

*THE FINANCIAL ADVISOR'S*

# **GUIDE TO ARRESTS, CRIMINAL CHARGES, AND RELATED FORM U4 ISSUES**



**JOEL R. BECK**



THE  
**BECK LAW FIRM**<sup>SM</sup>  
LLC

# **THE FINANCIAL ADVISOR'S GUIDE TO ARRESTS, CRIMINAL CHARGES, AND RELATED FORM U4 ISSUES**

*Important Note: This guide is provided for educational and informational purposes only.  
It is not legal advice for your situation and it is not a substitute for speaking with experienced financial  
markets regulation legal counsel about your matter.*

© 2021 The Beck Law Firm, LLC.  
All rights reserved.



**Attorney Joel Beck**

If you're a financial advisor facing the consequences of a criminal charge, know that you aren't alone. I get more phone calls than you would probably imagine from financial advisors who have been arrested or charged with a crime due to a variety of reasons. Sometimes these charges are recent, and sometimes they are a decades-old reminder of a college prank gone wrong or a momentary lapse in judgement. Having worked with so many of these advisors, I'm familiar with the fears and concerns that may be swirling through your mind:

**"What does this mean for my career?"**

**"Will I lose my license?"**

**"What do I have to disclose about this situation? When?"**

**"Is there a way to not report this to my firm or put it on my U4?"**

**"Can you help me?"**

Whether you are in the midst of your criminal case, or you're filling out your Form U4 for the first time and have concerns about what events from your past must be reported, or an old charge has been following you around on your U4 for years and you want to do something about it, this guide is for you. I'll share some valuable information that you need to know about the Form U4, your disclosure obligations, and steps you can take to potentially minimize the repercussions of a criminal charge. Understand that this information is provided for educational and informational purposes only. It is not legal advice for your specific situation.

By requesting this information, you have made the wise choice to seek answers about your compliance and regulatory obligations. No matter what situation may have led to the need for this information, you have taken the first step to protecting your reputation and career from a negative Form U4.

Once you've looked through this guide, if you think you can benefit from experienced legal counsel, I invite you to contact us to discuss your situation and concerns. It would be our honor to serve you.

A handwritten signature in blue ink, appearing to read "Joel R. Beck". The signature is fluid and cursive, with a large, stylized "J" and "B".

**Joel R. Beck**  
**The Beck Law Firm, LLC**

**THE BIG ISSUE:**

# ***Form U4 Disclosures for Criminal History Information***

## **A Quick Overview of What Gets Reported and When**

It's easy to look at the Form U4 and see that some criminal history information must be reported, but exactly what gets reported, and when, are questions many advisors have even after reading the questions several times. Unfortunately, I've seen first-hand that compliance staff and management at firms often don't really understand what is and is not required to be reported. Too often, they offer well-meaning advice to simply disclose everything out of an abundance of caution. While this may sound like the safest plan, they don't have to live with the consequences of having those disclosures made available for the world to see online. Most experienced lawyers will instead advise financial advisors to report what has to be reported, and don't report what doesn't have to be reported. This strategy seems simple enough, but the key is understanding the difference—and that's not always easy.

To summarize the U4 disclosure obligations, a financial advisor is generally required to disclose if they have ever been charged with any felony as well as if he or she has ever been convicted of or pled guilty or no contest to such charge. Additionally, certain misdemeanor charges that involve investments or an investment-related business (as defined by the uniform forms), as well as any other misdemeanor involving "any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses" must generally be disclosed. Likewise, disclosure is required if the advisor is convicted of one of these reportable misdemeanors or pled guilty or no contest to the reportable charge.

It is important to pay attention to words printed in italics on the Form U4. It means that they have a special meaning for purposes of the uniform forms (forms such as U4, U5, etc.) and those words are defined in the explanation of terms for the uniform forms. When you look at the criminal history questions, you'll notice that the word *charged* is in italics. For the uniform forms, the word *charged* is defined as "being accused of a crime in a formal complaint, information, or indictment (or other equivalent formal charge)."

Understanding the definition here is critical because, generally speaking, just being arrested for something by the police does not usually trigger a need to report it on your Form U4. In most criminal court systems, a formal charge is not filed by the police, but is filed by the prosecutor through an indictment, accusation, criminal complaint, information, or some other formal process under local law.

So, before updating your Form U4 to disclose a charge, you must know whether there actually is a formal charge such that the disclosure obligation is triggered. If there is, then it should be reported within 30 days. Then, whenever there is a plea or conviction in the case, or it is disposed of, you should again update your U4 as appropriate in a timely manner.

*Formal charges are typically filed by the prosecutor, not the police. Simply being arrested for something by the police does not usually trigger a need to report it on your Form U4.*

Keep in mind that your firm may have internal policies and procedures that obligate you to disclose events and information that are not required to be disclosed on the U4. For example, many firms have a requirement that advisors immediately report to the firm anytime they are arrested. Be sure to review your firm's policies and procedures to know if you have obligations to the firm that are different than the disclosure obligations for the Form U4.

# Not Getting the U4 Right Can Wreck Your Career

Many financial advisors are floored when I tell them that a potential result of an enforcement action against them for not disclosing a required item on the Form U4 is that the advisor might become statutorily disqualified (SD) from being associated with a broker-dealer or registered investment adviser firm. If an advisor is SD, then he or she is not allowed to be associated or registered with a firm unless they get special permission from FINRA (for broker-dealer association) and the SEC (for both broker-dealer and RIA association).

*A culpable state of mind, or intent, is not required to sanction you, perhaps with a Statutory Disqualification, for 'willfully' failing to disclose.*

This SD comes about under federal securities laws when a regulator makes a finding in a final enforcement action that the advisor “willfully” failed to disclose something on the Form U4, or willfully failed to timely amend the U4. Willfully, in this context, does not mean that the advisor intended to hide or conceal something to keep it off the U4. In many cases the advisor may have simply had no idea that the event required Form U4 disclosure! In cases on this subject, the regulators have made findings that an advisor's willful Form U4 violation does not require finding that the advisor did so with a culpable state of mind (intent).

As you might imagine, an enforcement action against an advisor that can result in the advisor becoming SD is a serious consequence! Accordingly, we recommend financial advisors learn what types of information must be reported on the Form U4, review their U4 periodically, and then promptly update it when the need arises. If they are uncertain about what must be disclosed, we recommend that they seek appropriate help to ensure that they get their U4 right. These simple steps can help insure against significant penalties.

# What To Do If You're Facing A Criminal Case Right Now?

If you've been arrested recently and are involved in a case now, you've likely already figured out that you probably need a good criminal defense lawyer to represent you and fight to resolve the case as favorably as possible. But can your defense lawyer protect your U4? Does your defense lawyer even know what a U4 is?

Most criminal defense lawyers are not well-informed on the Form U4 and FINRA/SEC sanctions, because their expertise is just that—criminal defense. Many very fine defense lawyers have never heard the term “Form U4” and have no idea how resolving a criminal case might impact your ability to work pursuant to federal and state securities industry laws, rules, and regulations. Broker-dealer and RIA compliance work and advisor registration is a niche field, and you should never assume your defense attorney has any knowledge of this area. What your attorney may consider a successful resolution of your criminal case could in fact be detrimental if you wind up being disqualified from working in your chosen career, especially if that could have been avoided.

Therefore, you and your defense lawyer must understand how different outcomes of the criminal case may impact your career.

Because of the importance of correctly resolving criminal cases, I'm often engaged by financial advisors or their criminal defense lawyers to provide guidance so that everyone is knowledgeable about how various resolutions of a criminal case could impact the advisor's livelihood. With that knowledge, the defense lawyer can better negotiate a resolution with the prosecutor, or in a hearing or trial better present your case to the judge. And, if necessary due to circumstances in the case, the advisor can make any needed plans to change firms or to sell his or her business and exit the industry due to an expected and unavoidable disqualification.

One more point to consider: it may make sense for your defense lawyer to speak with prosecutors about the case soon after the arrest and before any formal charges are filed. If agreement can be reached as to what charges will be filed—or perhaps won't be filed—you may avoid a Form U4 disclosure being necessary or may make the disclosure appear more favorable to help preserve your professional reputation. This is another reason why you must ensure that your defense lawyer has the information needed to understand how the criminal case will impact your career.

*It's not usually a great resolution of the criminal case if you wind up unknowingly being disqualified from working in your chosen career.*

# What About Older Criminal Cases On My U4?

Financial advisors will often call with concerns about an old disclosure on their record, wanting to know if there is any way to make that go away or look better. Advisors are increasingly concerned about this as there has been a push for prospective clients and employers to review an advisor's background online, and more items might now be disclosed on a Form ADV or the newer Form CRS. I've found that there are two strategies to use for these older cases.

First, explore whether it is possible to have the records of that case sealed, restricted, or expunged under state law. In many states, when there was a charge but not a conviction, the defendant may be able to have the record expunged (or sealed or restricted—note that the wording used by states varies, as does the meaning of such term under state law). If you are able to have the matter expunged (or sealed, restricted, etc.), it may be possible to either have the disclosure of the event completely expunged from your CRD record and Form U4, or to have it archived such that it will no longer appear to the public on FINRA's BrokerCheck® report for registered representatives or the Investor.gov report for IARs. While we've been successful with cleaning up these expunged records in cases from many different states, understand that not all states have an expungement process, and some that do may still require disclosure of charges on certain professional licensing applications such as the U4. There is no nationwide uniformity of laws regarding expungement, so what can be done for your situation is very state specific.

*Do not include any false information in your Form U4 comments. The consequences of lying on the form could be greater than the negative disclosure itself.*

If you can't get a disclosure expunged from your Form U4, you may be able to make it look better and reduce the negative effects of the disclosure. For each disclosure, a registered representative or IAR can add a comment on the Form U4 and the most recent comment for an item will be what appears to the public on your online background checks through FINRA or the SEC. A well-crafted comment can provide your explanation of the event, and perhaps give some additional detail to cast the situation in a more positive light. This can help reduce the negative impact of some disclosures for prospects and clients should they review your CRD/IARD record, which may in turn have a positive outcome on your business.



A word of caution: be careful when adding comments on your U4, and don't put anything in the comment that is not true. Because the comment is made on the Form U4, making a false statement can lead to a regulatory investigation and an enforcement action against you. If the disclosure is new, and there is a regulatory exam open or one might soon be started, always consult experienced counsel before adding a comment on your CRD record.

# The Costs of Improper or Unnecessary U4 Disclosures

**“Go ahead and disclose it, just to be safe.”**

As I mentioned earlier, this is what you will hear from some firm compliance folks or managers when faced with a question of whether something needs to be reported on the U4. Before you heed this advice, consider the possible costs or consequences of putting something on the U4 for the world to see that does not have to be there, or that is not disclosed in the right manner:

*Contrary to common advice, disclosing everything ‘just in case’ is not the safest way to guard your career.*

- Inability to gain trust of prospective clients who review the advisor's CRD/IRD report
- Loss of trust from existing clients who learn of negative disclosures on the advisor's record
- Inability to “move up” at your current firm or to obtain employment with a larger or a more prestigious firm
- Loss of revenue and income to the advisor based on the three items above

For these reasons, I think most advisors will not want to report something on the U4 unless they are required to do so. Furthermore, advisors with negative disclosures on their public record that can be cleaned up in one way or another would be wise to do so. Otherwise, you may wind up losing more in lost income over your career as opposed to a one-time expenditure for legal fees to get the help you need.

# How we help with your Form U4 Issues

Here at The Beck Law Firm, LLC, we help financial advisors with Form U4 issues including criminal history matters. For some clients, we review documents, interview them to gather details, and then do research as necessary to determine whether they are required to disclose an event on their Form U4. After all, the easiest way to get something off your Form U4 is to not put it there in the first place. As explained above, if you are not required to disclose an item on the Form U4, generally it is wise not to do so.

For other clients, we review their existing U4 disclosures and related documents and interview them about the events leading to the criminal history disclosure so that we can evaluate whether it makes sense to seek expungement of the matter from the Form U4 so that the disclosure is either totally removed from the CRD/IARD system or classified as an archived disclosure and no longer made available to the public. If we determine it makes sense to seek expungement of the item for the client, we'll take steps to have it expunged to clean up the Form U4. Generally, that means we prepare a detailed letter outlining procedural history and an analysis of applicable law along with supporting documents to FINRA to remove criminal history disclosures that have been ordered expunged or sealed by a court. Of course, we can't seek to expunge a criminal disclosure from the U4 unless the matter was improperly reported in the first place, or the advisor has obtained some type of expungement, sealing, or restriction under applicable state law.

In the cases where expungement is not a reasonable option, we'll work with the client to craft explanatory comments to add to their Form U4 to make the disclosure potentially more favorable and then let the client get the Form U4 updated via an amendment filed by their broker-dealer or RIA firm.

With over two decades of experience in Form U4 issues and general compliance and regulation matters, we know the rules and the processes, and can counsel financial advisors on their unique issues to help prevent problems and keep their record as clean as possible.

# What Some Clients Have Said\*

Here's a sampling of what a few clients who engaged The Beck Law Firm, LLC regarding Form U4 and related compliance issues have said about their experience working with us (you can find more online by checking out Joel Beck on [avvo.com](https://avvo.com), our Google reviews, and by visiting our website [TheBeckFirm.com](https://TheBeckFirm.com)):

*Very knowledgeable and easy to work with. I know that they totally understand the nature of our business and would be able to help us find a solution.*

- KM, a broker-dealer compliance officer (October 2020)

*Very good understanding of securities laws. Go talk with Joel Beck, it will be your first and last lawyer you will need to interview.*

- VC, a financial markets client (September 2020)

*Joel got done exactly what he set out to do. He did not guarantee anything, he was honest and straight forward. When we got the result we wanted with a short return I was very satisfied. He is responsive and does quality work. Highly recommended.*

- Anonymous client (of a record expungement matter) via [Avvo.com](https://avvo.com) review (February 2019)

*Joel is very knowledgeable and experienced in securities law and with FINRA. He is professional and responsive in returning calls and emails and will give your case his full attention. My case only took about a month total, and he achieved the best result possible. I cannot thank him enough for helping me get the disclosure off of my record so I can finally advance my career!*

- Anonymous client (for a FINRA CRD/U4 expungement matter) (April 2018)

*Joel was extremely responsive and efficient in getting a FINRA U4 criminal disclosure expunged. He was a pleasure to work with and had the matter resolved weeks ahead of schedule. Thank you Joel for the hard work and swift results.*

- Anonymous client via [Avvo.com](https://avvo.com) review (May 2017)

*He researched my case right away and gave me feedback very quickly. Definitely recommend for issues relating to U4 and FINRA.*

- Andy (May 2017)

**Q: What stood out to you about your experience with our firm?**

**A: First, results. And I don't mean the ultimate good results that we have no control, but the staging of the client's affairs to maximize that probability. Also, very easy to do business with.**

**Q: If a friend or family member asked you for a recommendation to a lawyer and you were to recommend The Beck Law Firm, LLC, what would you say to that person?**

**A: He can understand the client. Even "off the wall" ones like me, and really understands FINRA. He gently led me to grasp and respect and trust fuller disclosure and compliance, but on the client's terms, as they can absorb this fearful path. He elevated me professionally, an ongoing benefit.**

**- L.H. (December 2016)**

**I hired Joel this past June to attempt to expunge certain disclosures from my BrokerCheck record. Before agreeing to take my case, Joel reviewed the circumstances of my situation and was very honest and forthright with me about our chances of success. I am happy to report that Joel was successful in getting my BrokerCheck record expunged. Throughout the process Joel was incredibly professional, and he made himself very accessible for any questions I had. I am extremely satisfied with Joel's services and the outcome that was received. I would highly recommend Joel Beck and The Beck Law Firm, LLC to anyone else.**

**-Bill, (July 2014)**

\* Any results obtained for a client are done based on the facts and law applicable to that matter; your situation may be different. Prior results do not guarantee a similar outcome. These testimonials are not intended to solicit for any clients where the use of testimonials may be prohibited or restricted.

## **The Next Step – Where Do You Go From Here?**

After reading this U4 guide on criminal disclosures, your next step on the path to resolving your Form U4 issues or questions is to contact us to speak about your situation. We look forward to your call and the chance to serve you as we have served many other financial advisors. While we cannot guarantee any results, we might be the right law firm to assist you with your Form U4 issues, and in improving your reputation and marketability to firms and prospective clients. The best way to find out is to call us at (678) 344-5342 to schedule a consultation about your situation. Because of the volume of requests for calls and answers to "quick questions" we receive from advisors across the country concerning U4 issues, we do charge for these consultations, but believe that the information you receive can be very valuable in helping you understand what options you may have and then determine how to map out action steps to get there.

*Remember that this free report is designed to provide you with general information, but it is not legal advice for your specific situation and is not a substitute for legal advice from an experienced broker-dealer and RIA regulation attorney.*

*Finally, if you have thoughts on how we might be able to improve this free report for other financial advisors, be sure to let us know. Drop us a letter or an email and share your thoughts.*



**The Beck Law Firm, LLC**  
**2090 Sugarloaf Parkway, Suite 135**  
**Lawrenceville, GA 30045**  
**(678) 344-5342**  
**[www.thebeckfirm.com](http://www.thebeckfirm.com)**

**[facebook.com/thebeckfirm](https://facebook.com/thebeckfirm)**  
**[youtube.com/thebeckfirm](https://youtube.com/thebeckfirm)**