

ASSISTED HOUSING MANAGEMENT

A Legal Compliance
Guide for Owners
& Managers of
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IN THIS ISSUE

FEATURE

HUD to PHAs: Prepare for
Funding Shortfalls & Cut Operating
Costs 1

DEPARTMENTS

SCREENING APPLICANTS

How to Avoid Discrimination When Rejecting
Applicants Because They Have a Criminal
Record 4

RECENT COURT RULINGS

Daughter Wins Last Chance to Prove She
Inherited Her Mom's Section 8 Voucher
Rights 7

ANNUAL INDEX

The linked articles published in *Assisted
Housing Management Insider* in 2025 8

HUD to PHAs: Prepare for Funding Shortfalls & Cut Operating Costs

*A recent notice lays out a menu of cost-cutting
options grouped into three categories.*

That's the somber message HUD sent to the nation's roughly 3,300 PHAs in a Nov. 17, 2025, notice entitled "Cost-Savings Measures in the Housing Choice Voucher and Project Based Voucher Programs" (PIH 2025-28). The notice (which we'll refer to as "PIH 28") outlines the cost-cutting measures that PHAs may take to reduce housing assistance payment

(HAP) expenses and prevent funding shortfalls. Among the options: cutting vouchers, raising minimum rent, turning away families seeking to move, and, as a last resort, terminating the HAP contracts of families with housing vouchers. Here's a briefing of what landlords and their managers need to know about PIH 28.

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HUD “STRONGLY RECOMMENDS” THAT PHAS AVOID ACTIONS THAT ADVERSELY IMPACT FAMILIES.

The 3 Cost-Cutting Categories

PIH 28 is a set of recommendations, not mandates. PHAs have the discretion to make their own decisions about what costs to cut. But HUD “strongly recommends” that PHAs avoid actions that adversely impact families, such as raising rents. PIH 28 lays out a menu of cost-cutting options grouped into three categories:

Category 1. Standard compliance & program management practices.

Category 1 lists potential cost-saving measures involving mandatory program requirements “that, if used proactively,” may help PHAs save money:

- Ensure that the payment standard used to calculate the family share is based on the lower of the voucher size for which the family is eligible or the actual size of the unit—for example, a single-member household living in a three-bedroom unit must have a zero- or one-bedroom, rather than a three-bedroom payment standard;
- Regularly monitor local market trends and keep payment standard amounts and schedule within the basic range of 90 to 110 percent of the applicable fair market rents (FMR);
- Review utility allowances more frequently than the required once a year to determine if they’re higher than the typical cost;
- Ensure that the utility allowance used to calculate the housing assistance payment for a tenant-based Housing Choice Voucher (HCV) is appropriate for the size of the unit the family leases;
- Use an area-wide, energy-efficient utility allowance schedule for building units that meets Leadership in Energy and Environmental Design (LEED) or ENERGY STAR standards;
- Base utility allowance payments on actual flat fees charged by an owner for utilities that are billed directly, provided that the flat fee doesn’t exceed the PHA’s utility allowance for the utilities the fee covers;
- Determine whether the rent to owner is reasonable compared to other comparable unassisted units and that it’s in accordance with the HAP contract;
- If experiencing a shortfall, don’t initiate new requests for proposals (RFPs) or undertake new selection processes, except for new Project Based Voucher (PBV) Rental Assistance Demonstration (RAD) developments;

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THE REASONABLE ACCOMMODATIONS FACTOR

PIH 28 also addresses another fly in the ointment that PHAs that initiate the recommended cost-cutting measures may encounter, namely, the rights of disabled individuals affected by these actions to “reasonable accommodations” under the Fair Housing Act, Americans with Disabilities Act, and other federal laws. PIH 28 reminds PHAs that they don’t have to grant accommodations that would impose undue financial and administrative burdens. When denying a reasonable accommodations request, PHAs should engage the family in discussions to explore alternative accommodations that would effectively address the family’s disability-related needs.

- Cancel current RFPs or selection processes that haven’t yet come to fruition if you lack the budget authority available to pay the HAP for PBV contract units; and/or
- Comply with all applicable regulations and requirements in determining PBV rents to owners including the ban on exceeding the rent requested by the owner and on exceeding the reasonable rent.

Category 2. Additional cost-cutting actions.

The controversial parts of PIH 28 are the additional cost-cutting measures that HUD recommends PHAs consider, starting with the Category 2 actions that can be taken without HUD approval:

- Reduce or stop issuing turnover vouchers to new applicants;
- Increase the minimum rent up to \$50 (or higher for Moving to Work (MTW) PHAs with an approved MTW waiver for a higher minimum rent increase);
- Stop absorbing new portable families who want to move and elect to bill the initial PHA as a cost-savings measure; and/or
- Revise subsidy standards that exceed minimum HUD requirements to reduce voucher size eligibility, subject to the requirement that HCV or PBV units have at least one bedroom or living/sleeping room per two people.

Category 3. Other cost-saving measures that HUD must approve.

Category 3 lists cost-cutting measures that, unlike Category 2, require HUD approval:

- Under some circumstances, PHAs without sufficient funding may deny requests from families receiving tenant-based assistance who want to move to another location;
- Rescind vouchers issued to applicants that haven’t yet resulted in an executed HAP contract (although HUD says that the PHA should work with HUD’s

shortfall prevention team (SPT) and local HUD field office to minimize the detrimental impact on affected families);

- Seek a waiver to apply decreases in payment standards provided for in the HAP contract immediately to current families, provided that the waiver request includes the calculation the PHA used to arrive at the projected shortfall in funding and cost-savings measures it’s taken or will take as part of the required good cause justification; and/or
- Request approval to establish payment standards below 90 percent of the applicable FMR, which will be granted only if the family share for more than 40 percent of the PHA’s voucher participants doesn’t exceed 30 percent of monthly adjusted incomes (unless the approval is required to prevent termination of program participants).

The Nuclear Option: Termination of Assistance

Of course, there’s no guarantee that cutting new vouchers, rescinding previously issued vouchers, increasing minimum rent, turning away families who want to move, and initiating the other cost-cutting options PIH 28 lays out will enable the PHA to get its funding shortfall under control.

HUD reminds PHAs that, “as a last resort,” they may terminate HAP contracts for families with tenant-based HCVs if they determine that funding under the Consolidated Annual Contributions Contract (CACC) is “insufficient to support continued assistance for families in the program.” Of course, PHAs must follow the applicable requirements for termination of the HAP contract based on insufficient funding. But it’s comforting to know that HUD is reminding PHAs that the nuclear option is there in case they need it.

SCREENING APPLICANTS

How to Avoid Discrimination When Rejecting Applicants Because They Have a Criminal Record

We outline seven ways to avoid liability risk.

On Nov. 25, 2026, HUD published a letter (the “HUD Letter”) revoking previous guidance advising landlords how to perform criminal background checks on rental applicants without committing discrimination. The HUD Letter says that the guidance was confusing and had a chilling effect on criminal background checking and other building security measures. In revoking the guidance, HUD is assuring owners that they can and must do what’s necessary to keep their sites safe and free of crime without fear of getting sued or investigated for discrimination.

Unfortunately, it’s not as simple as that. Revoking guidance doesn’t change the law or the fact that criminal checks and other security measures may still run afoul of discrimination laws. Here’s a look at the liability risk and the seven things you can do to manage it.

What the Law Says

The federal Fair Housing Act (FHA) makes it illegal to refuse to rent or deny a person housing because of their race, color, religion, sex, handicap (disability), familial status, or national origin. It doesn’t say anything about criminal history or background. However, statistics show that African Americans and Hispanics are arrested, convicted, and incarcerated at disproportionately higher rates than whites.

Result: Courts have consistently ruled that excluding rental applicants or tenants just because they have a criminal record may violate the FHA ban on racial and national origin discrimination. Criminal

history or record is also a protected class under some state and local fair housing laws, including Connecticut, Illinois, and the District of Columbia.

Impact of the HUD Letter

The guidance the HUD Letter revokes recognized the fair housing liability risks associated with criminal record screening and explained what owners could do to ensure compliance. That guidance is now gone. The problem is that the underlying liability risk remains. The HUD Letter won’t stop states, municipalities, advocacy organizations, and individuals from suing owners who use criminal checks to exclude minorities, whether deliberately or inadvertently, for discrimination. And when those cases go to court, the judges will still rely on the same jurisprudence it always has to determine the owner’s liability.

7 Ways to Minimize Liability Risk

Nobody is saying that you should stop performing criminal background checks. On the contrary, HUD regulations expressly require federally assisted landlords to not admit persons who’ve been convicted of certain offenses or pose a danger to health or safety. The takeaway is that you can’t lower your guard and must continue to ensure that your criminal record-checking rules and procedures comply with fair housing laws. Here are seven ways to do that.

**YOUR CRIMINAL
RECORD-
CHECKING
PROCEDURES
MUST STILL
COMPLY WITH
FAIR HOUSING
LAWS.**

ARREST RECORDS DON'T SHOW WHETHER THE INDIVIDUAL WAS CONVICTED OR ACQUITTED.

1. Establish reasonable & nondiscriminatory rental criteria. Owners have every right to establish policies governing who may live at their sites, as long as those standards are fair, reasonable, and nondiscriminatory—that is, they apply equally to all applicants regardless of race, color, etc. Such criteria include protecting their property and tenants' safety.

2. Establish reasonable, nondiscriminatory protocols for criminal record checks. Courts have long recognized landlords' rights to perform background screening to ensure applicants meet their legitimate criteria. As the HUD Letter notes, landlords have "broad discretion to screen for suitability of tenancy or program participation for all relevant circumstances, including a history of criminal activity which would adversely affect the health, safety, and peaceful enjoyment of the property." The principal liability risk stems from the housing decisions you make based on the results of your screening.

3. Don't impose a blanket ban on applicants with a criminal record. Rejecting a rental applicant because of a criminal record may or may not be illegal. It all depends on the crime and circumstances involved. That's why implementing pre-determined, blanket rules that treat all criminal activity the same, such as automatically rejecting any applicant with a criminal record, is highly problematic.

4. Reject based on criminal convictions, not arrests. In general, rejecting on the basis of criminal record is justified only when applicants have actually been convicted of a crime; merely being *arrested* isn't enough. An arrest, on its own, is merely an accusation and doesn't prove that the person did anything wrong. Many people who get arrested are acquitted; others get their charges dropped and don't

even go to trial. Because arrest records don't show whether the individual was prosecuted, convicted, or acquitted of the charges, relying on them isn't reliable basis for determining whether the individual poses a potential risk to safety, health, and quiet enjoyment.

5. Distinguish between dangerous & non-dangerous convictions. While more significant than an arrest, a conviction alone isn't enough to show that an individual poses a potential risk to safety, health, or quiet enjoyment. So, it's imperative to distinguish between criminal conduct that does and doesn't rise to that level. Factors to consider:

- Whether the individual was convicted of a felony or misdemeanor;
- The type of felony the individual was convicted of—attorneys suggest that crimes posing a substantial risk to safety, health, and quiet enjoyment would generally include illegal manufacture or distribution (but not mere possession) of drugs and other specified controlled substances, sexual assaults, violent crimes like homicide, assault and battery, domestic violence, robbery and false imprisonment, and crimes causing significant damage to property like arson or vandalism; and
- How long ago the felony was committed—based on court cases, seven years is the unofficial window (exception: according to attorneys, the one crime that doesn't have a shelf life is sexual assault).

6. Apply your screening policy consistently. Having legally sound screening criteria and procedures won't help if you apply them inconsistently. The biggest danger is treating people with comparable criminal histories differently based on their race, national origin, etc.

Example: A federal court ordered a Tennessee community and its property management company to pay \$42,250 in damages for selectively applying its

policy of disqualifying people with felony convictions to minority applicants. The evidence showed that the defendants denied an African American applicant because of his criminal record while approving the applications of two white applicants with similar and what should have been disqualifying felony convictions [U.S. v. Dyersburg Apartments, Ltd., (W.D. Tenn.), Aug. 13, 2019].

7. Establish criteria for termination of assistance for criminal behavior.

In addition to criminal records checking, the HUD Letter says that owners should “continuously monitor for criminal activ-

ity and take steps to immediately act if information is found that could result in a termination of tenancy.” It recommends establishing standards for termination of assistance for households if individuals within the households:

- Engage in illegal drug use or have a pattern of drug use that threatens the health, safety, or peaceful enjoyment of the property;
- Have been convicted of production of methamphetamine in federally assisted housing;
- Engage in drug-related criminal activity;
- Engage in violent criminal behavior; or
- Are abusing alcohol.

RECENT COURT RULINGS

Daughter Wins Last Chance to Prove She Inherited Her Mom's Section 8 Voucher Rights

What Happened:

In 2016, the New York City Housing Authority (NYCHA)-owned and managed Ocean Bay public housing community converted to semi-private ownership under the Permanent Affordability Commitment Together (PACT) program. When a tenant who obtained a Section 8 project-based voucher (PBV) after the conversion died, NYCHA sought to evict her adoptive daughter who was living the unit. While acknowledging not being the tenant of record, the daughter claimed that she had succeeded to her mother's voucher rights, which were attached to the unit. NYCHA insisted that the PBV rights were portable and that it had ported the household's Section 8 voucher to the tenant's son in Connecticut, leaving nothing for the daughter to inherit.

Ruling:

The New York court issued an eviction order but stayed its execution to give the daughter a last chance to prove her succession claim.

Reasoning:

Under HUD regulations, for units receiving federal project-based Section 8 benefits which remain subject to Section 8 subsidies after the household vacates and must be re-rented, the tenancy is

so “intertwined” with the subsidy that remaining occupants must prove their eligibility to inherit the subsidy to inherit the leasehold and avoid eviction. The problem is that HUD Handbook rules governing succession rights in these situations don't apply to buildings enrolled in the project-based Section 8 voucher program, like Ocean Bay. Instead, HUD leaves the PHA in charge of administering the project discretion to set its own succession rules.

Not only did NYCHA establish succession rules in this case, it also had exclusive jurisdiction over PBV succession claims, including in the context of public housing conversions under the PACT program. Consequently, the court said it had no authority to decide on the daughter's succession defense and issued an eviction.

However, what the court could and did do was stay execution of the eviction order for four months to give the daughter what she never got from NYCHA—a fair chance to make out her succession defense. And if she could prove that NYCHA's decision to award the voucher to the son unfairly stripped her of her succession rights, she'd be allowed to stay.

- Ocean Bay RAD, LLC v. Camacho, 2025 N.Y. Misc. LEXIS 8835, 2025 NY Slip Op 25244, 2025 LX 529161

ANNUAL INDEX

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FEATURE ARTICLES

Features

- The Shutdown Ends: Assisted Housing Dodges a Bullet
- How the Government Shutdown Will Impact HUD Operations & Housing Programs
- Take 6 Steps to Verify Claims of Zero Income
- Include New Compliance Certifications in Your SF-424 Submissions for CY 2026
- How to Apply HOTMA's Asset Rules to Tenant Certification, Eligibility Decisions
- HOTMA Deadline Delayed for Multifamily Housing Programs
- Comply with New Rules for the Use and Reporting of Public Housing Operating Funds
- How to Handle Income Changes from the Social Security Fairness Act
- New Violence Against Women Act Model Forms: What You Need to Know
- HUD Delays Implementation of HOME Final Rule Amid Regulatory Freeze
- HUD's Final Rule Establishes Eviction Notice Requirements
- HUD Publishes Updated FAQ on HOTMA Implementation

Compliance

- Restoring Subsidy of Residents Whose Assistance Was Terminated
- HUD Orders PHAs to Audit Residents' Immigration Status
- Corrections re: HOTMA Asset Limit Enforcement Against Current Residents
- HUD Rescinds Longstanding Guidance on Voter Registration in Public Housing
- HUD Seeks to Eliminate Affirmative Fair Housing Marketing Rules
- HUD Watchdog Report Identifies Key Compliance Issues
- Comply with HUD's Record Retention Requirements During Spring Cleaning
- HUD Lowers Blood Lead Level Threshold for Children Under 6
- Compliance Deadline Extended for NSPIRE's Affirmative Requirements

Crime & Security

- Are No-Fault Eviction Clauses for Guests' Criminal Behavior Enforceable?

Dealing with Households

- Social Security Overpayment Clawbacks May Disrupt Some Residents' Finances

Income Calculations

- HUD Issues Income Limits for Fiscal Year 2025
- How to Count Student Financial Assistance under New Rules
- How to Handle Medicare Advantage Flex Cards When Calculating Income

DEPARTMENTS

Dos & Don'ts

- Don't Let Notice SNAFUs Undermine Nonpayment Evictions

HUD Audits

- HUD Didn't Adequately Oversee Physical Condition of RAD Voucher Conversions

Recent Court Rulings

- Landlord Took Reasonable Steps to Enforce Community's No-Smoking Policy
- Waiver-By-Acceptance of Rent Rule Applies to Assisted Housing
- Insecure Window Screens Don't Violate Lease's Warranty of Habitability
- Court Nixes Resident's Civil Rights Money Damages Lawsuit Against PHA for Fatal Fire
- OK to Revoke Section 8 Voucher of Evicted PHA Resident
- Surviving Sons Can Take Over Section 8 Subsidy Despite Not Being Listed as Household Members
- Handgun Registration Conviction Doesn't Automatically Justify "One-Strike" Eviction
- Section 8 Resident's Failure to Disclose Income Is Grounds for Eviction
- Owners May File for Eviction Immediately after Serving Notice
- Owner Must Repay HUD for Leasing Unit to Ineligible Tenant Despite Good Intentions
- Court Dismisses Discrimination Lawsuit Based on Refusal to Accept Vouchers
- Court Dismisses Claim Seeking Two Apartments with One Voucher
- Owner's Lease Renewal Prevents Nonpayment of Rent Eviction
- Court Upholds Eviction for Marijuana Use

In the News

- HUD Offers One-Time "Good-Cause" OCAF Exception for RAD Owners
- Insider's 2025 Survey Results: How Readers Are Tackling Today's Management Challenges
- Housing Report Finds Renter Cost Burdens at Record High
- New Trump Budget Details Confirm Threats to HUD-Assisted Housing Programs
- Trump's FY 2026 "Skinny" Budget Would Place Severe Strain on HUD Programs
- Bill Seeks to Ban Use of Biometrics in Public Housing, Citing Bias Concerns
- Fair Housing Organizations Sue HUD and DOGE Over Grant Terminations
- Report: Gap in Affordable Rental Housing Worsens
- Trump Administration Pushes for Workforce Reductions, Field Office Closures
- President Trump Orders Sweeping Deregulation Push
- HUD Ends Affirmatively Furthering Fair Housing Rule—Again
- OMB Pause in Federal Financial Assistance Creates Confusion, Uncertainty
- HUD Publishes 2025 Operating Cost Adjustment Factors
- Sound Off on Climate Resilience Measures, Property Insurance
- HUD Issues 2025 Section 8 Annual Adjustment Factors
- HUD PIH Sends Letters on Voucher Funding, Forecasting for 2025

MODEL TOOLS

- Use Certification Form When Applicants, Residents Claim Zero Income
- Student Financial Aid Affidavit

CONTRIBUTOR'S CORNER

- Daniel Bagliore: HUD Asset Dispositions: Understanding the Two-Year Rule
- Daniel Bagliore: Restoring Subsidy of Residents Whose Assistance Was Terminated