

has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current.

§5.856 When must I prohibit admission of sex offenders?

You 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 the screening of applicants, you must perform necessary criminal history background checks in the State where the housing is located and in other States where the household members are known to have resided. (See §5.905.)

§5.857 When must I prohibit admission of alcohol abusers?

You must establish standards that prohibit admission to federally assisted housing if you determine you have reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

TERMINATING TENANCY

§5.858 What authority do I have to evict drug criminals?

The lease must provide that drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control, is grounds for you to terminate tenancy. In addition, the lease must allow you to evict a family when you determine that a household member is illegally using a drug or when you determine that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

§5.859 When am I specifically authorized to evict other criminals?

(a) *Threat to other residents.* The lease must provide that the owner may terminate tenancy for any of the following types of criminal activity by a covered person:

(1) Any criminal activity that threatens the health, safety, or 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, safety, or 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 you may terminate the tenancy during the term of the lease if a tenant 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.

§5.860 When am I specifically authorized to evict alcohol abusers?

The lease must provide that you may terminate the tenancy if you determine that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

§5.861 What evidence of criminal activity must I have to evict?

You may terminate tenancy and evict the tenant through judicial action for criminal activity by a covered person in accordance with this subpart if you determine that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying a criminal conviction standard of proof of the activity.

Subpart J—Access to Criminal Records and Information

SOURCE: 66 FR 28794, May 24, 2001, unless otherwise noted.

§ 5.901

§ 5.901 To what criminal records and searches does this subpart apply?

(a) *General criminal records searches.* This subpart applies to criminal conviction background checks by PHAs that administer the Section 8 and public housing programs when they obtain criminal conviction records, under the authority of section 6(q) of the 1937 Act (42 U.S.C. 1437d(q)), from a law enforcement agency to prevent admission of criminals to public housing and Section 8 housing and to assist in lease enforcement and eviction.

(b) *Sex offender registration records searches.* This subpart applies to PHAs that administer the Section 8 and public housing programs when they obtain sex offender registration information from State and local agencies, under the authority of 42 U.S.C. 13663, to prevent admission of dangerous sex offenders to federally assisted housing.

(c) *Excluded records searches.* The provisions of this subpart do not apply to criminal conviction information or sex offender information searches by a PHA or others of information from law enforcement agencies or other sources other than as provided under this subpart.

§ 5.902 Definitions.

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

(b) *Additional terms* used in this subpart are as follows:

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.

Covered housing. Public housing, project-based assistance under section 8 (including new construction and substantial rehabilitation projects), and tenant-based assistance under section 8.

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

Owner. The owner of federally assisted housing.

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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 Annual Contributions Contract with HUD. For all other Section 8 programs, *responsible entity* means the Section 8 owner.

§ 5.903 What special authority is there to obtain access to criminal records?

(a) *Authority.* If you are a PHA that administers the Section 8 program and/or the public housing program, this section authorizes you to obtain criminal conviction records from a law enforcement agency, as defined in § 5.902. You may use the criminal conviction records that you obtain from a law enforcement agency under the authority of this section to screen applicants for admission to covered housing programs and for lease enforcement or eviction of families residing in public housing or receiving Section 8 project-based assistance.

(b) *Consent for release of criminal conviction records.* (1) In order to obtain access to records under this section, as a responsible entity you must require every applicant 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.

(c) *Procedure for PHA.* (1) When the law enforcement agency receives your request, the law enforcement agency must promptly release to you a certified copy of any criminal conviction records concerning the household member in the possession or control of the law enforcement agency. NCIC