

OWNER RESPONSIBILITY FOR SCREENING TENANTS

Suitability for Tenancy: The HA must inform the owner that the HA has not screened the family's behavior or suitability for tenancy and that such screening is the owner's own responsibility.

Family's Background: An owner may consider a family's background with respect to such factors as:

- ~ Payment of rent and utility bills
- ~ Caring for a unit and premises.
- ~ Respecting the rights of others to the peaceful enjoyment of their housing.
- ~ Drug-related criminal activity or other criminal activity that is a threat to the life, safety or property of others and compliance with other essential conditions of tenancy.

Information Provided Owner Concerning Tenancy: The HA must give the owner the family's current address (as shown in the HA records) and the name and address of the landlord at the family's current and prior addresses, if known to the HA.

Information Provided Owner Concerning Criminal/Sex Offender Activity:

Owner access to criminal records.

(1) General

(a) If an owner submits a request to the PHA for criminal records concerning an adult member of an applicant or participant household, in accordance with the provisions of paragraph (2), (3) of this section, the PHA must request the criminal conviction records from the appropriate law enforcement agency or agencies, as determined by the PHA.

(b) If the PHA receives criminal conviction records requested by an 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, as applicable in accordance with HUD regulations and the owner criteria.

(c) The PHA must notify the owner whether the PHA 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 (b)(2)(ii) of this section, the PHA must not disclose the household member's criminal conviction record or the content of that record to the owner.

(2) Screening. If you are an owner of covered housing, you may request that the PHA in the jurisdiction of the property obtain criminal conviction records of an adult household member from a law enforcement agency on your behalf for the purpose of screening applicants. Your request must include:

- ~ A copy of the consent form, signed by the household member.
- ~ Your standards or prohibiting admission of drug criminals in accordance with

Sec. 5.854, and for prohibiting admission of other criminals in accordance with Sec.5.855.

- (3) Eviction or lease enforcement. If you are an owner of a unit with Section 8 project-based assistance, you may request that the PHA in the location of the project obtain criminal conviction records of a household member from an appropriate law enforcement agency on your behalf in connection with lease enforcement or eviction.
 - (a) Your request must include a copy of the consent form, signed by the household member.
 - (b) If you intend to use the PHA determination regarding any such criminal Conviction records in connection with eviction, your request must include your standards for eviction drug criminals in accordance with Sec. 5,875, and for eviction other criminals in accordance with Sec. 5.858.
 - (c) If you intend to use the PHA determination regarding any such criminal Conviction records for lease enforcement other than eviction, your request must include your standards for lease enforcement because of criminal activity by members of a household.
- (4) Fees. If an owner request a PHA to obtain criminal conviction records in accordance with this section, the PHA may charge the owner reasonable fees for among the request on behalf of the owner and for taking other actions for the owner. The PHA may require the owner to reimburse costs incurred by the PHA, including reimbursement of any fees charged to the PHA by the law enforcement agency, the PHA's own related staff and administrative costs. The owner may not pass along to the applicant or participant the costs of a criminal records check.

B. 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:
 - (a) Applicant screening.
 - (i) PHA screening of applicants for admission to housing programs (part 960 of this title);
 - (ii) PHA screening of applicants for admission to the Housing Choice Voucher Program (section 8 tenant-based assistance) (part 982 of this Title);
 - (iii) 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 (d) of this section.)
 - (b) PHA disclosure of records.
 - (a) A PHA may disclose the criminal conviction records which the PHA Receives from a law enforcement agency only as follows:
 - (i) 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 terminate assistance 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) To the owner for use in connection with judicial eviction proceedings by the owner to 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 offered as evidence.

- (b) This disclosure may be made only if the following conditions are satisfied:
 - (i) 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
 - (ii) If the owner certifies in writing that it will use the criminal conviction records only for the purpose and only to the extent necessary to seek eviction in a judicial proceeding of a Section 8 tenant based on the criminal activity by the household member that is described in the criminal conviction records.
- (c) The PHA may rely on an owner's certification that the criminal record is necessary to proceed with a judicial member, as shown in the criminal conviction record.
- (d) Upon disclosure as necessary in connection with judicial eviction proceedings, the PHA is not responsible for controlling access to or knowledge of such records after such disclosure.

C. Opportunity to dispute. If a PHA obtains record information from a State or local agency under this section showing that a household member has been convicted of a crime relevant to applicant screening, lease enforcement or eviction, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant or participant a copy of such information. This opportunity must be provided before a denial of admission, eviction or lease enforcement action on the basis of such information.

D. Records Management. Consistent with the limitations on disclosure of records in Paragraph (B,(2)) of this section, 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:

- ~ Maintained confidentially;
- ~ Not misused or improperly disseminated; and

~ Destroyed, once the purpose(s) for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation.

E. Penalties for improper release of information.

(1) Criminal penalty. Conviction for a misdemeanor and imposition of a penalty of not more than \$ 5,000 is the potential for:

~ Any person, including an officer, employee, or authorized representative of any PHA or of any project owner, who knowingly and willfully requests or obtains any information concerning an applicant for, or participant of, covered housing assistance under the authority of this section under false pretenses; or

~ Any person, including an officer, employee, or authorized representative of any PHA or a project owner, who knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive the information.

(2) Civil liability.

(a) A PHA may be held liable to any applicant for, or participant of, covered housing assistance affected by either of the following:

(i) A negligent or knowing disclosure of criminal records information obtained under the authority of this section about such person by an officer, employee, or authorized representative of the PHA if the disclosure is not authorized by this section; or

(ii) Any other negligent or knowing action that is inconsistent with this section.

(b) An applicant for, or participant of, covered housing assistance may seek relief against a PHA in these circumstance by bringing a civil action for damages and such other relief as may be appropriate against the PHA responsible for such unauthorized action. The United States district court in which the affected applicant or participant resides, in which the unauthorized action occurred, or in which the offices employee, or representative alleged to be responsible resides, has jurisdiction. Appropriate relief may include reasonable attorney's fee and other litigation costs.