

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Expires: This notice remains in effect until amended, superseded, or rescinded

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

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

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.

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)).