

# CRIMINAL HISTORY AND PUBLIC HOUSING:

## *An Evaluation of Seattle Housing Authority's Applicant Denial and Eviction Practices*

As the number of persons living in the United States with permanent criminal records rapidly increases, finding stable and affordable housing for ex-offenders and their families becomes exceedingly difficult. In the interest of promoting and protecting public safety, complete exclusion of those with criminal histories from the both the workforce and public housing has proven to be ineffective. While housing and employment are fundamental in preventing recidivism, those with criminal backgrounds face inevitable obstacles. Nevertheless, landlords and other officials of public and subsidized housing programs have a legitimate interest in ensuring the safety and well being of their residents. An evaluation of Seattle Housing Authority's use of criminal history in determining which applicants to exclude from its various housing programs is thus necessary to address this conflict. By analyzing both the eviction notices and denial letters of housing applicants, our research aims to examine how criminal history impacts both potential and current residents, as well as determine whether the policies and subsequent actions of Seattle Housing Authority are consistent with the ultimate goal of providing secure housing for those in need. Through these findings we will develop policy recommendations that encompass a comprehensive understanding of the problem, while considering the legal, ethical, and social consequences of excluding applicants with criminal histories.

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**Criminal History and Public Housing:**  
*An Evaluation of Seattle Housing Authority's Applicant Denial  
and Eviction Practices*

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# ACRONYMS

Admissions and Continued Occupancy Policy (**ACOP**)

Low Income Public Housing (**LIPH**)

Housing Choice Voucher Program (**HCV** or **Section 8**)

King County Housing Authority (**KCHA**)

Northwest Justice Project (**NJP**)

Public Housing Agency (**PHA**)

Seattle Housing Authority (**SHA**)

Section 8 Tenants Organizing Project (**STOP**)

United States Department of Housing and Urban Development (**HUD**)

# INTRODUCTION

## *The Problem*

By Anthony Friedman

It is no secret that the American criminal justice system is a “global leader in the rate at which it incarcerates its citizenry.”<sup>1</sup> In fact, as of March 2011, more than one in every four adults in the United States is currently living with a criminal record.<sup>2</sup> Having a criminal record is more than a minor blemish on one’s background. Rather than fading away with time, criminal records often become indelible, resulting in the social and economic alienation of ex-offenders.

To make matters worse for these individuals, modern technology and the Internet have made criminal records increasingly accessible. As the population of ex-offenders living in the United States has grown, so too has the criminal background check industry. Private investigatory agencies provide employers and landlords with inexpensive and readily available commercial criminal background reviews. The use of these services has become so common that interested parties can find full criminal history reports online within hours

The availability of ex-offenders’ criminal records has created an economic and social barrier that limits their access to a myriad of social services. In particular, ex-offenders are frequently excluded from the affordable housing programs of public housing authorities. The overcrowded waiting lists for affordable housing are partially to blame for this exclusion. There

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<sup>1</sup>Warren, Jenifer. *One in 100: Behind Bars in America 2008*. Rep. Washington: PEW Charitable

<sup>2</sup> Rodriguez, Michelle N., and Maurice Emsellem. *"65 Million Need Not Apply"* Rep. New York: National Employment Law Project, 2011. Print.

are not enough affordable housing units to accommodate the extensive number of eligible individuals applying for tenancy. Moreover, there has recently been a dramatic decline in federal support for affordable housing programs. This has led to the development of exclusionary policies that often prevent ex-offenders from accessing affordable housing programs.

The dearth of affordable housing units in the United States has put housing authorities in a situation where they are forced to choose individuals that they believe will best promote safe, secure, and stable living environments. From these organizations' policy standpoints, ex-offenders, by their nature, would hinder these programs' ability to produce such living conditions. Consequently, many individuals with criminal records are deemed unsuitable for tenancy and their applications are subsequently denied.

### **The Consequences**

The exclusion of ex-offenders from affordable housing programs has generated a multitude of other societal problems – most notably, the severe increase in criminal recidivism in the U.S. In many cases, the policies of public housing authorities exclude ex-offenders from stable, affordable housing solely on account of their criminal history. This compounds the social and economic stigmatization suffered by ex-offenders, further isolates them from the society, and hinders the re-integration process. As a result, many of these individuals are left to their own devices and return in desperation to those practices and behavioral patterns that initially led to their incarceration.

The exclusionary policies of housing authorities have also caused many local communities to suffer. Unable to access affordable housing, many ex-offenders and their families join the growing population of the homeless, resort to petty crime in nearby neighborhoods, and participate in a multitude of other problematic activities that lead to the

deterioration of communities and property values. Families living in these deteriorating communities are pressured to leave and new families are discouraged from moving in. In extreme cases, only shells of once thriving communities are left behind.

### **The Present Study: SHA**

The present research study focuses on the Seattle Housing Authority (SHA), a public organization responsible for providing affordable housing options for low-income individuals in the Greater Seattle Area. The agency's primary objective, as stated in its mission statement, is "to enhance the Seattle community by creating and sustaining decent, safe and affordable living environments that foster stability and self-sufficiency for people with low incomes."<sup>3</sup> Currently, SHA assists more than 28,000 individuals and manages buildings on more than 400 different sites through four major housing programs. These programs include: the Housing Choice Voucher Program (Section 8), low income public housing (LIPH), senior housing, and impact property management.

Not every low-income Seattle resident can access SHA's services. Each of the organization's programs has strict eligibility and suitability requirements that applicants must meet in order to qualify for housing. Some of these criteria, such as income limits, are dictated by absolute, straightforward guidelines. However, there are many other categories that are relatively open-ended and lend themselves to discretionary application. In these cases, applicants are either accepted or denied based on individual SHA employees and how they interpret these open-ended criteria.

In terms of an applicant's criminal history, SHA's policy for suitability is particularly subject to discretion. While they offer specific guidelines on the restrictions for applicant's with

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<sup>3</sup> "Agency Overview." *Seattle Housing Authority*. Seattle Housing Authority, 2012. Web. 7 Mar. 2012. <<http://www.seattlehousing.org/about/overview/>>

certain types of criminal history (i.e. domestic violence, homicide, assault), SHA's policy also states that if an applicant's criminal record demonstrates that he or she "may not be a suitable resident, their application may be denied."<sup>4</sup> Frequently, the standard for such a determination is whether or not the criminal history of the applicant is indicative of 'habitual criminal behavior,'<sup>5</sup> or a "pattern of criminal activity." However, SHA provides no formal explanation in any of its policies that clarifies what constitutes evidence of 'habitual criminal behavior.' Consequently, SHA application screeners have discretionary power in determining whether an applicant's criminal record qualifies as a pattern of criminal activity.

Criminal activity also factors into SHA's eviction decisions. According to the agency's housing regulations, if there is evidence that a tenant in one of its programs has engaged in illegal criminal activity on or about the premises, his or her occupancy will be terminated. However, SHA provides no definitive guidelines for what does or does not qualify as legitimate evidence of criminal conduct. Furthermore, the organization has not established a standard of proof by which SHA employees might judge the sufficiency of evidence, and whether it should qualify as grounds for the termination of a tenant's lease. This is another instance where SHA policies lend themselves to discretion.

In theory, SHA abides by these strict criminal record policies in accordance with its stated mission: to ensure that public housing sites are protected and safe. However, ostensibly, these policies appear excessively open-ended, resulting in the exclusion of a large portion of the population that would greatly benefit from access to affordable housing. However, there is no

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<sup>4</sup> "Eligibility." *Seattle Housing Authority*. Seattle Housing Authority. Web. 7 Mar. 2012. <<http://www.seattlehousing.org/housing/public/eligibility/>>.

<sup>5</sup> Seattle Housing Authority. Admission and Occupancy. *Seattle Housing Authority Manual of Operations*. Code L10.4-1. Seattle: Seattle Housing Authority, 2004. Print. Ser. 1.



national-level or SHA-specific data on the number of ex-offenders who have been or would be excluded from affordable housing because of their criminal histories. Moreover, little to no research has been conducted on how criminal records factor into SHA's decision-making processes regarding admission to public housing or eviction from public housing.

### **Research Questions**

Little is known SHA's discretionary practices and how these practices affect ex-offenders. This scarcity of information regarding the effect of criminal records on access to public housing necessitates further research on the subject, and is the purpose of this project.

Of the four public housing programs under SHA, we focused on the low-income public housing (LIPH) program in order to answer three main research questions that will facilitate a more comprehensive understanding of the SHA's institutional processes.

- What are SHA's formally stated policies with respect to criminal history for low-income public housing decisions?
- In practice, how do SHA employees use criminal history in denial and eviction decisions?
- Is SHA's use of criminal history consistent with their mission objectives?

# FOLLOWING THE RULES

## *HUD Guidelines and SHA Policies*

By Andrea Greenstein and Alexa Mullarky

### *HUD Eligibility Criteria*

In order to understand SHA's policies for applicant suitability, it is important to understand the issue of public housing in the federal context, where the guidelines and prescriptions for public housing authorities are first developed.

The United States Department of Housing and Urban Development (HUD) is the federal oversight for all public housing agencies throughout the nation. HUD is responsible for allocating federal funds to all housing authorities and ensuring that they adhere to federal laws. HUD requires all housing authorities to publish their admissions decision process in an Admissions and Continued Occupancy Policy (ACOP). The purpose of the ACOP is to ensure that individual housing authority policies are in compliance with HUD mandates and are clearly defined in order to ensure consistent and accurate implementation. The Public Housing Occupancy Guidebook, published by HUD, emphasizes the importance of clear and detailed screening procedures.<sup>6</sup> Furthermore, in providing guidance for the implementation of screening procedures, HUD cautions public housing agencies (PHAs) against creating disparities between written policy and the practical application of such policies: If a PHA cannot articulate its

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<sup>6</sup> United States. Department of Housing and Urban Development. *Public Housing Occupancy Guidebook*. Washington D.C, June 2003.  
<[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph/rhiip/phguidebook](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/rhiip/phguidebook)>

screening procedures in writing, odds are the PHA is performing screening incorrectly or applying criteria inconsistently from one applicant to the next.”<sup>7</sup> In summary, PHAs such as Seattle Housing Authority are expected to find a fair balance between applying their written policies accurately and consistently, while simultaneously using their discretion in a manner that reasonably assesses families’ qualifications for tenancy.

While HUD offers guidance to housing authorities in terms of operation, individual housing authorities are ultimately responsible for selecting applicants for tenancy. As a result, housing authorities such as SHA have wide discretion in their individual admissions processes. HUD sets several, basic eligibility requirements that all housing authorities are required to follow, but PHA’s set their own subsequent suitability requirements. Therefore, Seattle applicants who are eligible under HUD must also meet minimum requirements for SHA’s policy on suitability before they qualify for tenancy.

The eligibility criteria determine which families are eligible for federally assisted housing based on income levels. In order to be considered for the SHA low income public housing program, households must first make eighty percent of the local median income or less (based on average annual incomes). In addition, these families must be of eligible citizenship status and meet HUD’s definition of “household.” Finally, HUD sets exclusions for two types of criminal convictions that must result in the automatic denial of an applicant: (1) methamphetamine production on federally assisted property or (2) lifetime registration on a state sex offender registry.<sup>8</sup>

As stated above, eligibility is only one of two major phases in the admissions process.

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<sup>7</sup> Ibid, 48

<sup>8</sup> “Admission - Eligibility Factors L10.3-1.” SHA Manual of Operations. 1 May 2010.  
<[http://www.seattlehousing.org/residents/pdf/10-3-1\\_Eligibility\\_Factors.pdf](http://www.seattlehousing.org/residents/pdf/10-3-1_Eligibility_Factors.pdf)>

Applicants who meet the aforementioned eligibility criteria do not automatically receive housing. Once they have been deemed eligible, SHA selects the households that it considers to be most likely to comply with the lease obligations and to live peacefully with other residents and with SHA staff.<sup>9</sup> Thus, acting as a landlord, SHA takes into consideration a variety of factors that indicate a household will make a suitable tenant. These form the minimum requirements under SHA's policy for suitability.

### **SHA Suitability Criteria**

These suitability criteria are central to the admissions process. SHA considers the applicant's credit history, housing history, sources of income (such as the applicant's current place of employment), and criminal history. The SHA policy on suitability criteria emphasizes the importance of housing history as a means of determining the suitability of applicants for tenancy. Applicants may satisfy the housing history requirement through continuous and stable rental history, residential history, or demonstrated success in a transitional housing program.

Seattle Housing Authority's policy on housing history requirements makes an important distinction between transitional housing and rehabilitative housing programs. SHA defines rehabilitative housing programs as those intended for "mainstreaming felons, drug addicts, alcoholics...following institutionalization, incarceration, court mandated treatment, or other socially based intervention." Those with rehabilitative housing histories must demonstrate successful participation in such programs, have six months of current, independent housing history, and a strong reference from a rehabilitation professional who is independent from the rehabilitation program such as a parole officer.<sup>10</sup>

This distinction between transitional housing history and rehabilitative history is

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

significant to our research findings as it presents yet another barrier that ex-offenders are likely to face in order to satisfy the SHA suitability requirement for public housing. For example, SHA requires a minimum of six months of transitional housing history if the housing provider is a social service agent who agrees to formally follow the tenant for six months to ensure a successful transition. On the other hand, those with rehabilitative housing history must have two separate positive references verifying the applicant's participation in the rehabilitation program and their continuing success in that program, as well as a minimum of six months of independent housing history.<sup>11</sup>

The scope of our research depended on an understanding of Seattle Housing Authority's policy on suitability as it pertains to the use of criminal history in making admissions decisions. Seattle Housing Authority is required to conduct criminal background checks on all households.<sup>12</sup> This criminal background check evaluates the "probable lease compliance" of a potential tenant,<sup>13</sup> and the crimes considered relevant in a housing authority's background check should be indicative of whether the applicant will be a good tenant. More specifically, HUD identifies the relationship between criminal history and unsuitable tenants as "involvement in criminal activity on the part of any applicant family member that would adversely affect the health, safety or right to peaceful enjoyment of the premises by other tenants."<sup>14</sup> In understanding the scope of these policies, it is important to emphasize that not every crime on an

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<sup>11</sup> Ibid.

<sup>12</sup> United States. Department of Housing and Urban Development. *Public Housing Occupancy Guidebook*. Washington D.C, June 2003.  
<[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph/rhiip/phguidebook](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/rhiip/phguidebook)>

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

applicant’s criminal history is indicative of whether or not the individual will comply with his or her lease. In fact, SHA weighs criminal violation differently depending on the criminal offense – with different restrictions depending on the crime (i.e. domestic violence, homicide, or assault). Throughout the screening process, HUD reminds housing authorities to consider the “time, nature, and extent of the applicant’s conduct and the seriousness of the offense.”<sup>15</sup>

Through an evaluation of the low-income public housing program policy, we determined that the automatic exclusions based on criminal history, and sanctioned under SHA’s policy for suitability, far exceed those mandated by the U.S. Department of Housing and Urban Development. While HUD offers policy guidance and recommendations, it only requires individual housing authorities to exercise four automatic criminal history exclusions. These criminal history exclusions apply to all families with any member who has the relevant criminal history exclusion. In other words, if one family member has been convicted of one of these crimes, the entire family is directly affected and is deemed ineligible for tenancy. These crimes can be seen in Table 2.1. It is important to note that two of HUD’s four criminal history exclusions allow SHA to exercise discretion in their implementation (italicized in Table 2.1).

For example, HUD asserts that public housing authorities should consider evidence of “favorable future conduct” through a commitment to social services, such as participation in a rehabilitation program.<sup>16</sup> HUD guidelines ask housing authorities to consider “the time, nature, and extent of the applicant’s conduct and the seriousness of the offense.”<sup>17</sup> Table 2.1, shown below, illustrates the criminal exclusions required by HUD and the LIPH criminal exclusions created under SHA’s policy for suitability. Not only is the list of SHA LIPH exclusions

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<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

extensive, but the exclusions far exceed those mandated by HUD. The years referenced in Table 2.1 signify the number of years an offender must wait to apply for public housing following their incarceration for the criminal offense, and they do not include the time during which the individual was incarcerated.<sup>18</sup>

**TABLE 2.1. HUD Eligibility v. SHA Suitability**

Exclusions under HUD Eligibility	Exclusions Under SHA Suitability
<ul style="list-style-type: none"> <li>• Sex offender subject to lifetime registration requirement under a State sex offender registration program (banned for life)</li> <li>• Individuals found to have manufactured or produced methamphetamine on the premises of federally assisted housing (banned for life)</li> <li>• <i>Evicted from public housing for drug related criminal activity for 3 years after the date of eviction</i></li> <li>• <i>Currently using illegal drugs or show a pattern of illegal drug use</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Habitual criminal behavior</i></li> <li>• Misdemeanor or drug crimes - 2 years</li> <li>• Felony drug crimes – 5 years</li> <li>• Sexual assault – 10 years</li> <li>• Felony assault – 5 years</li> <li>• Misdemeanor assault – 2 years</li> <li>• Four or more assaults – 10 years</li> <li>• Arson – 10 years</li> <li>• Homicide – 20 years</li> <li>• Burglary – 2 years</li> <li>• Robbery – 5 years</li> <li>• Armed robbery – 10 years</li> <li>• Kidnapping – 7 years</li> <li>• Prostitution – 2 years</li> <li>• Domestic abuse – 5 years</li> <li>• Other felony convictions – 3 years</li> <li>• Incarceration within last 6 months</li> </ul>

**Table 2.1.** Italicized points indicate policies that are subject to discretionary interpretation.

Not only do the policies outlined in the Public Housing Occupancy Guidebook suggest that HUD strongly encourages housing agencies to use information on criminal history in a way that does not unjustly exclude ex-offenders, but a recent letter sent by HUD Secretary Shaun Donovan reiterates and emphasizes the importance of providing stable housing for ex-offenders. In offering additional guidance to all housing authorities throughout the United States, Shaun

<sup>18</sup> “Low Income Public Housing Eligibility.” Seattle Housing Authority. Dec 2011. 20 May 2012. <<http://www.seattlehousing.org/housing/public/eligibility/>>

Donovan reminded the executive directors that there are only two absolute exclusions for those with criminal histories.

In his letter, Donovan also clarified the remaining criminal exclusions set by HUD, which allow for housing authorities to exercise discretion in their implementation. By emphasizing the importance of stable housing history in the re-entry process, Donovan recognized the significant role that public housing authorities play in providing stable housing for many ex-offenders. Donovan acknowledged the significant number of persons currently leaving our criminal justice system and asked housing authorities to consider facilitated the reunion of ex-offenders with their families, when appropriate. Finally, he concluded the letter by acknowledging the Obama administration's dedication to providing second chances and asked housing authorities to do the same.<sup>19</sup>

### **Application Process for Low-Income Public Housing**

An individual begins the application process for low-income public housing by submitting the initial application for housing assistance to the Seattle Housing Authority. The application for housing assistance collects information on the applicant's income, employment, criminal history, and eviction history. The criminal history section of the application for housing assistance specifically asks if the applicant or any member of the household have ever been arrested, at any time throughout the course of their life. These arrests need no have resulted in a conviction.

Once the application has been submitted, the applicant enters the pre-application phase at

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<sup>19</sup> Donovan, Shaun, and Sandra B. Henriquez. United States. Department of Housing and Urban Development. Public and Indian Housing. *Housing Ex-Offenders*. Washington D.C, 17 June 2011. Web.  
<[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph)>

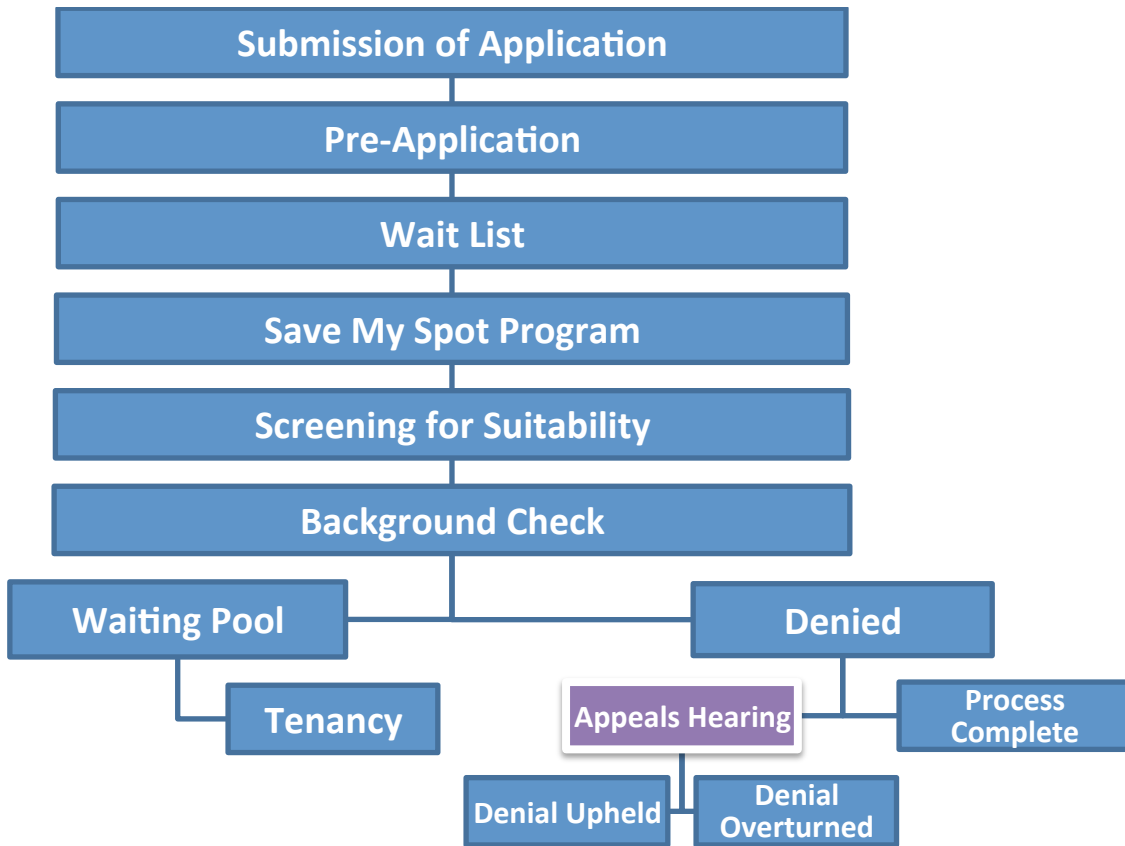


which point he or she is screened for eligibility under the HUD income guidelines. Applicants who are deemed eligible are then placed on a waiting list. Preferential treatment is given to potential tenants with disabilities, to victims of domestic violence, and to other high-risk groups, resulting in a higher spot on the waiting list. While on the waiting list, applicants are required to participate in the “Save My Spot” program, and call a phone number a minimum of once per month to demonstrate continued interest in public housing, and to maintain their spot on the waiting list. Without special assistance provided for applicants with disabilities and non-native English-speaking applicants, the “Save My Spot” program are disparately affected and potentially excluded.

Once an applicant reaches the top of the waiting list they are screened for suitability under SHA’s policy for suitability. Screening for suitability includes a background check that is conducted by a third party company. The background check includes a financial credit report, criminal records, interviews with former housing providers, and personal references. SHA uses the compiled report, the recommendation from the third party background check company, and the original application to determine an applicant’s suitability. Applicants who are deemed suitable are placed in a waiting pool until there is space available in the type of unit for which they qualify (studio, 1-bedroom, or 2-bedroom units). Eventually, suitable applicants will become tenants of SHA. Conversely, applicants who are deemed unsuitable receive a denial letter. At this time, denied applicants have the right to request an appeals hearing, at which they do not have the right to legal representation. Applicants who request an appeals hearing are granted an appeal hearing with an SHA officer, where the denial will either be upheld or overturned. The SHA officer present has full discretionary power in their ability to uphold or overturn a denial based on the additional information that the applicant introduces. Our case

records include the appealed denial hearings for the years dating from 2007 to 2011.

**CHART 2.1. LIPH Application Process**



**Chart 2.1.** This chart illustrates the application process for applicant’s seeking low-income public housing. “Appeals Hearing” is highlighted in purple to indicate the stage of the application process for which our group obtained data (Denial Hearing Decisions).

**On-Site Management Inc.**

During the suitability stage of the low-income public housing application process, SHA obtains applicants’ background checks from On-Site Management, Inc., the third party company that conducts most of SHA’s background checks. On-Site compiles reports using national data sources, local targeted searches, and reference verification. Reference verification includes contact with the applicants’ previous landlords, employer, and bank. On-Site screens differently for different landlords, and claims to use the parameters set by individual landlords to determine

tenants suitability.<sup>20</sup> Consequently, if On-Site adheres to their standards for flexibility, then the suitability requirements set by SHA are enforced by their company. However, On-Site advocates “stream-lining” the process for landlords, and they accomplish this by making a simple positive or negative recommendation without providing the comprehensive report.

SHA’s Suitability Worksheet, is utilized during the suitability stage of the low-income public housing application process. The Suitability Worksheet screens for rental history and employment, yet at the conclusion of each category, the endnote states that all points previously allotted will be zeroed out if the applicant is found to have a “negative criminal history.” An applicant who is unable to earn six points in a single category is deemed unsuitable, and all applicants with negative criminal histories are therefore deemed unsuitable. On-Site’s policy of giving a simple negative or positive recommendation, combined with the system set forth in the suitability worksheet and the ambiguous language of “negative criminal histories” found in some of our case records, leads us to believe that On-Site plays an inappropriate role in deciding the fate of applicants.

### **Appeals Process**

Prior to 2008, the appeals processes for Section 8 Housing Choice Vouchers and LIPH were quite similar. However, the appeals process for tenants seeking Section 8 Housing was reformed in 2008 and now requires: that hearing officers possess law degrees and that a three person panel review all hearing officer’s decisions. Contrarily, the appeals process for low-income public housing consists of an SHA hearing officer who is not required to possess a law degree, and no model currently exists for the internal review of hearing officer’s decisions. The changes to the Section 8 appeals hearing occurred after STOP (Section 8 Tenants Organizing

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<sup>20</sup> “Why On-Site?” On-Site Web, last modified 2012, <http://www.on-site.com/about/why-on-site/>

Project) began a grass-roots campaign to which SHA responded by reforming its appeals process.

Similar reforms could be achieved in the low-income public housing appeals process, yet have not been implemented. It is our hope that our findings may induce academics, policy-makers, and stakeholders to enact changes in the LIPH denial appeals hearings so as to bring the LIPH appeals process more in-line with the Section 8 appeals process, and thereby increase the likelihood of fair treatment for ex-offenders.

### **Policy Findings: Summary**

Our study found convincing evidence of the use of a complicated bureaucratic application process, a questionable third party background check company, and a substandard denial appeals hearing process.

While HUD has given housing authorities like SHA wide discretion in creating their own admissions procedures, the federal department ultimately emphasizes that ex-offenders represent a significant portion of the low-income population that all housing authorities have been created to assist. Housing authorities must be prevented from overtly excluding applicants with criminal records without reasonable justification.

HUD has recognized the problematic consequences of exclusionary policies that accompany the “eligibility-compliance” culture noted by Vicki Lens, a professor for the School of Social Work at Columbia University. Lens argues that this “eligibility-compliance culture” results in an emphasis on the process rather than a “full personal assessment.” She asserts, “Otherwise eligible people are denied aid based on process, rather than substance.”<sup>21</sup> Ultimately

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<sup>21</sup> Lens, Vicki. *Examining the Administration of Work Sanctions on the Frontlines of the Welfare System.* Social Science Quarterly, Vol 87, No. 3, pages 570-590. September 2006. New York: Columbia University School of Social Work.

Lens argues that the policy goals are at risk of being undermined when the programs do not succeed in providing aid to those it intends to help.<sup>22</sup>

Not only does HUD warn against inconsistencies among application decisions, but it also recognizes other problematic screening practices: “Also, applicant selection criteria require that the PHA examines each applicant’s individual behavior, not the attributes or behavior imputed to a particular group or category of persons to which the applicant may belong.”<sup>23</sup> As our research questions suggest, ex-offenders as a group are at risk of unjustly being associated with certain negative behaviors that may not actually be pertinent to the individual applicant. Ex-offenders have become stereotyped.

Our research findings demonstrate the ways in which SHA policy has problematically been designed to exclude applicants with criminal histories. The SHA policy for suitability suggests a counterproductive approach to advancing the goals and mission of a subsidized housing program, an approach that contradicts HUD guidelines that explicitly emphasize the importance of allowing criminal offenders to reunite with their families.<sup>24</sup>

Our research has also provoked further questions that remain unanswered. Further investigation is required to determine SHA’s justification for assigning look-back dates with specific criminal offenses. This investigation should determine whether there is relevant research demonstrating a correlation between criminal history, look-back periods, and recidivism. For

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<sup>22</sup> Ibid, 4

<sup>23</sup> Lens, Vicki. *Examining the Administration of Work Sanctions on the Frontlines of the Welfare System.*” Social Science Quarterly, Vol 87, No. 3, pages 570-590. September 2006. New York: Columbia University School of Social Work.

<sup>24</sup> “HUD's Public Housing Program.” Department of Housing and Urban Development: Topic Areas: Rental Assistance. 20 May 2011.  
<[http://portal.hud.gov/hudportal/HUD?src=/topics/rental\\_assistance/phprog](http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance/phprog)>

example, is an ex-offender less likely to commit sexual assault again ten years after they are released from incarceration than they are one year post-incarceration?

A better understanding of how the extent of time following the criminal offense and the likelihood of recidivism would better inform the policymakers who are responsible for creating criminal history exclusions that rely on criminal history look-back periods.

# DATA, LIMITATIONS, AND METHODS

By Brittany Ward

## Data

As part of our research project, we collected a variety of materials concerning SHA public housing records. Our objective was to capture a broad scope of information in order to avoid sample biases, but also to gain a well-versed understanding of the mechanics of SHA discretion within LIPH as it pertains to criminal history. Relying heavily on the Public Records Act to obtain vital public housing records from SHA, our group submitted a request for information to SHA at the project's inception. Under Washington State legislation, the Public Records Act allows for full access to public records, and specifies the manner in which public agencies, like SHA, will maintain such records. Furthermore, the Act provides for civil penalties if the requested material is not made accessible. We expected to be granted full access to SHA's public records of past housing denial decisions, hearing decisions for denial appeals, evictions, and hearing decisions for eviction appeals.

Given the objectives of our research, it was imperative to access these records. Unfortunately, SHA did not comply with all of our record's requests, which ultimately limited the scope of our research. As a result of our data collection process, and with additional information supplied by participating stakeholders involved in the public housing matter, we were able to analyze an extensive records relating to the denial and eviction process, as well as documents regarding the administrative conditions and policies of SHA.

We never obtained copies of the initial letters of denial or acceptance that were issued to LIPH applicants. SHA only provided us with the hearing decisions from denial appeals, so our data was limited to applicants who had the resources and the will to appeal their initial denial. Had we been able to examine the initial denial decisions notifications along with the appeals of the denials notices, we would have had a more comprehensive analysis of how SHA determines who qualifies for housing.

Our sample of hearing decisions from the denial appeals shed light on the type of applicants that were either successful, (or in most cases, unsuccessful), in appealing their initial denial from public housing. Both SHA and the Northwest Justice Project (NJP) provided these records. The attorneys at NJP had previously requested eviction records from SHA for past litigation purposes, and were willing to share their collected records with us. As a group, we examined and coded 145 appeals decisions of denied applicants dating between the years of 2007 and 2011. The letters included a summary of the reasoning for why the applicant was denied, the additional information and evidence provided by the applicant, as well as SHA's listed reasons for denial. The end of the letter includes the hearing officer's decision to either uphold the denial or to overturn it. As stated on the SHA website, all of the review requests, supporting documentation of the case, and a copy of the final decision are retained in the applicant's file, as a public record.<sup>25</sup>

Secondly, we analyzed eviction notices provided to LIPH tenants upon a supposed lease violation, or a violation against SHA or HUD policies. We examined the eviction notification records to determine how criminal records are used in SHA's eviction policies and hearings. We

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<sup>25</sup> "Low Income Public Housing Eligibility." Seattle Housing Authority. Dec 2011. 20 May 2012.  
<<http://www.seattlehousing.org/housing/public/eligibility/>>



were particularly interested in analyzing the frequency with which a tenant is evicted based on their interactions with the criminal justice system. For instance, we were curious if a person could be subject to eviction after only an arrest, or if there had to be a conviction in order for the tenant to lose their housing

We looked at 30 cases of evictions notices provided to tenants in LIPH from November 2010 to November 2011. The public housing eviction notices showed evidence of wide variation in their format and in the justification that warranted the termination of a tenancy. The eviction notices generally contained a reason for denial based on a violation, and a summary of events illustrated either by a police report or simply as an exposition within the eviction notice. All the notices generally outlined relevant resident responsibilities that were not fulfilled, and provided a grievance procedure for filing an appeal within five days. The most common reason people were evicted was for maintaining a nuisance, which appears to encompass any unfavorable conduct including, but not limited to: drug activity, excessive foot traffic or noise, and waste. Other common reasons for evictions included criminal conduct by the tenant or guests of the tenant, drug activity, allowing banned persons on the premises, and receiving multiple notices within a year.

SHA is required to provide written documentation that further notifies the tenant of their right to appeal the initial eviction in a so-called “grievance hearing.” The third batch of documentation that we analyzed consisted of 46 of these grievance hearing cases, dating between 2010 and 2011. A grievance is any dispute a resident may have with respect to SHA action or failure to act in accordance with the lease or regulations that adversely affects the individual resident’s rights, duties, welfare or status. These hearings can be informal or formal depending on the severity of the grievance. For example, a case of a criminal activity grievance would be

immediately formalized, whereas a staff dispute with a resident would go before the Director of the Department in an informal hearing. The records that we were provided were formal grievance hearings, which took place before an SHA hearing officer. The formal grievance hearing decision letters resembled the denial appeals hearing decisions we had studied earlier. Grievance decision letters included a presentation of written or oral objections to SHA's initial eviction determination, listed the provided evidence, explanations, supplied witnesses, and any additional accompaniment on behalf of the appellant. The hearing officer's decision on whether to overturn or uphold SHA's decision was included at the bottom of the hearing decision letter.

In addition to the raw material we collected, SHA also provided us with their suitability and eligibility guidelines and checklists, SHA's policy manual, and an admissions checklist for potential applicants. We analyzed these policy materials to gain insight into how the organization works, the criteria needed to obtain public housing, and the rules that must be followed in order to maintain tenancy. We oftentimes compared our findings with SHA's policies to determine whether SHA was complying with their own rules when deciding to deny or accept new tenants, and if their process of rejecting potential tenants was fair, or discriminatory.

In addition to the raw data that we gathered, we conducted interviews with several stakeholders involved in the issue of public housing in Seattle. Eric Dunn, an attorney at the Northwest Justice Project was extremely helpful in helping us to understand the underlying issues of Seattle public housing. Mr. Dunn has litigated cases in defense of appealing tenants and denied applicants. From his experiences working against SHA and from his own research, Mr. Dunn suggested that SHA displays inconsistent levels of discretion and that the stringent suitability requirements unfairly exclude much of the low-income population. For example, on the suitability work sheet, it is unclear what the definition of negative housing suitability means.

It seems that if someone has a criminal record they are automatically considered a negative candidate for housing.

This would indicate that SHA may not be abiding by their own guidelines for establishing suitability. Mr. Dunn also described the advantage appellants have at overturning the original SHA decision if they have legal representation. However, most appellants applying for low-income public housing do not have the financial means or time to undertake the burden of finding an attorney to appeal their housing denial. Mr. Dunn suggested that appealing a denial or eviction was unrealistic for these individuals, even if there was a legitimate reason to contest the original decision. Mr. Dunn's insights provided key starting points for the direction of our research. We were able to utilize his suggestions during our examinations of the documentation by looking for trends within the data that aligned with Mr. Dunn's personal observation from his own interactions with SHA and with SHA's appeals processes.

Additionally, we interviewed Jonathan Grant from the Seattle Tenant's Union. Mr. Grant provided information relating to the stigma associated with low-income housing tenants and applicants, and expressed his concern for the lack of universal support for this segment of the population. Mr. Grant supplied us with information regarding the nature of a hearing process. Additionally, he also informed us that in Washington State, there are two main bodies of law that govern a tenant's relationship with their landlord: (1) the Resident Landlord Tenant Act, which governs when a landlord can increase rent, and (2) the Fair Housing Act, which provides landlord guidelines that can be policed in the context of discrimination.

Both of these regulations can be applied to a person's treatment within the public housing sphere and can be used to prevent SHA from utilizing unfair policies. However, Mr. Grant indicated that such legislation was only viable if the person had the appropriate legal

representation to assert their rights and appeal their case. Mr. Grant additionally discussed the relationship between SHA and private screening companies, as well as the reorganization of the Section 8 appeals processes. Overall, he left us with the message that change in the appeals processes within LIPH housing hearing decisions needs to be reworked to the benefit of the appellant.

### **Limitations**

In order to incorporate both sides of the issue, we wanted to speak with an admissions director within SHA. Unfortunately, we were unable to schedule an interview with them over the course of our project because they did not reply to our e-mail requests. Hence, the opinion-based material we obtained does not incorporate SHA's perspective on the issue.

Furthermore, SHA was less responsive than we had hoped at providing public records as sources of our research. We requested the initial LIPH denial notifications in addition to the denial hearing decision letters, but SHA did not provide us with these records despite our submission of the Public Records Act. By being unable to obtain this data material, our project was greatly hindered. The main objective of our project was to question the implementation of criminal records in the initial denials process. Therefore, only being granted information about people who have appealed skews the data collection and analysis, creating a sample bias. We felt that the lack of access to the initial notifications limited us to a specific population of only those that appealed their denial. This population was more likely to feel confident in their reasons for appeal, and was less likely to be inhibited by the stigma of their past criminal histories. Furthermore, as discussed previously, the appeals process is quite arduous, and difficult to articulate without the help of legal counsel. Thus, for the purpose of analyzing denied housing

decisions, we were only given a very small sample size of people that were denied through the hearing appeals decision letters.

Not only are we limited by the amount of data provided, but also by its content. The content of the data sets described is varied and unclear, and we have no way to determine whether or not relevant information was excluded. The eviction notices that were provided to us were intended to be exclusively notices that include allegations of criminal misconduct. Fortunately, we were supplied with additional eviction notifications from past litigation projects that the NJP had been involved in.

### **Methods**

We have chosen to use systematic content analysis to process the three sets of data we obtained. This method allows for a large number of documents to be organized so that significant patterns can be discerned and isolated. We hoped to find trends in SHA's denial and eviction working policies.

When undertaking the systemic content analysis methodology, researchers usually begin by selecting cases. Our research, however, is limited to the LIPH eviction notices and denial appeals that SHA provided to us. While we did not receive a complete sampling frame of records that we requested, the documentation provided has allowed us to construct coding procedures to analyze the denials appeals hearing decisions, the eviction notifications, and the grievance hearing decisions. We created one coding protocol for each of the data sets.

Our researchers were divided into two groups. One created a data set and coding protocol for the eviction notices, and another did so for the housing denial appeal decisions. We identified the salient factual and legal reasoning within each document, and then assigned them numerical codes. Additionally, we created codes to distinguish characteristics such as the date of the

decision, whether a third party was present, and the name of the presiding hearing officer.

Once we had constructed a coding protocol, each member of the group paired in teams of two to code each document twice. We noticed a lack of consistency within the decision letters, and often found them difficult to decipher. In order to ensure that we achieved inter-coding reliability of the data we processed, we had two team members code each document. This was to maintain consistency within our coding procedures.

Upon completing our systematic content analysis, we were able to engage in an interpretive assessment of additional documentation provided by SHA, the informative interviews we conducted, and by reanalyzing SHA's administrative information to compare with our data discoveries. Our hope was that if the data was supportive, we would be able to use both methodologies to build a compelling argument with regard to our research questions.

#### **Limitations to Systematic Content Analysis**

There are several limitations to systematic content analysis that should be acknowledged. While it is helpful in generating general summaries for a large number of documents, it is not an appropriate tool for deep analysis. Content analysis is primarily useful in illustrating the reasoning used in the documents; but the perspective postulated by an organization's internal documents does not always coincide with reality. To address this shortcoming, we chose to supplement our research with additional methods through our informative interviews, speaking with public housing stakeholders, and by studying other public housing projects.

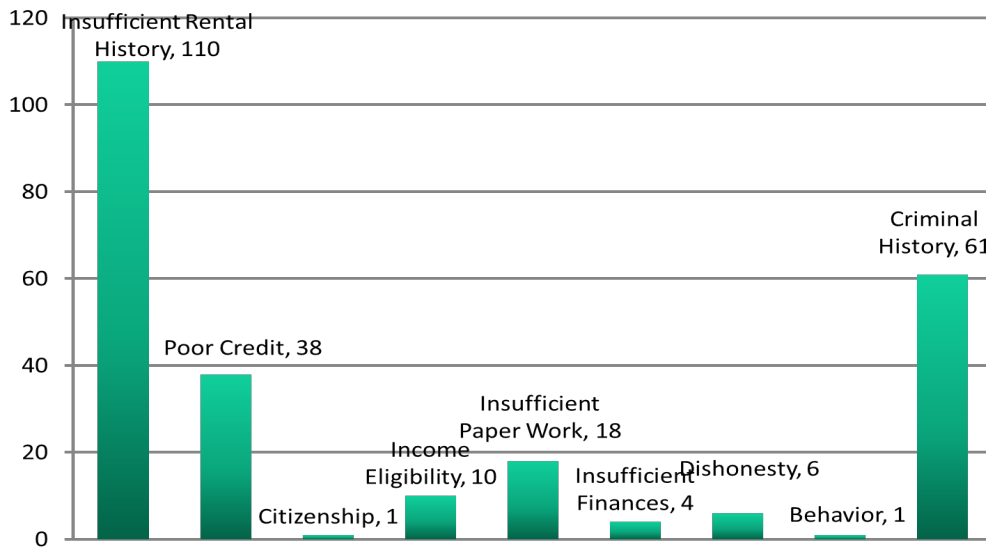
# RESEARCH FINDINGS

By Keaton Daucher and Erika Maskal

## ***Findings: Denial Hearings***

The following graph shows the reasons used to justify the denial decisions. Insufficient rental history was cited most frequently, with criminal history being the second most cited reason for a denial. The values on this graph add up to more than the total number of cases we looked at because there were many cases where more than one reason was cited. Further analysis shows a significant overlap between insufficient rental history and criminal history.

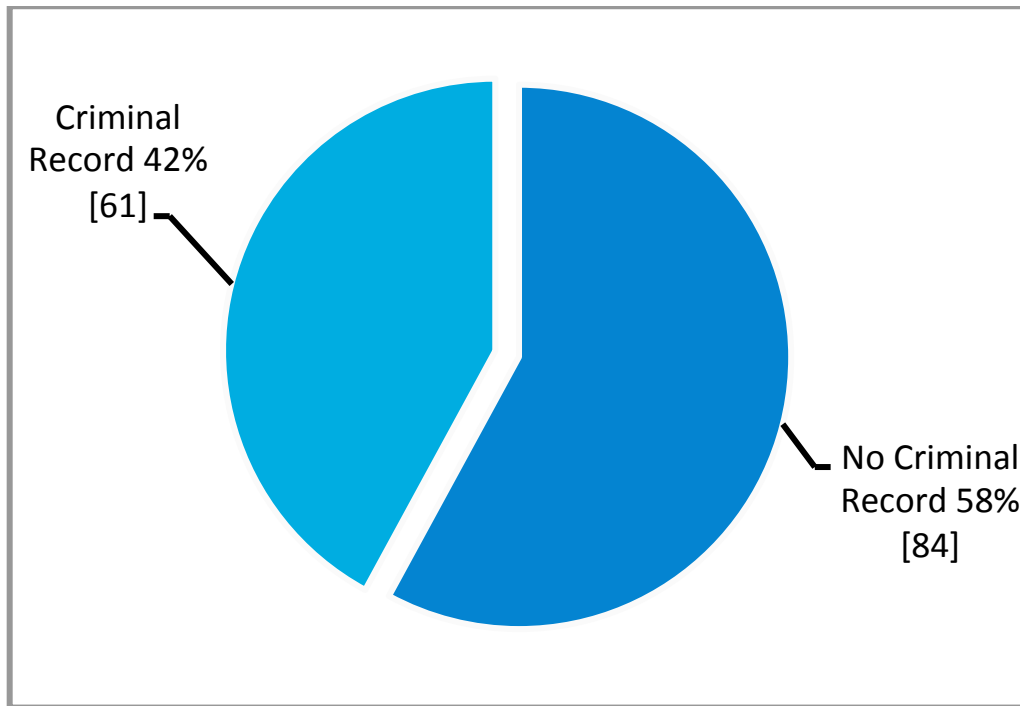
**CHART 4.1 Reasons For Denial**



The overlap between insufficient rental history and criminal history is particularly significant, and is indicative of the improbability of ex-offenders establishing a suitable rental history post-incarceration in order to qualify for low-income public housing.

The following chart illustrates the overall percentage of denial decisions that involved criminal records. Out of the 145 denial appeals we were provided, 61 cases cited a criminal record as one of the causes for denial. Of the 61 applicants denied for their criminal record, none were accused or convicted of one of the two crimes that require absolute exclusion under HUD. None of these denials were mandated by HUD.

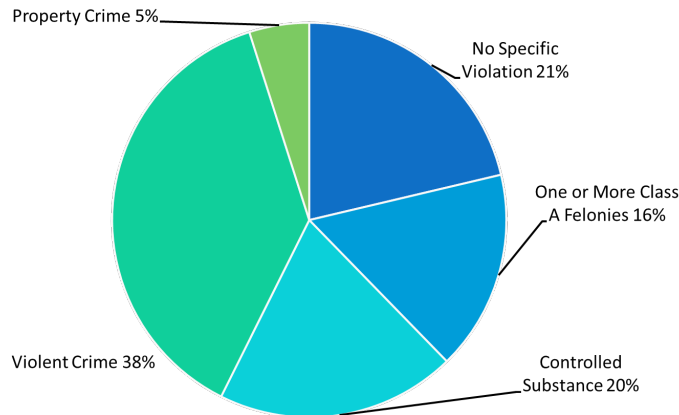
**CHART 4.2 Percent of Cases Involving Criminal Records**



The following chart breaks down the 61 cases that involved criminal records by the specific criminal violation that was cited. Since not all crimes are equally relevant to whether or not a person would be suitable for public housing, we decided to analyze how often specific crimes were used in the denial appeals. The portion of the chart titled “No Specific Violation” shows the cases in which a criminal record was mentioned as a reason for denial, but the crime associated with that record was not described in the denial decision.



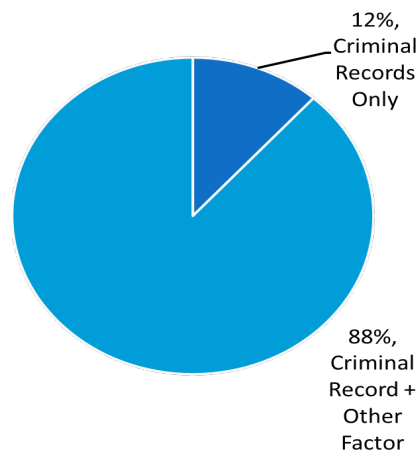
**CHART 4.3. Criminal History by Specific Violation**



A total of thirteen cases were coded as “No Specific Violation” because they did not specify the violation that precludes the applicant from receiving public housing. In these cases, there was substantial ambiguity surrounding the exact cause for denial. In some cases, only “a pattern of criminal behavior” was cited. In one hearing decision dated March 29, 2010, the only reference to the applicant’s criminal history states: “The background report indicates that the applicant has engaged in criminal activities that prevents approval.”

The following chart shows the number of applicants who were denied solely based on their criminal record – a total of 17 cases. Of these cases, only four were overturned.

**CHART 4.4. Criminal History as the Sole Cause for Denial**



**CHART 4.5. Denials Rarely Overturned**

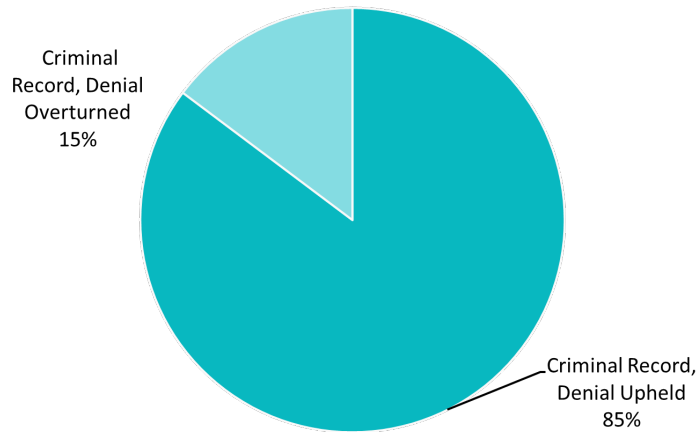
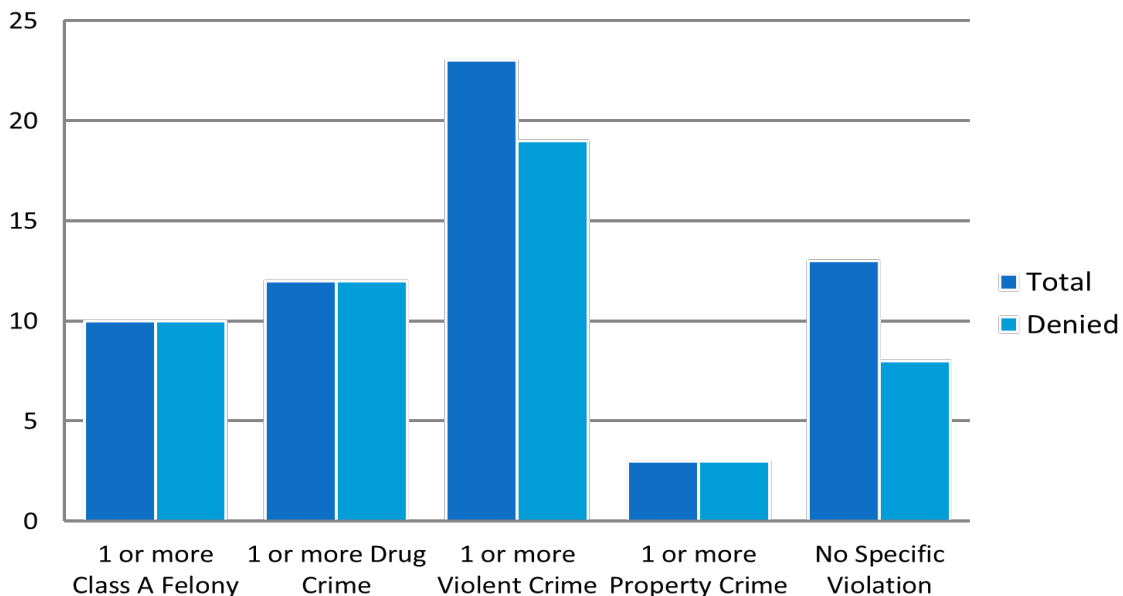


Chart 4.5 illustrates the rate of denial for cases that involved criminal records. Out of the 61 cases that cited a criminal record, the denial was overturned only 15% of the time – a slightly higher denial rate than in cases that did not involve a criminal record.

Chart 4.6 shows the rate of denial based on the specific criminal violations that the applicant was denied for. This illustrates the immense difficulty applicants face at overturning a denial. Aside from “No Specific Violation,” the only applicants who overturned their decision were those with violent crimes on their criminal record.

**CHART 4.6. Overturned Denials by Type of Offense**



Evidence of Rehabilitation.

This data illustrates the immense difficulty that applicants face in overturning a denial letter, particularly for applicants who are appealing denials that were based on criminal records. The absoluteness of SHA's policy for suitability with regard to criminal records was evident in individual cases that were provided. One hearing decision letter in particular, dated June 1, 2010, illustrates the improbability of applicant's overturning SHA's initial decision. In this case, the applicant was denied for not meeting minimum standards under SHA policy for suitability based on two felony charges in 2006 and 2007. The body of the hearing decision letter states:

Through your participation in the King County Drug Diversion court, from October 9, 2008 to November 5, 2009 you have remained clean and sober, and have made great strides to turn your life around...You are in treatment through THS, and have been compliant with your required once a month appointment. Mr. Dineson was very supportive of you.

However, the applicant was ultimately denied. Property Management Administrator Cindy Sribhidhbadh stated that despite the evidence of rehabilitation and treatment, she "could not find sufficient cause to overlook your two felony changes [sic] in 2006 and 2007..." so the decision was upheld. No other justification for SHA's decision was provided, so it would appear that the applicant met all other minimum requirements under SHA's policy for suitability.

Based on the information presented in this hearing decision, mitigating factors were not taken into consideration when this applicant was denied public housing. This stands in stark contradiction to HUD guidelines, which recommend that public housing authorities take into account the "future favorable conduct" of the tenant.

Northwest Justice Project

In the LIPH hearing decisions, we also noticed a remarkable difference in the cases where applicants were accompanied by legal representation. Accompaniment at the hearing –

particularly by representatives of the Northwest Justice Project – appeared to have a substantial impact on the hearing’s outcome and always resulted in the overturning of the initial denial.

One hearing decision dated August 23, 2011, overturns the denial of an applicant who did not meet minimum requirements under SHA policy for suitability. The applicant did not have one year of continuous rental history within the past five years, did not provide evidence of satisfactory performance in a legal tenancy, and did not have a positive credit history to support the ability to sustain independent tenancy. The body of the hearing decision also expressed concern over the applicant’s demeanor towards staff, and his “inappropriate, argumentative and abusive communication style.” Aside from the presence of a representative from the Northwest Justice Project, the hearing decision does not indicate whether the applicant provided any additional material or information. Despite the applicant’s unsuitability, the hearing officer overturned SHA’s decision conditional on the applicant’s attendance of diversity and anger management classes.

Another case from February 3, 2011, presents an applicant who was denied for almost identical reasons. He did not have one year of continuous rental history, provided no evidence of satisfactory performance in a legal tenancy, and no credit history to support the ability to sustain independent tenancy. The only significant difference between these two cases was the presence of Northwest Justice Project; the facts contained in each of the hearing decisions were virtually identical. However, in the case of the applicant who was not represented by SHA, the denial was upheld.

This demonstrates a strong potential for arbitrary decision-making, especially in a forum where applicants are seeking low-income public housing and are unlikely to find representation if they feel that they are being unfairly denied.

***Findings: Evictions***

**CHART 4.7. Reasons for Evictions**

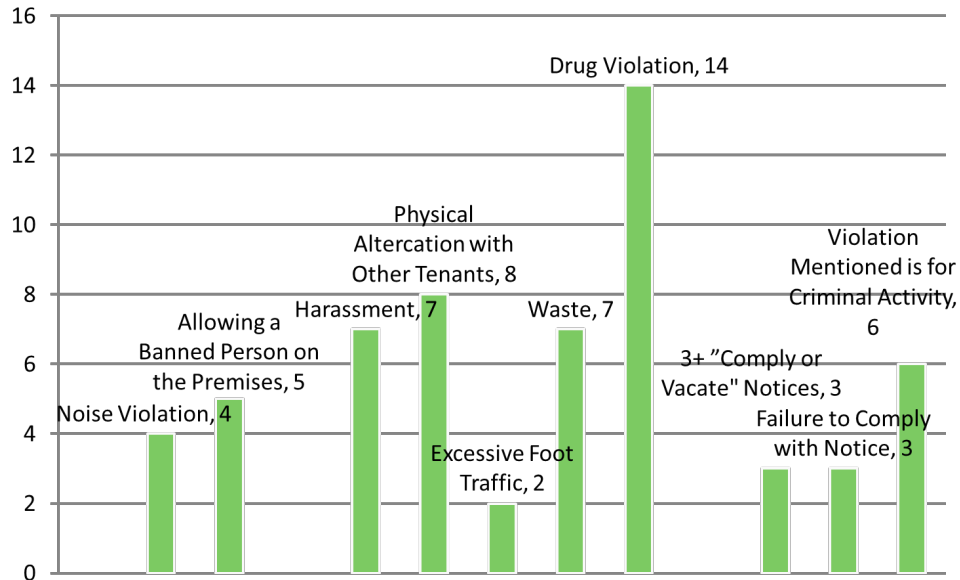


Chart 4.7 displays the infractions that are most often cited as a reason for the termination of an individual’s LIPH tenancy. Tenants were often evicted for noise violations, allowing a banned person on the premises, harassment, physical altercations with other tenants, excessive foot traffic and waste, but drug violations were the most frequently cited reason for an eviction.

**CHART 4.8. Criminal Conviction Not Required**

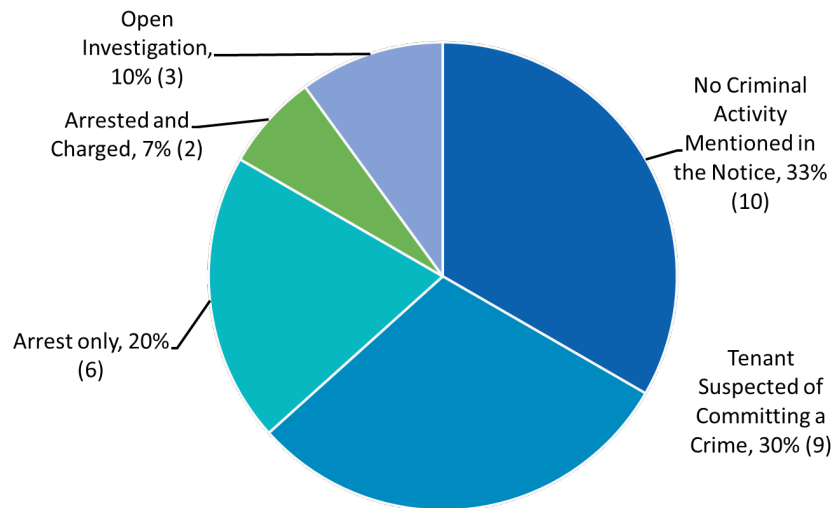
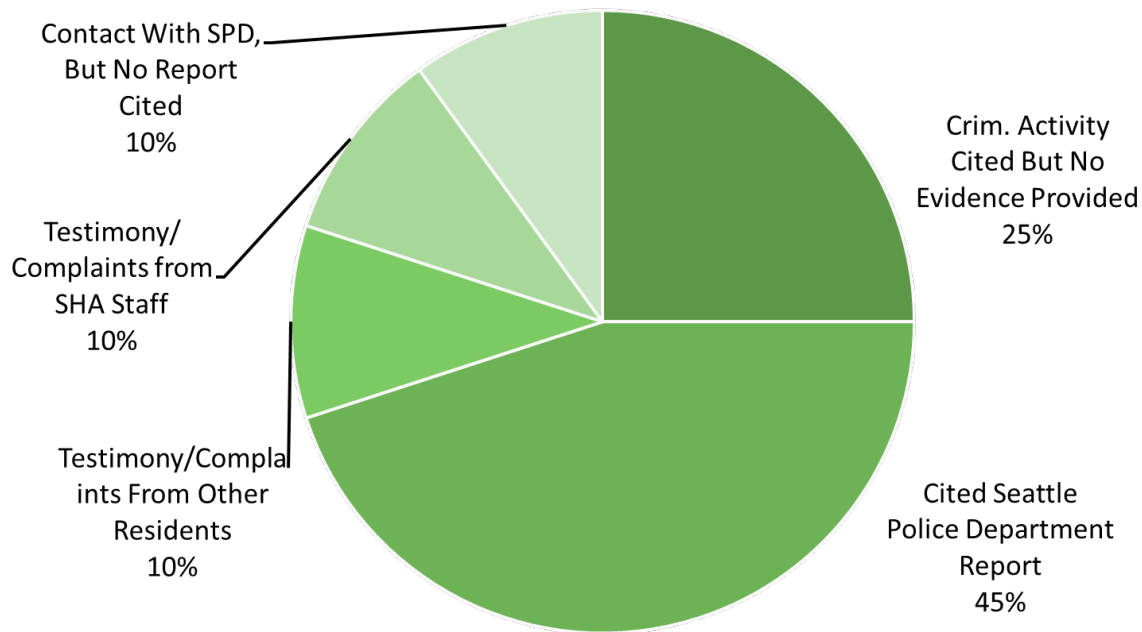


Chart 4.8 displays how often criminal activity was cited as the justification for an eviction. While the 30 cases we received were initially selected and sent to us because they included allegations of criminal misconduct, we found that only 67% of these cases actually involved criminal activity and that the cases that did involve criminal activity cited arrests, criminal charges, and suspicion of a crime.

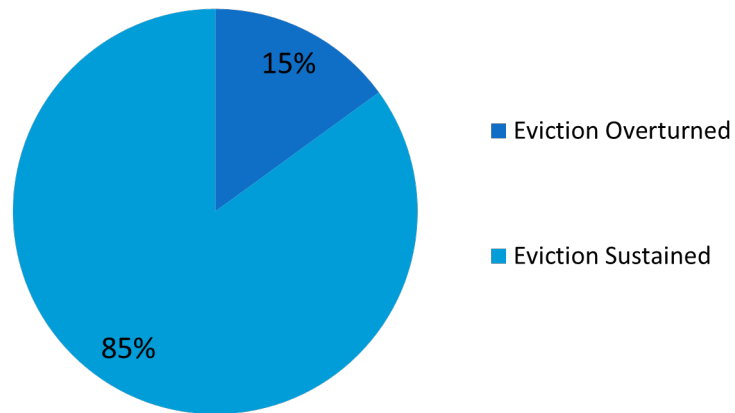
These statistics are significant because none of the cases we looked at involved a tenant who was convicted of a crime. This makes it easy for SHA to bring an eviction notice against a tenant. Furthermore, out of the nine tenants served eviction notices for a “suspected crime”, only two were able to overturn their eviction.

**CHART 4.9. Criminal Conviction Not Required – Continued**



None of the cases we examined involved a conviction. Additionally, SHA often did not provide specific evidence to support its determination of a tenant’s guilt in regard to criminal activity. This occurred in 25% of the eviction notices studied, where no evidence was provided by SHA at the grievance hearing.

**CHART 4.10. Most Evictions Were Sustained in the LIPH Hearings**



The difficulty tenants have when attempting to overturn an eviction decision was clearly exemplified by the LIPH Grievance Hearing Decisions we examined. Tenants were successful in only 15% of the 47 decisions we were able to study.

# CONCLUSION AND RECOMMENDATIONS

By Dexter Callahan

## *Criminal History*

From thorough examination of SHA administrative materials and from the SHA documents that we analyzed, we have determined that SHA has designed their suitability requirements to be excessively discretionary, particularly in the interpretation and use of criminal histories. HUD has set only minimal guidelines for eligibility that contain only two explicit categories of automatic exclusion with regards to criminal history. None of the cases that we examined qualified for HUD's automatic exclusion.

We have also determined that SHA has used its discretion to implement a much more specific list of criminal violations for its LIPH program that carry mandatory periods of exclusion ranging from 2-20 years post-incarceration. Unfortunately SHA declined to speak with us and we were unable to gain their perspective on why they choose to enforce a more specific list of criminal exclusions, which exceed the HUD mandated criminal history exclusions. This is problematic because we were unable to locate any empirical research that stated that there is solid evidence the probability of recidivism decreases after a certain period of time, depending on the offense. Without evidence that the probability of recidivism decreases at different rates depending on the crime committed, or another justification for the very specific periods of exclusions they seem arbitrary.



Stable housing is a fundamental building block of a meaningful life and these mandatory periods of exclusion from SHA's LIPH program effectively add to the sentences of those who have served their time and paid their debt to society. By not providing access to safe and stable places to live for ex-offenders, there is always a risk of forcing someone back into a position of desperation and into re-offending.

Categories of exclusion like habitual criminal behavior, or a pattern of criminal behavior are also problematic because they are not clearly defined in the SHA Manual of Operations. This allows for discretion and uneven application without a single standard of interpretation. It is unclear how SHA makes its determination if an applicant falls into the category of a habitual criminal offender, or if these determinations are made by On-Site Management, Inc. Unclear policies are difficult to oversee and challenge when they are used as a reason for denial. SHA should work to make all possible categories of exclusion as clear and transparent as possible.

### **Rental and Credit History**

In addition to strict suitability standards for those with a criminal history, SHA also has set very stringent policies regarding the length of verifiable positive rental history needed by an LIPH applicant. SHA requires one year of continuous positive rental history, two years in a transitional housing program, or five years of verified residential history. The most frequent reason that applicants appealed a denial in our study was for a rejection based on negative or insufficient rental history, 110 cases of the 145 we reviewed cited this as a reason for denial. The second most frequent reason for an appeal of a LIPH application denial was for a criminal history.

The significant overlap between rental, criminal, and credit history is obvious, as is exceptionally high number of cases which cited insufficient rental history. What the previous

comparison shows is that having a negative or insufficient rental history or a poor credit history is often times linked with having a criminal history. By placing such strict requirements on verifiable rental history and credit history not only is SHA placing an extra hurdle which is difficult for ex-offenders to surmount, it would seem as though SHA'S policies may be excluding anyone who has experienced a bout of homelessness as well.

### **Suitability**

PHA's are given the discretion to set suitability requirements beyond those mandated by HUD. Recent guidance from the HUD secretary Shaun Donovan instructed PHA administrators in his letter that this discretion is supposed to be used with an eye towards the favorable future conduct of an applicant. Donovan specifically highlighted criminal history as well stating that the broad discretion given to PHA's in setting suitability requirements should be used to allow the greatest number of ex-offenders to reunite with their families and reintegrate in society. Mandatory criminal exclusions do not allow SHA to take into consideration mitigating circumstances and the efforts of applicants to reform their lives.

### **Denials**

The denial appeals hearing decisions that we analyzed did not follow a singular, consistent format and were often difficult to decipher. Oftentimes if a criminal offense or criminal history was cited as a reason for denial, the crime that resulted in the denial was not specified. Not giving a specific reason for denial limits an applicant's ability to appeal. SHA should focus on giving clear and concise notice as to why an applicant is denied and allowing the applicant a meaningful chance to appeal that decision.

Additionally SHA claims to consider mitigating circumstances but it is unclear how or if SHA will consider mitigating circumstances regarding an applicant's criminal history. Without

taking into account mitigating circumstances and approaching the decision to deny a person housing SHA risks developing an eligibility-compliance culture which effectively only considers whether a person has met the minimum requirements of the program rather than examining individuals on a case-by-case basis, or seeking to help people re-integrate and build stable lives post-incarceration.

Finally SHA does not require the hearing officers who preside over the LIPH appeals hearings to have any formal legal training. Since the recent reforms in SHA's HCV program, the hearing officers there are required to hold a law degree and all decisions they issue are subject to a review by a three-person panel. Also the mandatory criminal exclusions in the HCV program are much more reasonable, 12 months of exclusion post-incarceration for any class A-felony. Beyond those 12 months applicants will not be denied admission to the HCV program on the basis of a criminal history. There are fewer protections for applicants in the LIPH program than in the HCV program, because of this we recommend that SHA implement reforms similar to those which were enacted for the HCV program into the LIPH program as well. Similar reforms could likely be made in the LIPH program.

### **Evictions**

By analyzing the eviction notices and eviction grievance hearing decisions, we discovered that neither a criminal conviction nor an arrest is required to initiate and sustain an eviction based on criminal history. Simple contact with the police or suspected criminal activity is enough to justify an eviction under SHA's current policies. The low standard of proof required for an eviction to occur also results in few tenants being able to overturn the decision to terminate their housing.

The appeals process for the LIPH evictions has similar problems to the denial appeals process, the hearing officers also do not have any formal legal training, nor are there decisions subject to an in house review. Although tenants who are evicted are able to challenge the decision in civil court, often times the eviction has been completed and the tenant removed before they are able to appeal the decision resulting in a loss of the unit anyways. SHA should also reform the eviction appeals process in a similar way as the HCV program requiring hearing officers to possess formal legal training and for their decisions to be reviewed by another panel.

#### Mission

SHA's policies effectively seem to exclude those people whom the LIPH program is intended to help. By combining extensive mandatory exclusions on applicants with criminal histories and the strict requirements for sufficient rental and credit history, SHA has created a barrier that is difficult for ex-offenders, addicts, and those who are or have been homeless. According to HUD secretary Shaun Donovan instead of the discretion granted to SHA to create suitability factors being used to limit the applicant pool, this discretion should be used in a way that allows the greatest number of people to reintegrate in society and gain access to stable housing. In light of this guidance we recommend that SHA implement several changes to their LIPH program policies and appeals process which will provide greater protections for LIPH applicants and be better suited to helping SHA fulfill their mission of providing the greatest number of people with safe, low-cost stable housing and simultaneously complying with the recent HUD guidance.

## Recommendations

In light of our findings we hereby recommend that SHA implement the following changes:

- **Relax mandatory criminal history exclusions** that go beyond those mandated by HUD.
- **Remove categories of discretion** such as “habitual criminal behavior,” and a “pattern of criminal behavior.”
- **Make all policies as clear and transparent as possible** so that when someone is denied they are able to understand why and have a realistic opportunity to challenge the denial.
- **Relax strict rental history requirements** that effectively bar certain marginalized groups such as ex-offenders and the homeless from attaining LIPH through SHA.
- **Remember that a poor credit history** may not be indicative of future favorable conduct for a LIPH applicant
- **Only use suitability requirements** that are proven to be indicative of an applicant’s ability to be a good tenant.
- **Consider mitigating circumstances** and issue decisions on a case-by-case basis remembering that stable housing is an essential part of building a meaningful life.
- **Differentiate between suspicion, arrest, and conviction**, remembering in this country that the legal standard of proof for a criminal offense in our country is innocent until proven guilty.
- **Reform the denial and eviction appeals process** in ways similar to the Section 8 program so that applicants are given a meaningful chance to appeal the denial of their LIPH housing application or tenants to appeal their eviction from an LIPH unit.

- **Require hearing officers** to have formal legal training. A multiple person panel must review all decisions to ensure evenhanded and fair application of SHA policies.

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