undocumented immigration, or other stigmatized past circumstances.
- Demystify the regulatory and policy landscape of eligibility requirements and restrictions for HUD-funded housing resources.



Learning Objectives

- 1 Understand which regulatory and policy barriers to HUD-funded housing resources (including CoC-funded and Public Housing) are mandatory and which are discretionary.
- 2 Learn strategies to reduce and overcome regulatory and private market barriers to housing, particularly those based on past circumstances such as criminal history, addiction, and undocumented immigration.
- 3 Identify potential sources of information for verifying or invalidating perceived barriers to housing placements and leveraging the information to support advocacy.



Myth Busting



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Criminal Background



Criminal History

- Mandatory vs. Discretionary Restrictions in HUD-funded housing
- Drug Use vs. Drug Crimes
- Policy Restrictions vs. Practical Restrictions



Criminal History: PHAs

- Federal law requires criminal background checks to be done on adult household members applying to live in public housing – PHAs must give applicants opportunity to dispute accuracy
- **Mandatory:** For public housing and Housing Choice Vouchers (“Section 8”), only two required reasons to deny housing:
 1. Lifetime sex offender registration
 2. Conviction for meth production in federally funded housing



Criminal History: PHAs

Discretionary: Federal public housing laws permit but do not require PHAs to deny admission in following circumstances:

- Recent drug-related or violent criminal activity
- Illegal use of controlled substance or pattern of drug/alcohol use (may consider evidence of rehab)
- Eviction from federally assisted housing due to drug-related criminal activity within past 3 years

Limitations:

- No blanket bans on any kind of criminal record
- Must give applicants opportunity to dispute criminal records
- Cannot deny housing for arrest records alone
- Housing policies and practices must comply with Fair Housing Act, ADA, Civil Rights Act, Rehabilitation Act



Criminal History: CoC and ESG

- CoC Program interim rule does not require recipients to disqualify individuals or families based on criminal history
- Recipients have flexibility in designing their programs - they have the discretion to establish policies regarding sex offenders and people with a criminal record
- Choosing not to serve sex offenders and people with a criminal record with CoC Program funds is **not consistent** with a Housing First approach, an approach HUD is encouraging communities to implement
- Recipients may request information related to a potential program participant's sex offender status or other criminal background history, but should use the information to determine the most appropriate housing placement and not to screen out an otherwise eligible individual or family (exception: site-based projects)



Criminal History

Sex offender status

- One of the most difficult barriers to overcome with regarding to finding housing (including private market housing)
- Know your jurisdiction - Residency restrictions vary widely by state and sometimes even by local jurisdiction
- Use the registry to your advantage - Focus search where current registrants live



Bad or Missing Papers



Bad or Missing Papers



Serving Veterans with Non Honorable Discharges



Serving Undocumented Immigrants or other Non-Citizens



Bad or Missing Papers

Serving Veterans with Non Honorable Discharges

- General, Other Than Honorable (OTH)
 - Eligible for most VA benefits with character VA reference
 - Obtain VA card that shows veteran status but does not characterize level of discharge
- Bad Conduct, Dishonorable (“Bad Paper” discharges)
 - Ineligible for most VA benefits, but can still access homeless services
 - No obligation to disclose veteran status to prospective landlord
- Upgrade process exists but is long and difficult



Bad or Missing Papers: CoC and ESG

Serving Undocumented Immigrants or other Non-Citizens

- Recipients must only document that an individual or family is homeless and meets any additional NOFA eligibility criteria for the type of assistance being provided
- Recipients are not required to collect birth certificates, social security cards, picture IDs, or other forms of personal identification to determine eligibility for assistance*—though recipient might need to obtain these forms of documentation to help program participants obtain mainstream benefits

* Except in cases where required to document immigration status as required by PRWORA (see next slide)



Bad or Missing Papers: CoC or ESG

Serving Undocumented Immigrants or other Non-Citizens

Whether CoC and ESG recipients have to verify immigration status depends on type of organization and the type of assistance being provided.

- Providers of street outreach services, emergency shelters, safe havens, TH (except where rental assistance is provided), and RRH **must make this assistance available** to program participants without regard to citizenship, nationality, or immigration status
- **Nonprofit organizations are not required to verify the immigration status** of applicants for assistance, but if they choose to do so must do so for all applicants for assistance
- Government entities providing PSH or TH with rental assistance must verify immigration status of applicants for assistance and may only serve those in accordance with PRWORA



Fair Housing and Accessibility



Fair Housing and Accessibility



Federally-Funded Housing vs. Private Market



Who Can Demand Reasonable Accommodations? Fair Housing?



Fair Housing and Accessibility

Fair Housing Act and ADA

- Right to live in community
- Right to rent or buy housing on same terms as others
- Right to request reasonable accommodation for disability when needed
- Same rights to housing units as any other tenant (assuming use of standard lease)
- No discrimination based on race, color, national origin, religion, sex, familial status, or handicap
- Protections for people with disabilities (including substance use disorders)



Fair Housing and Accessibility

Fair Housing Act: No one may take any of the following actions based on race, color, national origin, religion, sex, familial status, or handicap:

- Refuse to rent or sell
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling

ADA: Prohibits discrimination against people with disabilities. Right to live in the community is based on statutes, case law, and federal policy initiatives.



Fair Housing and Accessibility

Reasonable accommodations

- A change, exception, or adjustment to a rule, policy, practice or service, which may be necessary to afford an individual with a disability an opportunity to use and enjoy a dwelling unit, including public and common use spaces.
- Must be a relationship between the requested accommodation and the person's disability.
- If disability is obvious and need for the requested accommodation is readily apparent, may NOT request additional information.
- If disability is obvious, but need for the accommodation is not readily apparent, may request information necessary to evaluate the disability-related need for the accommodation.
- Housing providers may not require persons with disabilities to pay extra fees or deposits or to obtain additional insurance as a condition of receiving a reasonable accommodation.



Fair Housing and Accessibility

Reasonable Accommodations

- Determined on a Case-by-Case Basis
- Factors for Denial:
 - Undue Financial and Administrative Burden
 - Fundamental Alteration of the Nature of Provider's Operation
 - Direct Threat to Health and Safety
- Assistance animals = service animals, emotional support animals
 - No different in treatment under the Act
 - All animals, not just dogs
- Other types of requests:
 - Live-in aids
 - Transfer to another unit
 - Assistance with completing applications
 - Change or modify a policy or procedure



Fair Housing and Accessibility

Reasonable Modifications

- Structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises
- Requestor pays except where housing provider is a recipient of federal funds (such as a housing authority)
- Examples:
 - Installing Ramps
 - Widening Doorways
 - Lowering Kitchen and Bathroom Cabinets
 - Lowering Light Switches
 - Raising electrical outlets
 - Grab Bars/Toilet Extensions
 - Strobe Lighting



Other Common Myths



Other Common Myths

- Employment Will Cut Off Disability or Other Benefits
- No Significant Others/Adult Children/Pets Allowed
- Deal breakers: Evictions, Bad Credit, Section 8



Navigating Barriers



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Navigating Barriers

1

Awareness

- Housing and resources available
- Eligibility and other requirements/limitations

2

3



Navigating Barriers

1

2

Access

- Relationship building
- Participation
- Connection

3



Navigating Barriers

1

2

3

Availability

- Resource allocation and targeting
- Data-supported advocacy (including landlord engagement)



Navigating Barriers

Strategies

- Build relationships with PHAs and private landlords
- Use Master Leasing
- Know your clients' rights: research additional local or state laws that may apply
- Mitigate eviction damage
 - Consider landlords with fewer units (less likely to run checks)
 - Explain situation and show current stability
 - Avoid formal evictions in future
- Criminal history
 - Record expungement – varies by jurisdiction
 - Sex offender status – know your community's restrictions / use the registry to your advantage by focusing housing search on areas where registrants live



Resources



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Resources

- [HUD Guidance to PHAs on excluding use of arrest records in housing decisions](#) (November 2015)
 - Answers to [FAQs](#) about Guidance
 - [Summary of Guidance](#) by National Alliance to End Homelessness
- [HUD Guidance on Application of Fair Housing Act standards to the use of criminal records by housing providers](#) (April 2016)
- [HUD Guidance on reentry models for PHAs](#) (June 2016)
- [HUD: Fair Housing—It's Your Right](#)
- [USICH: Fulfilling the Dream: Aligning State Efforts to Implement *Olmstead* and End Chronic Homelessness](#)



Resources

- American with Disabilities Act www.usdoj.gov/crt/ada
- Uniform Federal Accessibility Standards www.access-board.gov/ufas
- Fair Housing Accessibility First www.fairhousingfirst.org
- [Fair Housing Information Clearinghouse](#)
- Joint Statement on Reasonable Accommodations under the FHA www.hud.gov/offices/fheo/library/huddojstatement
- Joint Statement on Reasonable Modifications under the FHA www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf
- Social Security Administration's Ticket to Work Program: www.choosework.net



Q&A



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Thank you!

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