



# FAIR CHANCE HOUSING

**A National Know-Your-Rights  
Toolkit for Accessing Housing  
with a Conviction Record**





## ABOUT THE AUTHOR

**Root & Rebound** is a national reentry and advocacy organization that addresses racial, economic, and social inequities within the criminal justice system and the reentry process by restoring and protecting rights, dignity, and opportunities for people directly impacted by the criminal justice system. Our mission is to transfer power and information from the policy and legal communities to the people most impacted by our criminal justice system through public education, direct legal services, and policy advocacy, so that the law serves, rather than harms, low-income communities and communities of color in the U.S. Learn more at [www.rootandrebound.org](http://www.rootandrebound.org).

### HAVE A QUESTION ABOUT THE FAIR CHANCE HOUSING TOOLKIT?

- **CALL:** Please call Root & Rebound's **Reentry Legal Hotline** any Friday 9am-5pm Pacific Time (except Holiday closures) at phone number (510) 279-4662. Our lawyers are licensed in California and can give general legal information nationally.
- **EMAIL:** E-mail Root & Rebound's legal team at [info@rootandrebound.org](mailto:info@rootandrebound.org) with subject line: NATIONAL HOUSING TOOLKIT.
- **WRITE:** Write by postal mail to Root & Rebound's office at 1730 Franklin Street, Suite 300, Oakland, CA 94612.
- **FIND MORE ONLINE:** Check out Root & Rebound's multimedia toolkit on Fair Chance Housing including **videos**, a **PowerPoint training template**, and **state-specific fact sheets** for the following states: CA, GA, MD, NY, OH, PA, and TX at [rootandrebound.org/housing-toolkit](http://rootandrebound.org/housing-toolkit).

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# ABOUT THE FAIR CHANCE HOUSING TOOLKIT

## **WHO IS THIS HOUSING TOOLKIT FOR?**

This Toolkit is designed for individuals with prior involvement in the criminal justice system, who are seeking to learn about how a criminal record will affect their rights and ability to secure housing. A criminal record is often a barrier to the most important things in life, including securing safe and **affordable housing**. We created this toolkit to provide you with information about your legal rights through helpful tools and resources. We hope this information empowers you to take control of your reentry, and enables you to move beyond your system involvement.

## **HOW DO I FIND OUT MORE INFORMATION ON THE LAWS IN MY STATE OR GET LEGAL HELP?**

Root & Rebound has created fact sheets with more tailored information for the following states: California, Georgia, Maryland, New York, Ohio, Pennsylvania, and Texas. These fact sheets include state-specific legal information and contact information to get legal help.

For information in other states, contact your local legal aid provider. You can find a nonprofit legal aid office near you by visiting [LSC.gov](https://www.lsc.gov).

## **WILL I UNDERSTAND THE INFORMATION IN THE TOOLKIT IF I AM NOT A LAWYER?**

Yes. This Toolkit was written for people with records to better understand their housing rights and take proactive steps to prepare for barriers, so we defined any legal terms in a **Glossary of Terms** at the end of this Toolkit. Throughout the Toolkit, we **bolded words** to remind you that you could refer back to the Glossary for a definition.

## **DISCLAIMER**

**THIS TOOLKIT DOES NOT PROVIDE LEGAL ADVICE, BUT RATHER PROVIDES GENERAL LEGAL INFORMATION. NO ATTORNEY-CLIENT RELATIONSHIP IS CREATED BY USING ANY INFORMATION IN THE TOOLKIT. YOU SHOULD CONSULT AND RETAIN YOUR OWN ATTORNEY IF YOU NEED LEGAL ADVICE SPECIFIC TO YOUR SITUATION.**

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# EXECUTIVE SUMMARY

In 2017, over 600,000 men and women made the transition back from state and federal prison.<sup>1</sup> And as many as 100 million – or 1 in 3 – Americans now have an arrest or **conviction** on their record.<sup>2</sup> Whether or not someone has safe, affordable and stable housing is one of the most important factors to successful reentry and life on the outside.<sup>3</sup> Housing stability is critical to one's ability to contribute to the larger economy, remain physically and mentally healthy, take care of children and other dependents, and be an active member of one's community. Unfortunately, navigating the housing search process with a criminal record can be daunting. This Toolkit is designed to help people with criminal records and their advocates understand what legal rights and barriers exist under federal law when it comes to accessing housing.

## 1. HOUSING TYPES

There are a lot of different types and forms of housing. And your rights as a housing-seeker can differ depending on who owns, operates, and/or funds the housing. This Toolkit focuses on the differences between **private housing** and **federally assisted housing**. This section will explain the differences between these two types of housing, and help you figure out what type of housing you may be applying for.

## 2. FAIR HOUSING – YOUR RIGHTS & ELIGIBILITY

What are your rights under the federal **Fair Housing Act**? What does **HUD's** Guidance on Use of Criminal Records by Housing Providers say about your housing rights as someone with a criminal record? This section outlines your rights to not be discriminated against in your housing search, as well as how your criminal record may impact your eligibility for different types of housing.

## 3. BACKGROUND CHECKS

It is common for a landlord to request background information on you during the application process. This often includes running a background check. This section explains what a landlord can and cannot do, as well as your rights to make sure all information is accurate.

## 4. CHALLENGING YOUR HOUSING DENIALS

Unfortunately, you may encounter a situation where your application for housing is denied. In **federally assisted housing**, you have a right to appeal any denial. While there is no right to appeal in **private housing**, there are options for you if you think you have been denied housing illegally or have been discriminated against. This section provides information to help you take any next steps after a denial, including additional resources.

## CONCLUSION

We have included a Step-by-Step Guide in this Toolkit to identify critical action steps individuals with criminal records may take as they begin their housing search. If you have specific questions, we have also included a list of **Additional Resources** (page 28) that may help you in the state and city you are in, including specific fact sheets for the states of California, Georgia, Maryland, New York, Ohio, Pennsylvania, and Texas.

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<sup>1</sup> E. ANN CARSON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2016 (2018).

<sup>2</sup> HALF IN TEN, SENTENCING PROJECT & CMTY. LEGAL SERVS. OF PHILA., POVERTY AND OPPORTUNITY PROFILE: AMERICANS WITH CRIMINAL RECORDS (2014).

<sup>3</sup> JOCELYN FONTAINE, EXAMINING HOUSING AS A PATHWAY TO SUCCESSFUL REENTRY: A DEMONSTRATION DESIGN PROCESS (2013).

# INTRODUCTION

## HOW WE GOT HERE

Over the last forty years, the number of people in America’s jails and prisons has skyrocketed.<sup>4</sup> Today, over 2 million people are living behind bars.<sup>5</sup> The impacts of this dramatic increase in incarceration extends beyond prison walls, disrupting communities and families across the country. Low-income communities and communities of color have been hit hardest.

The racial inequity of incarceration is severe:

- “One in 87 working-aged white men is in prison or jail, compared with 1 in 36 Hispanic [or Latino] men and 1 in 12 African American men.”<sup>6</sup>
- Native American men are admitted to prison at four times the rate of White men, and Native women at six-fold the rate of White women.<sup>7</sup>

At least 95% of incarcerated people will return home.<sup>8</sup> In 2017, over 600,000 men and women returned to the community from state and federal prison.<sup>9</sup> And as many as 100 million – or 1 in 3 – Americans now has an **arrest or conviction** on their record.<sup>10</sup>

Making sure that the millions of people with records and in reentry across the United States have the resources they need to succeed when they return home increases family stability, benefits the economy, and promotes public safety. But there are literally *thousands* of legal barriers that prevent people from successfully reentering society after release.

One of the most important factors in successful reentry is access to stable housing.<sup>11</sup> The kind of housing someone has, or doesn’t have, impacts whether they will be able to reunite with their family and children, secure employment, monitor their health needs, and access other important benefits. But a severe lack of **affordable housing** across the United States, coupled with both legal and *illegal* restrictions on housing for people with criminal records, make it incredibly difficult for many people to find stable housing.

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<sup>4</sup> *Key Statistics: Total Correctional Population*, BUREAU OF JUSTICE STATISTICS, <https://www.bjs.gov/index.cfm?ty=kfdetail&iid=487> (last visited Apr. 27, 2018).

<sup>5</sup> *Id.*

<sup>6</sup> PEW CHARITABLE TRUSTS, *supra* note 7.

<sup>7</sup> *CREATED EQUAL: RACIAL AND ETHNIC DISPARITIES IN THE U.S. CRIMINAL JUSTICE SYSTEM* (2009).

<sup>8</sup> Timothy Hughes & Doris James Wilson, *Reentry Trends in the U.S.*, BUREAU OF JUSTICE STATISTICS, <https://www.bjs.gov/content/reentry/reentry.cfm> (last revised May 28, 2018).

<sup>9</sup> E. ANN CARSON, BUREAU OF JUSTICE STATISTICS, *PRISONERS IN 2016* (2018).

<sup>10</sup> *HALF IN TEN, SENTENCING PROJECT & CMY. LEGAL SERVS. OF PHILA., POVERTY AND OPPORTUNITY PROFILE: AMERICANS WITH CRIMINAL RECORDS* (2014).

<sup>11</sup> JOCELYN FONTAINE, *EXAMINING HOUSING AS A PATHWAY TO SUCCESSFUL REENTRY: A DEMONSTRATION DESIGN PROCESS* (2013).

On a single night measured in 2017, there were **553,742** people experiencing homelessness in the United States.

- 41% of those experiencing homelessness - or 224,937 individuals - were African American
- 22% - 119,419 individuals – were Hispanic or Latino.<sup>12</sup>

### **WHERE DO WE GO FROM HERE?**

Reducing barriers to housing for people with criminal records can help end the cycle of homelessness and incarceration, make our communities safer and more stable, and provide individuals and families with a meaningful chance to succeed in all areas of life.

This Toolkit provides critical information for people with records who are seeking housing and want to know their legal rights! It will also help advocates and service providers who support people in reentry and people with records to more successfully access housing opportunities and ensure their clients' rights are protected.

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<sup>12</sup> U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 5.

# A STEP-BY-STEP GUIDE FOR APPLYING TO HOUSING WITH A RECORD

After reading the Toolkit, we encourage you to use this Step-by-Step Guide as you prepare for your housing search. It is organized in an order that will be useful as you look for housing, decide on what housing is right for you, apply for housing, and steps in case you are denied housing. Please reference the relevant sections of the Toolkit for more detailed information.

## KEY STEPS BEFORE YOU START LOOKING FOR HOUSING:

**STEP 1: Read this Toolkit and watch our Fair Chance Housing videos [online](#).**<sup>13</sup>

**STEP 2: Find out what's on your record.**

Find out what is on your record by requesting a copy of your state or federal RAP sheet. A RAP sheet stands for *Record of Arrests and Prosecutions*. It is the government's official record of your interactions with law enforcement and the criminal justice system, including arrests, juvenile adjudications, adult **convictions**, acquittals, dismissals and sentences. Every U.S. state has an agency that maintains criminal record information. Contact the agency responsible for keeping these records in your state and request a copy. You are usually required to pay a fee and submit *fingerprints*. Fee waivers are often available to low-income people. Visit your state agency's website for instructions on how to get a RAP sheet in your state. Visit [www.edo.cjis.gov](http://www.edo.cjis.gov) for instructions on how to get your federal record or if you have records in multiple states.

**KNOW YOUR RIGHTS!** If your RAP sheet has any errors, you have the right to challenge those errors with both the U.S. Department of Justice and your state's criminal justice department.

**STEP 3: Find out if anything in your record can be expunged or removed from public view.**

Although there are opportunities for housing even if you have a criminal record that landlords can see, the best option in the long-term may be to get your record cleared. An **expunged** conviction record cannot show up on a **consumer background check**, and therefore, cannot be used by a **private landlord** to deny you housing. If this option is available to you in your state, you should take steps to clear your record. In addition to improving access to housing, getting your record cleared may create more opportunities for you in employment and others areas of life as well!

Each state has different laws that determine who is able to get their record cleared or **expunged**. For more information on record expungement in your state, visit the following websites:

- [Clean Slate Clearinghouse](#)<sup>14</sup>
- [Restoration of Rights Project](#)<sup>15</sup>
- [FindLaw](#)<sup>16</sup>

<sup>13</sup> <https://www.rootandrebond.org/guides-toolkits/>

<sup>14</sup> <https://cleanslateclearinghouse.org/states/>

<sup>15</sup> <https://ccresourcecenter.org/restoration/>

<sup>16</sup> <https://criminal.findlaw.com/expungement/expungement-and-criminal-records-state-specific-information.html>

#### STEP 4: Gather evidence that shows how your life has changed.

There may be different times during the housing search where you need to explain, either formally or informally, why your criminal record should not be a reason to deny you housing. It can be helpful to have documents that explain why your record is not as bad as it seems on paper, as well as documents that explain how you have improved your life since you were convicted. Because this information can take time to gather, it is best to get started before you begin your housing search. While many people still hold unfair stereotypes about people with records, sharing these documents can help you tell a DIFFERENT STORY of who you are and how far you have come.

**Gather Proof of Rehabilitation:** **Proof of rehabilitation** is information and evidence that you have changed and improved since the time of your criminal offense or conduct. Some examples of what you can submit, include:

- Letters of certificates from supervising officers or court documents showing that you have completed parole, probation, or other supervision;
- Certificates, transcripts, or diplomas for education you have received;
- Letters or certificates for completing alcohol or drug treatment programs;
- Letters or certificates for completing rehabilitation programs; or
- Letters of support or recommendations from employers, educators, volunteer supervisors, former landlords, clergy, or any other non-family member who can speak positively about you.

A nonprofit organization Legal Action Center has developed a resource called “[How to Gather Evidence of Rehabilitation](#)”<sup>17</sup> that is a great place to start for types of proof you can gather.

**Gather Proof of Mitigating Evidence:** **Proof of mitigating evidence** is extra information and evidence that explains that the offense or conduct is not as negative as it seems and/or that you are not a threat to anyone's safety (again, a stereotype some people still hold and a stigma that people with records often have to fight against). You can submit information that shows:

- A long time has passed since your **conviction** or criminal activity;
- You were young when you were convicted;
- You were not as involved in the conduct as it seems;
- There was physical, sexual or emotional abuse, coercion, or mental illness that led to the **conviction** or criminal activity;
- You or a family member had a disability that led to the **conviction** or criminal activity; or
- Any other factors that help explain the circumstances you were in when the crime occurred and why it should be viewed leniently.

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## KEY STEPS FOR DECIDING WHAT HOUSING IS RIGHT FOR YOU:

### STEP 1: Decide whether you need short-term/transitional housing or permanent housing.

For many people in reentry, short-term or transitional housing is necessary because long-term housing is not an immediate option. This is especially true for people who have been

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<sup>17</sup> *How to Gather Evidence of Rehabilitation*, LEGAL ACTION CTR., <https://lac.org/wp-content/uploads/2016/04/How-to-Gather-Evidence-of-Rehabilitation-3.30.16.pdf> (last visited Apr. 28, 2018).

incarcerated for longer periods, who cannot be approved for release without an approved residence, and/or who will be required by the rules of their supervision (parole or probation conditions) to live in transitional housing first. Some may also prefer transitional housing because of the structured environment and professional support offered.

### **STEP 2: Find out if you qualify for federally assisted housing.**

If your household income falls below a certain amount, you may qualify for **federally assisted affordable housing**. This can include short-term and long-term options. In addition to general **affordable housing** programs, there are housing programs that provide support just to households with an elderly member (62 or older), or an adult with a disability (including a physical or developmental disability or chronic mental illness), or to veterans of the military.

To find out what types of **federally assisted affordable housing programs** might be available to you, visit the [U.S. Department of Housing and Urban Development \(HUD\)'s website](https://www.hud.gov)<sup>18</sup> or call toll-free at (800) 569-4287.

#### **KNOW YOUR RIGHTS! THERE ARE SOME LEGAL BARRIERS TO FEDERAL HOUSING:**

- Even if your income, age, or disability makes you eligible for **federally assisted housing**, you will be denied from certain federal housing programs if you or anyone in your household has ever been convicted of one of the following:
  - Manufacture or production of Methamphetamine
  - An offense that requires *lifetime* sex offender registry in your state.
- You can also be denied from certain federal housing programs for three years if you or anyone in your household was previously evicted from **federally assisted housing** for a drug-related offense.
- And you can be denied from certain housing programs if you or anyone in your household is *currently* using illegal drugs.
- For more information on criminal bans in **federally assisted housing**, including which programs you may be eligible for if any of these bans apply to you, see **Section II: Your Housing Rights & Eligibility**.

### **STEP 3: Learn about the resources people use to find private housing.**

If you cannot get into **federally assisted affordable housing**, there are many **private housing** options to look into. There are a number of online rental and homebuyer listing websites. The websites listed below have listings nationally; you can also look for other listings focused in your geographic region and contact your local City Housing Department to ask for local housing listings with a good reputation. Here is a starter list of websites to find **private housing**:

- [Craigstlist.org](https://www.craigslist.org)
- [Apartments.com](https://www.apartments.com)
- [ForRent.com](https://www.forrent.com)
- [RentJungle.com](https://www.rentjungle.com)
- [Hotpads.com](https://www.hotpads.com)
- [Realtor.com](https://www.realtor.com)
- [Homefinder.com](https://www.homefinder.com)
- [Homes.com](https://www.homes.com)

<sup>18</sup> [https://www.hud.gov/topics/rental\\_assistance](https://www.hud.gov/topics/rental_assistance)

## KEY STEPS FOR APPLYING FOR HOUSING:

### STEP 1: Know Your Rights!

It is important to know your rights as you apply for housing. That way you know what to look for and when to stand up for yourself. See **Section II: Your Housing Rights & Eligibility** for more information about your rights. It's also important to know that your legal rights are different depending on whether you are applying for **private housing** or **federally assisted housing**.

### STEP 2: Find out where to apply.

If you are applying for any **federally assisted housing**, you will apply through your local **Public Housing Authority (PHA)**. You can find contact information for your local **PHA** by visiting [HUD's website](#)<sup>19</sup>. Request to see and make a copy of the **PHA's** eligibility policies so you are aware early on whether or not you are eligible for their housing programs.

If you are applying for **private housing**, you will apply directly through the landlord or through a real estate agent / broker. Contact the landlord or real estate agent / broker directly for information on how to apply.

### STEP 3: Fill out the housing application.

Any landlord, whether it is the **Public Housing Authority (PHA)** or a private individual or company, will have you fill out a housing application. Usually, a housing application will include questions about your identity, income, credit, housing and employment history, and, possibly, your criminal record.

#### KNOW YOUR RIGHTS!

##### Landlords CAN:

- Ask for you to consent to a background check.
- Ask you to list your **convictions** on your application (UNLESS you live in a city/county that has adopted a **Fair Chance Housing ordinance**. See **Section III: Background Checks** or a list of cities/counties that have adopted this type of legislation).

##### Landlords CANNOT:

- Ask you about arrests that did not lead to **convictions**.
- Prevent you from applying if you have ever been convicted of a felony.
- Run a background check on you (but not others) because of your race, color, religion, sex, national origin, disability status, or familial status.

**TIP:** If the housing application asks about criminal **convictions**, include the **proof of mitigating evidence** and/or **proof of rehabilitation** that you have gathered in your application. Giving the landlord this information upfront may increase your chance of getting approved for housing.

<sup>19</sup> [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/pha/contacts](https://www.hud.gov/program_offices/public_indian_housing/pha/contacts)

## KEY STEPS TO TAKE IF YOU ARE DENIED HOUSING:

### STEP 1: Ask why you were denied.

In most places, if a landlord denies your application because of information they received in a **background check**, they are required to give you a copy of the background check report, if you ask for it (this includes information about your criminal history)<sup>20</sup>. If a landlord denies your application because of information you shared about your record on the application, they most likely do *not* need to tell you that was the reason. Finally, if they denied your application for another reason, they are not legally required to tell you why your application was denied, but they might tell you anyway.

#### What to do:

- If you know or believe you were denied housing because of negative information in your background check, ask the landlord for a copy of the background check report and the contact information of the company that ran the background check. The landlord is required by law to give you this information<sup>21</sup>. Then, double-check the report to make sure there are no errors. See **Section III: Background Checks** for more information.
- If you think you were denied housing because of incorrect information in your background check, contact the landlord and the background check company to notify them of the error. The background check company is required by law to investigate and correct any incorrect information. See **Section III: Background Checks** for more information.

### STEP 2: If you think you were illegally denied housing.

If you were denied **private housing** or **federally assisted housing** for an illegal reason, it is important to contact a lawyer. If you are low-income, you may be able to get a lawyer to help you with your housing case for free. Find a nonprofit legal aid office near you by visiting [LSC.gov](http://LSC.gov).<sup>22</sup> You may want to file a complaint as well. Find the contact information for your local **HUD** office by visiting [HUD's website](http://HUD's website).<sup>23</sup> Scroll down that webpage to find the toll-free number for your local office. Call and ask for information about filing a **housing discrimination complaint**.

If you were denied **federally assisted housing**, you can challenge the decision by asking for a **review hearing**. You must submit a written request to the **Public Housing Authority (PHA)** to request a hearing, and the request must be made within a specified time period - which should be written in the denial notice. For more information on what a **review hearing** is and how to prepare for one, see **Section IV: Challenging Housing Denials**.

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<sup>20</sup> 15 U.S.C. § 1681b(b)(3)(A).

<sup>21</sup> Id.

<sup>22</sup> <http://www.lsc.gov/what-legal-aid/find-legal-aid>

<sup>23</sup> [http://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/fheodir](http://www.hud.gov/program_offices/fair_housing_equal_opp/fheodir)

# I. HOUSING TYPES

*In Section 1, learn about the differences between privately owned housing and some key types of **federally assisted housing**. As you'll see in later sections, there are different rules about criminal records for different types of housing.*

There are a lot of different types and forms of housing, and the type of housing can impact what your rights are under law. For this Toolkit, we are focusing on the differences between **private housing** and **federally assisted housing** (while many people will simply call **federally assisted housing** “public housing,” public housing is actually only ONE of the many housing program that the federal government helps to fund).

In **Section II - YOUR HOUSING RIGHTS & ELIGIBILITY**, you will learn more about how your rights as a housing-seeker are impacted depending on who owns, operates, and/or funds the housing. Before we get into that, this section will explain the differences between these two types of housing, and help you figure out more of the housing options that you have.

## **WHAT IS PRIVATE HOUSING?**

**Private housing** is a type of housing that is owned and operated by a **private landlord**, not the government. A for-profit company, a non-profit organization, or an individual may own and operate **private housing**. **Private housing** can take many different forms, including:

- Apartments (also called “multi-family housing”);
- Single-family homes;
- Homeless shelters or transitional homes;
- Senior housing;
- Housing for people with special needs such as for people with a mental illness; and
- Religious housing.

**Private housing** can either be **market-rate** or **affordable housing**.

- **Market-rate housing** is housing that can be sold or rented at any price to anyone who can pay. It is not limited to persons with low income.
- **Affordable housing** is housing that is limited to persons with low incomes and can *only* be rented or sold at a set, affordable price. Households making more than a set income are not eligible for **affordable housing**.

## **WHAT IS FEDERALLY ASSISTED HOUSING?**

**Federally assisted housing** is receiving funding from the federal government. It can be owned, operated, or managed by the federal government – usually through a local government agency called a **Public Housing Authority (PHA)**. Like **private housing**, **federally assisted housing** can also take many forms, including:

- Apartments (also called “multi-family housing”);
- Single-family homes;
- Senior housing; and
- Housing for people with special needs such as for people with a mental illness.

Unlike **private housing**, however, all **federally assisted housing** is only affordable housing available to low-income individuals or households. There is no such thing as *market-rate federally assisted housing*!

There are MANY different **federally assisted housing** programs. The three largest **federally assisted housing** programs, which we focus on in this Toolkit are:

- **PUBLIC HOUSING PROGRAM:** **Public Housing** is a specific program within the **U.S. Department of Housing and Urban Development (HUD)** that is operated within cities and counties by local housing agencies called **Public Housing Authorities**, or **PHAs**, to provide decent, safe, **affordable housing** for low-income households, seniors, and persons with disabilities.<sup>24</sup>

The **Public Housing program** operates through 3,300 local **Public Housing Authorities** that manage the approximately 1.2 million public housing units.<sup>25</sup>

- **HOUSING CHOICE VOUCHER PROGRAM or “SECTION 8” VOUCHER PROGRAM:** The **Housing Choice Voucher Program** – also more commonly known as **Section 8** or the **Section 8 Voucher Program** – is another **HUD** program operated by local **PHAs**. After applying for a Section 8 voucher through your local **PHA**, you can use the voucher to rent from a **private landlord/owner** in the community. The voucher allows you to pay approximately 30% of your income as rent to the landlord; **HUD** pays the landlord the remaining amount of rent. This voucher program is a **tenant-based subsidy**. This means that you, as the tenant, can take the voucher and use it for any housing in your community; if you choose to move, the voucher goes with you to be used for rental of your next home.<sup>26</sup>

Even if your unit or building is *owned by a private individual, company or organization*, if you have a Section 8 voucher, you are participating in a **federally assisted housing** program because the Section 8 voucher is *provided and paid for by the federal government*.

- **PROJECT-BASED SECTION 8 RENTAL ASSISTANCE PROGRAM:** Unlike the voucher program described above, the **Project-Based Section 8 Rental Assistance Program** provides federal funding to a housing site and not to an individual. This means that the housing itself, not the tenant, is given money by the federal government to keep it affordable to low-income families. If you move out of housing that is part of the **Section 8 Project-Based Rental Assistance Program**, the housing unit stays affordable for the *next tenant* who lives there. You are usually required to pay around 30% of your income towards the rent, and **HUD** pays the landlord the rest of the rent to keep the housing affordable to tenants with low-incomes.<sup>27</sup>

<sup>24</sup> HUD's Public Housing Program, U.S. DEP'T OF HOUS. & URBAN DEV., [https://www.hud.gov/topics/rental\\_assistance/phprog](https://www.hud.gov/topics/rental_assistance/phprog) (last visited Apr. 27, 2018).

<sup>25</sup> Id.

<sup>26</sup> Housing Choice Vouchers Fact Sheet, U.S. DEP'T OF HOUS. & URBAN DEV., [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/about/fact\\_sheet](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/about/fact_sheet) (last visited Apr. 27, 2018).

<sup>27</sup> Project Based Vouchers, U.S. DEP'T OF HOUS. & URBAN DEV., [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/project](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/project) (last visited Apr. 27, 2018).

**IMPORTANT TIP:** Even though a lot of **affordable housing** receives some funding from federal, state, and/or local government, this Toolkit only explains your rights under FEDERAL LAW. If we use the term **federally assisted housing**, we are referring to one of the types of housing listed on the previous page or in this chart below. Most **affordable housing** that is owned by a private, nonprofit organization is still considered **private housing**.

<p><b>Federally Assisted Housing</b>, for purposes of this Toolkit</p>	<ul style="list-style-type: none"> <li>*<u>Public Housing Program</u></li> <li>*<u>Housing Choice Voucher Program</u></li> <li>*<u>Project-Based Section 8 Rental Assistance Program</u></li> <li>*<u>Section 8 Moderate Rehabilitation</u></li> <li>*<u>Section 202 Housing</u> (for the elderly)</li> <li>*<u>Section 811 Housing</u> (for individuals with disabilities)</li> <li>*<u>Section 221(d)(3) Housing</u> (Multifamily Rental Housing for Moderate-Income Families)</li> <li>*<u>Section 236 Housing</u> (preservation program)</li> </ul>
<p><b>Private (NOT Federally Assisted) Housing</b>, for purposes of this Toolkit</p>	<ul style="list-style-type: none"> <li>*<u>Low-Income Housing Tax Credit Housing</u></li> <li>*<u>Shelter Plus Care</u></li> <li>*<u>Supportive Housing Program</u></li> <li>*<u>Rural Development</u></li> <li>*<u>HOPWA</u> (Housing Opportunities for Persons with AIDS)</li> </ul>

**ACTION STEP! FIND OUT IF YOU ARE APPLYING FOR PRIVATE HOUSING OR FEDERALLY ASSISTED HOUSING.** To know what your rights are when applying to housing, you need to find out what TYPE of housing you are applying to. If you are required to go through your local **Public Housing Authority (PHA)** or city or county to apply for your housing or voucher, then the housing is considered **federally assisted housing** for purposes of this Toolkit. If you are not sure whether you are applying for **private** or **federally assisted housing**, ask the listing agent, realtor, property manager, owner, or other contact listed on the housing advertisement.

## II. YOUR HOUSING RIGHTS & ELIGIBILITY

*In Section 2, learn about your rights to not be discriminated against under the federal **Fair Housing Act** and how your criminal record may impact your ability to qualify for private and federally assisted housing*

This Toolkit discusses the federal **Fair Housing Act** and [HUD Guidance](#) on the use of criminal records. These set the minimum baseline of your federal fair housing rights and eligibility, BUT your state or city or county may provide additional protections through its fair housing law. No matter where you live, it is important to look at your state's fair housing law and any local laws and policies that may affect your ability to access housing. See the **Step-by-Step Guide for Applying to Housing with a Record** or **Section V: Additional Resources** for the contact information of people that can help you learn more about your state and local laws.

### **KNOW YOUR RIGHTS - THERE ARE VERY LIMITED BARRIERS TO FEDERALLY ASSISTED HOUSING:**

- ***Legal Bans in Federally Assisted Housing***

It is important to know that it is both legal AND required for **federally assisted housing** programs to deny housing to you and/or a member of your household because of certain criminal **convictions** or conduct.

**KNOW YOUR RIGHTS!** By law, **Public Housing Authorities** must have their policies for accepting and denying applicants in writing and make them available to applicants.

**ACTION STEP:** If you are considering applying for **federally assisted housing**, you have a right to see and to request to make a copy of the **PHA's** policies.

There are only four situations in which your criminal record will automatically disqualify you from **federally assisted housing**. Keep reading to learn more about these four very specific situations.

#### **1. Lifetime Ban for Methamphetamine Production on Federally Assisted Property<sup>28</sup>**

There is a permanent ban on qualifying for **federally assisted housing** if you or someone who will live in your household has been convicted (found or plead guilty/nolo contendere in a court of law) of the manufacture or production of Methamphetamine on the property of any type of **federally assisted housing**. This ban only applies to people who fall into this specific and narrow category where the person meets all the categories (see **federally assisted housing** chart in *Section I: Housing Types* above).

<sup>28</sup> 42 U.S.C. § 1437n(f).

BANNED (lifetime) from:	STILL ELIGIBLE for:
<p><b>*Public Housing Program</b>  <b>*Housing Choice Voucher Program</b>  <b>*Project-Based Section 8 Rental Assistance Program</b>            *Section 8 Moderate Rehabilitation Program            *Section 202 Housing (for the elderly)            *Section 811 Housing (for individuals with disabilities)            *Section 221(d)(3) Housing (Multifamily Rental Housing for Moderate-Income Families)            *Section 236 Housing (preservation program)</p>	<p><b>*ALL private housing</b></p>

## 2. Lifetime Ban for Sex Offense Convictions requiring LIFETIME registration<sup>29</sup>

There is a permanent ban for **federally assisted housing** if you or any member of your household is required to register as a sex offender for *the rest of your life* (see **federally assisted housing** chart in **Section I: Housing Types** above).

BANNED (lifetime) from:	STILL ELIGIBLE for:
<p><b>*Public Housing Program</b>  <b>*Housing Choice Voucher Program</b>  <b>*Project-Based Section 8</b>            *Section 8 Moderate Rehabilitation Program            *Section 202 Housing (for the elderly)            *Section 811 Housing (for individuals with disabilities)            *Section 221(d)(3) Housing (Multifamily Rental Housing for Moderate-Income Families)            *Section 236 Housing (preservation program)</p>	<p><b>*ALL private housing</b></p>

This federal statutory ban does not apply if you are required to register as a sex offender for a *temporary or limited* amount of time.

In some states and for certain offenses, if you were required to register as a sex offender for the rest of your life, cleaning up your record, such as through a pardon may mean you no longer have to register and could become eligible for public housing. If you have cleaned up your record for a sex offense **conviction**, talk to a lawyer in your state to see whether this ban still applies to you. Each state has different laws governing who is eligible to have their record cleared or **expunged**. For more information on record expungement in your state, visit:

- **Clean Slate Clearinghouse:** [cleanslateclearinghouse.org/states](https://cleanslateclearinghouse.org/states)
- **Restoration of Rights Project:** [ccresourcecenter.org/restoration](https://ccresourcecenter.org/restoration)

## 3. Temporary Ban for Past Eviction from Federally Assisted Property due to Drug-Related Activity<sup>30</sup>

There is a temporary ban for **federally assisted housing** if you or any member of your household has been evicted within the past three years from any **federally assisted housing** program or

<sup>29</sup> 42 U.S.C. § 13663.

<sup>30</sup> 42 U.S.C. § 13661(a).

property because of drug-related criminal activity. (See **federally assisted housing** chart in *Section I: Housing Types* above).

BANNED (3 years) from:	STILL ELIGIBLE for:
<p><b>*Public Housing Program</b>  <b>*Housing Choice Voucher Program</b>  <b>* Project-Based Section 8 Rental Assistance Program</b>            *Section 8 Moderate Rehabilitation Program            * Supportive Housing for the Elderly            * Supportive Housing for Persons with Disabilities            *Section 221(d)(3) Housing (Multifamily Rental Housing for Moderate-Income Families)            *Section 236 Housing (preservation program)</p>	<p><b>*ALL private housing</b></p>

The 3-year ban starts from the date of the eviction. If it has been more than three years since the eviction, and you have been denied for this reason, you can challenge your housing denial (see *Section IV: Challenging Housing Denials* below).

This ban can be reduced to a shorter period of time (less than 3 years) if the person who engaged in drug-related criminal activity successfully completes a supervised drug rehabilitation program or if that person is no longer a part of the household.

#### 4. Ban for Current Illegal Drug Use

If you or any member of your household *currently* use illegal drugs, there is a mandatory ban that applies. “Currently” means you used illegal drugs “recently enough to justify a reasonable belief” that you’re still using.<sup>31</sup>

This ban does not apply to past drug use. See the “**More information on disability**” box on page 19 of this section. But, even if you have stopped using illegal drugs, the **PHA** or owner could still reject you for a *reasonable time* after the illegal drug use from all **federally assisted housing**.

If you are no longer using illegal drugs but were previously addicted to drugs, you may be protected from housing discrimination based on disability as discussed above. See “More on Disability” above in this section.

#### 5. Other Lawful Reasons for Denying Housing to Federally Assisted Housing

Even if you do not fall under any of the four mandatory bans described above, it is still possible that you can be legally denied housing because of:

- Drug-related criminal activity,
- Violent criminal activity, and/or
- Activity that currently poses a threat to the health, safety or peace of other residents, the owner, or public housing agency employees.<sup>32</sup>

<sup>31</sup> 24 C.F.R. 960.204(a)(2)(i).

<sup>32</sup> 42 U.S.C. 13661(c).

These broader categories of legal denial allow the **PHA** or private owner to consider various information when deciding whether to provide you with housing, including past **convictions**. If you are applying for **public housing**, the **PHA** may ask you to authorize the release of information from a drug treatment facility<sup>33</sup> which you attended if the **PHA** has reason to believe that you are currently using illegal drugs.

If you are applying to any **federally assisted housing**, there may be other specific policies or regulations that give the **PHA** or owner the right to deny you housing based on certain criminal records or activity. **REMINDER: PHAs** must have their eligibility policies in writing and make them available to applicants. If you are considering applying for **federally assisted housing**, you have a right to see and to request to make a copy of the **PHA's** eligibility policies.

## **KNOW YOUR RIGHTS - THESE APPLY TO PRIVATE HOUSING!**

- ***Your Rights if a Landlord has a Ban on Renting to People with Records***

Although people with **conviction** histories are not considered to be in a “**protected class**” under federal law, the **U.S. Department of Housing and Urban Development (HUD)** announced in 2016 that under the **Fair Housing Act (FHA)**, it is illegal for landlords to refuse you housing:

- Because you have been arrested before, or
- Because you have been convicted of a crime before, without considering the circumstances of your prior **conviction(s)**.<sup>34</sup>

It is also important to remember that because people of color are overrepresented in our criminal justice system, if you are refused housing based on your criminal record, there could still be unlawful discrimination based on your race or national origin – which are **protected classes**. Learn more on page 20 about challenging illegal bans.

### **KNOW YOUR RIGHTS!** Under federal law:<sup>35</sup>

- A landlord may not deny you housing because of an arrest(s) not resulting in a **conviction**.
- A landlord may not have a “no felon” rule or other **blanket ban** against people with records, meaning they cannot refuse to rent to you because of a criminal **conviction** “no matter when the **conviction** occurred, what the underlying conduct entailed, or what the convicted person has done since then.”<sup>36</sup>
- When a landlord considers your **conviction** history, she should consider the nature of the crime, the amount of time that has passed since the crime, and the likelihood that the **conviction** creates a specific risk to the safety of the property or neighbors.

<sup>33</sup> 24 C.F.R. 982.553.

<sup>34</sup> 42 U.S.C. §§ 3601-3631.

<sup>35</sup> HUD Guidance dated April 4, 2016 available at: [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF)

<sup>36</sup> HUD Guidance dated April 4, 2016 available at: [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF)

- The same standards that the landlord uses for screening you should apply to all applicants equally. **EXAMPLE:** If a landlord runs a background check on you, they must run a background check on all other applicants.

**EXCEPTIONS:** The **Fair Housing Act** generally does not apply to:

- **Private** multi-family apartment buildings with fewer than 5 units when one of those units is occupied by the owner of the building; and
- **Private** single-family housing that is sold or rented without the use of a broker.
- Also: **private** religious organizations that lease apartments for a non-commercial purpose can limit the apartment's occupancy to members of the organization's religion, but still cannot discriminate based on race, color, or national origin!
- A **private** club that is leasing apartments for a non-commercial purpose and seeks to limit occupancy to the club's members.

## **KNOW YOUR RIGHTS - THESE APPLY TO BOTH PRIVATE AND FEDERALLY ASSISTED HOUSING!**

- ***Your Right to NOT be Discriminated Against in Housing***

The **Fair Housing Act (FHA)** is a federal law that applies to the entire country, regardless of where you live. It applies to both **private** and **federally assisted housing**.<sup>37</sup> It is the main law governing housing discrimination in the United States.

- ***Your Right to have Reasonable Accommodations for Disabilities***

**More information on disability:** One of the seven **protected classes** covered by the **FHA** is disability. It is illegal for a landlord to deny you housing because you have a disability.

***What qualifies as a disability?*** In addition to physical or mental disabilities – such as deafness, blindness, mobility limitations, or intellectual disability – past drug or alcohol addiction and current alcoholism<sup>38</sup> are also considered disabilities under federal law.

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<sup>37</sup> 42 U.S.C. §§ 3601-3631.

<sup>38</sup> 42 U.S.C. § 3602(h).

**KNOW YOUR RIGHTS!** If you have a disability, landlords are also required to provide you with **reasonable accommodations**, if requested.

A **reasonable accommodation** is a change in a rule, policy, practice, or service that is necessary for someone with a disability to use and enjoy a dwelling equally.<sup>39</sup> If the requested accommodation is reasonable (meaning not too difficult or expensive for the landlord) and necessary, it must be granted.<sup>40</sup> Some examples of **reasonable accommodations** include permission to use a service animal, to mail payment (instead of delivering it in person), or to have a parking space large enough for wheelchair access.

You also cannot be denied housing because of past addiction or current alcoholism, because these are considered disabilities. Landlords cannot even *ask* about past drug or alcohol abuse. But a landlord *can* deny you housing if you are currently using or selling illegal drugs,<sup>41</sup> and they can run a **consumer background check** on you, also called a tenant's report, which may show evidence of current or prior drug abuse. **In you have a substance abuse disability, here is an example of a reasonable accommodation you could request:** The landlord may have to accommodate some behaviors that are common for people with alcoholism or in recovery, like permitting smoking outdoors in an otherwise smoke-free complex.

Above, we discussed the legal grounds **federally assisted housing** and **private housing** landlords have to deny you housing because of your criminal record or perceived drug use or activity. It is important to note that there are no required bans for people with criminal records in **private housing**, but many landlords of **private housing** do *illegally* deny housing because of criminal history. Here are some situations you may encounter when looking for housing. You should contact your local fair housing organization or legal services office if you believe you have been denied housing in any of these illegal ways.

The **FHA** prohibits discrimination in renting, advertising housing, buying, or securing financing for housing based on your membership in any of the seven **protected classes**. These are listed below.<sup>42</sup>

**KNOW YOUR RIGHTS!** You have the right to not be discriminated against in the renting, buying or securing of financing for housing based on your:

- Race
- Color
- National origin
- Religion
- Sex
- Disability (read more information on disability protections on page 19)
- Family status (for example, having children).

Discrimination based on any of the characteristics above, which **protected classes**, is illegal.

<sup>39</sup> 42 U.S.C. § 3604(f)(3).

<sup>40</sup> Corp. of Episcopal Church of Utah v. W. Valley City 119 F. Supp. 2d 1215, 1221 (D. Utah 2000).

<sup>41</sup> 42 U.S.C. § 12210(b). See also, HUD Guidance dated April 4, 2016 available at: [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF)

<sup>42</sup> 42 U.S.C. § 3604.

- **Illegal Blanket Bans**

HUD has explained that it is illegal for landlords to deny individuals based on arrest history – period! And it is illegal for landlords to deny individuals with a criminal record without looking at the circumstances of their **conviction** first. Despite this, many landlords across the country still have illegal **blanket bans** like this.

- **Using People’s Criminal Records as a Way to Deny Housing to People of Color**

Even though people with records are often discriminated against, they are not listed as a **protected class** under the **FHA**. However, if a landlord says that they are excluding people because of their records, but the end result is that the landlord is denying housing to people of one race or national origin (or other **protected class**) more than others, this is discrimination and may be illegal. Even though the landlord may not mean to discriminate because of an applicant’s race, the decision still *impacts* people of one race more than people of other races, which may be illegal.

Both **private landlords** and **PHAs** must follow the **FHA**. And, according to the **HUD Guidance**, private owners *should* and **PHAs** *must* consider **proof of mitigating evidence** and **proof of your rehabilitation**.<sup>43</sup> More on **proof of mitigating evidence** and **rehabilitation** in *Section IV: Challenging Housing Denials* below.

### EXAMPLES OF COURT CASES ARGUING THAT CRIMINAL RECORD BANS UNFAIRLY & UNLAWFULLY IMPACTED RACIAL MINORITIES:

***Texas Department of Housing and Community Affairs v. Inclusive Communities Project:***

In 2015, the United States Supreme Court held that a housing policy that affects people of color more than others may violate the **Fair Housing Act** if there isn’t a legal justification.<sup>44</sup> Because African-Americans, Latinos, and other people of color are overrepresented in our criminal justice system, there is a strong argument that banning tenants with criminal records from **private housing** violates the FHA as well.

***Fortune Society v. Sandcastle Towers Housing Development:*** A non-profit organization called The Fortune Society sued the owner of a building in New York City for denying housing to anyone with a criminal record. The Fortune Society argued in its lawsuit that this was illegal under the **Fair Housing Act** because it *impacted* the ability of African-American and Latino applicants to get housing more than applicants of other racial groups. This lawsuit is still being litigated.<sup>45</sup>

<sup>43</sup> U.S. DEPT. OF HOUS. & URBAN DEV., OFFICE OF GENERAL COUNSEL GUIDANCE ON APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE USE OF CRIMINAL RECORDS BY PROVIDERS OF HOUSING AND REAL ESTATE-RELATED TRANSACTIONS (2016).

<sup>44</sup> Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc., 135 S. Ct. 2507, 2525-26 (2015).

<sup>45</sup> First Amended Complaint, Fortune Soc’y, Inc. v. Sandcastle Towers Hous. Dev. Fund Corp., No. 14-cv-6410 (E.D.N.Y. May 1, 2015).

- **“Crime-Free” Housing Programs may be Illegal Discrimination:**

Over 1,000 local governments and police departments across the country are participating in something called the **Crime Free Multi-Housing Program**.<sup>46</sup> In this program, local police departments (1) train landlords and property managers on how to keep their housing “crime free,” (2) inspect properties to make sure they are designed to prevent crime, and (3) train the people living on the property to prevent crime. Some cities and towns *require* housing providers to participate in this program, while in others, housing providers may *choose* to participate.

When police departments train landlords and property managers as part of this program, they talk about how to screen people who apply for housing. Sometimes this means landlords are told not to accept housing applicants with criminal records or are given other incorrect information that leads to illegal screening practices. **BE AWARE** that if your city or town participates in this program, you might be illegally discriminated against when you apply for housing! Talk to a lawyer to get support. You can find a legal aid organization at [LSC.gov](http://LSC.gov)<sup>47</sup> and check out the “Litigation Resources” on page 30.

**ACTION STEP:** If you believe one of these illegal forms of discrimination has happened to you:

- Contact a fair housing or nonprofit legal services organization near you.
  - You can find a legal aid organization at [LSC.gov](http://LSC.gov)<sup>48</sup>, or
  - Contact your city or county’s housing department or local **PHA** to ask for referrals to local fair housing and/or legal services organizations in your community, or
  - See *Section V: Additional Resources* of this Toolkit for national organizations that may be able to help you find other resources in your state or community.

OR

- Contact and/or file a complaint with your local **HUD** Office or state commission designated to investigate fair housing violations.
  - FIND your local **HUD** office by visiting [HUD’s website](http://HUD's website)<sup>49</sup>
  - FIND your state’s fair housing commission [here](#)<sup>50</sup>

Learn more about challenging illegal discrimination and denials in **Section IV - Challenging Your Housing Denial.**

<sup>46</sup> *Crime Free Multi-Housing*, INT’L CRIME FREE ASS’N, <http://www.crime-free-association.org/multi-housing.htm> (last visited Apr. 27, 2018).

<sup>47</sup> <https://www.lsc.gov/>

<sup>48</sup> <https://www.lsc.gov/>

<sup>49</sup> [https://www.hud.gov/program\\_offices/field\\_policy\\_mgt/localoffices](https://www.hud.gov/program_offices/field_policy_mgt/localoffices)

<sup>50</sup> <https://www.nolo.com/legal-encyclopedia/state-fair-housing-agencies.html>

### III. BACKGROUND CHECKS

*In Section 3, learn about how landlords can access your background information and your rights when a landlord runs a background check during your housing application process.*

Whenever you apply for housing, a landlord can use a number of different sources to access your background information as part of the application process, including by running a background check on you.<sup>51</sup> This background information can include information about your identity, your income, your credit, your housing and employment history, and your criminal record. How the landlord can get information about your background depends on what type of housing you are applying for.

All landlords (including landlords for both **private** and **federally assisted housing**) can access information about your background from the following sources:

- Your housing application,
- Private background check companies (also called **tenant screening companies** or **consumer reporting agencies**),
- Public court records, and
- The public sources on the internet.

Only PHAs – when you apply for **federally assisted housing** – can access your background information from the following sources:

- The National Crime Information Center,
- State and local police departments and other law enforcement agencies,
- Other **PHAs**, and
- Drug treatment facilities – only in the case of applications to **Public Housing** – only about<sup>52</sup> the likelihood that you are currently using illegal drugs, and with your permission.

If you apply for any of the three main **federally assisted housing** programs discussed above —**Public Housing**, the **Housing Choice Voucher Program**, OR the **Project-Based Section 8 Rental Assistance Program**—you will apply directly to the **PHA**. Only the **PHA** can access your background information from these sources. A **private landlord** who owns housing that is offered through either the **Housing Choice Voucher Program** or the **Project-Based Section 8 Rental Assistance Program** cannot access information from these other sources, though they can still run their own background check on you.

**EXCEPTION:** Although owners of units in the **Project-Based Section 8 Rental Assistance Program** cannot access these records directly, they can ask the **PHA** for information about your criminal record.

<sup>51</sup> 15 U.S.C. § 1681b.

<sup>52</sup> 42 U.S.C. § 1437(d)(t); 24 C.F.R. 960.205

## **SOURCES OF CRIMINAL RECORDS THAT LANDLORDS USE**

The two most common sources where a landlord gets information about your criminal record are (1) by asking you directly on your housing application and (2) by using a private background check company (sometimes called a **tenant screening company** or **consumer reporting agency**) to run a background check (sometimes called a **tenant report**).

### **When Filling out a Housing Application:**

In most parts of the country, a landlord can ask you about your criminal record on their housing application. However, local laws may provide you with more protection: see the box below.

And even though a landlord may be able to ask you about your criminal record when you apply for housing, they must ask everyone equally. If you think you are being asked about your criminal record because of your race, color, national origin, religion, sex, disability, or family status, you should contact a fair housing or legal services organization and file a complaint! You can find a legal aid organization at [LSC.gov](https://www.lsc.gov)<sup>53</sup> and check out the “Litigation Resources” on page 30.

### **KNOW YOUR RIGHTS! LOCAL LAWS MAY PROVIDE YOU WITH MORE PROTECTION:**

Some cities and counties have recently adopted local laws that ban landlords from asking about your criminal record on a housing application and/or ban discrimination on the basis of **arrests or convictions**. Check your city or county’s laws and ordinances as news laws are increasing protections!

As of the writing of this Toolkit, the following cities and counties have adopted **Fair Chance Housing Ordinances**:

- **‘Ban the Box’ Ordinances:** These prevent landlords from asking an applicant about criminal history in a housing application until *after* they have made an offer to rent to the applicant.
  - City of Newark, NJ<sup>54</sup>
  - City of Richmond, CA (applies only to **affordable housing**)<sup>55</sup>
  - City & County of San Francisco, CA (applies only to landlords receiving public funding)<sup>56</sup>
  - District of Columbia<sup>57</sup>
- **Anti-Discrimination Ordinances:** Adds criminal record (and, in some cases, arrest history) as a **protected class**, preventing landlords from denying you housing based on your criminal record (and/or arrest history).
  - City of Champaign, IL (see FOOTNOTE for list of exceptions)<sup>58</sup>
  - City of Seattle, WA (except for people on sex offender registry for adult **convictions**)<sup>59</sup>
  - City of Urbana, IL<sup>60</sup>

<sup>53</sup> <https://www.lsc.gov/>

<sup>54</sup> NEWARK, N.J., CODE §§ 2:31-1 to 2:31-9.

<sup>55</sup> RICHMOND, CAL., MUN. CODE §§ 7.110.010-7.110.090.

<sup>56</sup> S.F., CAL., POLICE CODE §§ 4900-4920.

<sup>57</sup> D.C., CODE §§ 42-3541.01 to 42-3541.10.

<sup>58</sup> CHAMPAIGN, ILL., CODE OF ORDINANCES §§ 17-3, 17-71 to 17-75.1. Note a number of exceptions apply here for forcible felony, felony drug conviction, conviction for the sale, manufacture, or distribution of illegal drugs, and conviction based on any of the factors that would constitute one of the categories of conviction listed under IL law unless the person has resided outside of prison for 5 years without any conviction for use of force or violence or the illegal use, possession, distribution, sale or manufacture of drugs.

<sup>59</sup> SEATTLE, WASH., MUN. CODE §§ 14.09.010-49.09.025.

<sup>60</sup> URBANA, ILL., CODE OF ORDINANCES §§ 12-39, 12-64.

**ACTION STEPS:** When a housing application asks about your criminal record, you should be honest. Before you submit your application, you should also gather **proof of mitigating evidence** and/or **proof of rehabilitation**. This includes any extra information or evidence that explains that the offense or conduct was not as negative as it seems; and information or evidence that you have changed and improved since the time of your criminal offense or conduct. See the *Step-by-Step Guide to Your Housing Search* for more on what information can be used as **proof of mitigating evidence** or **proof of rehabilitation**.

**When a Landlord Uses a Tenant Screening Company to Run a Background Check:**

When a landlord uses a **tenant screening company** to run a background check on you, you have certain rights under the **Fair Credit Reporting Act (FCRA)**.<sup>61</sup>

**KNOW YOUR RIGHTS!**

> **Your Right to Request a Copy:** If your housing application is denied because of information in your background check, the landlord must give you the name, address, and telephone number of the **tenant screening company** that ran the report. You have the right to request a free copy of your background check from the company that the landlord used within 60 days from the date of denial.<sup>62</sup>

> **Your Right to Correct Errors:** The **tenant screening company** must make sure that the information in your background check is accurate. If you think the information in your report is wrong, you should:

- **Tell the tenant screening company:** Report any incorrect information in your background check to the **tenant screening company**. They must investigate any reported inaccuracies to make sure the information is correct. If the information is incorrect, they have 30 days to either remove or correct the information in your background check.<sup>63</sup> **NOTE:** Because there are thousands of tenant screening companies, unfortunately, correcting information with one company may mean that errors will still appear on checks from other companies.
- **Tell the landlord:** If you think your housing application was denied because of incorrect information in your background check, tell the landlord that the information was incorrect and that you have reported it to the company. If you are applying to **federally assisted housing**, the **PHA** must give you a **review hearing**. More on **review hearings** in *Section IV: Challenging Housing Denials* below.

In addition to these rights, it is important to know that the landlord can only use information from your background check to make a decision on your housing application and must destroy the information once they have finished using it.<sup>64</sup>

<sup>61</sup> 15 U.S.C. §§ 1681-1681x.

<sup>62</sup> 15 U.S.C. § 1681j(b).

<sup>63</sup> 15 U.S.C. § 1681i.

<sup>64</sup> 15 U.S.C. §§ 1681b, 1681w.

## IV. CHALLENGING HOUSING DENIALS

*In Section 4, you will learn what to do if you believe you were illegally denied private or **federally assisted housing** and about the **review hearing** process in **federally assisted housing**.*

### **CHALLENGING A DENIAL TO FEDERALLY ASSISTED HOUSING**

- ***Request a Review Hearing***

If you applied to **federally assisted housing** and you believe you were denied housing because of illegal access to your records or incorrect or illegal information, you should IMMEDIATELY submit a written request for a **review hearing**. You should also request a **review hearing** if you believe that the **PHA** or owner did not fairly consider your mitigating or rehabilitative evidence. At a **review hearing**, you can make corrections to your record, give the **PHA proof of mitigating evidence** and/or **proof of rehabilitation** (more on this below), and challenge the denial of your housing application.

- ***What is a Review Hearing?***

A **review hearing** is an informal process (not in a court) where you can challenge your denial of housing with the **PHA**. The hearing will be conducted by a person (called the “hearing officer”) chosen by the **PHA**, but cannot be conducted by the person, or a subordinate of the person, who denied your application.

#### **KNOW YOUR RIGHTS!**

- You have a right to consult with and bring a lawyer with you (though you do not have a right to be given a lawyer like you do in criminal court).
- You have the right to have your case heard before an impartial, unbiased hearing officer.
- You have the right to review any **PHA** documents directly related to the hearing.
- You have the right to make an argument about why you should not have been denied housing.
- You have the right to explain the circumstances around any past **conviction(s)**.
- You have the right to question witnesses, and may ask that they testify under oath.
- You have the right to a written decision after the hearing.
- You can ask for a written transcript and/or an audio recording of the hearing (if there is one), or request to record the hearing yourself.

REMEMBER to comply with any time limits associated with your **review hearing**!

**EXCEPTION:** The hearing process is different for housing in the Rural Development program.

### **ACTION STEPS: STEPS TO TAKE TO PREPARE FOR A REVIEW HEARING:**

- If you have time, get immediate legal advice from a nonprofit fair housing or legal aid organization. Find a nonprofit legal aid office near you by visiting [LSC.gov](https://www.lsc.gov).<sup>65</sup>
- Make sure you know why your application was denied! You should have received a written explanation of your denial before the hearing. If you haven't received a written explanation, ask the **PHA** or owner. There should not be a **review hearing** if you haven't received this first!
- Ask the **PHA** or owner for all documents and information they have about your housing application denial.
- Gather information to show the **PHA** why you should not have been denied housing.
  - If you were denied housing because of your criminal **record**, you should include any **proof of rehabilitation** or **proof of mitigating evidence** (explained in the *Step-by-Step Guide to Your Housing Search*), evidence that there was a mistake in the criminal records that were used by the **PHA** or owner, or other information that shows why you are not a threat to the health or safety of other residents, **PHA** staff, or their contractors.

### **STEPS TO TAKE IF YOU ARE DENIED FEDERALLY ASSISTED HOUSING EVEN AFTER A REVIEW HEARING:**

- If you have not already, contact a nonprofit fair housing or legal aid organization near you to help you. Find a nonprofit legal aid office near you by visiting [LSC.gov](https://www.lsc.gov).<sup>66</sup> You can also contact your city's or county's housing department or local **PHA** to ask for referrals to local fair housing and/or legal services organizations in your community. Finally, see **Section V: Additional Resources** of this Toolkit for national organizations who may be able to direct you to other resources in your state or community.

#### AND

- File a complaint with your local **HUD** office or state fair housing commission.
  - Contact and/or file a complaint with your local **HUD** Office or state commission designated to investigate fair housing violations.
    - FIND your local **HUD** office by visiting [HUD's website](#)<sup>67</sup>
    - FIND your state's fair housing commission [here](#)<sup>68</sup>

## **CHALLENGING A DENIAL TO PRIVATE HOUSING**

There is no process similar to a **review hearing** where you can challenge your denial of **private housing**. Therefore, if you believe you have been illegally denied **private housing**, you should:

- Contact a nonprofit fair housing or legal aid organization to discuss your situation further. You can find a legal aid organization at [LSC.gov](https://www.lsc.gov)<sup>69</sup> and check out the "Litigation Resources" on page 30.

#### AND

- File a complaint either with the federal government through the **U.S. Department of Housing and Urban Development (HUD)** or through your state's fair housing commission. Learn more on [HUD's website on fair housing](#).<sup>70</sup>

<sup>65</sup> <http://www.lsc.gov/what-legal-aid/find-legal-aid>

<sup>66</sup> <http://www.lsc.gov/what-legal-aid/find-legal-aid>

<sup>67</sup> [https://www.hud.gov/program\\_offices/field\\_policy\\_mgt/localoffices](https://www.hud.gov/program_offices/field_policy_mgt/localoffices)

<sup>68</sup> <https://www.nolo.com/legal-encyclopedia/state-fair-housing-agencies.html>

<sup>69</sup> <https://www.lsc.gov/>

<sup>70</sup> [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp](https://www.hud.gov/program_offices/fair_housing_equal_opp)

## V. ADDITIONAL RESOURCES

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*In Section 5, find contact information for other organizations who may be able to assist with you with more information or refer you to local organizations in your community who can assist with your fair chance housing needs.*

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### **FOR HOUSING SEEKERS LOOKING FOR LOCAL FAIR HOUSING AND/OR LEGAL SERVICES ORGANIZATIONS**

The following national resources are good places to start if you're looking for more information on fair housing - including trustworthy fair housing and free legal services organizations in your community.

#### **National HIRE Network**<sup>71</sup>

*Established by the Legal Action Center, the National H.I.R.E. (Helping Individuals with criminal records Re-enter through Employment) Network is a national clearinghouse for information and an advocate for policy change. (Note: The listed resources are not just housing-specific.)*

- Contact at: [hirenetworkinfo@lac.org](mailto:hirenetworkinfo@lac.org) or (212) 243-1313 or (202) 544-5478
- Search by state for government and community-based organizations that provide assistance to individuals with a criminal record: <http://hirenetwork.org/clearinghouse>

#### **U.S. Department of Housing and Urban Development (HUD)**<sup>72</sup>

*Find information about fair housing rules, your rights, and filing complaints.*

- Contact at: (202) 708-1112, or TTY: (202) 708-1455
- Find your local **HUD** office by visiting [HUD's website](#)

#### **Equal Rights Center**<sup>73</sup>

*Equal Rights Center is a national civil rights organization working to stop illegal discrimination in housing as well as other areas.*

- Contact at: [info@equalrightscenter.org](mailto:info@equalrightscenter.org) or (866) 719-4372

#### **Nonprofit Legal Aid**<sup>74</sup>

Find a free legal services office near you at [LSC.gov](http://LSC.gov)<sup>75</sup>

#### **American Civil Liberties Union (ACLU)**<sup>76</sup>

*The ACLU is a national legal organization working to defend the rights and liberties guaranteed by the laws of the United States.*

To find an office near you, scroll down until you see this "Find your local ACLU affiliate" search box.

#### **American Bar Association:**

Go to [www.findlegalhelp.org](http://www.findlegalhelp.org) to find free legal help and lawyers for hire.

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<sup>71</sup> <http://hirenetwork.org/>

<sup>72</sup> <https://www.hud.gov/>

<sup>73</sup> <https://equalrightscenter.org/our-programs/fair-housing/>

<sup>74</sup> <https://www.lsc.gov/>

<sup>75</sup> <https://www.lsc.gov/what-legal-aid/find-legal-aid>

<sup>76</sup> <https://www.aclu.org/>

## **FOR ADVOCATES LOOKING FOR MORE INFORMATION ON BEST PRACTICES & POLICIES:**

### **National H.I.R.E. Network**<sup>77</sup>

*Established by the Legal Action Center, the National Helping Individuals with criminal records Re-enter through Employment (H.I.R.E.) Network is a national clearinghouse for information and an advocate for policy change.*

- For general inquiries: [hirenetworkinfo@lac.org](mailto:hirenetworkinfo@lac.org) or (212) 243-1313 or (202) 544-5478
- For state-specific organizations working in this space: [hirenetwork.org/clearinghouse](http://hirenetwork.org/clearinghouse)
- For publications: [hirenetwork.org/content/publications](http://hirenetwork.org/content/publications)
- Read their report “Helping Moms, Dads and Kids to Come Home: Elimination Barriers to Housing for People with Criminal Records” online at <https://lac.org/resources/criminal-justice-resources/housing-resources/eliminating-barriers-housing-criminal-records/>.

### **Shriver Center**<sup>78</sup>

*The Sargent Shriver National Center on Poverty Law is a national organization advocating for people living in poverty.*

- For general inquiries: [info@povertylaw.org](mailto:info@povertylaw.org) or (312) 263-3830
- For more information on [housing](http://povertylaw.org/housing)<sup>79</sup>
- For [resources and publications](http://povertylaw.org/resources-and-publications)<sup>80</sup>

### **Vera Institute of Justice**<sup>81</sup>

*Vera is a national organization working to tackle the most pressing injustices of our day, including mass incarceration and the unmet needs of marginalized communities.*

- For general inquiries: [contactvera@vera.org](mailto:contactvera@vera.org) or (212) 334-1300
- For information on [Second Chance Housing, including publications](http://vera.org/second-chance-housing)<sup>82</sup>

### **National Housing Law Project**<sup>83</sup>

*The National Housing Law Project is a national housing justice organization, working to strengthen and enforce the rights of tenants and increase housing opportunities for underserved communities.*

- For general inquiries: (415) 546-7000
- For more information on their [Housing Opportunities for People Reentering Initiative](http://nhlp.org/initiatives/housing-opportunities-for-people-reentering)<sup>84</sup>
- For the [Resource Center](http://nhlp.org/resource-center)<sup>85</sup>
- For [publications](http://nhlp.org/publications)<sup>86</sup>
- For a link to download “[An Affordable Home on Reentry](https://www.nhlp.org/nhlp-publications/an-affordable-home-on-reentry-2018/)”<sup>87</sup>, a resource for advocates working with individuals with criminal records who are seeking access to federally-assisted housing programs

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<sup>77</sup> <https://hirenetwork.org/>

<sup>78</sup> <http://www.povertylaw.org/>

<sup>79</sup> <http://www.povertylaw.org/housing>

<sup>80</sup> <http://povertylaw.org/clearinghouse>

<sup>81</sup> <http://www.vera.org>

<sup>82</sup> <https://www.vera.org/ending-mass-incarceration/providing-second-chances/housing>

<sup>83</sup> <https://www.nhlp.org/>

<sup>84</sup> <https://www.nhlp.org/initiatives/housing-opportunities-for-people-reentering/>

<sup>85</sup> <https://www.nhlp.org/resource-center/>

<sup>86</sup> <https://www.nhlp.org/trainings-publications/>

<sup>87</sup> <https://www.nhlp.org/nhlp-publications/an-affordable-home-on-reentry-2018/>

## **Fair Housing Litigation Resources:**

**Legal Aid** - Find a free legal services office near you at [LSC.gov](http://www.lsc.gov).<sup>88</sup>

**American Bar Association** - Go to [www.findlegalhelp.org](http://www.findlegalhelp.org) to find other legal organizations in your area.

**Relman, Dane & Colfax**<sup>89</sup> - *Relman, Dane & Colfax is a national civil rights law firm that litigates individual and class action cases in the area of housing discrimination, among other issues.*

- Contact information: [info@relmanlaw.com](mailto:info@relmanlaw.com) or (202) 728-1888
- For more information on their [housing litigation work](#)<sup>90</sup>

**American Civil Liberties Union (ACLU)**<sup>91</sup> - *The ACLU is a national legal organization working to defend the rights and liberties guaranteed by the laws of the United States, including through litigation.*

To find an office near you, scroll down until you see this “Find your local ACLU affiliate” search box.

**NAACP - Legal Defense Fund**<sup>92</sup> - *The NAACP Legal Defense Fund is a national legal organization fighting for racial justice through litigation, advocacy, and public education.*

Contact information: (212) 965-2200

## **State-specific Resources about the Legal Impact of Criminal Records:**

**Root & Rebound**<sup>93</sup> - *Root & Rebound is a non-profit organization whose mission is to transfer power and information from the policy and legal communities to the people most impacted by our criminal justice system through public education, direct legal services, and policy advocacy, so that the law serves, rather than harms, low income communities and communities of color in the United States.*

Find state-specific Fair Chance Housing fact sheets that accompany this Toolkit for the following states:

California, Georgia, Maryland, New York, Ohio, Pennsylvania and Texas, online at

[rootandrebound.org/housing-toolkit](http://rootandrebound.org/housing-toolkit).

**National Inventory of Collateral Consequences of Conviction (NICCC)**<sup>94</sup> - *The NICCC is a project to collect and analyze the collateral consequences of conviction for each U.S. jurisdiction.*

- For information by [jurisdiction](#)<sup>95</sup>
- For [additional resources](#)<sup>96</sup>
- To [contact](#)<sup>97</sup>

## **Collateral Consequences Resource Center**<sup>98</sup>

*The Collateral Consequences Resource Center is a non-profit organization working to promote public discussion on the collateral consequences of conviction.*

- For information by [jurisdiction](#)<sup>99</sup>
- To [contact](#)<sup>100</sup>

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<sup>88</sup> <https://www.lsc.gov/what-legal-aid/find-legal-aid>

<sup>89</sup> <http://www.relmanlaw.com>

<sup>90</sup> <http://www.relmanlaw.com/civil-rights-litigation/housing.php>

<sup>91</sup> <https://www.aclu.org/>

<sup>92</sup> <http://www.naacpldf.org/>

<sup>93</sup> <http://www.rootandrebound.org/>

<sup>94</sup> <https://niccc.csgjusticecenter.org/>

<sup>95</sup> <https://niccc.csgjusticecenter.org/map/>

<sup>96</sup> <https://niccc.csgjusticecenter.org/resources/>

<sup>97</sup> <https://niccc.csgjusticecenter.org/contact/>

<sup>98</sup> <http://ccresourcecenter.org/>

<sup>99</sup> <http://ccresourcecenter.org/resources-2/state-specific-resources/>

<sup>100</sup> <http://ccresourcecenter.org/contact-us/>

# GLOSSARY OF TERMS

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*These definitions are for the purposes of this Toolkit. These words might not have the same meaning when they are used in other contexts. Throughout the Toolkit, we frequently **bold** these words to remind you that their definitions can be found in this Glossary.*

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**Affordable Housing:** Housing that is partly funded by the government so that it is more affordable for people who make below a certain income to rent. People who receive **affordable housing** are expected to pay around 30% of their household income in rent.

**Anti-Discrimination Ordinances:** Local (city or county) laws that prohibit landlords from considering a housing applicant's criminal history when deciding whether to rent to them.

**Ban the Box Ordinances:** Local (city or county) laws that prohibit landlords from asking about a housing applicant's criminal history until after they have made an offer to rent to the applicant.

**Blanket Ban:** A policy of not renting to any housing applicants with a criminal **conviction** where the landlord does not consider the individual situation of each applicant, including the circumstances of the offense, the time that has passed since the **conviction**, or any efforts the applicant has taken to improve their circumstances since the offense.

**Consumer Background Check (see also tenant report):** This is the document produced by a **consumer reporting agency** that will include a list of certain criminal **convictions** and credit history information when a landlord pays a private company to run a criminal history report on someone who is applying for housing.

**Consumer Reporting Agency:** A company that runs background checks on people who are applying for housing, also called a **tenant screening company**.

**Conviction:** Any finding of guilt by a court in a criminal case, including at trial by a jury or by plea (including both guilty and nolo contendere pleas).

**Crime Free Multi-Housing Program:** A program where landlords (by law or by choice) receive training from local police departments on how to prevent people from committing crimes in their housing. Landlords usually receive a certification at the end of the program that announces the housing is "crime free."

**Disparate Impact:** When a renting policy has the effect of reducing access to housing for people in a **protected class**. This kind of discrimination is illegal under the **Fair Housing Act (FHA)** even if the landlord does not intend to discriminate against people based on their membership in a **protected class**.

**Disparate Treatment:** When a renting policy is intended to refuse housing to people because of their membership in a **protected class**.

**Expunge:** This is a court process by which the legal record of an arrest, juvenile adjudication or criminal **conviction** is either sealed, erased, or "set aside" (removed from public view but generally still able to be considered by certain government agencies, courts, and law enforcement).

**Fair Chance Housing Ordinances:** Local (city or county) laws, including both **anti-discrimination ordinances** and **ban the box ordinances**, that attempt to reduce discrimination in housing against people with criminal records.

**Fair Credit Reporting Act (FCRA):** A federal law that created rules about what consumer reporting companies can do when running background checks and created rights for people whom the companies are running background checks on.

**Fair Housing Act (FHA):** A federal law that prohibits discrimination in housing based on membership in a **protected class**.

**Federally Assisted Housing:** Housing that is partly or fully funded by the federal government.

**Housing Choice Voucher Program / Section 8 Voucher Program:** A **federally assisted housing** program that gives participants a **tenant-based subsidy** so that they can rent at a more affordable price.

**HUD:** A branch of the federal government that is responsible for regulating all housing in the United States.

**HUD Guidance:** A statement by the **U.S. Department of Housing and Urban Development (HUD)** on what the **Fair Housing Act (FHA)** requires landlords to do when considering housing applications by people with criminal records.

**Market-Rate Housing:** Housing that is available to anyone at the price listed by the landlord, regardless of the applicant's income.

**Private Housing:** Housing that is owned and operated by an individual or a company, not the government.

**Private Landlord:** This is any owner of housing (a person, for-profit corporation, or nonprofit organization) that is not a government agency.

**Project-Based Subsidy:** Funding from the government to make housing more affordable that stays with the housing when someone moves.

**Project-Based Section 8 Rental Assistance Program:** A **federally assisted housing** program that gives housing a **project-based subsidy** so that people who rent the housing can rent at a more affordable price.

**Proof of Mitigating Evidence:** Evidence that shows why a **conviction** is less serious than it seems.

**Proof of Rehabilitation:** Evidence that shows someone has improved their life since they were convicted.

**Protected Class:** Characteristics that cannot be used when deciding whether or not to rent to someone. Under federal law, these characteristics are: race, color, national origin, religion, sex, disability, and family status. State and local governments can add more **protected classes** but cannot take any away.

**Public Housing Authority (PHA):** A government agency that runs **federally assisted housing** programs.

**Public Housing Program:** A specific program within the **U.S. Department of Housing and Urban Development (HUD)** that is operated within cities and counties by local housing agencies called **Public Housing Authorities**, or **PHAs**, to provide decent, safe, **affordable housing** for low-income households, seniors, and persons with disabilities

**Reasonable Accommodation:** A change to a policy or practice that allows someone with a disability to use or access housing equally, unless that change in policy is an undue hardship.

**Review Hearing:** An opportunity for someone who was denied **federally assisted housing** to challenge their denial by presenting evidence and arguments to someone at the **Public Housing Authority (PHA)**.

**Tenant Report (see also consumer background check):** This is the document produced by a **consumer reporting agency** that will include a list of certain criminal **convictions** and credit history information when a landlord pays a private company to run a criminal history report on someone who is applying for housing.

**Tenant Screening Company:** A company that runs background checks on people who are applying for housing, also called a **consumer reporting agency**.

**Tenant-Based Subsidy:** Funding from the government to make housing more affordable that stays with the tenant when they move.

**U.S. Department of Housing and Urban Development (HUD):** A branch of the federal government that is responsible for regulating all housing in the United States.