

SECTION 720.120 - Definition of Demonstrable Risk

Issue: Proposed 5 year “look back period” of applicant’s criminal convictions

As proposed, the Rules make claim that “Criminal convictions that are five (5) years old or older do not represent a demonstrable risk to personal safety or property.” However, criminologist studies note that 1) **different criminal convictions yield different likelihoods of recidivism** and 2) “**at seven years past the offense date**, the likelihood that a person with a prior criminal record will engage in future criminal conduct decreases to where it approximates the likelihood that a person with no criminal history will engage in criminal conduct.”¹
CITE

Further, the current industry standard for screening is a seven year “look back period.” Seven to ten-year histories are also standard among other forms of Consumer Reports². **The NBOA recommends a seven (7) year “look back period” of an applicant’s history of criminal convictions.**

Issue: Limited Categories of Criminal Convictions defining “Demonstrable Risk”

The proposed Rules are limited to three categories of crime, do not adequately consider crimes against property (including those that might not be considered “violent” i.e. car thefts), and lack clarification concerning misdemeanor offenses. **The NBOA recommends that the categories of criminal convictions be expanded to define 1) arson-related offenses, 2) theft, stolen-property and fraud related offenses and 3) weapon possession offenses.** Further, if criminal convictions appear within any of these categories, the NBOA would ask that an automatic look-back period of greater than 7 years be made available.

Additionally, housing providers must be allowed to view and consider certain misdemeanor offenses. **The NBOA recommends setting a threshold for Class A misdemeanors in the definition of “Demonstrable Risk.”**

SECTION 740.110 / 740.120 - Dispute Procedures

Issue: Holding a unit off the market during a lengthy, bifurcated appeal process

As proposed, the Rules (Sec. 740.110) allow an applicant five (5) business days to make notice of appeal and an additional five (5) business days to produce evidence to support the appeal, without defining what evidence should be produced to the housing provider. Further, Section 720.120 requires a housing provider complete the process before the ability to extend housing to another applicant.

The cost of holding a vacant unit off the market for 10-13 days would be extremely detrimental to housing providers and would adversely affect housing availability and affordability for other potential applicants, let alone frustrate good housing providers. As much as persons re-entering are expected to prepare resumes prior to attending a job interview, so too should they be expected to prepare the documentation to support an anticipated appeal prior to applying for housing. **The NBOA recommends that, if a housing provider must hold a unit off the market, there be a reduction of the notice of appeal to two (2) business days and evidence production to two (2) business days while also amending language in Section 740.110 (B) to state “The applicant shall... produce substantiated evidence that disputes...”**

Issue: Definition of notice by postmark

As written, the Rules provide an applicant five (5) business days from the “**postal or electronic mail date stamp**” to notify a housing provider of intent to dispute and an additional five (5) days to produce evidence to support the dispute. The NBOA is concerned that if postmark controls, a housing provider would be required to wait an additional (undefined) number of days to ensure compliance of receipt of intent to appeal, thus further extending time a unit is held off-market. **The NBOA recommends that all written notices of intent to appeal be made electronically to the housing provider’s designated agent.**

SECTION 750.100 - Individualized Assessment

Issue: Undefined burden to produce assessment documentation

As written, the Rules require a housing provider to conduct an individualized assessment after an applicant disputes findings of a criminal background check, but fails to define who must produce the materials used. If the burden of responsibility lies with the housing provider, it would significantly reduce the providers’ ability to navigate an already onerous application process in a timely manner and would require undue resources and expense. Instead, the Rules should require the applicant to furnish documented evidence in mitigation, and in the absence of the applicant providing documented evidence, should clarify that the housing provider is under no obligation to furnish such materials, although they are within their rights to conduct such research.

Therefore, **the NBOA recommends that an applicant be required to produce all substantiated documentation required to satisfy factors considered for an individualized assessment and no defined requirement be made of the housing provider.**

Issue: Factors that may be considered in performing assessment

In Section 750.100, factors that may be considered include (J) “whether, if the applicant is an individual with a disability, any reasonable accommodation could be provided to ameliorate any purported demonstrable risk and (K) other mitigating factors.”

The NBOA seeks clarification on factors (I) (J) and why they were added to the review process factors. Do these provisions add to legal risk born by the housing provider as a protected class?

The NBOA recommends that factor (K) be written as “other mitigating *or aggravating* factors.”

ADDITIONAL QUESTIONS

Section 730.100

Reconciling requirement that housing providers furnish applicant with a copy of tenant screening criteria before applicants submit a credit check fee. **Must that housing provider’s criteria be no less restrictive than the factors outlined in Section 720.120 definition of “Demonstrable Risk”?**

Section 700.100

Are public housing agencies offered a different set of rules and expectations than private sector housing providers?

Undefined in the Rules as written

Adding New Roommates or Family Members to Existing Lease: **When a housing provider decides whether or not to add someone new to an existing lease, must they comply with the JHO? May the housing provider skip the bifurcated process and immediately begin a criminal background check if the new tenant’s financial responsibility is not an issue?**

1) https://www.reentryroundtable.net/wp-content/uploads/2013/10/Criminal-Background-White-Paper.final_.pdf
2) <https://www.ftc.gov/tips-advice/business-center/guidance/using-consumer-reports-what-landlords-need-know>