

Alcohol, Drug, and Criminal History Restrictions in Public Housing

Marah A. Curtis

University of Wisconsin-Madison

Sarah Garlington

Boston University

Lisa S. Schottenfeld

Mathematica Policy Research

Abstract

Housing assistance programs are a crucial resource for poor households. Access for families who include a member with a history of alcohol or drug use or a criminal record, however, varies considerably across public housing authorities (PHAs), because alcohol, drug, and criminal history restrictions in the housing assistance programs determine access to this scarce benefit. Very little is known about the specific rules facing poor families who apply for or use public housing. This article analyzes the alcohol, drug, and criminal history provisions governing access to or eviction from public housing using data from 40 PHAs across the country. The data show that nearly all PHAs institute more stringent bans than required by federal law and that individual PHAs exercise a great deal of discretion in setting ban lengths and defining individual problematic behavior. As a result, similar households may encounter radically different rules when attempting to access or retain housing assistance, even within a single PHA. The decision to define those with alcohol, drug, or criminal histories as categorically undeserving of housing assistance undermines other important public policy goals to treat similar populations equitably and to support ex-offenders and their families.

Introduction

The federal government funds three primary housing assistance programs: the public housing (PH) program, the Housing Choice Voucher Program (HCVP), and Section 8 project-based rental assistance, which together serve approximately 4 million low-income families.¹ The primary goal of these programs is to provide a subset of low-income households with stable, affordable housing (Committee on Ways and Means, 2004). All three programs reduce the cost of housing for participants and are governed by federal guidelines setting income eligibility and subsidy levels.²

All applicants to and residents of housing assistance programs are subject to federal alcohol, drug, and criminal activity restrictions, intended to increase the safety of assisted housing and to award a scarce benefit to “deserving” applicants (HUD, 1996; McCarty et al., 2012). These restrictions require that applicants be screened for alcohol use that interferes with the community (hereafter, “alcohol abuse”), other drug use, and past criminal activity. Applicants may be denied housing assistance if they, or anyone in their household, are found to have engaged in certain activities. In addition, households already receiving assistance may be evicted for behaviors related to alcohol abuse, drug use, and criminal activity. Public housing authorities (PHAs)—governmental entities that operate at the state or local level—administer the PH program and HCVP and are responsible for enforcing these federal alcohol abuse, drug use, and criminal history restrictions within their programs.

In an effort to empower PHAs to respond to local crime conditions, federal guidelines require the PHAs to implement certain alcohol abuse, drug use, and criminal activity restrictions, but they also give PHAs the discretion to create more severe restrictions. As such, the screening criteria for alcohol, drug, and criminal history vary tremendously across PHAs (LAC, 2004; Lundgren, Curtis, and Oettinger, 2010; McCarty et al., 2012). Further, to enable PHAs to consider applicants individually, PHA staff have broad discretionary power in determining the circumstances under which restrictions should apply and to whom. Many PHAs, for example, implement policies that individuals *may* be banned from assisted housing for certain offenses, leaving the final decision up to an individual PHA worker.

This set of circumstances raises three important issues that are of concern to policymakers. First, inter-PHA variation in the application of alcohol, drug, and criminal history restrictions means that similar households in different locations may encounter radically different rules when attempting to access or retain housing assistance. Second, the significant level of discretion awarded PHA staff ensures that similar households may be evicted, awarded assistance, or denied assistance, even within a single PHA. Third, the decision to define those with alcohol, drug, or criminal histories as categorically undeserving (HUD, 1996) undermines other important public policy goals to support ex-offenders and their families (Donovan and Henriquez, 2011).

Despite these concerns, very little is known about the specific alcohol, drug, and criminal history restrictions by which poor families are judged when they apply for or use housing assistance. To

¹ About 16 million families meet the eligibility requirements for housing assistance (McCarty et al., 2012).

² These guidelines generally require households to contribute no more than 30 percent of their income toward housing.

address this gap, this article aims to illuminate differential interpretation and implementation of these restrictions among PHAs in their PH programs. We collected primary policy data to analyze the range of banned behaviors, penalties, and discretion available to workers across a sample of PHAs in large cities across the nation. We review the standards PHAs use when evaluating evidence of misconduct or defining alcohol abuse or drug use to ban a household from receiving assistance. We focus on the PH program because PHAs are evaluated on their ability to demonstrate measurable progress on crime and drug reduction strategies in their annual performance reports to the U.S. Department of Housing and Urban Development (HUD, 2008). We therefore expect more agreement between a PHA's restrictions and implementation in the PH program.

Legislative Background

Crime and drug enforcement strategies in public housing have become increasingly vigorous during the past several decades. In an attempt to reduce drug-related crime and increase community well-being, public housing policies have (1) increased the penalties attached to behaviors deemed problematic and given PHAs extensive discretionary power in evaluating applicants and residents, (2) held residents accountable for the behavior of a broader range of actors (including minors and social associations), and (3) increased the oversight of and penalties for PHAs that fail to demonstrate progress on antidrug and crime-reduction strategies. The Anti-Drug Abuse Act of 1988³ required PHAs to construct lease clauses allowing for the eviction of tenants who engaged in drug use or other behaviors that could threaten the safety of other tenants (Blanks, 2002–2004). The Quality Housing and Work Responsibility Act of 1998⁴ supported PHAs' right to exclude applicants with a criminal history and use their discretion to determine which applicants were possible risks to the safety of the community. In addition, the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA)⁵ imposed a mandatory 3-year ban on the readmission of tenants evicted for drug-related criminal activity. PHAs have the option of extending the ban beyond 3 years. The Housing Opportunity Program Extension Act of 1996 (HOPEA)⁶ further strengthened eviction rules and called on the National Crime Information Center and local police departments to provide PHAs with applicants' criminal records (Human Rights Watch, 2004; Mazerolle et al., 2000). Further, HOPEA allowed for PHAs to deny applicants who were believed to be using drugs or abusing alcohol or who were found to have a pattern of alcohol or drug use that might threaten the health or safety of other tenants. Several PHAs currently have drug-testing policies in their public housing programs (McCarty et al., 2012). Federal policies neither permit nor prohibit PHAs from testing residents or applicants for the presence of drugs.

The U.S. Supreme Court has awarded PHAs the authority to hold a public housing resident accountable for the behavior of a broad range of actors, even if the resident in question has no knowledge of any objectionable behavior. In *U.S. Department of Housing and Urban Development v. Rucker*

³ Public Law 100-690.

⁴ Public Law 105-276.

⁵ Public Law 101-625.

⁶ Public Law 104-120.

(HUD, 2002), the Court unanimously upheld the rights of PHAs to evict an entire household based on the criminal activity of one member or guest without specific proof that the leaseholding tenant had knowledge of the activity. Other policies have sought to evaluate PHAs' ability to reduce alcohol, drug, and criminal activity. For example, NAHA required HUD to develop a broad set of performance indicators to evaluate PHAs (Clinton, 2005). Well-performing PHAs are rewarded with increased flexibility in management decisions, whereas poor performers can face serious sanctions.⁷ Antidrug and security indicators are a heavily weighted performance indicator for PHAs, indicating that PHAs likely place great importance on meeting goals in this particular area.

Regulatory Background

Although legislation has awarded PHAs a significant level of discretion in applicant and resident evaluation, a set of federal regulations provides PHAs with baseline restrictions on alcohol abuse, other drug use, and criminal history. Housing assistance programs are required to deny applicants who (1) have been evicted from public housing within the past 3 years for drug-related reasons, (2) are on the lifetime sex offender registry in any state, (3) have been convicted of manufacturing methamphetamines on public housing property, (4) are using illegal drugs currently, or (5) are abusing alcohol in a manner that interferes with the public housing community.⁸ Although all PHAs must comply with these regulations, PHAs are also granted considerable discretion to extend these bans to meet local security goals. In addition to meeting these baseline requirements, PHAs are encouraged to consider individual or mitigating circumstances when making eviction and denial decisions.

Previous Research

Systematic data on alcohol, drug, and criminal history restrictions in the housing assistance programs are sparse. Limited research suggests that PHAs have responded to these policies by creating more extensive bans than required. These bans consider alcohol, drug, and criminal behaviors outside federal requirements when screening applicants. We identified only three reports that consider the topic. The first, Lundgren, Curtis, and Oettinger (2010), reviewed postincarceration policies for those with criminal drug convictions and considered access to housing assistance, employment, education, and receipt of Temporary Assistance for Needy Families (TANF) and the Supplemental Nutrition Assistance Program (SNAP, or food stamps). These researchers found that, for those who have been convicted of a drug felony, bans on access to housing assistance often surpass the 3-year ban required in the federal mandates. Their analysis suggests that at least 12 states have adopted longer bans, which vary in length depending on the type of conviction. The second relevant report,

⁷ Each indicator is assigned a weight between 1 and 3 relative to its importance in the Public Housing Management Assistance Program scoring. For example, antidrug and security indicators are assigned a weight of 3, the average time it takes an agency to repair and turn around a vacant unit is assigned a weight of 2, and having a system to track inspection and repair of units and systems has a weight of 1 (HUD, 2008).

⁸ "Denial of Admission and Termination of Assistance for Criminals and Alcohol Abusers," 24 CFR § 982.553. *Federal Register* 68 (28805) April 1, 2010.

McCarty et al. (2012), reviewed drug-testing and crime restrictions in TANF, SNAP, and housing assistance in a Congressional Research Service report for Congress. Their findings emphasize the complex nature of alcohol, drug, and criminal restrictions in the three housing assistance programs and point out that the only method for knowing what set of policies is in effect in the PH program is a systematic review of the Admissions and Continued Occupancy Policy (ACOP) document for a specific PHA. The third publication, from the Legal Action Committee (LAC, 2004), reported on state legal barriers confronting people with criminal records and reviewed nine domains, including PH. LAC (2004: 19) produced a grade for each state based on the extent to which “its laws and policies create roadblocks to reentry.” For public housing, LAC relied on reports from the PHA in the largest city in the state. The report provides data on which states consider each applicant’s personal circumstances when making a decision (rather than using preset bans for specific criminal offenses) and whether conviction is considered in determining eligibility.

We extend this minimal body of research by considering the alcohol, drug, and criminal history restrictions contained in ACOPs for public housing in a number of large cities across the nation. We systematically review the specific activities or behaviors that result in a ban, ban length, and the extent to which PHA workers are allowed to use their discretion to consider individual circumstances.

Data and Methods

To conduct a systematic review of PHA policies related to alcohol, drug, and criminal history, we collected ACOPs, reviewed them for admissions and eligibility criteria, and categorized their restrictions. In this section, we provide detail on our data collection strategy, search methods, textual analysis, and categorization strategy.

Data Collection

We collected data from PHAs across the country to examine admission and occupancy policies related to alcohol, drug, and criminal history that result in a range of time-specific bans. We first selected any PHA that covered an entire state: the Alaska Housing Finance Corporation, the Delaware Housing Authority, and the Hawaii Public Housing Authority. We then chose the PHA in the city with the largest population in a given state (32 states). In those states where we were unable to get the admission and occupancy policies for the PHA in the largest city, we selected the second largest city’s PHA (5 states). Using these methods, we were able to collect data from 40 of the 50 states. The 10 states for which we were unable to obtain data from the PHA in either the first or second largest city are Alabama, Arkansas, Idaho, Kentucky, Maine, Mississippi, Rhode Island, Utah, Vermont, and Wyoming.⁹ The appendix includes the states and the PHAs included in our analyses.

⁹ Washington, D.C. PHA data also were not available.

Search Methods

We conducted a systematic Internet search to locate published documentation of PHAs' admission and occupancy guidelines. We used the Google search engine to locate the individual PHA websites using the search terms "[city name]" and "housing authority." We then searched each PHA website for policy documents regarding admission and occupancy in public housing developments, often referred to as ACOPs. When these documents were not available directly through the PHA website, we conducted an Internet search using the Google search engine and search terms "[name of] housing authority," "admissions policy," "admissions and continued occupancy policy," "ACOP," and "eligibility." We found 32 ACOPs on line using these search terms. ACOPs for 2 states were available on HUD's website and downloaded. We contacted the remaining 16 PHAs by telephone or e-mail to request the documents and received 6 ACOPs. The 10 states with missing data are those from whom we could not access information either on line or via phone.

Note that the absence of an ACOP means only that documentation was unavailable for our textual analysis. PHAs may have limited funding for website maintenance and limited staff available to respond to requests for information from unaffected parties (for example, academic researchers). We cannot comment on how PHAs train staff on protocols for screening residents and applicants according to mandatory restrictions, nor can we speak to how PHAs inform residents and applicants of rules that affect admission and residency. We do, however, point out that PHAs have both a financial and a management incentive to enforce restrictions, given that they are evaluated annually on how well they meet crime- and drug-reduction strategies (HUD, 2008).

Textual Analysis

We carefully reviewed the ACOPs for eligibility and admissions criteria. Two of the authors did an initial review of a subset of ACOPs to collect key language relevant to applicant exclusions, with special attention to alcohol, drug, and criminal history restrictions. After the initial review, we developed coding criteria based on common PHA language, including terms such as "eligibility," "screening," and "one-strike policy." Both reviewers then coded all eligibility sections of PHA documents for identified terms. The reviewers also coded any additional references to guidelines regarding the exclusion of applicants. The reviewers used line-by-line coding to ensure that any discussion of exclusion was noted. This method was used because precise exclusion language was often inconsistent among PHAs.

Categorizing Alcohol, Drug, and Criminal History Restrictions

To understand how policies differ at the PHA level, we collected data on restrictions across four dimensions: (1) grounds for bans from housing, (2) the length of bans for each activity or behavior, (3) whether individual circumstances can be considered when making a ban decision, and (4) whether the ban length is specified or left to worker discretion.

Some HUD language regarding alcohol abuse, other drug-related activity, and violent behavior, in general, was standard and included in each ACOP. Many PHAs, however, then delineated specific additional behaviors and ban lengths. We used HUD's language to construct four ban categories to capture the detailed information available in the ACOPs. The four categories are (1) bans for

drug-related activities, (2) bans for alcohol or nonviolent criminal activity, (3) bans for violent crimes, and (4) bans for other reasons. Each category contains activities that range in severity. For each category of offense, we review whether the PHA mentions a ban, whether the ban length is specified, and how many PHAs note that staff may consider individual circumstances in setting the ban length.

Results

Bans for drug-related activities, for alcohol or nonviolent criminal activity, and for violent crimes were common among our sampled PHAs. Ban lengths varied widely depending on the offense, although many PHAs chose to leave ban lengths to the discretion of their staff. We discuss each ban category separately.

Bans for Drug-Related Activities

We first examine bans specified under drug-related activities. Exhibit 1 notes nine different categories of bans, ranging in severity from “pending charges” for a drug-related activity to “manufacturing” drugs. The most frequently mentioned ban category is “illegal drug use, abuse, possession, distribution, and trafficking,” which 93 percent (37 of 40) of the PHAs mention. More than one-half (22) of the PHAs do not specify a ban length for this offense. In 12 of the PHAs, workers have the discretion to consider individual circumstances when deciding whether to impose the ban on an applicant or resident household. A ban for previous eviction because of drug-related activity in either public or private housing is mentioned by 34 of the 40 PHAs. Most (30) PHAs impose bans of between 3 and 5 years for this offense, and one-half (15) of those allow workers discretion in setting the length of the ban. A 6- to 10-year ban for this offense is enforced by 4 PHAs, and 2 PHAs

Exhibit 1

Bans for Drug-Related Activities

Activities	PHA Mentions Ban	No Ban Length Specified (circumstances)	1- to 2-Year Ban (circumstances)	3- to 5-Year Ban (circumstances)	6- to 10-Year Ban (circumstances)	Lifetime Ban (circumstances)
Illegal drug use, abuse, possession, distribution, trafficking	37	22 (12)	8 (3)	14 (8)	2	0
Eviction from public or private housing	34	1	0	30 (15)	4 (3)	2 (1)
Unspecified “activity”	29	15 (3)	2 (1)	18 (3)	1 (1)	0
Manufacturing	9	2	0	6 (1)	2	2
Arrest	6	5	1	0	0	0
Conviction	6	3	0	2	1	0
Intent to distribute	5	1	1	3	1	1
Warrant	2	2	0	0	0	0
Pending charges	2	2	0	0	0	0

PHA = public housing authority.

Notes: N = 40 PHAs. Individual PHAs can report multiple ban lengths for an offense or may have different ban lengths for similar offenses. Numbers in parentheses indicate the number of PHAs that take individual circumstances into account.

institute lifetime bans. These bans are in direct response to federal guidelines for the treatment of households that have been evicted from public housing within the past 3 years for drug-related reasons.¹⁰ PHAs have expanded on this mandate to include evictions from private housing as well. More than one-half (29) of the PHAs mention bans for unspecified “activity” related to drugs. Note that interaction with the criminal justice system via a warrant, pending charges, or previous arrest for drug-related activities results in bans in several of the PHAs, regardless of the criminal justice result (for example, conviction or not).

Bans for Alcohol or Nonviolent Criminal Activity

We now consider bans specified under alcohol or criminal activity in exhibit 2. The most frequently mentioned activity in the ACOs is alcohol use or abuse. Nearly every PHA (37 of 40) mentions a ban in this category, although most (32) do not specify a ban length. Bans for alcohol activity range rather dramatically from 6 months to, in 1 PHA, a lifetime ban. Overall, the prohibition on making public housing available to those with an alcohol use or abuse history is clearly manifest across our sample. PHAs are responsive to the federal mandate to exclude from housing those with alcohol abuse histories.¹¹ Bans for previous eviction for criminal activity in either public or private housing are mentioned by most (31) of the PHAs. Nearly one-half, however, do not specify the ban length. For PHAs that do mention a ban length for previous evictions because of criminal activity, these bans range from 1 to 2 years (5 PHAs) to a lifetime ban (3 PHAs), with 13 PHAs noting ban lengths of 3 to 5 years. Only 3 PHAs specify that workers consider individual circumstances when implementing this ban. Also, as in exhibit 1, more than one-half (27) of the PHAs enforce bans for unspecified criminal “activity” or “incidents.” One-half (20) of the PHAs do not specify a ban length for this open-ended category.

Some PHAs elected to impose bans for very specific criminal behaviors. These bans are for such offenses as “theft,” “burglary,” “robbery,” or “shoplifting” (14 PHAs); “criminal arson” (13 PHAs); “prostitution” or “solicitation” (7 PHAs); and “fire-related” activities (4 PHAs). Note that these specific offenses are mentioned far less frequently than the broader category of “unspecified activities or incidents” (27 PHAs). This finding suggests that PHAs concentrate on providing wide latitude for eviction and denials based on behaviors that either are directly mentioned in the federal mandates or may not be criminally enforceable. Finally, involvement with the criminal justice system via a previous “conviction,” “parole,” “parole violation,” “probation,” “arrest,” “warrant,” or “driving violation” provides potential grounds for a ban.

Bans for Violent Crimes

We next consider bans for violent crimes in exhibit 3. We expected these bans would be extensive, given the overarching goal of these provisions to maintain the safety and security of public housing by directly targeting criminal behavior. Instead, we found 17 categories of activities with ban lengths either unspecified or clustering in the 3- to 5-year range. This finding suggests that these restrictions

¹⁰ 24 CFR § 982.553.

¹¹ 24 CFR § 982.553.

Exhibit 2

Bans for Alcohol or Nonviolent Criminal Activity

Activities	PHA Mentions Ban	No Ban Length Specified (circumstances)	6-Month Ban	1- to 2-Year Ban (circumstances)	3- to 5-Year Ban (circumstances)	6- to 10-Year Ban (circumstances)	Lifetime Ban (circumstances)
Alcohol use/abuse	37	32 (8)	2	5 (3)	3 (1)	0	1 (1)
Eviction from public or private housing	31	15 (3)	0	5 (1)	13 (1)	2	3
Unspecified “activity”/“incidents”	27	20 (4)	0	5 (1)	6 (1)	3	0
Theft, burglary, robbery, shoplifting	14	2	1	3	10 (2)	1	1
Criminal arson	13	2 (1)	0	0	3	3	6 (1)
Conviction (all types)	13	5 (1)	0	1	6 (2)	5 (2)	0
Prostitution, solicitation	7	2	0	2	4 (1)	0	0
Parole, parole violation, probation	5	2	0	1	1	1 (1)	0
Arrest	4	4		0	0	0	0
Fire related	4	3	0	0	1	0	0
Lewd conduct, disorderly, public drunkenness, harassment, indecent exposure or conduct, mayhem, fighting, resisting arrest	4	1	0	2	2		0
Criminal pattern (various definitions)	4	3	0	0	1	0	0
Warrant	3	3	0	0	0		0
Driving violation (including DWI)	3	1	0	2	1	0	0
Violation protective order	1	0	0	1	0	0	0

DWI = driving while intoxicated. PHA = public housing authority.

Notes: N = 40 PHAs. Individual PHAs can report multiple ban lengths for an offense or may have different ban lengths for similar offenses. Numbers in parentheses indicate the number of PHAs that take individual circumstances into account.

are meant to supplement the existing criminal legal framework by adding enforcement power to less well-defined behaviors. PHAs mention a wide range of offenses, from “property violence” or “vandalism” in 28 ACOPs to “homicide,” “murder,” or “manslaughter” in 17 ACOPs. As in exhibits 1 and 2, one of the most frequently mentioned categories is unspecified violent “activity” (34 PHAs). Ban lengths for this offense range from 1 to 2 years (3 PHAs) to a lifetime ban (1 PHA). More than one-half of the PHAs (18) that mention unspecified activity have ban lengths of between 3 and 5 years, and another 5 PHAs carry bans from 6 to 10 years. Again, as in exhibits 1 and 2, criminal justice involvement in the form of a previous conviction or arrest (related to a violent offense) is grounds for a ban in 3 PHAs.

Exhibit 3**Bans for Violent Crimes**

Crimes/Activities	PHA Mentions Ban	No Ban Length Specified (circumstances)	1- to 2-Year Ban (circumstances)	3- to 5-Year Ban (circumstances)	6- to 10-Year Ban (circumstances)	Lifetime Ban (circumstances)
Unspecified "activity"	34	16 (2)	3 (1)	18 (6)	5 (1)	1 (1)
Property violence or vandalism	28	18	2	10 (1)	4 (1)	1
Sexual crimes	19	6 (1)	1	9 (1)	3	2
Homicide, murder, manslaughter	17	5 (1)	0	8	4	2
Assault, crime against a person	17	6 (1)	3	10 (2)	3	1
Threats, stalking	15	6	2	9 (1)	0	0
Firearms related, including explosives	12	4 (1)	1	7 (1)	2	0
Sexual crimes against children	9	3 (1)	0	2	1	3 (1)
Domestic violence	9	1 (1)	2	6 (2)	1	0
Abuse/neglect of child, elderly, or disabled person	9	4 (2)	1	5 (1)	0	0
Kidnapping, false imprisonment	7	2	0	2	2	1
Home invasion	4	0	0	4 (1)	0	0
Terrorism	3	1	1	1	0	0
Hate crimes, civil rights violations	3	2	0	1	0	0
Conviction	2	0	0	2	0	0
Gang related, organized crime	2	0	0	2 (1)	0	0
Arrest	1	1	0	0	1	0

PHA = public housing authority.

Notes: N = 40 PHAs. Individual PHAs can report multiple ban lengths for an offense or may have different ban lengths for similar offenses. Numbers in parentheses indicate the number of PHAs that take individual circumstances into account.

Bans for Other Reasons

Finally, we consider bans noted across a number of PHAs that were not included in bans for drug-related activities, bans for alcohol or criminal activities, or bans for violent crimes. Exhibit 4 reviews three specific reasons that trigger a ban: "neighbor disturbance," "disorderly house," and "incarceration." More than one-half of the PHAs (23) mention "neighbor disturbance," with most (19) not specifying a ban length, 4 enforcing a 3- to 5-year ban, and 1 enforcing a 6- to 10-year ban. "Disorderly house" is mentioned by 8 PHAs, 5 of which do not specify a ban length and 3 of which enforce bans of between 1 and 5 years. Although a history of criminal activity is not mentioned as one of the four mandated ban categories by the federal government, the broadly expanded ability of PHAs to exclude housing applicants with such a history is an observable pattern across all exhibits. In exhibit 4, we found that 2 PHAs directly mention incarceration (without reference to the reason for incarceration) as a justification for exclusion from public housing, with ban lengths ranging from 6 months to 2 years.

Exhibit 4

Bans for Other Reasons

Reasons	PHA Mentions Ban	No Ban Length Specified (circumstances)	6-Month Ban	1- to 2-Year Ban	3- to 5-Year Ban	6- to 10-Year Ban
Neighbor disturbance	23	19 (1)	0	0	4	1
Disorderly house	8	5	0	2	1	0
Incarceration	2	0	1	1	0	0

PHA = public housing authority.

Notes: N = 40 PHAs. Individual PHAs can report multiple ban lengths for an offense or may have different ban lengths for similar offenses. Numbers in parentheses indicate the number of PHAs that take individual circumstances into account.

Thus far, we have primarily focused on alcohol, drug, and criminal history behaviors that subject tenants and applicants to bans. We also have discussed the discretion PHA staff have in setting ban lengths and considering mitigating circumstances. The results of this analysis suggest significant differences in how public housing applicants and residents are treated across the sample PHAs.

Evidence of Alcohol, Drug, or Criminal Activity

Bans instituted for “unspecified” criminal, drug, or violent “activity or incidents” are common across our sample, as are bans for alcohol use or abuse. What is not clear, however, are how either “unspecified” activity or alcohol or drug use is defined to institute a ban. We did not conduct an extensive review of the definitions of alcohol or drug use or of the standards of proof needed to deny housing assistance, as such a review was beyond the scope of this article. We do, however, offer several dominant themes evident in our review of the ACOPs.

Standards of Proof

Federal regulations stipulate that PHAs may evict a household if they determine that an individual in the household has engaged in criminal activity “based on a preponderance of the evidence,”¹² a weaker standard than used in criminal trials. A number of PHAs include language in their ACOPs highlighting the use of this standard.¹³ When making decisions about whether to evict residents or deny applicants for criminal activity, PHAs can use evidence that is significantly weaker than that which would be required to convict in criminal court. Further, PHAs may evict a household for criminal activity regardless of whether an arrest or conviction has occurred.¹⁴

¹² “Denial of Admission and Termination of Assistance for Criminals and Alcohol Abusers,” 24 CFR § 982.553(c). *Federal Register* 68 (28805) April 1, 2010.

¹³ These ACOPs offer the following definition and explanation of the standard: “Preponderance of 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. The intent is not to prove criminal liability, but to establish that the act(s) occurred” (EBRPHA, 2011: 70; Hawaii Public Housing Authority, 2012: 11; Housing Authority of Baltimore City, 2011: 28–29; Housing Authority of the City of Bridgeport, 2011: 22).

¹⁴ 24 CFR § 982.553(c).

A number of ACOPs provide some detail about the types and sources of evidence that can be used to demonstrate an alcohol, drug, or criminal history. Criminal history can be collected from a variety of sources. In general, ACOPs establish that, although “credible evidence” might be accessed from police or court records, “testimony from neighbors, when combined with other factual evidence, can be considered credible evidence” (Hawaii Public Housing Authority, 2012: 11; Housing Authority of Baltimore City, 2011: 28–29; Housing Authority of the City of Bridgeport, 2011: 22–23). Other sources of “credible evidence” described by ACOPs include documentation of drug raids, arrest warrants, evidence gathered by inspectors during home inspections, and evidence gathered from the housing authority’s hotline. The Housing Authority of the City of Bridgeport’s ACOP (2011: 22–23) specifies that caller identities are “not required and shall remain private,” indicating that anonymous reports of criminal activity can be used as evidence against a household.

Alcohol Abuse or Drug Use

PHA methods for determining whether an individual is engaged in alcohol abuse or drug use vary widely. Many PHAs provide no concrete information about how a household’s alcohol abuse or other drug use would be determined or evaluated. PHAs that documented a process for identifying applicants or residents who abuse alcohol or use other drugs note a range of tactics. For example, the Indianapolis Housing Agency (2010) imposed mandatory drug testing of applicant households, whereas the Charlotte Housing Authority (2012) required applicants to sign consent forms allowing for the PHA to contact third parties involved in an applicant’s life (for example, social workers, police officers, and landlords). These third parties can be interviewed to gather information regarding the household’s eligibility, including alcohol abuse or drug use.

Discussion and Policy Implications

As our findings demonstrate, local PHAs use a wide range of criteria to exclude households from public housing, focusing primarily on those with alcohol, drug, or criminal histories. Federal policy intentionally incorporates discretion to allow for PHAs to accommodate local conditions and individual cases. We argue that this discretion, along with the criteria HUD uses to assess PHAs, creates incentives for stringent enforcement. The expansion of PHA discretion clearly serves a vital purpose in allowing local authorities to use public housing resources according to community needs. As we have shown, however, PHA bans create barriers to households that contain a member with suspected or verified alcohol, drug, or criminal history. Our analysis also shows that similarly situated households face markedly different public housing rules among but also within PHAs, depending on how individual workers use their considerable discretionary power in determining admissions and evictions. Our cursory review of how PHAs define alcohol abuse, other drug use, and the proof needed to enforce bans reveals considerable differences. Public housing residents, applicants, and those on waiting lists may have little information about the bans, the costs of association with family members with alcohol, drug, or criminal histories, and the breadth of information PHAs use to determine access. Further, PHAs are permitted to impose bans for “unspecified” activities without the necessity of a formal legal process.

Housing is a scarce resource and, as such, is not available to all households that qualify. Through discretion, local PHAs are charged with creating a public housing community that meets strict public safety metrics developed by HUD. We argue that PHA discretion, as captured in this analysis, expands on HUD exclusion criteria and creates the incentive to institute de facto bans that affect some of the most housing-needy populations. The Secretary of HUD, Shaun Donovan, urged PHAs to use their discretion to “seek a balance between allowing ex-offenders to reunite with families that live in HUD subsidized housing, and ensuring the safety of all residents in its programs” (Donovan and Henriquez, 2011: 1). Further, Donovan seeks to reframe the concept of the reentering population, moving from “undeserving” to “deserving” of public support as he noted, “this is an Administration that believes in the importance of second chances—that people who have paid their debt to society deserve the opportunity to become productive citizens and caring parents ... [and] part of that support means helping ex-offenders gain access to ... a place to live” (Donovan and Henriquez, 2011: 2). Our analysis suggests, however, that the current HUD framework using discretion to create balance between safety and access is not necessarily effective. Policymakers may need to consider structural changes to the federal alcohol, drug, and criminal history restrictions and limitations to PHA discretion in favor of clear, equitable policy standards that are transparent and consistent across the housing assistance programs.

Appendix. Public Housing Authorities

Exhibit A-1

Public Housing Authorities

State	Public Housing Authority
Alaska	Alaska Housing Finance Corporation*
Arizona	City of Phoenix Housing Department
California	Housing Authority of the City of Los Angeles
Colorado	Denver Housing Authority
Connecticut	Housing Authority of the City of Bridgeport
Delaware	Delaware State Housing Authority*
Florida	Jacksonville Housing Authority
Georgia	Atlanta Housing Authority
Hawaii	Hawaii Public Housing Authority*
Illinois	Chicago Housing Authority
Indiana	Indianapolis Housing Agency
Iowa	Des Moines Municipal Housing Agency
Kansas	City of Wichita Housing Authority
Louisiana	East Baton Rouge Parish Housing Authority
Maryland	Housing Authority of Baltimore City
Massachusetts	Boston Housing Authority
Michigan	Grand Rapids Housing Commission
Minnesota	Minneapolis Public Housing Authority
Missouri	St. Louis Housing Authority
Montana	Housing Authority of Billings
Nebraska	Omaha Housing Authority
Nevada	Southern Nevada Regional Housing Authority*
New Hampshire	Manchester Housing and Redevelopment Authority
New Jersey	Newark Housing Authority
New Mexico	Albuquerque Housing Authority
New York	New York City Housing Authority
North Carolina	Charlotte Housing Authority
North Dakota	Fargo Housing & Redevelopment Authority
Ohio	Columbus Metropolitan Housing Authority
Oklahoma	Oklahoma City Housing Authority
Oregon	Home Forward (formerly the Housing Authority of Portland)
Pennsylvania	Housing Authority of the City of Pittsburgh
South Carolina	Columbia Housing Authority
South Dakota	Sioux Falls Housing & Redevelopment Commission
Tennessee	Memphis Housing Authority
Texas	Houston Housing Authority
Virginia	City of Virginia Beach Department of Housing and Neighborhood Preservation
Washington	Seattle Housing Authority
West Virginia	Huntington West Virginia Housing Authority
Wisconsin	Housing Authority of the City of Milwaukee

* Single statewide or regional public housing authority.

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Authors

Marah A. Curtis is an assistant professor at the University of Wisconsin-Madison.

Sarah Garlington is a doctoral candidate at Boston University.

Lisa S. Schottenfeld is a research analyst at Mathematica Policy Research.

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