

## State Registered Lifetime Sex Offenders in the Housing Choice Voucher and Public Housing Programs FAQ

*These FAQs are issued by HUD's Office of Public and Indian Housing ("PIH") to address questions raised by Notice PIH 2012-28, which was issued on June 11, 2012. These FAQs are intended as a supplemental resource to Notice PIH 2012-28.*

- **Do Adam Walsh Act (AWA) Tiers affect admissions into federally assisted housing?**

The AWA specifies registration requirement lengths for each tier of sex offense; Tier 1 requires registration for 15 years, Tier 2 requires registration for 25 years, and Tier 3 requires registration for life. However, it is important to note that many states have not fully implemented the AWA. Additionally, states may require registration time lengths longer than those outlined under the AWA. PHAs should consult state law to determine the length of time an applicant is required to register under state law and, if the applicant is subject to a lifetime registration requirement under state law, the applicant cannot be admitted to HUD assisted housing even if the applicant's sex offense is a Tier 1 or Tier 2 offense.

- **If a state changes its sex offender registration laws/regulations so that persons who were on the Sex Offender Registry for a certain number of years (less than life) may be reclassified to Lifetime status, should PHAs terminate participants based on their new status on the Lifetime Sex Offender Registry?**

Current HUD regulations at 24 CFR §982.553(a)(2) and §960.204(a)(4) only require that persons subject to lifetime registration requirement under a State sex offender registration program be banned from admission, not be terminated. Residents who become sex offenders subject to lifetime registration after admission are already participants in the program. However, note that if the reclassification occurs prior to admission into federally assisted housing, the PHA would be required to deny admission to the person registered as a lifetime sex offender. As an administrative precaution, PHAs may choose to indicate in the files of any residents or participants that their offender status was reclassified after admission, provided that the PHA follow the rules for Records Management outlined at 24 CFR 5.905(c). See below for information about termination of assistance.

- **Some states allow individuals subject to lifetime sex offender registration requirements to appeal the requirement and be reclassified after a certain number of years on the registry. Are applicants who are currently subject to lifetime sex offender registration, but who have the right to appeal this requirement still barred from federally assisted housing?**

Yes. A PHA must only consider the registration requirement at the time of application; if, at that time, the applicant is required to register for life, the PHA must deny the application. If an individual successfully appeals the lifetime registration requirement and reapplies following the successful appeal, the offender is not barred at the time of the reapplication because the individual is no longer subject to a lifetime registration requirement.

## State Registered Lifetime Sex Offenders in the Housing Choice Voucher and Public Housing Programs FAQ

- **Can a PHA create a policy that denies admission to applicants for the duration of their sex offender registration requirement, if the registration requirement is less than life?**

No. PHAs may only create policies that deny admission under categories identified in 24 CFR §982.552, §982.553 and §960.204. With the exception of the ban on admission for those individuals subject to a lifetime registration requirement, requirements to register as a sex offender do not fall under these regulations.

- **What happens if someone commits a sexual crime after they are already a participant in the Housing Choice Voucher (HCV) or Public Housing programs and they are then required to register as a sex offender?**

A PHA may pursue termination of a sex offender (lifetime or otherwise) under current HCV regulations if the offender engaged in violent criminal activity or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. PHAs may pursue termination of sex offenders based on a preponderance of evidence that a member of the household has engaged in one of the above activities, regardless of whether the member of the household has been arrested or convicted of the offense. However, as outlined in Notice PIH 2015-19, PHAs should not rely on an arrest record alone to pursue termination under this regulation.

In general, PHAs may terminate assistance for anyone who threatens the health and safety of another resident or PHA staff. When the threat involves an individual with a disability, PHAs may terminate assistance if the individual poses a direct threat to the health or safety of others that cannot be mitigated by a reasonable accommodation. Please note that sex offender status is not a protected class under the Fair Housing Act. If any voucher holders or public housing tenants pose such a threat, the PHA may terminate their assistance (See 24 CFR §982.551(l); §982.553(b)(2) and §966.4(l)(5)).

- **What happens if an applicant was a sex offender subject to a lifetime registration requirement, but the applicant was wrongfully admitted into the HCV or Public Housing program?**

If a PHA finds out that an applicant was wrongfully provided assistance under the HCV or Public Housing program, the PHA must pursue termination procedures against the sex offender, as that applicant is ineligible and could not have been provided any assistance but for an oversight of the PHA or a false representation by the applicant (*see generally* §982.201(a) and §966.4(l)(2)(iii)(B); Notice PIH 2012-28; 42 USC §13663(a)).