

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**24 CFR Parts 5, 200, 247, 880, 882, 884,
891, 960, 966, and 982**

[Docket No. FR-4495-P-01]

RIN 2501-AC63

**One-Strike Screening and Eviction for
Drug Abuse and Other Criminal
Activity**

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations for the public housing and Section 8 assisted housing programs, and for other HUD assisted housing programs, such as the Section 221 (d)(3) below market interest rate (BMIR) program, Section 202 program for the elderly, and Section 811 program for persons with disabilities, and Section 236 interest reduction program. All of these programs were affected by recent statutory amendments. These amendments give Public Housing Agencies (PHAs) and assisted housing owners the tools for adopting and implementing fair, effective, and comprehensive policies for denying admission to applicants who engage in illegal drug use or other criminal activity and for evicting or terminating assistance of persons who engage in such activity.

DATES: Comments Due Date: Comments on the proposed rule and the proposed information collection requirements are due on or before September 21, 1999.

ADDRESSES: Submit written comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: For Section 8 certificate, voucher, and moderate rehabilitation programs—Gerald J. Benoit, Director, Real Estate Performance and Housing Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708-0477. For public housing—Patricia Arnaudo, Senior Program Manager, Office of Public and Assisted Housing Delivery, Department

of Housing and Urban Development, 451 Seventh Street, SW, Room 4224, Washington DC, 20410; telephone (202) 708-0744 or the Public and Indian Housing Resource Center at 1-800-955-2232.

For the Section 8 project-based programs—Willie Spearmon, Director, Office of Multifamily Business Products, Office of Housing, Department of Housing and Urban Development, Room 6134, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708-3000.

Only the Public and Indian Housing Resource Center number is toll-free. Persons with hearing or speech impairments may access these numbers via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

President Clinton, in his 1996 State of the Union address, proposed the “one strike and you’re out” policy. The President challenged local housing authorities and tenant associations to stop criminal gang members and drug dealers who were destroying the lives of decent tenants. In response to the President’s “One Strike” mandate, HUD expeditiously issued guidelines and procedures and conducted extensive training for PHAs around the country. Public housing agencies, localities, police departments and judges have all responded to the President’s call. Public housing communities are better, safer places because of their efforts.

It is critical that assisted housing owners have the same opportunities to fight criminal activity, so that residents in their communities can also live in peace. This proposed rule provides for that broadened authority and responsibility. The rule is intended to give PHAs and assisted housing owners the tools for adopting and implementing fair, effective, and comprehensive policies for both crime prevention and enforcement. Crime prevention will be advanced by the authority to screen out those who engage in illegal drug use or other criminal activity, and enforcement will be advanced by the authority to evict and terminate assistance for persons who participate in criminal activity.

In 1996, the Housing Opportunity Program Extension Act (Pub. L. 104-120, 110 Stat. 834-846, approved March 28, 1996) (“the Extension Act”) amended the United States Housing Act of 1937 (42 U.S.C. 1437a, *et seq.*) (“the 1937 Act”). The Extension Act added significant crime and security protections for public housing and

section 8 residents. It made an individual who has been evicted from public housing or any Section 8 program for drug-related criminal activity ineligible for admission to public housing and the section 8 programs for a three-year period, beginning from the date of eviction. The evicted family becomes eligible for re-admission, however, if the individual who engaged in the activity has successfully completed a rehabilitation program approved by the PHA or if the PHA determines that the circumstances leading to the eviction no longer exist.

The Extension Act also required PHAs to establish standards that prohibit occupancy in any public housing unit or participation in a section 8 tenant-based program by any person the PHA determines to be using a controlled substance, or whose pattern of illegal use of a controlled substance or pattern of alcohol abuse would interfere with the health, safety or right to peaceful enjoyment of the premises by other residents of the development. In this connection, the Extension Act authorized the PHA administering the program to determine whether an applicant has been rehabilitated from drug or alcohol abuse. In addition, the Extension Act provided PHAs the opportunity to access criminal records for public housing applicants and residents.

HUD issued a variety of guidance on implementing the Extension Act (PIH Notice 96-16, issued April 12, 1996 and PIH Notice 96-27, issued May 15, 1996). HUD published proposed rules for the section 8 tenant-based and moderate rehabilitation programs on March 31, 1997 (62 FR 15346) and for the public housing program on May 9, 1997 (62 FR 25728).

Sections 575-579 of the Quality Housing and Work Responsibility Act of 1998 (Public Law 105-276, approved Oct. 21, 1998, 112 Stat. 2634-2643) (“the Public Housing Reform Act” or “the 1998 Act”) revised provisions of the 1937 Act (sections 6 and 16) and created other statutory authority to expand crime and security provisions to most federally assisted housing. Instead of issuing a final rule on the admission and eviction provisions of the Extension Act, HUD is publishing this new proposed rule on the provisions as they exist after the revision to the drug abuse and criminal activity requirements made by the Public Housing Reform Act.

The 1998 Act revised the prohibition on admitting families for three years because of eviction from public housing or Section 8 units for drug-related criminal activity to cover admissions to

(and evictions from) Section 202, Section 811, Section 221(d)(3) BMIR, Section 236, and Section 514/515 rural housing projects. In addition, the 1998 Act (section 578(a)) added the obligation for project owners—including PHAs that administer public housing—to deny admission to sex offenders who are subject to a lifetime registration requirement under a State sex offenders' registration program. The FY 1999 appropriations act (Section 428 of Public Law 105-276, 112 Stat. 2511) added a new paragraph (f) to section 16 of the 1937 Act to bar persons convicted of manufacturing or producing methamphetamine from public housing and Section 8 assisted housing where the PHA determines who is admitted.

An additional crime and safety provision was added to the 1937 Act by the Personal Responsibility and Work Opportunity Act of 1996 (Public Law 104-193, approved August 22, 1996;

110 Stat. 2105, 2348). Section 903 of that Act amended the 1937 Act (42 U.S.C. 1437f(d)(1) and 1437d(l)) to add as a grounds for termination of tenancy in the public housing and Section 8 assistance programs fleeing to avoid prosecution, or custody or confinement after conviction, for a felony (or a high misdemeanor in New Jersey). Violating a condition of probation or parole imposed under Federal or State law is also grounds for termination of tenancy under that provision. That provision also created the obligation (in a new section 27 of the 1937 Act) for PHAs to provide Federal, State or local law enforcement officials with information concerning assistance recipients whom the officials are pursuing for violating parole or fleeing to avoid prosecution.

II. Applicability

This proposed rule would implement the statutory provisions described above. However, not all of the statutory

provisions apply to all of the programs covered by this rule. The chart below describes which provisions apply to which programs. Until this rule is issued for effect, the provisions of this rule are not effective. However, the following provisions of the recent statutory amendments are already in effect: (1) the drug treatment facility check provision of section 575(e) of the 1998 Act, which applies to public housing only, and (2) the methamphetamine production provision of section 428 of the Fiscal Year 1999 appropriation act. Both of these provisions were described as immediately applicable in the Initial Guidance Notice on the 1998 Act, published in the **Federal Register** on February 18, 1999 (64 FR 8192). The safety and security provisions of the Extension Act remain in effect, as described in PIH Notice 96-27.

BILLING CODE 4210-32-P

Statutory Provision [Section of 98 Act unless otherwise specified]	Applies to public housing?	Applies to Section 8 tenant-based assistance?	Applies to Section 8 project-based assistance?	Applies to other federally assisted housing: 221(d)(3) BMIR, 236, 202 & 811 projects?
Definition of Person with Disabilities [506 of 98 Act, amending 3 of 37 Act]	Yes	Yes	Yes	No
Access to Drug Abuse Treatment Facility Records [575(e) of 98 Act, adding 6(t) of 37 Act]	Yes	No	No	No
Criminal Activity Grievances & Evictions [575(a)&(b) of 98 Act, amending 6(k) & (l) of 37 Act]	Yes	No	No	No
Access to Criminal Records [575(c) & (d) of 98 Act, adding 6(t) of 37 Act]	Yes	Yes - PHAs No - owners	Yes, except owners obtain info through PHAs	No
Denial of Admission for Previous Eviction for Drug-Related Crime [576(a) of 98 Act, 42 USC 13661]	Yes	Yes	Yes	Yes
Denial of Admission for Drug Use & Alcohol Abuse [576(b) of 98 Act, 42 USC 13661]	Yes	Yes	Yes	Yes
Denial of Admission for Drug-Related, Violent or Other Crime [576(c) of 98 Act, 42 USC 13661]	Yes	Yes	Yes	Yes

Evictions & Termination of Assistance for Drug Use & Alcohol Abuse [577 of 98 Act, 42 USC 13662]	Yes	Yes	Yes	Yes
Denial of Admission & Evictions of Sex Offenders [578 of 98 Act, 42 USC 13663]	Yes	Yes	Yes	Yes
Definitions [579 of 98 Act, 42 USC 13664]	Yes	Yes	Yes	Yes
Denial of Admission, Evictions, & Termination of Assistance for Methamphetamine Manufacture [428 of 99 Appropriations Act, amending 16 of 37 Act]	Yes	Yes	Yes, if a PHA makes admission decisions	No
Evictions of Fleeing Felons [903 of 96 Personal Respons. & Work Opportunity Reconciliation Act, amending 6(1) & 8(d) of 37 Act]	Yes	Yes	Yes	No

III. Subjects This Rule Covers

A. Ineligibility of Persons Involved in Drug or Alcohol Abuse

The rule requires PHAs and owners of federally assisted housing to develop standards that prohibit admission of any household with a member who (1) the PHA or owner has determined is engaged in illegal drug use; or (2) the PHA or owner has reasonable cause to believe is engaged in illegal drug use or alcohol abuse (or pattern of abuse) that may interfere with the health, safety or right to peaceful enjoyment of other residents of the development. With respect to households already participating in a federally assisted housing program, the rule requires PHAs and owners to develop occupancy standards or lease provisions that allow the PHAs and owners to terminate tenancy or assistance of households with a member engaged in such conduct. The 1998 amendments of the 1996 Extension Act provisions on ineligibility of illegal drug users and alcohol abusers confirm that a PHA or owner may deny admission or terminate assistance for the whole household that includes a person involved in the proscribed activity. With respect to a PHA or owner's discretion to consider rehabilitation for a household member with the offending substance abuse problem, the rule would permit a PHA or owner to hold the whole household responsible for that member's successful rehabilitation as a condition for continued occupancy and avoidance of eviction.

B. Ineligibility of Persons Convicted of Producing Methamphetamine

Individuals convicted of manufacturing or producing methamphetamine are ineligible for public housing, Section 8 tenant-based assistance, and Section 8 project-based assistance administered by a PHA, in accordance with section 428 of the HUD appropriations act for FY 1999 (amending section 16 of the 1937 Act). The restriction applies to persons convicted of producing methamphetamine in a building or complex assisted under the public housing or Section 8 programs. PHAs are required by the statute and this rule (e.g., §§ 966.4(f)(5)(i)(B), 982.310(c), 982.553(b)(1)(ii)) to establish standards that make these persons ineligible for admission and require their immediate termination of tenancy.

C. Termination of Tenancy of Fleeing Felons

Owners of public housing and Section 8 assisted housing are authorized to

terminate the tenancy of individuals who are fleeing to avoid prosecution or to avoid custody or confinement after conviction of a crime or attempt to commit a crime, as described above (e.g., §§ 966.4(f)(5)(ii)(B) and 982.553(b)(2)(ii)). The crimes covered are those that are felonies under the laws of the place from which the individual flees (or, in the case of the State of New Jersey, a high misdemeanor). In addition, the rule permits owners to terminate the tenancy of individuals who violate a condition of probation or parole imposed under Federal or State law. In order to implement this provision, the proposed rule requires PHAs and Section 8 housing owners to amend their leases to provide for termination under these circumstances.

D. Criminal Records from Law Enforcement Agencies

PHA Access to Records

PHAs may access criminal conviction records from the National Crime Information Center, police departments, and other law enforcement agencies for purposes of applicant screening, lease enforcement, and eviction. PHAs may access such records for adult applicants and tenants of public housing and adult applicants and participants in the PHA's Section 8 tenant-based programs. In addition, they may access records in order to screen applicants or evaluate tenants for owners of project-based Section 8 housing programs. In order to access an applicant's or tenant's criminal conviction record, the PHA must provide the law enforcement agency with a consent form signed by the applicant or tenant.

Owners' Access to Records

Owners of project-based section 8 developments, including owners of project-based certificate program and moderate rehabilitation program developments, may request a PHA to obtain criminal records and perform determinations for the owner regarding screening applicants, lease enforcement, or eviction for developments located in the PHA's jurisdiction. The owner must provide the PHA with a consent form signed by the applicant or tenant. When the owner makes such a request, the PHA must obtain the applicant or tenant's criminal record from the appropriate law enforcement agency. The PHA must not give the criminal record, or disclose its content, to the owner. Instead, the PHA must use the record to screen the applicant or evaluate the tenant based on the owner's standards for admission and occupancy.

The PHA may charge the owner a fee for both obtaining the record and performing the screening and evaluation services.

E. Records of Sex Offenders Subject to a Lifetime Registration Requirement

This proposed rule would implement the requirement that PHAs and owners of federally assisted housing prohibit admission of any household that includes a person subject to a lifetime registration requirement under a State sex offender registration program.

This provision requires that, in addition to any criminal records check a PHA may conduct, the PHA also must make further inquiries, as necessary, with State and local agencies to determine whether an applicant is subject to a lifetime registration requirement under a State sex offender registration program. (State and local agencies responsible for collecting criminal history record information or information on persons required to register as sex offenders are required to comply with PHA requests for such information.) The PHA must make this determination for owners of other federally assisted housing if the housing is located in the PHA's jurisdiction and the owner requests that the PHA assist in this way. As with other criminal records obtained by the PHA on behalf of an owner pursuant to section 6(q) of the 1937 Act, the PHA must not release the information to the owner but must screen the applicant or evaluate the tenant using the owner's criteria. The PHA may charge a fee for this service.

F. Records From Drug Abuse Treatment Facilities—Applicable to Public Housing Only

The Public Housing Reform Act authorizes PHAs to obtain limited information concerning public housing applicants from drug abuse treatment facilities. A PHA may make an inquiry to a drug abuse treatment facility only if it either makes the same inquiry with respect to all applicants or makes inquiry concerning applicants with a prior criminal record or prior tenancy showing the applicant engaged in destruction of property, violent activity against another person or interfered with another tenant's peaceful enjoyment of the premises. To obtain information from a drug treatment facility, the PHA must provide the facility with a written consent form signed by the individual applicant. The PHA may only inquire whether the drug abuse treatment facility reasonably believes that the individual is currently using illegal drugs.

G. Records Management

PHAs must establish a records management system that ensures that criminal records and records from drug abuse treatment facilities are maintained confidentially, are not misused or improperly disseminated, and are destroyed within the statutorily prescribed time frames. The statute requires the imposition of a fine in the event that any PHA agent obtains criminal records under false pretenses or discloses any such information to anyone not legally entitled to such information. The rule provides that records must not be kept in the applicant or tenant file and that once the record is no longer needed it is destroyed.

Information obtained from public records or obtained from law enforcement agencies independent of this authority is not subject to the restrictions on disclosure imposed by this rule.

H. Definition of Person With Disabilities

The 1998 Act amended the 1937 Act (at 42 U.S.C. 1437a(b)(3)(E)) by adding a new sentence to the definition of a person with a disability which states, "Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for low-income housing * * * solely on the

basis of any drug or alcohol dependence." This new statutory language is already included in the Department's current definition of person with disabilities (§ 5.403(a)), since the rule refers to the statute. The statutory definition in the 1937 Act includes reference to the definition of disability in section 223(d) of the Social Security Act. The Social Security Administration (SSA) implements that provision through regulations found at 20 CFR 404.1535, which exclude individuals whose alcohol or drug addiction is a contributing factor material to the determination of disability. The SSA rule states that a person is considered disabled if the disabling physical and mental limitations would persist upon discontinuation of drugs or alcohol abuse. (20 CFR 404.1535(b)(2)).

As required by the 1998 Act, the Department consulted with the Departments of Justice, Health and Human Services and the Social Security Administration, and reviewed pertinent regulations related to the definition of disability. The Department is satisfied that the statutory definition of "person with disabilities" included in the existing rule incorporates the Social Security Administration's (SSA) definition of disability located at section 223(d) of the Social Security Act, and that the SSA's rule that excludes

individuals whose alcohol or drug addiction is a contributing material factor to their disability is appropriate to apply to disability determinations under HUD programs.

I. Compliance With Civil Rights Requirements

In developing their policies for screening and eviction under this rule, PHAs and owners are, of course, bound to comply with nondiscrimination and equal opportunity requirements, as provided in 24 CFR 5.105.

V. Findings and Certifications

Paperwork Reduction Act

(a) The proposed information collection requirements contained at §§ 5.853, 5.854, 5.855, 5.902, 5.903, 882.517, 960.204, and 982.553 of this rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(b) In accordance with 5 CFR 1320.5(a)(1)(iv), HUD estimates that the total reporting and recordkeeping burden that will result from the proposed collection of information as follows:

REPORTING BURDEN

Section reference	Number of respondents	Est. average response/freq. of response	Est. annual time (hours)	Burden (hours)
5.853, 5.854, 5.855, 882.517, 982.553: Standards for Admission of Drug Criminals; Other Criminals; Alcohol Abusers	4,500	1	30	135,000
5.902(c): Consent form from Family for Release of Criminal Records	3,000	1	.15	450
5.902(d) and (f): PHA and Owner Request for Criminal Conviction Records	1,500	1	4	6,000
5.902(f)(7): PHA Notification to Family and Owner concerning Criminal Conviction Records	1,500	1	1	1,500
5.903(d)(2): PHA request to State or local agency for Sex Offender Information	300	1	2	600
5.903(e)(6)(i): PHA Notification to Family and Owner concerning Sex Offender Information	300	1	1	300
960.204(c): PHA Requirement that Family provide information whether any proposed household member has ever been diagnosed or treated for illegal drug use, abuse; sign consent form	1,500	1	1	1,500
960.204(d), (e)(i)(ii): PHA request for Information from Drug Use Treatment Facility	500	1	1	500
5.902(g), 5.903(f), 960.204(f): Establishment of a Systems of Records Management and Confidentiality	4,500	1	16	72,000
Total Reporting Burden				82,850

(c) In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies

concerning the proposed collection of information to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

As described above, interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the rule by name and docket number (FR-4495-P-01) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer,
Office of Management and Budget,
New Executive Office Building,
Washington, DC 20503

and
Millie Hamman, Reports Management
Officer, Office of Public and Indian
Housing, Department of Housing and
Urban Development, Room 4238, 451
Seventh Street, SW, Washington, DC
20410

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose a Federal mandate that will result in the

expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year within the meaning of Unfunded Mandates Reform Act of 1995.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this proposed rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows:

(1) *A Substantial Number of Small Entities Will Not be Affected.* The proposed rule is exclusively concerned with public housing agencies and with owners of federally assisted housing. Specifically, the proposed rule will establish requirements governing applicant screening and termination of assistance and occupancy based on criminal activity. Under the definition of "Small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. Owners or managers of assisted housing would qualify as small entities only if they had less than \$1.5 million in gross receipts annually. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* The proposed rule will not change the amount of funding available under the federally assisted housing assistance programs. In the programs administered by the Office of Housing, management agents perform the functions affected by the rule for owners, including nonprofit owners. These agents are approved because they provide management acceptable to HUD and are capable of

carrying out requirement management activities, including changes in procedures. They receive fees based on the work they perform, and guidelines provide for allowing fee increases for changed work procedures. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have federalism implications concerning the division of local, State, and Federal responsibilities. No programmatic or policy change under this rule will affect the relationship between the Federal government and State and local governments.

Catalog of Domestic Assistance Numbers

The Catalog of Domestic Assistance numbers for the programs affected by this proposed rule are 14.120, 14.195, 14.850, 14.855 and 14.857.

List of Subjects

24 CFR Part 5

Administrative practices and procedures, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and Recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Aged, Civil rights, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 247

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, rural areas.

24 CFR Part 891

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant program—housing and community development, Individuals with disabilities, Public housing.

24 CFR Part 966

Grant programs—housing and community development, Public housing.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, HUD proposes to amend 24 CFR parts 5, 200, 247, 880, 882, 884, 891, 960, 966 and 982, as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. Amend § 5.100 by adding the following definitions, in alphabetical order:

§ 5.100 Definitions.

* * * * *

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Drug-related criminal activity means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to

manufacture, sell, distribute or use the drug.

* * * * *

Federally assisted housing (for purposes of subparts I and J of this part) means housing assisted under any of the following programs:

(1) Public housing;
(2) Housing receiving project-based or tenant-based assistance under Section 8 (42 U.S.C. 1437f);

(3) Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act (12 U.S.C. 1701q);

(4) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act;

(5) Housing that is assisted under section 811 of the National Affordable Housing Act (42 U.S.C. 8013);

(6) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715(d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. 1715(d)(5));

(7) Housing insured, assisted, or held by HUD or by a State or local agency under section 236 of the National Housing Act (12 U.S.C. 1715z-1); or

(8) Housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949 (42 U.S.C. 1483, 1484).

* * * * *

Public housing means housing assisted under the 1937 Act (42 U.S.C. 1437, *et seq.*), other than housing assisted under Section 8 (42 U.S.C. 1437f).

* * * * *

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, nontrivial bodily injury or property damage.

3. Amend part 5 by adding new subparts I and J, to read as follows:

Subpart I—Preventing Crime in Federally Assisted Housing—When a Project Owner May Deny Admission or Terminate Tenancy for Criminal Activity or Alcohol Abuse by Household Members

Sec.

5.851 Applicability to subsidized projects.

5.852 Terms.

5.853 Prohibiting admission of drug criminals.

5.854 Prohibiting admission of other criminals.

5.855 Prohibiting admission of alcohol abusers.

5.856 Evicting drug criminals.

5.857 Evicting other criminals.

5.858 Evidence of criminal activity.

5.859 Evicting alcohol abusers.

5.860 Drug use and alcohol abuse: owner discretion.

Subpart J—Access to Criminal Records and Information

Sec.

5.901 Definitions.

5.902 Availability of criminal records.

5.903 Sex offender information.

Subpart I—Preventing Crime in Federally Assisted Housing—When a Project Owner May Deny Admission or Terminate Tenancy for Criminal Activity or Alcohol Abuse by Household Members**§ 5.851 Applicability to subsidized projects.**

(a) Except as provided in paragraph (b) or (c) of this section, subpart I of this part is applicable to project-based assistance for federally assisted housing.

(b) Subpart I of this part does not apply to public housing or housing assisted with tenant-based assistance under Section 8. For public housing, see part 960 (admission) and part 966 (termination of tenancy) of this title. For Section 8 tenant-based assistance, see part 982 of this title.

(c) Subpart I of this part does not apply to housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949.

§ 5.852 Terms.

(a) *Terms found elsewhere.* The following terms are defined in subpart A of this part: *1937 Act, drug, drug-related criminal activity, federally assisted housing, HUD, public housing, public housing agency (PHA), Section 8, violent criminal activity.*

(b) *Additional terms* (for purposes of subpart I of this part).

Covered person. A resident, any member of the resident's household, a guest or another person under the resident's control.

Household. The family and any live-in aide approved by the responsible entity.

Owner. The owner of federally assisted housing.

Premises. The building or complex in which the assisted dwelling unit is located, including common areas and grounds.

Responsible Entity. For the public housing program, and for the Section 8 tenant-based assistance program (part 982 of this title), the Section 8 project-based certificate or project-based

voucher program (part 983 of this title) and the Section 8 moderate rehabilitation program (part 882 of this title), *responsible entity* means the PHA administering the program under an ACC with HUD. For all other federally assisted housing, the responsible entity means the owner of the housing.

§ 5.853 Prohibiting admission of drug criminals.

(a) The owner must establish standards that prohibit admission of a household to federally assisted housing (subject to the provisions of § 5.860 of this subpart) if:

(1) The owner determines that any household member is currently engaging in or has engaged in drug-related criminal activity; or

(2) The owner determines that it has reasonable cause to believe that illegal use or a pattern of illegal use of a drug by a household member may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, (other residents).

(b) The owner may require the household to submit sufficient evidence, as determined by the owner, that the members of the household have not engaged in drug-related criminal activity during a reasonable period, as determined by the owner, before admission to the federally assisted housing.

(c) The owner standards must prohibit admission to the federally assisted housing if any household member has been evicted from federally assisted housing for drug-related criminal activity. This prohibition applies during a reasonable period, as determined by the owner, which is at least three years from the date of the judicial determination authorizing the eviction. However, the owner may admit the household if the owner determines:

(1) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program, or

(2) That the circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

§ 5.854 Prohibiting admission of other criminals.

(a) The owner may prohibit admission of a household to federally assisted housing under standards established by the owner if the owner determines that any household member is currently engaging in or has engaged in:

(1) Violent criminal activity,

(2) Other criminal activity which may threaten the health or safety of, or the

right to peaceful enjoyment of the premises by, other residents, or

(3) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of an owner or PHA (including an employee, contractor, subcontractor or agent).

(b) The owner may require the family to submit sufficient evidence, as determined by the owner, that the members of the household have not engaged in such criminal activity during a reasonable period, as determined by the owner, before admission to the federally assisted housing.

(c) The owner must establish standards that prohibit admission to federally assisted housing if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In screening of applicants, the owner must check public documents or request the PHA to perform criminal history background check necessary to determine whether any household member is subject to a lifetime sex offender registration requirement. (See § 5.903.)

§ 5.855 Prohibiting admission of alcohol abusers.

The owner must establish standards that prohibit admission to federally assisted housing if the owner determines it has reasonable cause to believe that abuse or pattern of abuse of alcohol by a household member may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

§ 5.856 Evicting drug criminals.

The lease must provide that the owner may terminate the tenancy during the term of the lease if any covered person is currently engaged in or has engaged in any drug-related criminal activity on or near the premises.

§ 5.857 Evicting other criminals.

(a) *Threat to other residents.* The lease must provide that any of the following types of criminal activity by a covered person are grounds for termination of tenancy during the term of the lease:

(1) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises); or

(2) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises.

(b) *Fugitive felon or parole violator.* The lease must provide that the owner may terminate the tenancy during the term of the lease if a member of the household is:

(1) 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, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(2) Violating a condition of probation or parole imposed under Federal or State law.

§ 5.858 Evidence of criminal activity.

The owner may deny admission or terminate tenancy for criminal activity by a family member if the owner determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

§ 5.859 Evicting alcohol abusers.

The lease must provide that the owner may terminate the tenancy if the owner determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

§ 5.860 Drug use and alcohol abuse: owner discretion.

(a) *Consideration of rehabilitation.* In determining whether to deny admission or terminate tenancy for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

(b) *Conditions for admission or continued assistance.* (1) In determining whether to deny admission or terminate tenancy for illegal drug use by a household member, or for alcohol abuse by a household member, the owner may impose, as a condition of admission to or continued assistance in the program for other household members, a requirement that any household member who engaged in or is culpable for the drug use or alcohol abuse may not reside with the household or on the premises.

(2) The owner may require a household member who has engaged in

the illegal use of a drug (as defined in § 5.100 of this part), or in alcohol abuse that threatened the health or safety of, or the right to peaceful enjoyment of the premises by, other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program as a condition to being allowed to reside with the household or on the premises.

Subpart J—Access to Criminal Records and Information

§ 5.901 Definitions.

(a) *Terms found elsewhere.* The following terms are defined in subpart A of this part: *1937 Act*, *annual contributions contract (ACC)*, *drug, household, HUD, public housing, public housing agency (PHA)*, *Section 8*.

(b) *Additional terms* (for purposes of subpart J of this part).

Responsible entity. For the public housing program, the Section 8 tenant-based assistance program (part 982 of this title), the Section 8 project-based certificate or project-based voucher program (part 983 of this title), and the Section 8 moderate rehabilitation program (part 882 of this title), *responsible entity* means the PHA administering the program under an ACC with HUD. For all other Section 8 programs, *responsible entity* means the Section 8 owner.

§ 5.902 Availability of criminal records.

(a) *Purpose and applicability.* (1) This section authorizes PHAs that administer the Section 8 and public housing programs to obtain criminal conviction records from a law enforcement agency. The criminal conviction records are used to screen applicants for admission to these programs and for lease enforcement or eviction. PHAs may not provide these records concerning a household member receiving Section 8 tenant-based assistance to owners.

(2) This section implements section 6(q) of the 1937 Act (42 U.S.C. 1437d(q)). The provisions of this section only apply to criminal records obtained by a PHA from a law enforcement agency under this section. The provisions of this section do not apply to criminal records obtained by a PHA or others from law enforcement agencies other than under this section, e.g., criminal records that are publicly available or records offered by law enforcement agencies.

(b) *Additional definitions* (for purposes of this section).

Adult. A person who is 18 years of age or older, or who has been convicted of a crime as an adult under any Federal, State, or tribal law.

Law enforcement agency. The National Crime Information Center, police departments and other law enforcement agencies that hold criminal conviction records.

(c) *Consent for release of criminal conviction records.* (1) The responsible entity may require the family to submit a consent form signed by each adult household member.

(2) By execution of the consent form, an adult household member consents that:

(i) Any law enforcement agency may release criminal conviction records concerning the household member to a PHA in accordance with this section;

(ii) The PHA may receive the criminal conviction records from a law enforcement agency, and may use the records in accordance with this section.

(d) *PHA request for criminal conviction records.* (1) A PHA that administers a Section 8 or public housing program under an ACC with HUD may request criminal conviction records from any law enforcement agency concerning an adult member of a household:

(i) Applying for admission to a public housing program or to a Section 8 tenant-based or project-based program.

(ii) Residing in public housing or receiving Section 8 project-based assistance.

(2) The PHA request to the law enforcement agency must include a copy of the consent form signed by the household member.

(3) When the law enforcement agency receives the PHA request (including a copy of the signed consent form), the law enforcement agency must promptly release to the PHA a certified copy of any criminal conviction records concerning the household member in the possession or control of the law enforcement agency. NCIC records must be provided in accordance with NCIC procedures.

(4) The law enforcement agency may charge a reasonable fee for releasing criminal conviction records to the PHA.

(e) *Permitted use and disclosure of criminal conviction records received by PHA.* (1) *Use of records.* Criminal conviction records received by a PHA from a law enforcement agency in accordance with this section may only be used for the following purposes:

(i) *Applicant screening:* (A) PHA screening of applicants for admission to public housing (part 960 of this title);

(B) PHA screening of applicants for admission to the Section 8 tenant-based assistance program (part 982 of this title);

(C) PHA screening of applicants for admission to the Section 8 moderate

rehabilitation program (part 882 of this title); or the Section 8 project-based certificate or project-based voucher program (part 983 of this title); or

(D) PHA screening concerning criminal conviction of applicants for admission to Section 8 project-based assistance, at the request of the owner. (For requirements governing use of criminal conviction records obtained by a PHA at the request of a Section 8 owner under this section, see paragraph (f) of this section.)

(ii) *Lease enforcement and eviction:*

(A) PHA enforcement of public housing leases; and PHA eviction of public housing residents;

(B) Enforcement of leases by a Section 8 project owner; and eviction of residents by a Section 8 project owner. (However, criminal conviction records received by a PHA from a law enforcement agency under this section may not be used for lease enforcement or eviction of residents receiving Section 8 tenant-based assistance.)

(2) *PHA disclosure of records.* A PHA may only disclose the criminal conviction records which it receives from a law enforcement agency as follows:

(i) Criminal conviction records may be disclosed to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information. For example, if the PHA is seeking to evict a public housing tenant on the basis of criminal activity as shown in criminal conviction records provided by a law enforcement agency, the records may be disclosed to PHA employees performing functions related to the eviction, or to a PHA hearing officer conducting an administrative grievance hearing concerning the proposed eviction.

(ii) Criminal conviction records may be disclosed to the extent necessary in connection with a judicial eviction proceeding. For example, criminal conviction records may be included in pleadings or other papers filed in an eviction action, may be disclosed to parties to the action or the court, and may be filed in court or used in evidence. Upon disclosure as necessary in connection with judicial eviction proceedings, such criminal conviction records may become public information, and the PHA is not responsible for controlling access to or knowledge of such records after such disclosure.

(f) *Owner's request for criminal records.* (1) An owner of a unit with Section 8 project-based assistance that is located in a PHA's jurisdiction may request that the PHA obtain criminal conviction records of a household

member from a law enforcement agency. The PHA must review the records on the owner's behalf in accordance with paragraph (f)(6) of this section.

(2) The owner's request must include a copy of the consent form, signed by the household member.

(3) The owner's request must also specify whether the owner is requesting the PHA to obtain the criminal conviction records concerning the household member for applicant screening, for lease enforcement, or for eviction.

(4) The owner's request must also include the following information concerning the criteria used by the owner in applicant screening, lease enforcement or eviction:

(i) If the owner intends to use the PHA determination regarding any such criminal conviction records for applicant screening, the owner's request must include the owner standards for prohibiting admission of drug criminals in accordance with § 5.853, and for prohibiting admission of other criminals in accordance with § 5.854.

(ii) If the owner intends to use the PHA determination regarding any such criminal conviction records for eviction, the owner's request must include the owner standards for evicting drug criminals in accordance with § 5.856, and for evicting other criminals in accordance with § 5.857.

(iii) If the owner intends to use the PHA determination regarding any such criminal conviction records for lease enforcement other than eviction, the owner's request must include any owner standards for lease enforcement because of criminal activity by members of a household.

(5) If the owner submits a request for criminal conviction records concerning an adult household member to the PHA, the PHA must request the criminal conviction records from the appropriate law enforcement agency or agencies as determined by the PHA.

(6) If the PHA receives criminal conviction records requested by a Section 8 project owner, the PHA must determine whether criminal action by a household member, as shown by such criminal conviction records, may be a basis for applicant screening, lease enforcement or eviction. The PHA determination must be based on the criteria used by the owner as specified in the owner's request (see paragraph (f)(4) of this section). For example, if the owner wants to know if the household member has engaged in criminal activity that may be a basis for denying admission, the PHA must determine whether criminal activity as shown by any criminal conviction record received

from a law enforcement agency may be a basis for prohibiting admission in accordance with HUD regulations and the owner criteria.

(7) The PHA must notify the family and the owner whether it has received criminal conviction records concerning the household member, and of its determination whether such criminal conviction records may be a basis for applicant screening, lease enforcement or eviction. However, except as provided in paragraph (f)(8) of this section, the PHA must not disclose the household member's criminal conviction record or the content of that record to the owner.

(8) The PHA may only disclose criminal conviction records to the owner for use in connection with judicial eviction proceedings by the owner. The PHA may only release the records:

(i) If the owner has requested the criminal conviction records concerning a household member for use in connection with eviction; and

(ii) If the PHA has determined that criminal activity by the household member as shown by such records received from a law enforcement agency may be a basis for eviction from a Section 8 unit; and

(iii) If the owner provides the PHA a written certification that the owner must use the criminal conviction records only to the extent necessary in connection with judicial eviction proceeding in which the owner seeks to evict the Section 8 tenant based on criminal activity by the household member as shown in the criminal conviction records.

(9) If an owner requests a PHA to obtain criminal conviction records in accordance with this section, 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.

(g) *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:

(1) Maintained confidentially;

(2) Not misused or improperly disseminated; and

(3) Destroyed, once the purpose for which the record was requested has been accomplished.

§ 5.903 Sex offender information.

(a) *Purpose.* The purpose of this section is to prevent admission of

dangerous sex offenders to federally assisted housing. For this purpose, PHAs are authorized to obtain sex offender registration information from State and local agencies.

(b) *Applicability.* The provisions of this section apply to criminal history background checks by a PHA of State sex offender registration information in accordance with 42 U.S.C. 13663. The provisions of this section do not apply to sex offender information obtained by a PHA or others from law enforcement agencies other than under this section, such as publicly available information listing persons subject to a lifetime registration requirement under a State sex offender registration program.

(c) *Terms found elsewhere.* The following terms are defined in subpart A of this part: *federally assisted housing, household, HUD, public housing, public housing agency (PHA), owner, Section 8.*

(d) *How PHA obtains sex offender registration information.* (1) A PHA that administers a Section 8 or public housing program under an ACC with HUD must carry out criminal history background checks necessary to determine whether a member of a household applying for admission to any federally assisted housing program is subject to a lifetime sex offender registration requirement under a State sex offender registration program.

(2) If the PHA requests such information from any State or local agency responsible for the collection or maintenance of such information, the State or local agency must promptly provide the PHA such information in its possession or control.

(3) The State or local agency may charge a reasonable fee for providing the information.

(e) *Owner's request for sex offender registration information.*

(1) An owner of federally assisted housing that is located in the jurisdiction of a PHA that administers a Section 8 or public housing program under an ACC with HUD may request that the PHA obtain information necessary to determine whether a household member is subject to a lifetime registration requirement under a State sex offender registration requirement.

(2) The owner's request must specify whether the owner is asking the PHA to obtain the sex offender registration information concerning the household member for applicant screening, for lease enforcement, or for eviction.

(3) The owner's request must also include the following information concerning the criteria used by the

owner in applicant screening, lease enforcement or eviction:

(i) If the owner intends to use the PHA determination regarding any such sex offender registration information for applicant screening, the owner's request must include the owner standards in accordance with § 5.854(c) for prohibiting admission of persons subject to a lifetime sex offender registration requirement.

(ii) If the owner intends to use the PHA determination regarding any such sex offender registration information for eviction, the owner's request must include the owner standards for evicting persons subject to a lifetime registration requirement in accordance with § 5.857.

(iii) If the owner intends to use the PHA determination regarding any such sex offender registration information for lease enforcement other than eviction, the owner's request must include any owner standards for lease enforcement because of criminal activity by members of a household.

(4) If an owner submits a request for sex offender registration information from the PHA, the PHA must obtain such information in accordance with paragraph (d) of this section.

(5) If the PHA obtains sex offender registration information from a State or local agency upon request from an owner, the PHA must determine whether such information may be a basis for applicant screening, lease enforcement or eviction. The PHA determination must be based on the criteria used by the owner as specified in the owner's request.

(6)(i) The PHA must notify the family and the owner of its determination whether sex offender registration information received by the PHA under this section concerning a household member may be a basis for applicant screening, lease enforcement or eviction in accordance with HUD requirements and the criteria used by the owner.

(ii) The PHA must not disclose to the owner any sex offender registration information obtained by the PHA under this section. However, the restriction on PHA disclosure of sex offender registration information does not apply to information that is public information, or is obtained by a PHA other than under this section (for example, information posted on a State sex offender registration website).

(7) If an owner asks a PHA to obtain sex offender registration information concerning a household member in accordance with this section, 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 a State or local agency for releasing the information.

(f) *Records management.* (1) The PHA must establish and implement a system of records management that ensures that any sex offender registration information record received by the PHA from a State or local agency under this section is:

- (i) Maintained confidentially;
- (ii) Not misused or improperly disseminated; and
- (iii) Destroyed, once the purpose for which the record was requested has been accomplished.

(2) The records management requirements do not apply to information that is public information, or is obtained by a PHA other than under this section.

(g) *Opportunity to dispute.* If a PHA obtains sex offender registration information from a State or local agency under paragraph (d) of this section showing that a household member is subject to a lifetime sex offender registration requirement, the PHA must provide the family a copy of such information, and an opportunity to dispute the accuracy and relevance of the information. This opportunity must be provided before a denial of admission, eviction or lease enforcement action on the basis of such information.

PART 200—INTRODUCTION TO FHA PROGRAMS

4. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

5. Add a new § 200.37 under the heading “Miscellaneous Cross Cutting Regulations” to read as follows:

§ 200.37 Preventing crime in federally assisted housing.

Programs administered under section 236 and under sections 221(d)(3) and 221(d)(5) of the National Housing Act are subject to the requirements of part 5, subparts I and J, of this title.

PART 247—EVICTIONS FROM SUBSIDIZED AND HUD-OWNED PROJECTS

6. The authority citation for part 247 continues to read as follows:

Authority: 12 U.S.C. 1701q, 1701s, 1715b, 1715l, and 1715z–1; 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

7. In § 247.2, revise the last sentence in the definition of “subsidized project” to read as follows:

§ 247.2 Definitions.

* * * * *
Subsidized project * * * For purposes of this part, *subsidized project* also includes those units in a housing project that receive the benefit of:

(1) Rental subsidy in the form of rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); or

(2) Housing assistance payments for project-based assistance under Section 8 of the 1937 Act (42 U.S.C. 1437f). However, this part is not applicable to Section 8 project-based assistance under parts 880, 881, 883 and 884 of this title (except as specifically provided in those parts).

8. In § 247.3, revise paragraph (a)(3) to read as follows:

§ 247.3 Entitlement of tenants to occupancy.

(a) * * *
 (3) Criminal activity or alcohol abuse by a covered person in accordance with part 5, subparts I and J, of this title.

* * * * *

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

9. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

§ 880.607 [Amended]

10. In § 880.607, revise paragraph (b)(1)(iii) to read as follows:

* * * * *

(b) * * *
 (1) * * *
 (iii) Criminal activity or alcohol abuse by a covered person in accordance with part 5, subparts I and J, of this title.

* * * * *

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

11. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

12. In § 882.102, amend paragraph (b) by removing the definitions of the terms “Drug-related criminal activity”, “Drug-trafficking”, and “Violent criminal activity”, and by adding definitions of the following additional terms, in alphabetical order:

§ 882.102 Definitions.

* * * * *

Covered person. A resident, any member of the resident's household, a guest or another person under the resident's control.

* * * * *

Household. The family and any PHA-approved live-in aide.

§ 882.514 [Amended]

13. In § 882.514, remove paragraph (a)(2) and redesignate paragraph (a)(3) as paragraph (a)(2).

14. In part 882, add a new § 882.518 to read as follows:

§ 882.518 When a PHA may deny admission or terminate assistance for criminals and alcohol abusers.

(a) *Requirement to deny admission.*

(1) *Prohibiting admission of drug criminals.* (i) The PHA must establish standards that prohibit admission of a household to the Section 8 moderate rehabilitation program if the PHA determines that any household member is currently engaging in or has engaged in drug-related criminal activity or the PHA determines that it has reasonable cause to believe that illegal use or a pattern of illegal use of a drug, as defined in § 5.100 of this part, by a household member may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents).

(ii) The PHA may require the household to submit sufficient evidence, as determined by the PHA, that the members of the household have not engaged in drug-related criminal activity during a reasonable period, as determined by the PHA, before admission to the program.

(iii) The PHA standards must prohibit admission to the program if any household member has been evicted from federally assisted housing for drug-related criminal activity. This prohibition applies during a reasonable period, as determined by the PHA, which is at least three years from the date of the judicial determination authorizing the eviction. The PHA may admit the household if the PHA determines:

(A) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA, or

(B) That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(iv) The PHA must establish standards that permanently prohibit admission to the program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Prohibiting admission of other criminals.* (i) The PHA may prohibit

admission of a household to the program under standards established by the PHA if the PHA determines that any household member is currently engaged in or has engaged in:

(A) Violent criminal activity,

(B) Other criminal activity which may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents,

(C) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

(ii) The PHA may require the household to submit sufficient evidence, as determined by the PHA, that the members of the household have not engaged in such criminal activity during a reasonable period, as determined by the PHA, before admission to the program.

(iii) The PHA must establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement.

(3) *Prohibiting admission of alcohol abusers.* The PHA must establish standards that prohibit admission to the program if the PHA determines that it has reasonable cause to believe that abuse or pattern of abuse of alcohol by a household member may adversely affect the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(b) *Terminating assistance.* (1) *Terminating assistance for drug criminals.* (i) The PHA must establish standards that allow the PHA to terminate assistance for a family under the program if the PHA determines that any household member has engaged in drug-related criminal activity.

(ii) *Methamphetamine conviction—termination of assistance.* The PHA must immediately terminate assistance for a family under the program if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Terminating assistance for other criminals.* (i) The PHA must establish standards that allow the PHA to

terminate assistance for a family if the PHA determines that any household member has engaged in violent criminal activity.

(ii) *Fugitive felon or parole violator.*

The PHA may terminate assistance for a family if the PHA determines that a member of the household is:

(A) 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, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(B) Violating a condition of probation or parole imposed under Federal or State law.

(3) *Evidence of criminal activity.* The PHA may deny admission or terminate assistance for criminal activity by a household member, as authorized in this section, if the PHA determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

(4) *Terminating assistance for alcohol abusers.* The PHA must establish standards that allow termination of assistance for a family if the PHA determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(5) *Drug use or alcohol use: PHA discretion.* (i) *Consideration of rehabilitation.* In determining whether to deny admission or terminate assistance for illegal drug use by a household member who is no longer engaging in such use, or for alcohol abuse by a household member who is no longer engaging in such abuse, the PHA may consider whether the household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

(ii) *Conditions for admission or continued assistance.* (A) In determining whether to deny admission or terminate assistance for illegal use of a drug (as defined in § 5.100 of this title) by a household member, or for alcohol abuse by a household member, the PHA may impose, as a condition of admission to, or continued assistance in the program for other family members, a requirement that the family member who engaged in or is culpable for such use or abuse may not reside with the household or on the premises.

(B) The PHA may require a household member who has engaged in the illegal

use of a drug (as defined in § 5.100 of this title), or in alcohol abuse that threatened the health or safety of, or the right to peaceful enjoyment of the premises by, other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program as a condition of continued assistance.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

15. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

16. In § 884.216, revise paragraph (b) to read as follows:

§ 884.216 Termination of tenancy.

* * * * *

(b) Termination of tenancy for criminal activity or alcohol abuse by a covered person is subject to part 5, subpart G of this title.

* * * * *

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

17. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

18. Revise § 891.430 to read as follows:

§ 891.430 Denial of admission, termination of tenancy, and modification of lease.

(a) The provisions of part 5, subpart I, of this title apply to Section 202 and Section 811 capital advance projects.

(b) The provisions of part 247 of this title apply to all decisions by an owner to terminate the tenancy or modify the lease of a household residing in a unit (or residential space in a group home).

19. Revise § 891.630 to read as follows:

§ 891.630 Denial of admission, termination of tenancy, and modification of lease.

(a) The provisions of part 5, subpart I, of this title apply to Section 202 direct loan projects.

(b) The provisions of part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit.

20. Revise § 891.770 to read as follows:

§ 891.770 Denial of admission, termination of tenancy, and modification of lease.

(a) The provisions of part 5, subpart I, of this title apply to Section 202 direct loan projects with Section 162 assistance for disabled families.

(b) The provisions of part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit (or residential space in a group home).

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

21. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n and 3535(d).

22. In part 960, add a new subpart A to read as follows:

Subpart A—Applicability and Definitions

Sec.

960.1 Applicability.

960.2 Definitions.

Subpart A—Applicability and Definitions

§ 960.1 Applicability.

This part is applicable to public housing.

§ 960.2 Definitions.

(a) *Terms found elsewhere.* The following terms are defined in part 5, subpart A of this title: *1937 Act, drug, drug-related criminal activity, federally assisted housing, HUD, public housing, public housing agency (PHA), Section 8, violent criminal activity.*

(b) *Additional terms* (for purposes of this part).

Covered person. A resident, any member of the resident's household, a guest or another person under the resident's control.

Household. The family and any PHA-approved live-in aide.

Premises. The building or complex in which the public housing dwelling unit is located, including common areas and grounds.

23. In subpart B of part 960, remove § 960.202, redesignate § 960.204 as § 960.202, and add new §§ 960.203 and 960.204 to read as follows:

§ 960.203 When a PHA may deny admission for criminal activity or drug abuse by household members.

(a) *Prohibiting admission of drug criminals.* (1) The PHA must establish standards that prohibit admission of a household to the PHA's public housing program if:

(i) The PHA determines that any household member is currently engaging in or has engaged in drug-related criminal activity; or

(ii) The PHA determines that it has reasonable cause to believe that illegal drug use or a pattern of illegal drug use by a household member may adversely affect the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(2) The PHA may require the household to submit sufficient evidence, as determined by the PHA, that the members of the household have not engaged in drug-related criminal activity during a reasonable period, as determined by the PHA, before admission to the PHA's public housing program.

(3) The PHA standards must prohibit admission to the PHA's public housing program if any household member has been evicted from federally assisted housing for drug-related criminal activity. This prohibition applies during a reasonable period, as determined by the PHA, which is at least three years from the date of the judicial determination authorizing the eviction. However, the PHA may admit the household if the PHA determines:

(i) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(ii) That the circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(4) The PHA must establish standards that permanently prohibit admission to the PHA's public housing program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(b) *Prohibiting admission of other criminals.* (1) The PHA may prohibit admission of a household to the PHA's public housing program, under standards established by the PHA, if the PHA determines that any household member is currently engaging in or has engaged in:

(i) Violent criminal activity; or

(ii) Other criminal activity which may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents; or

(iii) Other criminal activity which may threaten the health or safety of PHA management staff, or persons performing management functions on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

(2) The PHA may require the family to submit sufficient evidence, as determined by the PHA, that the

members of the household have not engaged in such criminal activity during a reasonable period, as determined by the PHA, before admission to the PHA's public housing program.

(3) The PHA must establish standards that prohibit admission to the PHA's public housing program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement.

(c) *Prohibiting admission of alcohol abusers.* The PHA must establish standards that prohibit admission to the PHA's public housing program if the PHA determines that it has reasonable cause to believe that abuse or pattern of abuse of alcohol by a household member may threaten the health or safety of, or right to peaceful enjoyment of the premises by, other public housing residents.

(d) *Evidence of criminal activity.* The PHA may deny admission for criminal activity by a household member as authorized in this section if the PHA determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

(e) *Criminal records.* Before a PHA denies admission to the PHA's public housing program on the basis of a criminal record, the PHA must provide the household with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record.

(f) *Drug use and alcohol abuse: PHA discretion.* (1) *Consideration of rehabilitation.* In determining whether to deny admission to the PHA's public housing program for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

(2) *Conditions for admission.* In determining whether to deny admission to the PHA's public housing program for illegal drug use by a household member, or for alcohol abuse by a household member, the PHA may impose, as a condition of admission to, and

continued assistance in, the PHA's public housing program for other family members, a requirement that the household member who engaged in or is culpable for the drug use or alcohol abuse may not reside in the unit.

(3) *Submission of evidence.* The PHA may require a household member who has engaged in the illegal use of a drug (as defined in § 5.100 of this title), or in alcohol abuse that affected the health or safety of, or the right to peaceful enjoyment of the premises by, other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program as a condition to being allowed to reside in the unit.

§ 960.204 Drug use by applicants: obtaining information from drug treatment facility.

(a) *Purpose.* This section implements section 6(u) of the 1937 Act (42 U.S.C. 1437d(u)) on requesting and obtaining information from drug abuse treatment facilities concerning applicants. The provisions of this section do not apply to information requested or obtained from drug abuse treatment facilities other than under section 6(u).

(b) *Additional definitions* (for purposes of this section).

(1) *Currently engaging in illegal drug use.* Illegal drug use occurred recently enough to justify a reasonable belief that continuing illegal drug use by a household member is a real and ongoing problem.

(2) *Drug abuse treatment facility.* An entity:

(i) That holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use; and

(ii) That is either an identified unit within a general care facility; or an entity other than a general medical care facility.

(c) *Authorization by household member for PHA to receive information from a drug abuse treatment facility.* (1) The PHA may require the family to submit for any household member who is at least 18 years of age, and for each family head or spouse regardless of age a consent form signed by such household member that:

(i) Requests any drug abuse treatment facility to inform the PHA whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use;

(ii) Authorizes the PHA to receive such information from the drug treatment facility, and to utilize such information in determining whether to

prohibit admission of the household member to the PHA's public housing program in accordance with § 960.203.

(2) The consent form submitted for a proposed household member must expire automatically after the PHA has made a final decision to either approve or deny the admission of such person.

(d) *PHA request for information from drug use treatment facility.* (1) The PHA may request that a drug abuse treatment facility disclose whether the drug abuse treatment facility has reasonable cause to believe that the proposed household member is currently engaging in the illegal use of a drug (as defined in § 5.100 of this title).

(2) The PHA's request to the drug abuse treatment facility must include a copy of the consent form signed by the proposed household member.

(3) Subject to section 543 of the Public Health Service Act (42 U.S.C. 290dd-2), the drug abuse treatment facility is required to provide the information requested by the PHA in accordance with paragraph (d)(1) of this section.

(4) A drug abuse treatment facility is not liable for damages based on any information required to be disclosed under this section if such disclosure is consistent with section 543 of the Public Health Service Act (42 U.S.C. 290dd-2).

(5) The PHA is not obligated to request information from a drug treatment facility under this section, and is not liable for damages for failing to request or receive such information.

(6) A drug abuse treatment facility may charge the PHA a reasonable fee for information provided under this section.

(e) *Prohibition of discriminatory treatment of applicants.* (1) A PHA may request information from a drug abuse treatment facility under paragraph (d) of this section only if the PHA has adopted and has consistently implemented either of the following policies:

(i) *Policy A—Request for all families.* Under Policy A, the PHA must submit a request for information to a drug abuse treatment facility in accordance with paragraph (d) of this section before admitting any family to the PHA's public housing program. For each such family, the request must be submitted for each proposed household member described in paragraph (c)(3) of this section.

(ii) *Policy B—Request for certain household members.* Under Policy B, the PHA must submit a request to a drug abuse treatment facility only with respect to each proposed household member:

(A) Whose criminal record indicates prior arrest or conviction for any

criminal activity that may be a basis for denial of admission under § 960.203; or

(B) Whose prior tenancy records indicate that the proposed household member:

(1) Engaged in the destruction of property;

(2) Engaged in violent activity against another person; or

(3) Interfered with the right of peaceful enjoyment of the premises of other residents.

(2) The policy adopted by the PHA must be included in the PHA administrative plan and the PHA plan.

(f) *Records management and confidentiality.* (1) Each PHA that receives information from a drug abuse treatment facility under this section must establish and implement a system of records management that ensures that any information which the PHA receives from the drug abuse treatment facility about a person:

(i) Is maintained confidentially in accordance with section 543 of the Public Health Service Act (12 U.S.C. 290dd-2);

(ii) Is not misused or improperly disseminated; and

(iii) Is destroyed, as applicable:

(A) Not later than 5 business days after the PHA admits the person as a household member under the PHA's public housing program; or

(B) If the PHA denies the admission of such person as a household member, in a timely manner the date on which the statute of limitations for the commencement of a civil action based upon that denial of admissions has expired.

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

23a. Revise the heading for part 966 to read as set forth above.

24. The authority citation for part 966 is revised to read as follows:

Authority: 42 U.S.C. 1437d and 3535(d).

25. Revise § 966.1 to read as follows:

§ 966.1 Purpose and applicability.

(a) This part is applicable to public housing.

(b) Subpart A of this part prescribes the provisions that must be incorporated in leases for public housing dwelling units.

(c) Subpart B of this part prescribes public housing grievance hearing requirements.

26. Add a new § 966.2 to read as follows:

§ 966.2 Definitions.

(a) *Terms found elsewhere.* The following terms are defined in part 5,

subpart A of this title: *1937 Act, drug, drug-related criminal activity, HUD, public housing, public housing agency, Section 8, violent criminal activity.*

(b) *Additional terms* (for purposes of this part).

Covered person. A resident, any member of the resident's household, a guest or another person under the resident's control.

Federally assisted housing means housing assisted under any of the following programs:

(1) Public housing;

(2) Housing receiving project-based or tenant-based assistance under Section 8 (42 U.S.C. 1437f);

(3) Housing that is assisted under section 202 of the Housing Act of 1959 as amended by section 801 of National Affordable Housing Act) (12 U.S.C. 1701q);

(4) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act;

(5) Housing that is assisted under section 811 of the National Affordable Housing Act (42 U.S.C. 8013);

(6) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715(d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. 1715(d)(5));

(7) Housing insured, assisted, or held by HUD or by a State or State agency under section 236 of the National Housing Act (12 U.S.C. 1715z-1); or

(8) Housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949 (42 U.S.C. 1483, 1484).

Household. The family and any PHA-approved live-in aide.

Premises. The building or complex in which the public housing dwelling unit is located, including common areas and grounds.

27. In § 966.4, redesignate paragraph (l)(5) as paragraph (l)(6), revise paragraphs (f)(12), (l)(2) and (l)(3)(i), and add new paragraph (l)(5) to read as follows:

§ 966.4 Lease requirements.

* * * * *

(f) * * *

(12)(i) To assure that no covered person engages in:

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents; or

(B) Any drug-related criminal activity on or off the premises.

(ii) To assure that no member of the household engages in an abuse or pattern of abuse of alcohol that affects the health, safety, or right to peaceful enjoyment of the premises by other residents.

* * * * *

(l) * * *

(2) *Grounds for termination of tenancy.* The PHA may terminate the tenancy for any of the following grounds:

(i) Serious or repeated violation of the lease. Serious violation includes, but is not limited to:

(A) Failure to pay rent or other payments due under the lease; or

(B) Violation of household obligations as described in paragraph (f) of this section;

(ii) Criminal activity or alcohol abuse as provided in paragraph (l)(5) of this section; or

(iii) Other good cause. Other good cause includes, but is not limited to:

(A) Criminal or other activity by a member of the household that threatens the health or safety of other public housing residents or of persons residing in the immediate vicinity of the premises; or

(B) Criminal or other activity by a member of the household that threatens the health or safety of PHA management staff.

(3) *Lease termination notice.* (i) The PHA must give written notice of lease termination of:

(A) 14 days in the case of failure to pay rent;

(B) A reasonable period of time considering the seriousness of the situation (but not to exceed 30 days):

(1) If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or

(2) If any member of the household has engaged in any drug-related criminal activity or violent criminal activity; or

(3) If any member of the household has been convicted of a felony;

(C) 30 days in any other case, except that if a State or local law allows a shorter notice period, such shorter period shall apply.

* * * * *

(5) *When the PHA may terminate tenancy for criminal activity or alcohol abuse by household members.—(i) Evicting drug criminals.* (A) *Drug crime on or off the premises.* The lease must provide that the PHA may terminate the tenancy if any covered person has engaged in any drug-related criminal activity on or off the premises, including cases where:

(1) A covered person has engaged in drug-trafficking; or

(2) A covered person has engaged in illegal drug use (including cases where the PHA determines that illegal drug use or a pattern of illegal drug use by a household member may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents).

(B) *Methamphetamine conviction.* The PHA must immediately terminate the tenancy if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(ii) *Evicting other criminals.* (A) *Threat to other residents.* The lease must provide that any criminal activity by a covered person that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including PHA management staff residing on the premises) is grounds for termination of tenancy.

(B) *Fugitive felon or parole violator.* The PHA may terminate the tenancy if a member of the household is:

(1) 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, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(2) Violating a condition of probation or parole imposed under Federal or State law.

(iii) *Evidence of criminal activity.* The PHA may terminate tenancy for criminal activity by a household member if the PHA determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

(iv) *Use of criminal record.* If the PHA seeks to terminate the tenancy for criminal activity as shown by a criminal record, the PHA must provide the tenant with a copy of the criminal record before a PHA grievance hearing or court trial concerning the termination of tenancy or eviction, and the tenant must be given an opportunity to dispute the accuracy and relevance of that record in the grievance hearing or court trial.

(v) *Evicting alcohol abusers.* The PHA must establish standards that allow termination of tenancy if the PHA determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(vi) *Drug use and alcohol abuse: PHA discretion.* (A) *Consideration of rehabilitation.* In determining whether to terminate tenancy for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

(B) *Conditions for continued assistance.* (1) In determining whether to terminate tenancy for illegal drug use by a household member, or for alcohol abuse by a household member, the PHA may impose, as a condition of continued assistance for other household members, a requirement that any household member who engaged in or is culpable for the drug use or alcohol abuse may not reside in the unit.

(2) The PHA may require a household member who has engaged in the illegal use of a drug (as defined in § 5.100 of this title), or in alcohol abuse that threatened the health or safety of, or the right to peaceful enjoyment of the premises by, other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program as a condition to being allowed to reside in the unit.

28. In § 966.51, revise paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) and add paragraph (a)(2)(i)(C) to read as follows:

§ 966.51 Applicability.

- (a) * * *
- (2)(i) * * *

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA;

(B) Any violent or drug-related criminal activity on or near such premises; or

(C) Any criminal activity that resulted in felony conviction of a household member.

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

29. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

30. Amend § 982.4 as follows:

a. Remove the definitions of *drug-related criminal activity*, *drug-*

trafficking, and *violent criminal activity* from paragraph (b);

b. Add definitions of “covered person” and “household” to paragraph (b), in alphabetical order; and

c. Revise paragraph (a)(2) to read as follows:

§ 982.4 Definitions.

(a) * * *

(2) *Terms found elsewhere.* The following terms are defined in part 5, subpart A of this title: *1937 Act*, *drug*, *drug-related criminal activity*, *federally assisted housing*, *MSA*, *HUD*, *public housing*, *Section 8*, and *violent criminal activity*.

* * * * *

(b) * * *

Covered person. A resident, any member of the resident’s household, a guest or another person under the resident’s control.

* * * * *

Household. The family and any PHA-approved live-in aide.

* * * * *

31. In § 982.54, add a new paragraph (d)(4)(iii) to read as follows:

§ 982.54 Administrative plan.

* * * * *

(d) * * *

(4) * * *

(iii) Standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with § 982.553;

* * * * *

32. In § 982.310, revise paragraph (c) to read as follows:

§ 982.310 Owner termination of tenancy.

* * * * *

(c) *Criminal activity.*—(1) *Evicting drug criminals.*—(i) *Drug crime on or near the premises.* During the term of the lease, the owner may terminate tenancy if any covered person has engaged in any drug-related criminal activity on or near the premises, including cases where:

(A) A covered person has engaged in drug-trafficking; or

(B) A covered person has engaged in illegal use of a drug, as defined in § 5.100 of this title, (including cases where the owner determines that illegal use or pattern of illegal use of a drug by a household member may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents).

(2) *Evicting other criminals.*—(i) *Threat to other residents.* During the term of the lease, the owner may terminate tenancy for any of the following types of criminal activity by a covered person:

(A) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);

(B) Any criminal activity that threatens the health, safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises; or

(C) Any violent criminal activity on or near the premises.

(ii) *Fugitive felon or parole violator.* During the term of the lease, the owner may terminate the tenancy if a member of the household is:

(A) 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, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(B) Violating a condition of probation or parole imposed under Federal or State law.

(3) *Evidence of criminal activity.* The owner may terminate tenancy for criminal activity by a family member if the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

* * * * *

33. Amend § 982.551 by redesignating paragraph (m) as paragraph (n); adding a new paragraph (m); and revising paragraph (l) to read as follows:

§ 982.551 Obligations of participant.

* * * * *

(l) *Crime by household members.* The members of the household may not engage in drug-related criminal activity or 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 (see § 982.553).

(m) *Alcohol abuse by household members.* The members of the household must not abuse alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.

* * * * *

34. Amend § 982.552 as amended at 64 FR 26650 effective August 12, 1999, by revising paragraphs (b)(1), (b)(2), and (c)(3), and by adding paragraph (c)(1)(xi), to read as follows:

§ 982.552 PHA denial or termination of assistance for family.

* * * * *

(b) *Requirement to deny admission or terminate assistance.* (1) The PHA may deny admission to the program for a reasonable time period determined by the PHA if any household member has been evicted from federally assisted housing for serious violation of the lease (other than eviction for drug-related criminal activity. For provisions on eviction for drug-related criminal activity, see § 982.553).

(2) The PHA may terminate program assistance for a household evicted from housing assisted under the program for serious violation of the lease (other than an eviction for drug-related criminal activity).

* * * * *

(c) *Authority to deny admission or terminate assistance.*

(1) * * *

(xi) For denial or termination of assistance for crime or alcohol abuse by household members, see § 982.553.

* * * * *

(3) *Exclusion of family members.* In determining whether to deny admission or terminate assistance in accordance with paragraphs (c)(1) or (c)(2) of this section, the PHA may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure will not reside in the unit. The PHA may permit the other members of a participant family to continue receiving assistance.

* * * * *

35. Revise § 982.553 to read as follows:

§ 982.553 Denial of admission or termination of assistance for criminals and alcohol abusers.

(a) *Requirement to deny admission.—* (1) *Prohibiting admission of drug criminals.* (i) The PHA must establish standards that prohibit admission of a household to the program if:

(A) the PHA determines that any household member is currently engaging in or has engaged in drug-related criminal activity; or

(B) the PHA determines that it has reasonable cause to believe that illegal drug use or a pattern of illegal drug use by a household member may adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) The PHA may require the household to submit sufficient evidence, as determined by the PHA, that the members of the household have not engaged in drug-related criminal activity during a reasonable period, as determined by the PHA, before admission to the program.

(iii) The PHA must prohibit admission to the program if any household member has been evicted from federally assisted housing for drug-related criminal activity. This prohibition applies during a reasonable period, as determined by the PHA, which is at least three years from the date of the judicial determination authorizing the eviction. The PHA may admit a household if the PHA determines:

(A) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(B) That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(iv) The PHA must establish standards that permanently prohibit admission to the program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Prohibiting admission of other criminals.* (i) The PHA may prohibit admission of a household to the program if the PHA determines that any household member is currently engaged in or has engaged in:

(A) Violent criminal activity;

(B) Other criminal activity which may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents;

(C) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

(ii) The PHA may require the household to submit sufficient evidence, as determined by the PHA, that the members of the household have not engaged in such criminal activity during a reasonable period, as determined by the PHA, before admission to the program.

(iii) The PHA must establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement.

(3) *Prohibiting admission of alcohol abusers.* The PHA must establish standards that prohibit admission to the program if the PHA determines that it has reasonable cause to believe that abuse or pattern of abuse of alcohol by a household member may adversely affect the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(b) *Terminating assistance.*—(1) *Terminating assistance for drug criminals.*—(i) *Standards.* The PHA must establish standards that allow the PHA to terminate assistance for a family under the program if the PHA determines that any household member has engaged in drug-related criminal activity.

(ii) *Methamphetamine conviction—termination of assistance.* The PHA must immediately terminate assistance for a family under the program if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Terminating assistance for other criminals.*—(i) *Standards.* The PHA must establish standards that allow the PHA to terminate assistance for a family if the PHA determines that any household member has engaged in violent criminal activity.

(ii) *Fugitive felon or parole violator.* The lease must provide that the PHA may terminate assistance for a family if the PHA determines that a member of the household is:

(A) 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, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(B) Violating a condition of probation or parole imposed under Federal or State law.

(3) *Terminating assistance for alcohol abusers.* The PHA must establish standards that allow termination of assistance for a family if the PHA determines that household member has engaged in abuse or pattern of abuse of alcohol that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(c) *Evidence of criminal activity.* The PHA may deny admission or terminate assistance for criminal activity by a household member as authorized in this section if the PHA determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

(d) *Use of criminal record.* If a PHA proposes to deny admission for criminal activity as shown by a criminal record, the PHA must provide the family with a copy of the criminal record before a PHA informal review of such decision in accordance with § 982.554. If a PHA proposes to terminate assistance for criminal activity as shown by a criminal record, the PHA must provide the family with a copy of the criminal record before a PHA hearing in accordance with § 982.554. The family must be given an opportunity to dispute the accuracy and relevance of that record. For denial of admission, the PHA must provide such opportunity in the informal review process in accordance with § 982.554. For termination of assistance, the PHA must provide such opportunity in accordance with § 982.555.

(e) *Drug use or alcohol use: PHA discretion.* (1) *Consideration of rehabilitation.* In determining whether to deny admission or terminate assistance for illegal drug use by a household member who is no longer engaging in such use, or for alcohol abuse by a household member who is no longer engaging in such abuse, the PHA may consider whether the household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

(2) *Conditions for admission or continued assistance.* (i) In determining whether to deny admission or terminate assistance for illegal use of a drug by a household member, or for alcohol abuse by a household member, the PHA may impose, as a condition of admission to, or continued assistance in the program for other family members, a requirement that the family member who engaged in or is culpable for such use or abuse may not reside in the unit.

(ii) The PHA may require a household member who has engaged in the illegal use of a drug (as defined in § 5.100 of this title), or in alcohol abuse that threatened the health or safety of, or the right to peaceful enjoyment of the premises by, other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program as a condition of continued assistance.

Dated: July 16, 1999.

Andrew Cuomo,

Secretary.

[FR Doc. 99-18801 Filed 7-22-99; 8:45 am]

BILLING CODE 4210-32-P