

**COMPARISON OF CHICAGO HOUSING AUTHORITY (CHA) HOUSING CHOICE VOUCHER PLAN
(FORMERLY KNOWN AS SEC 8) AND HOUSING AUTHORITY OF COOK COUNTY (HACC) REGULATIONS
REGARDING SECTION 8 RE: INDIVIDUALS RE-ENTERING FREE SOCIETY FROM INCARCERATION**

SEPTEMBER 2009

INTRODUCTION

This document reviews and summarizes Federal and CHA policies re: housing availability for the Section 8 Program, focusing specifically on those policy items that relate directly to individuals re-entering free society after incarceration in prison or jail.

Federal requirements (mandated exclusions) are limited, and do NOT indicate any relationship between arrest record, incarceration, release date, or date of release from probationary status after incarceration, and access to public housing.

Local housing authorities are given wide discretion in development and application of exclusion policies. This memorandum provides a summary of the federal Section 8 regulations affecting persons with criminal records and the policies of CHA (Chicago Housing Authority) and HACC (The Housing Authority of Cook County) (some provisions have been paraphrased for ease of understanding). The objective is to identify areas where locally erected barriers to access for individuals who have been incarcerated or have criminal records are in place, and can potentially be reduced, thus maximizing the potential of the Section 8 program to help end homelessness in the City of Chicago and Cook County.

I. GENERAL PROVISIONS

(1) Definitions [24 CFR §5.100 and §982.4]

Drug related criminal activity: The illegal manufacture, sale, distribution or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug. [24 CFR §5.100]

Violent criminal activity: Any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

PHA: A public housing agency, including a public housing authority.

Family: A group of persons, as determined by the PHA, approved to reside in a unit with assistance under the program.

Household is used interchangeably with *family*.

(2) Evidentiary Standard [24 CFR §982.553(c)]

HUD authorizes PHAs to deny or terminate assistance for an activity based on a preponderance of the evidence, regardless of whether the person has been arrested or convicted for such activity.

The CHA uses the concept of the preponderance of the evidence as the standard for making all admission decisions.

Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence. [CHA §3-III.E]

(3) Consideration of Circumstances [24 CFR §982.552(c)(2)(i)]

In cases where HUD does not specifically require denial or termination, HUD authorizes PHAs to consider all relevant circumstances when determining whether to deny or terminate assistance. Relevant circumstances can include the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to disability, and the effects of denial or termination on non-culpable family members.

Under HUD regulations, if the family includes a person with a disability, PHA decisions regarding denial or termination are subject to reasonable accommodation requirements.

The CHA will consider the following factors prior to making its decision:

The seriousness of the case, especially with respect to how it would affect other residents;

The effects that denial of assistance may have on other members of the family who were not involved in the action or failure;

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 3-III.G) a victim of domestic violence, dating violence, or stalking;

The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future;

In the case of drug or alcohol abuse, whether the culpable household member is participating in

or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully;

The CHA will require the applicant to submit evidence of the household member’s current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully. [CHA §3-III.E]

(4) Assistance with Conditions to Non-Culpable Family Members [24 CFR §982.552(c)(2)(ii)]

In cases of denial or termination, HUD authorizes PHAs to continue assistance to non-culpable family members. PHAs may impose, as a condition of continued assistance, a requirement that the violating family member(s) will not reside in the unit.

CHA	HACC
<p>As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit or to stay as a guest in the assisted unit. [CHA §3-III.E]</p>	<p>The HACC will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity, if the HACC is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the HACC or the person who committed the crime is no longer living in the household. [3-III.B]</p>
<p>After admission to the program, the family must present evidence of the former family member’s current address upon CHA request. [CHA §3-III.E]</p>	
<p>The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination. [CHA §12-III.D]</p>	
<p>In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider</p>	

<p>whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully. [CHA §12-III.D]</p>	
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II. MANDATORY DENIALS

HUD requires public housing agencies (PHAs) to deny housing to families that include certain types of individuals:

- **Individuals who have been evicted from federally assisted housing within the past three years because of drug related criminal activity;**
- **Individuals who are subject to a lifetime sex offender registration requirement in any state;**
- **Individuals who have been convicted of manufacturing or producing methamphetamine on the premises of federally assisted housing;**
- **Individuals who are currently engaging in illegal drug use; and**
- **Individuals who are currently abusing alcohol in a manner that interferes with the health, safety or right to peaceful enjoyment of other residents.**

The PHAs have discretion to make exceptions for persons who have been rehabilitated.

(1) Previous Evictions for Drug Related Criminal Activity [24 CFR §982.553(a)(1)(i)]

HUD requires PHAs to deny admission for three years from the date of eviction if any household member was evicted from federally assisted housing for drug-related criminal activity (including personal use).

However, the PHA may admit the household if the PHA determines:

(A) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(B) That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned).

CHA	HACC
<p>The CHA will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity, if the CHA is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the CHA, or the person who committed the crime, is no longer living in the household. [CHA §3-III.B]</p>	<p>The HACC will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity, if the HACC is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the HACC or the person who committed the crime is no longer living in the household. [24 CFR 982,553 (a)] [3-III.B]</p>

(2) Lifetime Sex Offender Registration -- Applicants [24 CFR §982.553(a)(2)(i)]

HUD requires PHAs to prohibit admission of the family if any household member is subject to a lifetime sex offender registration requirement in any state. The PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in any state where the household members are known to have resided.

CHA Addition: *If any household member's criminal activity is such that requires them to be registered as a sex offender under a State registration requirement, whether life time or lesser registration, including the ten year Illinois State Sex Offender Registration Act; the family will be denied assistance. [CHA §3-III.B]*

(3) Production of Methamphetamine – Applicants [24 CFR §982.553(a)(1)(ii)(C)]

HUD requires PHAs to deny admission if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally assisted housing.

If any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine in any location, not just federally assisted housing, the family will be denied assistance. [CHA §3-III.B]

(4) Illegal Use of a Drug – Applicants [24 CFR §982.553(a)(1)(ii)(A)-(B)]

HUD requires PHAs to establish standards that deny admission if any household member is currently engaging in illegal drug use or has a pattern of drug use that threatens the health, safety or right to peaceful enjoyment of other residents.

“Currently engaging in” means the use was recent enough to warrant a belief that it is current/ongoing. [24 CFR §982.553 (a)(2)(ii)(C)(2)]

The PHA may permit the person to be admitted if the person demonstrates that he or she is not currently using drugs and has been rehabilitated in any one of three ways:

- (1) Participation in a supervised drug or alcohol rehabilitation program;
- (2) Completion of a supervised drug or alcohol rehabilitation program;
- (3) Successful rehabilitation in some other manner. [24 CFR §982.552(c)(2)(iii)]

CHA	HACC
<p>The CHA rejects the application of a household if the CHA determines that:</p> <ul style="list-style-type: none"> -any household member is currently engaged in the use of illegal drugs; -it has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. <p>In determining reasonable cause, the CHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of Illegal drugs or the abuse of alcohol. The CHA will also consider evidence from treatment providers or community-based organizations providing services to household members. [CHA §3-III.B]</p>	<p>The HACC determines that any household member is currently engaged in the use of illegal drugs. <i>Currently engaged in</i> is defined as any use of illegal drugs during the past twelve (12) months</p> <p>The HACC has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. In determining reasonable cause, the HACC will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. The HACC will also consider evidence from treatment providers or community-based organizations providing services to household members</p>

<p><i>Currently engaged in</i> is defined as any use of illegal drugs during the previous six months.</p>	<p>Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing</p> <p>Any household member is subject to a lifetime registration requirement under a state sex offender registration program</p> <p>Evidence includes: conviction for drug related criminal activity in past 5 years; arrests in past 5 years; eviction records in past 5 years</p> <p>Convictions carry more weight than arrests</p> <p>Decisions are made on a case by case basis [CFR 982 552©]</p>
<p><i>Completion of or participation in treatment:</i></p> <p>In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully the CHA will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully. [CHA §3-III.E]</p>	<p>HUD permits, but does not require, the HACC to admit an otherwise-eligible family if the household member has completed the HACC-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g., the person involved in the criminal activity no longer lives in the household).</p> <p>The HACC will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity, if the HACC is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the HACC or the person who committed the crime is no longer living in the household</p>

(5) Alcohol Abuse – Applicants [24 CFR §982.553(a)(2)(ii)(C)(3)]

HUD requires PHAs to establish standards that deny admission if a household member’s abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

“Currently engaging in” means the use was recent enough to warrant a belief that it is current/ongoing. [24 CFR §982.553 (a)(2)(ii)(C)(2)]

The PHA may permit the person to be admitted if the person demonstrates that he or she is not currently using drugs and has been rehabilitated in any one of three ways:

- (1) Participation in a supervised drug or alcohol rehabilitation program;
- (2) Completion of a supervised drug or alcohol rehabilitation program;
- (3) Successful rehabilitation in some other manner. [24 CFR §982.552(c)(2)(iii)]

CHA	HACC
<p>The CHA rejects the application of a household if the CHA determines that:</p> <ul style="list-style-type: none"> -any household member is currently engaged in the use of illegal drugs; -it has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. <p>In determining reasonable cause, the CHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. The CHA will also consider evidence from treatment providers or community-based organizations providing services to household members. [CHA §3-III.B]</p>	<p>The HACC has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. In determining reasonable cause, the HACC will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. The HACC will also consider evidence from treatment providers or community-based organizations providing services to household members</p> <p>Evidence includes: conviction for drug related criminal activity in past 5 years; arrests in past 5 years; eviction records in past 5 years</p> <p>Convictions carry more weight than arrests</p> <p>Decisions are made on a case by case basis</p>

<p>Currently engaged in is defined as any use of illegal drugs during the previous six months.</p> <p><i>Completion of or participation in treatment:</i></p> <p>In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully the CHA will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully. [CHA §3-III.E]</p>	<p>HUD permits, but does not require, the HACC to admit an otherwise-eligible family if the household member has completed the HACC-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g., the person involved in the criminal activity no longer lives in the household).</p> <p>The HACC will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity, if the HACC is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the HACC or the person who committed the crime is no longer living in the household</p>
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III. PERMISSIVE DENIALS

HUD regulations permit public housing agencies to deny admission where a household member has certain kinds of criminal records, if the criminal activity occurred a "reasonable time" before the person seeks admission:

- Individuals who have engaged in any drug-related criminal activity;
- Individuals who have engaged in any violent criminal activity;
- Individuals who have engaged in any other criminal activity that would threaten the health, safety or right to peaceful enjoyment of other residents, the owner, or PHA personnel.
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The regulations are silent on what constitutes a "reasonable time."

Federal regulations also permit public housing agencies to deny admission where:

- A household member has been evicted from assisted housing within the past five years;
- or
- A PHA has ever terminated assistance for any household member.

(1) Drug Related Criminal Activity – Applicants [24 CFR §982.553 (a)(2)(ii)(A)(1) and (a)(2)(ii)(B)]

HUD authorizes PHAs to deny admission of persons who have engaged in drug-related criminal activity during a reasonable period of time before the person seeks admission. The PHA may establish a period before the admission decision during which the applicant must not have engaged in the activities specified in paragraph (a)(2)(ii) of this section (“reasonable time”).

CHA	HACC
<p>If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past five years, the family will be denied assistance.</p> <p><i>Drug-related criminal activity</i>, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100].</p> <p>Evidence of such criminal activity includes, but is not limited to:</p> <p>Any conviction for drug-related within the past 5 years.</p> <p>Any arrests for drug-related criminal activity within the past 5 years.</p> <p>A conviction for drug-related criminal activity will be given more weight than an arrest for such activity. A pattern of illegal use of drugs, whether established by one or more arrests or one or more convictions of the same or similar criminal activity will be given more weight than a single arrest for such activity. [CHA §3-III.C]</p>	<p>If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past five years, the family will be denied assistance:</p> <p><i>Drug-related criminal activity</i>, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100]. [3-III.C]</p>
<p><i>In making its decision to deny assistance, the CHA will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the CHA may, on a case-by-case basis, decide not to deny assistance. [CHA §3-III.C]</i></p>	<p><i>Exception – disability:</i></p>

(2) Violent Criminal Activity – Applicants [24 CFR §982.553(a)(2)(ii)(A)(2)]

HUD authorizes PHAs to deny admission of persons who have engaged in violent criminal activity during a reasonable period of time before the person seeks admission.

CHA	HACC
<p>If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past five years, the family will be denied assistance.</p> <p><i>Violent criminal activity</i>, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].</p> <p>Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or</p> <p>Criminal activity that may threaten the health or safety of property owners and management staff, and persons performing contract administration functions or other responsibilities on behalf of the CHA (including a CHA employee or a CHA contractor, subcontractor, or agent).</p> <p><i>Immediate vicinity</i> means within a one mile radius of the premises.</p> <p>Evidence of such criminal activity includes, but is not limited to:</p> <p>Any conviction for violent criminal activity within the past 5 years.</p> <p>Any arrests for violent criminal activity within the past 5 years.</p>	<p>If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past five years, the family will be denied assistance:</p> <p><i>Violent criminal activity</i>, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100]</p> <p>[3-III.C].</p>

<p>Any record of eviction from public or privately-owned housing as a result of criminal activity within the past 5 years.</p> <p>A conviction for violent criminal activity will be given more weight than an arrest for such activity.</p> <p>A pattern of illegal violent criminal activity, whether established by one or more arrests or one or more convictions of the same or similar criminal activity will be given more weight than a single arrest for such activity.</p> <p>In making its decision to deny assistance, the CHA will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the CHA may, on a case-by-case basis, decide not to deny assistance. [CHA §3-III.C]</p>	
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(3) Other Criminal Activity [§982.553(a)(2)(ii)(A)(3)]

HUD authorizes PHAs to deny admission to persons who, during a reasonable time before admission, have engaged in other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity. HUD also authorizes PHAs to deny admission to persons who, during a reasonable time before admission, have engaged in other criminal activity which may threaten the health or safety of the owner, property management staff, or any PHA employee, contractor or agent.

CHA	HACC
<p>If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past five years, the family will be denied assistance.</p> <p>Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or</p> <p>Criminal activity that may threaten the health or safety of property owners and management staff, and persons performing contract administration functions or other responsibilities on behalf of the CHA (including a CHA employee or a CHA contractor, subcontractor, or agent).</p> <p><i>Immediate vicinity</i> means within a one mile radius of the premises.</p> <p>Other Permitted Restrictions of Eligibility</p> <p>Any household member is subject to a lifetime registration requirement under a state sex offender registration program</p> <p>CHA Policy</p> <p>If any household member's criminal activity is such that requires them to be registered as a sex offender under a State registration requirement, whether life time or lesser registration, including the ten year Illinois State Sex Offender Registration Act; the family will be denied assistance.</p> <p>If any household member has ever been convicted of arson or child molestation the family will be denied assistance. [24 CFR 982.553(a)]</p>	<p>If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past five years, the family will be denied assistance:</p> <p>Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity (within a three-block radius of the premises); or</p> <p>Criminal activity that may threaten the health or safety of property owners and management staff and persons performing contract administration functions or other responsibilities on behalf of the HACC (including a HACC employee or a HACC contractor, subcontractor, or agent)</p>

Evidence of criminal activity includes:

CHA	HACC
<p>Evidence of such criminal activity includes, but is not limited to:</p> <p>Any record of eviction from public or privately-owned housing as a result of criminal activity within the past 5 years.</p> <p>In making its decision to deny assistance, the CHA will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the CHA may, on a case-by-case basis, decide not to deny assistance. [CHA §3-III.C]</p>	<p>Evidence of such criminal activity includes, but is not limited to:</p> <ul style="list-style-type: none"> • Any conviction for drug-related or violent criminal activity within the past 5 years • Any arrests for drug-related or violent criminal activity within the past 5 years • Any record of eviction from public or privately-owned housing as a result of criminal activity within the past 5 years • A conviction for drug-related or violent criminal activity will be given more weight than an arrest for such activity. <p>In making its decision to deny assistance, the HACC will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the HACC may, on a case-by-case basis, decide not to deny assistance. [3-III.C]</p>