

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

Office of Public and Indian Housing

Special Attention of:

Multifamily Hub Directors
Multifamily Program Center Directors
Supervisory Housing Project Managers
Project Managers
Resident Management Corporations;
Contract Administrators
Owners and Management Agents Administering
Multifamily Housing Rental Assistance Programs

NOTICE: PIH 2012-28

NOTICE: H 2012-11

Issued: June 11, 2012

Expires: This notice remains in effect until amended, superseded, or rescinded

Supersedes: H 2009-11 and
PIH 2009-35 (HA)

Public Housing Agency Directors
Section 8 and Public Housing Administrators
HUD Directors of Public Housing
PIH Program Center Coordinators
Public Housing Division Directors

SUBJECT: State Registered Lifetime Sex Offenders in Federally Assisted Housing

I. PURPOSE

This guidance reiterates owners' and agents' (O/As) and Public Housing Agencies' (PHAs) statutory- and regulatory-based responsibilities to prohibit admission to individuals subject to a lifetime registration requirement under a State sex offender registration program. If a participant who is subject to such a lifetime registration requirement was erroneously admitted into a federal housing program identified under Section II, below, and is found to be receiving housing assistance, O/As and PHAs must pursue eviction or termination of assistance for these participants. In addition, this Notice clarifies regulations concerning admissions and strongly recommends additional steps to prevent individuals subject to a lifetime registration requirement under a State sex offender registration program from receiving federal housing assistance.

II. APPLICABILITY

Screening requirements for state registered lifetime sex offenders apply to O/As and PHAs administering the following rental assistance programs:

- Section 202 Project Rental Assistance Contracts (PRAC)
- Section 811 PRAC
- Section 811 Project Rental Assistance (PRA) demonstration

- Section 202/162 Project Assistance Contract (PAC)
- Section 202/8
- Section 202 Senior Preservation Rental Assistance Contracts (SPRACs)
- Section 8 Project-based
- Section 236
- Section 236 Rental Assistance Payment (RAP)
- Section 221(d)(3) Below Market Interest Rate (BMIR)
- Section 101 Rent Supplement
- Public Housing
- Tenant-based Housing Choice Voucher
- Project-based Certificate and Housing Choice Voucher
- Moderate Rehabilitation

III. BACKGROUND

The Office of Inspector General (OIG) conducted an audit of the Department of Housing and Urban Development's requirement prohibiting lifetime registered sex offenders from admission to HUD-subsidized housing. The result of this audit estimated that 2,094 to 3,046 assisted households included a lifetime registered sex offender as a household member. A copy of the Audit Report 2009-KC-0001, dated August 14, 2009, is located at: www.hudoig.gov/pdf/Internal/2009/ig0970001.pdf.

Although this estimate is small in relation to the total number of households assisted through HUD programs, the potential public safety concern remains paramount. It is critical to ensure that HUD-assisted housing comply with the law barring admission of lifetime registered sex offenders in order to maximize resident safety.

IV. STATUTORY AND REGULATORY CLARIFICATIONS

A. Mandatory Prohibition for Lifetime Sex Offenders- HUD regulations at 24 CFR § 5.856, § 960.204(a)(4), and § 982.553(a)(2) prohibit admission after June 25, 2001, if any member of a household is subject to a State lifetime sex offender registration requirement. This regulation reflects a statutory prohibition. A household receiving assistance with such a member is receiving assistance in violation of federal law.

O/As and PHAs must follow the guidelines outlined in paragraphs B and C below in order to ensure that no lifetime sex offenders are admitted into federally assisted housing. Furthermore, if an O/A or PHA discovers that a household member was erroneously admitted (the household member was subject to a lifetime registration requirement at admission and was admitted after June 25, 2001), the O/A or PHA must immediately pursue eviction or termination of assistance for the household member. Regulations for hearings for the Public Housing (PH) and Housing Choice Voucher (HCV) programs, at 24 CFR § 966 Subpart B and § 982.555, respectively, continue to apply.

If an O/A or PHA erroneously admitted a lifetime sex offender, the O/A or PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA or O/A must terminate assistance for the household.

For admissions before June 25, 2001, there is currently no HUD statutory or regulatory basis to evict or terminate the assistance of the household solely on the basis of a household member's sex offender registration status.

- B. Applicant Residential History** – Pursuant to 24 C.F.R. § 5.856 and § 5.905, O/As and PHAs must perform criminal background checks during the application stage to determine if an applicant, or a member of an applicant's household, is subject to a lifetime registration requirement under any State sex offender registration program. Criminal background checks must be performed in the state in which the housing is located and for states where the applicant and members of the applicant's household may have resided. **As such, applicants for admission into the applicable HUD-assisted housing programs must provide a complete list of all states in which any household member has resided.**¹ Failure to accurately respond to any question during the application process is cause to deny the family admission. **Additionally, PHAs and O/As must ask whether the applicant, or any member of the applicant's household, is subject to a lifetime sex offender registration requirement in any state.** PHAs and O/As are reminded of their obligations with respect to Limited English Proficiency when processing applications of families for admission and at recertification. HUD's Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance) can be found in the Federal Register at 72 FR 2732 (January 22, 2007).

O/As and PHAs determine, in accordance with their screening standards, whether the applicant and the applicant's household members meet the screening criteria. If the processes described above reveal an applicant's household includes an individual subject to State lifetime sex offender registration, the O/As and PHAs must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHAs and O/As must deny admission to the family.

Before a PHA can deny admission to an applicant for PHA-administered programs covered in this Notice, the applicant must be notified of the right to dispute the accuracy and relevance of the criminal background check information (see § 960.204(c) and § 982.553(d)).

For other programs covered in this Notice, an O/A must provide a rejected

¹ Alternatively, if a PHA has access to a national database covering sex offender registries in all states, the PHA may use this in lieu of asking for a complete list of states on the application. The chosen method must be indicated in the PHA admissions and occupancy and/or administrative plans. This option is not available for O/As.

applicant with a written rejection notice in accordance with the requirements at Paragraph 4-9.C of Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*.

- C. **Criminal Background Check Record Retention** – PHAs must destroy the results of a criminal background check in accordance with the records management requirements in 24 C.F.R. §5.905(c); however, a record of the screening, including the type of screening and the date performed, must be retained.

O/As must retain the results of the search, along with the application, in accordance with the requirements at Paragraph 4-22 of Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*.

V. **RECOMMENDED PROCEDURES**

In addition to the above regulatory requirements, HUD recommends that O/As and PHAs adopt new procedures at admission and at annual recertification/reexamination to prevent lifetime registered sex offenders from receiving federal housing assistance.

- A. **Admission** – O/As and PHAs should verify the criminal history information, provided by the applicant. For example, PHAs and O/As are encouraged to use the Dru Sjodin National Sex Offender Database, an online, searchable database hosted by the Department of Justice, which combines the data from individual state sex offender registries and/or other available national, state, or local resources. The Dru Sjodin National Sex Offender database is available at: <http://www.nsopw.gov>. O/As and PHAs should also explore the use of other available databases through their local law enforcement agencies.

In addition to screening adult members of the applicant’s household, HUD recommends that criminal background screening include juvenile members of the applicant’s household, to the extent allowed by state and local law.

- B. **Annual Recertification/Reexamination** – HUD recommends that at annual recertification or reexamination, O/As and PHAs ask whether the tenant or any member of the tenant’s household is subject to a State lifetime sex offender registration program in any state. O/As and PHAs should verify this information using the Dru Sjodin National Sex Offender Database and/or other official federal, state, and local resources and document this information in the same manner as at admission.

If the recertification screening reveals that the tenant has falsified information or otherwise failed to disclose criminal history on his/her application and/or recertification forms, the O/A or PHA should pursue eviction or termination of assistance, as described in section IV.a, above.

Notwithstanding the above, if the tenant or a member of the tenant's household, regardless of the date of admission, engages in criminal activity (including sex offenses) while living in HUD-assisted housing, the O/A or PHA should pursue eviction or termination of assistance to the extent allowed by HUD requirements, the lease, and state or local law.

VI. PAPERWORK REDUCTION ACT

The information collection requirements contained in this document have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1955 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2577-0169, 2577-0083, and 2502-0178. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

VI. ADDITIONAL INFORMATION

Requirements for the prohibition of admission to applicants who are lifetime registered sex offenders and for obtaining criminal background checks are found at 24 C.F.R. Part 5, Subparts I and J; § 960.204(a)(4); § 982.553(a)(2); and in HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*.

Questions regarding this Notice pertaining to the Office of Housing's programs may be directed to Mr. Zeljko Jovanovic at 202-402-3157 or Zeljko.Jovanovic@hud.gov. Questions pertaining to the Office of Public and Indian Housing's Housing Choice Voucher and Public Housing programs may be directed to Ms. Caroline Crouse at 202-402-4595 or Caroline.P.Crouse@hud.gov. **Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.**

_____/s/
Carol J. Galante, Acting Assistant Secretary for
Housing-Federal Housing Commissioner

_____/s/
Sandra B. Henriquez, Assistant Secretary for
Public and Indian Housing