

Notice PIH 96-27 (HA)

Secretary's Representatives; Issued: May 15, 1996
State/Area Coordinators; Expires: May 31, 1997
Directors, Public Housing
Divisions; All Public Housing
and Section 8 Housing Agencies;
Resident Management Corporations;
All FHEO Directors for Enforcement
and for Operations and Compliance

Subject: Occupancy Provisions of the Housing Opportunity Program
Extension Act of 1996

1) **Overview**

This Notice describes the screening, lease, and eviction provisions that housing agencies (HAs) must adopt as a result of the "Housing Opportunity Program Extension Act of 1996," which was signed into law on March 28, 1996.

HAs are to implement the provisions in this law without awaiting HUD regulations.

These provisions are in addition to the authority HAs already have in the areas of screening, leases, evictions, and Section 8 terminations.

This Notice focuses on the new law's Section 9, "Safety and Security in Public and Assisted Housing." The Notice also provides a summary of Section 10, "Public Housing Designated for Elderly and Disabled Families." A more detailed discussion of the requirements of Section 10 is being provided in a separate HUD notice.

2) **Purpose**

The purpose of this Notice is to inform HAs of the requirements of the new law related to safety and security in public and assisted housing, which, by the law's terms, are already in effect. These requirements are consistent with the Department's determination to take every reasonable step to help HAs promote safer public and assisted housing.

It is one of a series of steps that are being taken along these lines. These steps include the April 12, 1996 issuance of Notice PIH 96-16 (HAs) entitled "'One Strike and You're Out' Screening and Eviction Guidelines for Public Housing Authorities," and a Proposed Rule published on May 6, 1996 that includes HAs' security efforts as an additional performance indicator under the Public Housing Management Assessment Program (PHMAP).

3) Programs Covered

The new law makes changes to Subsection 6(r) and Section 16(e) of the United States Housing Act of 1937, as amended (USHA) (42 U.S.C. 1437 et seq.), which apply to the Section 8 certificate, voucher, and moderate rehabilitation programs.

Changes to Sections 6, 7, and 16 of the USHA apply to public housing.

None of these changes is applicable to the administration of Indian Housing programs under the USHA.

4) Statutory Changes Applicable to the Section 8 Certificates, Vouchers, and Moderate Rehabilitation Programs

HAs must amend their administrative plan to state their policies for implementing the provisions below.

A) Ineligibility if Evicted for Drug-Related Activity

Drug-related criminal activity is the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use a controlled substance.

Persons evicted from public housing, Indian housing, Section 23, or any Section 8 program because of drug-related criminal activity are ineligible for admission to Section 8 programs for a three-year period beginning on the date of such eviction.

HAs may waive this requirement if:

- the person demonstrates successful completion of a rehabilitation program approved by the HA, or

-- the circumstances leading to the eviction no longer exist. For example, the individual involved in drugs is no longer in the household because the person is incarcerated.

B) Screening Out Illegal Drug Users and Alcohol Abusers

HAs must establish standards (i.e., policies and procedures) that prohibit the admission to Section 8 programs of any person who the HA determines is illegally using a controlled substance.

HAs must establish policies and procedures that prohibit admitting any person to Section 8 programs in cases where the HA determines that there is reasonable cause to believe that the person abuses alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

HAs must establish policies and procedures that prohibit admitting any person to Section 8 programs in cases where the HA determines that there is reasonable cause to believe that the person's **pattern** of illegal use of a controlled substance or **pattern** of abuse of alcohol may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

HAs may waive the policies prohibiting admission in these circumstances if the person demonstrates to the HA's satisfaction that the person is no longer engaging in illegal use of a controlled substance or abuse of alcohol and:

- has successfully completed a supervised drug or alcohol rehabilitation program;
- has otherwise been rehabilitated successfully; or
- is participating in a supervised drug or alcohol rehabilitation program.

C) Terminating Assistance to Illegal Drug Users and Alcohol Abusers

HAs must establish standards (i.e., policies and procedures) that allow for the termination of Section 8 assistance of any person who the HA determines is illegally using a controlled substance.

HAs may terminate Section 8 assistance for any person if the HA determines that the person's abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

5) Statutory Changes Applicable to Public Housing

Nothing in the Extender Act negates the provisions for applicants' rights to informal hearings and tenants' rights to judicial proceedings for evictions.

The Extender Act imposes certain requirements beyond those already in place which, in general, look at a person's **recent behavior** to see whether it would result in noncompliance with the lease. Normal screening should look at past conduct as an indicator of future conduct. In considering the elements discussed below, the HAs' focus should **not** be on whether the applicant or tenant happens to have a disability.

A) Ineligibility if Evicted for Drug-Related Activity

Drug-related criminal activity is the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use a controlled substance.

Persons evicted from public housing, Indian housing, Section 23, or any Section 8 program because of drug-related criminal activity are ineligible for admission to public housing for a three-year period beginning on the date of such eviction.

HAs can waive this requirement if:

- the person demonstrates successful completion of a rehabilitation program approved by the HA, or
- the circumstances leading to the eviction no longer exist. For example, the individual involved in drugs is no longer in the household because the person is incarcerated.

B) Screening Out Illegal Drug Users and Alcohol Abusers

HAs must establish standards (i.e., policies and

procedures) that prohibit the admission to public housing of any person who the HA determines is illegally using a controlled substance.

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- has successfully completed a supervised drug or alcohol rehabilitation program;
- has otherwise been rehabilitated successfully; or
- is participating in a supervised drug or alcohol rehabilitation program.

C) Terminating Assistance to Illegal Drug Users and Alcohol Abusers

HAs must establish standards (i.e., policies and procedures) that allow for the termination of the tenancy of any person who the HA determines is illegally using a controlled substance.

HAs may terminate the tenancy of any person if the HA determines that the person's abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

D) Lease Provision

Public housing lease forms must be amended promptly to provide that the following activities by any resident are grounds for termination of tenancy:

- drug-related criminal activity **on or off the premises, not just on or near the premises;** and
- alcohol abuse that the HA determines interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

In amending the lease form, HAS must provide tenants with notice and opportunity to comment, according to the provisions in 24 CFR 966.3. The modification may be either in the body of the lease or in a lease addendum.

Tenants must be required to execute the new lease/addendum no later than their next reexamination.

E) Grievance Procedures

In states where HUD has determined that a court provides the elements of due process, HAS may bypass the grievance procedures in cases involving termination of tenancy for **any activity, not just a criminal activity**, that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or employees of the HA; or any drug-related criminal activity **on or off such premises, not just on or near such premises**. Otherwise, grievance procedures would remain the same as they have been, per 24 CFR 966.

If HAS plan to amend their grievance procedures, they must provide tenants with notice and opportunity to comment, according to the provisions in 24 CFR 966.52(c).

F) Availability of Criminal Records

The law states that, notwithstanding any other provision of law, the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide HAS information regarding the criminal conviction records of adult applicants for, or tenants of, public housing for purposes of applicant screening, lease enforcement, and eviction.

This information must be provided for persons 18 years of age or older, or for those convicted of a crime as an

adult.

The provisions of this paragraph (5F) pre-empt any contrary provision in State, local, or tribal laws, and prevail over any contrary federal requirement. These provisions do not pre-empt or limit any laws or authority that permit broader access to records.

On request, HAS must be provided the same information for juveniles, only to the extent that the release of such information is authorized by State, local, or tribal laws.

While not addressed by the statute, HAS may pay reasonable fees charged by law enforcement agencies that provide the information. The applicant or tenant may not be charged.

HUD is working with the FBI on this matter and will issue additional guidance when it is available.

HAS must establish a system to ensure that any criminal record received be maintained confidentially, not misused or improperly disseminated, and destroyed once the purpose for which it was requested is accomplished.

Before HAS take any adverse action based on a criminal conviction record, the HA must provide the applicant or tenant with a copy of the criminal record and an opportunity to dispute the accuracy or relevancy of the record. The opportunity to dispute the record can be at an informal hearing for rejected applicants or at the court hearing in the case of evictions.

6) **Statutory Changes in Designating Public Housing for Elderly and Disabled Families**

Some important elements of Section 10 of the Housing Opportunity Program Extension Act of 1996 are summarized here:

-- Provides new statutory requirements for HAS in developing plans to designate projects for elderly families only, disabled families only, or elderly and disabled families. Provides that an allocation plan that was submitted prior to the new law but has not yet been approved or disapproved shall be considered submitted under the new law.

- Provides that any plan approved before enactment of this law shall be in effect for five years beginning with the date of such approval.
- Explains that HAs must establish that the designation is necessary to achieve the housing goals in the jurisdiction's Comprehensive Housing Affordability Strategy (CHAS) and necessary to meet the housing needs of its low-income population.
- Requires that the plan include a description of the designated project, the tenants, any supportive services that will be provided, how the design and related facilities accommodate the special environmental needs of the intended occupants, and any plans to secure additional housing resources or housing assistance for the families that may have been housed in the project if it had not been designated.
- Notes that no tenants in compliance with their lease may be evicted or required to move because of the designation of the unit. HAs must provide relocation assistance to tenants who agree to be relocated in connection with the designation.

More detailed requirements for designating public housing will be covered in a separate notice.

7) **Nondiscrimination**

Nothing in this Notice relieves HAs from complying with Federal requirements prohibiting unlawful discrimination. In particular, in implementing the provisions described in this Notice, HAs must abide by Federal laws prohibiting discrimination on the basis of race, religion, sex, color, national origin, age, disability, and familial status.

HAs must apply their procedures objectively in dealing with both applicants and participants. Only an individual's particular behavior may be considered, not traits that might be attributed to a specific group or category of persons. HAs should carefully document the

rationale for their decisions.

/s/ Kevin Emanuel Marchman

Kevin Emanuel Marchman, Deputy Assistant
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