

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 Manager
Project Managers
Contract Administrators
Owners and Management Agents Administering
Multifamily Housing Assistance Programs

NOTICE: H 2009-11
NOTICE: PIH 2009-35(HA)

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Cross References: None

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 Lifetime Sex Offender Registration

I. PURPOSE

The purpose of this Notice is to reiterate current regulatory requirements and strongly encourage the establishment of standards and processes with a zero tolerance approach to prevent lifetime sex offenders from receiving federal housing assistance. The recommendations for new processes are to:

- Ask households at each recertification/reexamination whether any member is subject to a lifetime registration requirement under a state sex offender registration program.
- Use the Dru Sjodin National Sex Offender Website to confirm that applicants and federal housing assistance recipients are not lifetime registered sex offenders.
- Aggressively pursue termination of tenancy or assistance, as appropriate, for tenants subject to a State lifetime sex offender registration requirement to the extent currently allowed by law.

HUD is currently exploring regulatory and legislative changes to ensure that individuals subject to lifetime registration requirements do not continue to reside in federally assisted housing, but the strong recommendations in this Notice are vital to the ongoing effort to ensure the highest levels of public safety in federally assisted housing facilities.

II. APPLICABILITY

Screening for lifetime sex offender registration applies to O/As and PHAs administering the following rental assistance programs:

- Section 202 Project Rental Assistance Contracts (PRAC)
- Section 811 PRAC
- Section 202/162 Project Assistance Contract (PAC)
- Section 202/8
- 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) recently conducted an audit of the U.S. Department of Housing and Urban Development's (HUD'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:

<http://www.hud.gov/offices/oig/reports/files/ig0970001.pdf>

Although the estimated number of assisted households that include a State lifetime registered sex offender as a household member is a relatively small percentage of the total assisted household population, from a public safety perspective this is not a question of numbers. It is critical that all appropriate steps be taken to ensure that assisted housing facilities comply with the law barring lifetime registered sex offenders, in order to help maximize the safety of other residents. In order to exclude ineligible persons from residing in federally assisted housing to the greatest extent possible, the guidance below reiterates O/A's and PHA's statutory- and regulatory-based responsibilities and strongly recommends additional steps that can be taken to minimize the number of lifetime registered sex offenders receiving federal housing assistance.

IV. CURRENT STATUTORY AND REGULATORY REQUIREMENTS

In accordance with the regulations at 24 CFR 5.856 and 5.905, O/As and PHAs must perform necessary criminal history background checks to determine if an applicant, or a member of an applicant's household, is subject to a lifetime registration requirement under a State sex offender registration program. This check must be carried out with

respect to the State in which the housing is located and with respect to States where the applicant and members of the applicant's household are known to have resided.

O/As and PHAs will make the determination, in accordance with their screening standards, whether the applicant and the applicant's household members meet the screening criteria. If these processes reveal that an applicant is a lifetime registered sex offender, or if the applicant withholds or falsifies information on the application, the O/A or PHA must deny admission to the program. Before admission can be denied, the applicant must be notified of the right to dispute the accuracy and relevance of the background check information (24 CFR 5.905 (d) and 24 CFR 960.204 (c) for PHAs; Paragraph 8-14.C of Handbook 4350,3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, for O/As.).

V. RECOMMENDATIONS FOR ADDITIONAL PROCEDURES

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

A. At Admission

In addition to screening adult members of the household, it is recommended that this screening include background checks on juvenile household members to the extent allowed by state and local law. In order to request information necessary to screen applicants for lifetime sex offender registration requirements, the O/A's and PHA's application should include a question asking whether the applicant or any member of the applicant's household is subject to a lifetime state sex offender registration program in any state. There should also be a notation that failure to respond to the question may jeopardize the approval of the application. Any changes to admissions policies must be consistent with Fair Housing and Equal Opportunity regulations as well as any other applicable legal requirements.

O/As and PHAs should verify the information provided by the applicant by searching the Dru Sjodin National Sex Offender Database. The Dru Sjodin National Sex Offender Database is an online, searchable database, hosted by the Department of Justice, which combines the data from individual state sex offender registries. The website for the database is located at: <http://www.nsopw.gov>. A record of this screening, including date performed, should be retained. PHAs must destroy the results of the search in accordance with 24 CFR 5.903 (g). O/As must retain the results of the search, along with the application, for a period of three years if the applicant is denied housing or, if the applicant is admitted to the program, for the term of tenancy plus three years.

B. At Recertification/Reexamination

It is recommended that annual recertification/reexamination documents include a question asking whether the tenant or any member of the tenant’s household is subject to a lifetime state sex offender registration program in any state. The O/As and PHAs should verify this information using the Dru Sjodin National Sex Offender Database and document this information in the same method used at admission.

For any admissions after June 25, 2001 (the effective date of the Screening and Eviction for Drug Abuse and Other Criminal Activity final rule), if the recertification/reexamination screening reveals that the tenant or a member of the tenant’s household is subject to a lifetime sex offender registration requirement, or that the tenant has falsified information or otherwise failed to disclose his or her criminal history on their application and/or recertification/reexamination forms, the O/A or PHA should pursue eviction or termination of tenancy to the extent allowed by their lease and state or local law.

Notwithstanding the above, if the tenant or a member of the tenant’s household, regardless of when they were admitted, commits criminal activity while living in federally assisted housing, the O/A or PHA should pursue eviction or termination of tenancy to the extent allowed by their lease and state or local law.

VI. FURTHER INFORMATION

The requirements for prohibition of admission to applicants subject to a lifetime sex offender registration requirement and obtaining background checks can be found at 24 CFR Part 5, Subpart I – Preventing Crime in Federally Assisted Housing – Denying Admission and Terminating Tenancy for Criminal Activity and Alcohol Abuse; Subpart J – Access to Criminal Records and Information; and in HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*.

If you have any questions regarding the requirements in this Notice as they pertain to the Office of Housing’s programs, please contact Diane Hooten at 515-284-4513. If you have any questions regarding the requirements in this Notice as they pertain to the Office of Public and Indian Housing’s Housing Choice Voucher and Public Housing programs, please contact Caroline Crouse at 202-402-4595.

David H. Stevens, Assistant Secretary for
Housing-Federal Housing Commissioner

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