Procedure for Criminal Background Checks with Arrests ONLY[[1]](#footnote-1)

In November, 2015 HUD issued Notice 2015-19, which provided guidance on excluding the use of arrest records in housing decisions. The point of the notice is to inform PHAs and other owners of assisted housing that an arrest alone is not evidence of criminal activity and hence, cannot be the sole reason to reject an applicant or evict/terminate a client/tenant.

The HUD Notice notwithstanding, an arrest record cannot be ignored either. The underlying 1937 Housing Act forbids PHAs to assist people involved in violent or drug related criminal activity. Accordingly, we are modifying our procedures on the use of arrest records detected through criminal background checks (CBCs) as follows.

1. **Criminal Background Checks**
2. When CBCs are run, the reports to the PHA will note whether each negative report (detecting recent violent or drug related criminal activity) is based solely on an arrest record or is based on a police report, indictment, positive test for illegal drugs, conviction or guilty plea (including deferred adjudication). This method will permit staff to handle each case appropriately
3. When the PHA receives negative CBCs, the actions that follow will depend upon whether the negative information is simply an arrest rather than an indictment, police report, positive test for illegal drugs, conviction or guilty plea.
4. **Applicant Processing**
5. When a negative CBC is received on an adult member of an applicant family the following actions will take place:
6. If the CBC reveals a recent arrest followed by an indictment, police report, positive test for illegal drugs, conviction or guilty plea for drug-related or violent criminal activity, the applicant family will be rejected (public and multifamily housing) or denied (HCV).
7. If the CBC shows a recent open arrest with no conviction, police report, indictment or guilty plea, the application will be pended on the waiting list for up to one year. The applicant family will be informed in writing (or in the method needed by an applicant with disabilities) that it is his/her responsibility to inform PHA in person or in writing as soon as the open arrest is resolved,.
8. If the applicant demonstrates in a verifiable manner that the arrest has not resulted in an indictment, conviction or guilty plea within the year, the applicant will be admitted/receive a voucher. This would include situations in which the charge against the applicant is dismissed or the applicant is acquitted of the crime.
9. If the applicant is unable to demonstrate in a verifiable manner that the arrest has not resulted in a conviction or guilty plea within the year, the applicant will be rejected/denied.
10. All applicants for public and multifamily housing that are rejected will be entitled to an informal hearing on the rejection.
11. All Housing Choice Vouchers applicants that are denied will be entitled to an informal review of their denial.
12. **Public, Project-based Voucher and Multifamily Housing Tenants**
13. When a failed CBC on an adult member of a public or multifamily housing development is received, it is the responsibility of the PHA to determine whether evidence exists in addition to the arrest record. Examples of such evidence might include:
14. Testimony of witnesses
15. Police reports, discussion with arresting officer
16. Videos, including but not limited to YouTube or other social media sites
17. Stolen property or illegal drugs found on/in resident premises
18. Indictment for the crime
19. PHA staff will meet in person with the head of household to inform him/her that the investigation is ongoing and may result in lease termination and eviction, depending on acquiring additional evidence on the results of the arrest.
20. Additional CBCs will be run on the adults who have been arrested for violent or drug-related criminal activity where open arrests exist at 6 month intervals (rather than one year intervals).
21. If open arrests result in indictment, convictions or guilty pleas, the family will be subject to lease termination and eviction with consideration given to individual family circumstances (innocence of other family members).
22. One way the head of household can preserve housing for the remaining family members (assuming the head is not the one with the arrest that has been verified) is to remove the person with the arrest from the family and the lease. Should this occur, the person leaving the unit must verify where he/she is moving.
23. **HCV Clients**
24. When a CBC on an adult member of an HCV client family is received, it is the responsibility of the PHA to determine whether evidence exists in addition to the arrest record. Examples of such evidence might include:
25. Testimony of witnesses
26. Police reports, discussions the with arresting officer
27. Videos including, but not limited to YouTube or other social media sites
28. Stolen property or drugs found on/in resident premises
29. Indictment
30. PHA staff will meet in person with the head of household to inform him/her that the investigation is ongoing and may result in lease termination and termination of assistance, depending on acquiring additional evidence on the results of the arrest.
31. Additional CBCs will be run on the adults who failed and have open arrests at 6 month intervals (rather than one year intervals).
32. If open arrests result in indictments, convictions or guilty pleas, the family will be subject to termination of assistance with consideration given to individual family circumstances (innocence of other family members).
33. One way the head of household can preserve housing for the remaining family (assuming the head is not the one with the open arrest) is to remove the person with the arrest from the family and the lease. Should this occur, the person leaving the unit must verify where he/she is moving.

1. No police reports, indictments, verifiable witness statements, convictions, positive tests for illegal drugs or other evidence corroborating the arrest [↑](#footnote-ref-1)