

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Public and Indian Housing

Special Attention of:	Notice PIH 2003-11 (HA)
Public Housing Agencies;	
HUB Directors of Public Housing;	Issued: April 11, 2003
PIH Program Center Coordinators;	Expires: April 30, 2004
Public Housing Division Directors	
Resident Management Corporations	Cross References

Subject: Instructions for Obtaining Federal Bureau of Investigation Criminal History Record Information

1. Purpose

This Notice provides advice to public housing agencies (PHAs) for obtaining Federal Bureau of Investigation (FBI) National Crime Information Center (NCIC) database criminal history record information and fingerprint checks that will assist PHAs with their applicant screening, lease enforcement and eviction responsibilities.

Gaining access involves:

- Requesting and obtaining an Originating Agency Identifier (ORI) number from the FBI; and,
- Identifying and contracting with either the State Identification Bureau (SIB) or another approved channeling agent (CA) to process and forward fingerprints from PHAs to the FBI.

This Notice also discusses the different types of checks that PHAs can do and how to do them; and, it provides a list of states in which the SIBs have agreed to channel PHA fingerprint submissions to the FBI, as well as a listing of FBI-approved channeling agents that PHAs can contract for this service.

2. Applicability

This Notice is for use by public housing agencies. It describes procedures to use in obtaining criminal history record information and National fingerprint checks on all applicants for and residents of public housing and the Housing Choice Voucher programs.

3. Background

Section 578 of the Quality Housing and Work Responsibility Act (QHWRA) of 1998, and Section 5.903 of the regulations at 24 CFR Part 5 describe how PHAs that administer the public housing and HCV program are authorized to obtain criminal history record information from the FBI, state, local police departments or other law enforcement agencies. Law enforcement agencies are authorized to give information to PHAs at 42 USC 1437d(q)(1)(A), which states that “the National Crime Information Center (NCIC), police departments, and other law enforcement agencies shall, upon request, provide information to public housing authorities regarding the criminal conviction records of adult applicants for, or tenants of assisted housing with grant amounts provided to the PHA for purposes of applicant screening, lease enforcement and eviction.” In order to obtain access to these criminal records, as a responsible entity, the PHA must require every applicant family to submit a consent form signed by each adult household member.

Under 24 CFR Parts 5.903, 960 and 982, PHAs are authorized to obtain and use the criminal records to screen applicants for admission to public housing and HCV programs, and for lease enforcement or eviction of families residing in public housing or receiving HCV assistance. Under these rules for both the public housing and HCV Programs, there are certain policies that PHAs must adopt to screen out applicants that have been engaged in specific criminal conduct. PHAs are required to adopt the following admissions standards that prohibit admission to applicants or lease provisions that authorize a PHA to propose to evict a household for the following offenses:

- Persons currently engaged in illegal drug activity;
- Fugitive felons, parole violators and persons fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees;
- Persons convicted for producing Methamphetamine on federal assisted housing property;
- Sex offenders who are required by law to maintain permanent/lifetime registration with a State program;
- Persons whom a PHA determines it has reasonable cause to believe the household member’s illegal drug or alcohol abuse threatens the health, safety, or interferes with the peaceful enjoyment of the premises by other residents; and
- Persons evicted from federally assisted housing for drug-related criminal activity less than 3 years ago, unless the tenant successfully completes a

rehabilitation program approved by a PHA or the circumstances for the eviction no longer exist.

Under 24 CFR Parts 5.903, 966.4, 982.553 and 982.552, PHAs are authorized to access criminal records. PHAs may obtain and use these records to screen applicants or current residents for lease enforcement purposes on behalf of an owner. Owners must submit requests to a PHA in the jurisdiction in which the property is located. When an owner submits this type of request, PHAs are required to obtain and review criminal records to determine whether an applicant or household member has committed any criminal activity that is a basis for denying admission, lease enforcement, or eviction in accordance with HUD regulations and the owner's criteria. The owner may request that a PHA obtain criminal records for each adult applicant or current resident living in the property. The criminal records may be used for admission to the program, and for lease enforcement or eviction of families residing in public housing or receiving HCV assistance. The request must include:

- A copy of a consent form signed by the proposed household member in accordance with Section 5.903;
- Admissions standards for drug related criminal activity in accordance with Section 5.854;
- Admission standards for prohibiting admission for other criminal activity in accordance with Section 5.855;
- Standards for evictions for illegal drug activity in accordance with Section 5.858; and
- Standards for evictions for other criminal activity in accordance with Section 5.859.

Section 575(5) of Quality Housing and Work Responsibility Act of 1998, provides that each PHA receiving information may use it only for the purposes provided in this Act and such information may not be disclosed to any person who is not an officer, employee, or authorized representative of the PHA or the owner of assisted housing under this Act, and who has a job related need to have access to the information for the purpose of this Act. For judicial eviction proceedings, disclosures may be made to the extent necessary and in compliance with 24 CFR Section 5.903(e)(2)(i)(B)) for the HCV.

For the HCV and public housing programs, before a PHA denies admission to a household, it must notify the household of the proposed action based on the criminal record. PHAs must also provide applicants with an opportunity to dispute the accuracy and relevance of the record.

4. Overview

PHAs that undertake criminal history record searches as part of their applicant screening, lease enforcement, and eviction responsibilities have several options.

They may:

- Go to the state agencies responsible for criminal history records only;
- Do a name check through their local law enforcement agency, which has access to limited information from the NCIC Interstate Identification Index (III). It is up to the discretion of the local law enforcement agency whether it will charge a reasonable fee for this service. Access for this purpose does not entitle the requesting law enforcement agency to obtain the full content of automated records through the Interstate Identification Index; or
- Submit an applicant fingerprint card through their CA to the FBI in order to obtain the full content of a criminal history record. The FBI and HUD have jointly agreed that every PHA must use a CA to submit its fingerprint cards to the FBI. The FBI's processing fee for each card is currently \$24.00. Neither this cost, nor any other cost associated with this screening shall be passed on to the applicant or tenant. When an owner requests that a PHA obtain criminal conviction records, the PHA may charge the owner reasonable fees for making the request on behalf of the owner and for taking other actions for the owner. The PHA may require the owner to reimburse costs incurred by the PHA, including reimbursement of any fees charged to the PHA by the law enforcement agency, the PHA's own related staff, and administrative costs. The owner may not pass along to the applicant or tenant the costs of a criminal history records check.

5. Obtaining Access to NCIC Data Thru the FBI

In order for PHAs to have access to NCIC data through their local or state law enforcement agencies or to obtain FBI criminal history records through the submission of an applicant fingerprint card, each PHA must be assigned a unique ORI number by the FBI. Those PHAs that have not yet obtained an ORI number from the FBI may do so upon written request.

- ❑ Some PHAs are currently channeling fingerprint cards to the FBI through the SIB. Those PHAs that wish to continue channeling fingerprint cards to the FBI through their SIBs may do so, or
- ❑ A PHA may choose to utilize one of the approved CAs.

A PHA cannot utilize a SIB and an approved CA at the same time to channel fingerprint cards to the FBI. PHAs must send the fingerprint cards directly to their SIBs or CAs. The CAs and SIBs will collect the fee to cover their own costs

as well as the FBI fee and forward the PHA's fingerprint cards to the FBI for processing. The FBI will forward the results of the criminal records search directly back to the PHA. The FBI's current processing time is approximately 24 hours or less for electronically submitted fingerprints (please allow additional time for mailing results to reach the PHA) or 2 weeks for fingerprint cards submitted in hard copy through the mail.

6. Issuance of ORI Numbers

The first step in obtaining criminal history data through the NCIC is for the PHA to obtain an ORI number, regardless of whether they intend to channel fingerprint cards through their SIB or an approved CA. This number will identify the PHA in NCIC transactions as an entity authorized to receive criminal history records through the submission of fingerprint cards and enables those submissions to be tracked and billed appropriately.

All requests for ORI numbers should be sent directly to the FBI at the following address:

Chief, Programs Support Section
Module E3
FBI Complex
1000 Custer Hollow Road
Clarksburg, WV 26306

The request should include:

- the full name of the PHA;
- the PHA's complete mailing address;
- the county in which the PHA's main office is located;
- the number of fingerprint cards the PHA will initially need;
- the name and telephone number of the PHA contact person;
- the name of the CA or SIB the PHA will utilize to submit its fingerprint cards to the FBI;
- the FBI will assign an ORI number to the PHA and furnish applicant fingerprint cards to the PHA bearing that ORI number. A reorder form will be included with each supply of fingerprint cards so that the PHA can reorder when necessary.

7. Obtaining Criminal History Records

Once the PHA has its ORI number, it is eligible to submit search requests for criminal history records on public and assisted housing applicants and residents. The procedures below have been developed to facilitate the process.

- The PHA submits a name check request to the state/local law enforcement agency. The name check request must include the name, date of birth, and social security number of the applicant/resident (if he/she has one). Using the ORI assigned to the PHA, the law enforcement agency will access the III through the NCIC to determine whether an applicant/resident for public housing may have a criminal history record in the III.

- The law enforcement agency will advise the PHA that either:
 - the information provided by the PHA did not match any criminal record in the national database; or

 - the information may match a criminal record indexed in the national database. This statement means only that, based on the information provided, the record may belong to the applicant/resident, but is inconclusive without a positive fingerprint comparison. The results of an inconclusive name check cannot be used to deny an applicant's admission to housing or as a basis to evict a tenant.

- If the state/local law enforcement agency indicates to the PHA that there is a criminal history record in the III which may belong to the applicant/resident, the PHA must submit an applicant/resident fingerprint card to the FBI, through either the SIB or an approved CA, in order to verify whether the criminal record is that of the applicant. This step would, of course, be unnecessary if the applicant chooses to withdraw his/her application. When a fingerprint check is necessary, the FBI recommends that PHAs use trained local law enforcement personnel to do the actual fingerprinting. Although the process appears simple, many fingerprints are rejected as unreadable, even when taken by qualified personnel.

- The applicant's/tenant's fingerprints will be compared with criminal fingerprints maintained in FBI files; and, if found to be identical, a copy of the corresponding criminal history record will be provided to the PHA. Applicant fingerprint card submissions not identified with a criminal record will be destroyed, and automated responses indicating that no record was found will be generated in lieu of returning the fingerprint cards to the PHA.

8. Channeling to the FBI through a SIB

The FBI conducted a survey of all State Criminal Justice Information Services Control Terminal Officers (CTOs) to determine whether the SIBs would agree to channel PHA fingerprint submissions to the FBI. The following is a list of the states and territories that have agreed to channel fingerprint card submissions for public housing and HCV applicants/residents to the FBI and be the responsible billing agent:

Alabama	Indiana	Oklahoma
Alaska	Michigan	Oregon
Colorado	Missouri	South Carolina
Connecticut	Nebraska	Texas
District of Columbia	Nevada	Utah
Florida	New Jersey	Virginia
Hawaii	New York	Washington
Idaho	North Dakota	
Illinois	Ohio	

PHAs in the above listed states and territories may either:

- ❑ Use the SIB to channel their fingerprint cards to the FBI (these PHAs will be provided with the name and telephone number of a contact in their respective states for instructions on channeling procedures and applicable state processing fees along with the assignment of their ORI); or
- ❑ Each PHA not choosing to channel through a SIB must competitively select a CA in accordance with its own procurement standards and HUD regulations at 24 CFR 85.36 (See #9 of this Notice).

9. Channeling to the FBI through a Non-SIB CA

The FBI approved the following CA, whose points of contact are listed below in alphabetical order by company name:

American Bankers Association
Ms. Thia S. Fox
Administrative Assistant
Technical Service
1120 Connecticut Avenue, NW
Washington, DC 20036
(202) 663-5297 (phone)
(202) 828-5057 (fax)

U.S. Investigations Services, Inc.
Mr. Steve Marica
Director, Government Services
7799 Leesburg Pike
Suite 400 South
Falls Church, VA 22043
(703) 442-3970 (phone)
(703) 442-3969 (fax)

PHAs may be interested to know that each non-SIB CA has executed a Memorandum of Understanding (MOU) with the FBI and has agreed to the following duties and responsibilities:

- ❑ Receive “noncriminal justice applicant fingerprint cards” of adult applicants for, or residents of public housing for purpose of applicant screening, lease enforcement and eviction from the PHAs, which the CA will receive and forward to the FBI for processing.
- ❑ Ensure that all fingerprint cards have been properly and adequately completed and are being submitted under the authority of the U.S. Housing Act of 1937, as amended.
- ❑ Charge and collect the FBI fee, currently \$24.00, for processing each applicant or resident’s fingerprint card. The CA’s total fee to the PHA will be the amount reflected in its response to the competitive PHA solicitation in addition to the FBI fee.
- ❑ Submit payment of the FBI’s fee to the FBI within thirty (30) calendar days from the date upon which it receives a bill from the FBI for those fingerprint cards proceeded during the proceeding month.
- ❑ Batch and submit fingerprint cards to the FBI each weekday for processing.
- ❑ Develop instructions and information for dissemination to participating PHA regarding the procedures to be followed to ensure the adequacy of the channeling system. This would involve the creation of strategies for the resolution of issues relating to:
 - i. Incomplete or missing data on the fingerprint cards, illegible i.e., unclassifiable fingerprints;
 - ii. Reasonable inquiries by PHAs and applicants/residents regarding processing status of a fingerprint card;
 - iii. Requests for special or expedited processing based on extenuating circumstances; and

- iv. Payment of fees, no payment, overpayment, underpayment, credit, memoranda, etc.

10. PHA Procurement for Non-SIB CAs

Each PHA not channeling through a SIB will competitively procure a CA consistent with HUD procurement requirements at 24 CFR 85.36 and its own procurement policies. The FBI has approved the firms listed in #9 above, as the only ones authorized to receive PHA applicant/tenant fingerprint cards for submission to the FBI for processing. Therefore, PHAs are authorized to limit competition to these firms.

The FBI's automated billing system is designed to link each PHA with its selected CA through the PHA's ORI number. To avoid having fingerprint card submissions rejected, the PHA must notify the FBI in writing when a CA other than a SIB is contracted for fingerprint card channeling purposes.

A PHA may contract one CA for a maximum of three years, after which the PHA must reinitiate the procurement process. However, the PHA, pursuant to 24 CFR 85.36(b)(2), must ensure that contractors perform in accordance with the terms and conditions of their contracts. If the PHA encounters performance problems with the CA, it should take appropriate action, which may include contract termination. In such cases, the PHA should procure another CA, giving the FBI sixty (60) days written notice. Any time the PHA changes its CA, the FBI must assign a different ORI number to the PHA (which is coded to reflect the new CA chosen by the PHA) and issue a new supply of applicant/tenant fingerprint cards preprinted with the PHA's new ORI number. For all correspondence with the FBI, PHAs may use the address identified in Section 6 of this Notice. HUD is not a party to any arrangement between the FBI and the approved CAs.

11. Records Management

The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is:

- i. Maintained confidentially;
- ii. Not misused or improperly disseminated; and
- iii. Destroyed, once the purpose(s) for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation.

Criminal records are to be managed in accordance with the requirements in 24 CFR 5.903(g). Consent forms obtained from applicants expire automatically immediately following the PHA's final decision to either approve or deny admission. If a person is denied admission, the record must be destroyed in a

timely manner following the expiration period of the statute of limitations for civil action challenging a denial.

In addition, PHAs must handle any information obtained from other records in accordance with applicable State and Federal privacy laws and with the provisions of the consent forms signed by the applicant/tenant. Any criminal history record information obtained through the submission of fingerprints to the FBI may be provided to the subject of the record upon his/her request. It is recommended that a receipt be signed by the subject upon issuance of the record for the protection of the PHA.

12. For Further Information

If there are questions regarding this guidance, please contact your local HUD public housing Field office.

13. Paperwork Reduction

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paper Reduction Act of 1995 (44 U.S.C. 3520) and assigned OMB control number 2577-0232. 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.

/s/

Michael Liu
Assistant Secretary, PIH