

# NAHMA Analysis

## News and Analysis of Breaking Issues in Affordable Housing



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## Screening and Eviction for Drug Abuse and other Criminal Activity Update on Events and Status

The May 24 Screening and Eviction Rule has attracted more attention, questions, and consternation than any other rule issued in 2000 or 2001. Here is an update on the status and issues in work related to this rule.

### The Issues

- We have asked HUD to suspend implementation of this rule pending resolution of long lists of issues and drafting of guidance for the HUD Field Offices and Contract Administrators. The National Council of State Housing Agencies has likewise called for more time to implement the rule. July 10, NAHMA, NLHA, IREM, AAHSA, NCSHA and NAHB all met with Fred Tombar and most of the Housing Division Senior Staff to go over issues yet to be resolved. HUD has not yet decided if they will suspend the rule, we have been promised a decision on that no later than July 25.
- The industry has raised 44 issues with HUD that require clarification, rewriting, and changes to parts of the rule. Fred and his staff have taken under advisement all the issues raised at the July 10 meeting and subsequently and have promised us responses on all items along with a timetable of when changes and clarifications will be issued.
- Virtually none of the PHA's and HFA's that are covered by this rule are prepared to perform the background and criminal record checks required in the rule. Everyone on the industry and state agency side was surprised by this rule, it is nearly three years in the making, took almost none of the industry comment on the proposed rule into consideration, and was issued with a short implementation time line. The question has been raised to us, and other trade groups whether the current Administration at HUD cleared this rule, the answer is yes; they were aware of the rule and cleared its issuance.
- While the rule is technically in effect none of the necessary support systems needed to implement it are in place.
- Significant elements of the rule have been found to be against public policy and in violation

of Congress intent in the 9<sup>th</sup> Federal Circuit Court's jurisdiction. The Court's ruling in Rucker vs. Davis was not addressed in drafting the rule, and for the parts of the West Coast in the 9<sup>th</sup> Circuit this rule is even more problematic. We have indicated to HUD that we would prefer the entire rule to be reworked to address the issues raised in the 9<sup>th</sup> Circuit, and in the meanwhile have requested that guidance be issued for 9<sup>th</sup> Circuit Owners and Agents specifically addressing the parts of the policy Rucker vs. Davis found to be unlawful.

- A revised Model Lease form is now being drafted. We have been promised the revised Model Lease in 60 to 90 days. HUD Multifamily Field Offices have varying policies on lease review and approval, we hope to get a single policy set regarding review, and get assurances that lease reviews will be handled in a timely fashion. Given that the field offices have no guidance beyond what we have it appears that there is no way to do a lease review that is meaningful at present.
- The Contract Administrators who are mostly State Housing Finance Agencies want to be excluded from this rule. Several agencies who we know well initially thought they would offer background checks have since reviewed things more closely and have indicated that they either will not, or will only reluctantly do background work. It is unclear how HUD will act here. NAHMA is of the view that this will work best if we have "one stop backgrounds" and the Contract Administrators and State HFA are the logical ones to do that, so this issue is joined in a three way debate.
- The Eviction exclusion parts of this rule look to be totally unworkable. There is no centrally maintained database on evictions. Records will be hard and expensive to assemble. Additionally there is no known way to assemble eviction data where the matter was settled prior to a court date and dismissed .
- Adding FBI NCIC checks to the background work is provided for in the rule, to do that however requires a set of fingerprints and several weeks time. The specter of fingerprinting applicants for assisted housing to run background checks is truly scary when you consider how that will play in the press and among some civil liberties advocates.
- The agencies that will do the work have the right to be reimbursed for their costs, no one has gotten very far into the costing elements of this yet, but it will not be cheap, and the costs are not covered by HUD in that market rate properties do not have to do this work, and the market pricing model which forms a cap on our rents does not include these costs. Compensation for both us and the PHA/HFA providers remains to be worked out.

### **What should you be doing ?**

*George's Spin - The rule has such significant problems that it can't be implemented at the moment. There are two sine qua non's that have to be in place before we can start working with this. Those are the new model lease, and a functioning background check system. In our estimation it will be mid September before we have those two pieces in place in even a preliminary way.*

*Given the myriad due process and fair housing issues involved here trying to rework your lease prior to seeing the new model lease is probably wasted effort. We have been assured that the model lease rewrite is being given priority and as we see draft versions we will share those with you.*

*It is clear that your application will need to be edited to pick up at least one address from each state adult family members have lived in to support the sexual predator registry part of this rule.*

*Until the issue of who will do the background checks is more fully settled reworking consent forms is probably preliminary.*

*You will want to start thinking about changes to your selection criteria. To assist you in that task, and in training your staff on the rule we have attached a condensed explanation of the rule's provisions program by program. Our colleague Denise Muha at NLHA had this put together and you will find it a useful way to understand the "musts" and "mays" of this rule.*

*Getting this rule workable or withdrawn is a continuing priority, we will keep you posted as we get decisions and clarifications. In the meanwhile we would appreciate any feedback or questions you have to add those to our discussions with HUD.*

*Festina Lente.....* Our next meeting with HUD on this issue is August 20.

# SCREENING AND EVICTION RULE

Provided to NAHMA Members by our colleague Denise Muha at the National Leased Housing Association

The table below briefly summarizes some of the provisions found in the recently published final rule on screening and eviction (May 24, “Screening and Eviction for Drug Abuse and Other Criminal Activity; Final Rule.”) The table presents regulatory provisions that apply to each of the major program areas — Section 8 tenant-based assistance, Public Housing, programs whose owners contract directly with HUD, and Moderate Rehabilitation. While the table is not all-inclusive, the summary may help administrators locate provisions that apply to the programs they operate.

The regulation introduces several new definitions that will assist the reader in understanding the regulatory provisions. Among them is the definition for a “covered person.” A covered person means a tenant, any member of the tenant’s household, a guest, or another person under the tenant’s control. “Guest” generally means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. “Household” usually means the family and PHA-approved live-in aide. And, “other person under the tenant’s control,” means that the person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

TOPIC	TENANT-BASED SECTION 8	PUBLIC HOUSING	OTHER FEDERALLY ASSISTED PROJECTS (EXCLUDING TENANT-BASED, PUBLIC HOUSING AND MOD REHAB)	MODERATE REHABILITATION
<b>SCREENING STANDARDS REQUIREMENTS:</b>				
Drug criminals: previous eviction from federally assisted housing for drug-related criminal activity	<ul style="list-style-type: none"> <li>▪ The PHA <i>must</i> prohibit admission of applicant for <b>three years</b> if any household member was evicted from federally assisted housing for drug-related criminal activity. The three years begins on the date of eviction. 982.553 (a)</li> <li>▪ The PHA <i>may</i> admit such household if the person has successfully completed an approved supervised drug rehabilitation program or if the circumstances leading to the eviction no longer exist. 982.553 (a)</li> </ul>	<ul style="list-style-type: none"> <li>▪ The PHA standards <i>must</i> prohibit admission of applicant for <b>three years</b> if any household member was evicted from federally assisted housing for drug-related criminal activity. The three years begins on the date of eviction. 960.204 (a)</li> <li>▪ The PHA <i>may</i> admit such household if the person has successfully completed an approved supervised drug rehabilitation program or if the circumstances leading to the eviction no longer exist. 960.204 (a)</li> </ul>	<ul style="list-style-type: none"> <li>▪ The owner <i>must</i> prohibit admission of applicant for <b>three years</b> if any household member was evicted from federally assisted housing for drug-related criminal activity. The three years begins on the date of eviction. 5.854 (a)</li> <li>▪ The owner <i>may</i> admit such household if the person has successfully completed an approved supervised drug rehabilitation program or if the circumstances leading to the eviction no longer exist. 5.854 (a)</li> </ul>	<ul style="list-style-type: none"> <li>▪ The PHA <i>must</i> prohibit admission of applicant for <b>three years</b> if any household member was evicted from federally assisted housing for drug-related criminal activity. The three years begins on the date of eviction. 882.518(a)</li> <li>▪ The PHA <i>may</i> admit such household if the person has successfully completed an approved supervised drug rehabilitation program or if the circumstances leading to the eviction no longer exist. 882.518 (a)</li> </ul>

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Conviction for manufacture of methamphetamine on the premises of federally assisted housing	The PHA <i>must</i> establish standards that prohibit admission if any household member has ever been convicted of drug-related activity for manufacture or production of methamphetamine on the premises of federally assisted housing. 982.553 (a)	PHA <i>must</i> establish standards that permanently prohibit admission 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. 960.204 (a)		PHA <i>must</i> establish standards that permanently prohibit admission 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. 882.518 (a)
Applicant currently engaging in illegal use of a drug	The PHA <i>must</i> establish standards to permanently prohibit admission if any household member is currently engaging in use of a drug or if the PHA has reasonable cause to believe that a household member illegal use or pattern of illegal use may <b>threaten</b> the health, safety, or right to peaceful enjoyment if the premises by other residents. 982.553 (a)	The PHA <i>must</i> establish standards to prohibit admission if any household member is currently engaging in use of a drug or if the PHA has reasonable cause to believe that a household member illegal use or pattern of illegal use may <b>threaten</b> the health, safety, or right to peaceful enjoyment if the premises by other residents. 960.204 (a)	The owner <i>must</i> establish standards to prohibit admission if any household member is currently engaging in use of a drug or if the owner has reasonable cause to believe that a household member illegal use of a drug or pattern of illegal use may <b>interfere</b> with health, safety, or right to peaceful enjoyment of the premises by other residents. 5.854 (b)	The PHA <i>must</i> establish standards to prohibit admission if any household member is currently engaging in use of a drug or if the PHA has reasonable cause to believe that a household member illegal use or pattern of illegal use may <b>threaten</b> the health, safety, or right to peaceful enjoyment if the premises by other residents. 882.518 (a)
Lifetime sex offender registration	The PHA <i>must</i> establish admission standards that prohibit admission of a household that has a member who is subject to lifetime registration by as a sex offender under a State registration program. 982.553 (a) The PHA <i>must</i> carry out sex offender's registration checks in the state in which housing is located and any state in which the members of the applicant household are known to have resided. 5.905 (a) and 982.553 (a)	The PHA <i>must</i> establish admission standards that prohibit admission of a household that has a member who is subject to lifetime registration by as a sex offender under a State registration program. 960.204 (a) The PHA <i>must</i> carry out sex offender's registration checks in the state in which housing is located and any state in which the members of the applicant household are known to have resided. 960.204 (a)	An owner <i>must</i> establish admission standards that prohibit admission of persons subject to lifetime registration requirement under a State sex offender registration program. 5.856 When making a request to the PHA to search for records of registration as sex offender, the owner <i>must</i> provide the PHA with addresses or other information about where members of the household are known to have lived. 5.856 and 5.905 (a)	The PHA <i>must</i> establish admission standards that prohibit admission of a household that has a member who is subject to lifetime registration by as a sex offender under a State registration program. 882.518 (a) The PHA <i>must</i> carry out sex offender's registration checks in the state in which housing is located and any state in which the members of the applicant household are known to have resided. 882.518 (a)
Alcohol abuse screening standards	A PHA <i>must</i> establish standards to prohibit admission if there is reasonable cause to believe that household member's abuse or pattern of abuse of alcohol may <b>threaten</b> the health, safety, or peaceful enjoyment of the premises by other residents. 982.553 (a)	A PHA <i>must</i> establish standards to prohibit admission if there is reasonable cause to believe that household member's abuse or pattern of abuse of alcohol may <b>threaten</b> the health, safety, or peaceful enjoyment of the premises by other residents. 960.204 (b)	An owner <i>must</i> establish standards to prohibit admission if there is reasonable cause to believe that household member's abuse or pattern of abuse of alcohol may <b>interferes</b> with health, safety, or peaceful enjoyment of the premises by other residents. 5.857	A PHA <i>must</i> establish standards to prohibit admission if there is reasonable cause to believe that household member's abuse or pattern of abuse of alcohol may <b>threaten</b> the health, safety, or peaceful enjoyment of the premises by other residents. 882.518(b)
<b>DISCRETIONARY SCREENING STANDARDS</b>				

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<p>Denying admissions to those who are currently engaging in or have recently engaged in criminal activities</p>	<ul style="list-style-type: none"> <li>▪ The PHA <i>may</i> prohibit admission if any household member is currently engaged in, or has engaged in during a reasonable time before admission 1) drug-related criminal activity; 2) violent criminal activity; 3) other criminal activity which may <b>threaten</b> the health, safety or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; 4) other criminal activity that would threaten health or safety of the owner, PHA staff, contractor or subcontractor. 982.553 (a) <ul style="list-style-type: none"> <li>▪ The PHA may establish a set period, a “reasonable time” in which the applicant must not have engaged in these activities before admission. 982.553 (a)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ The PHA <i>may</i> require each applicant (all adult household members) to sign one or more consent forms that request any drug treatment facility to inform the PHA only whether the drug treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use. 960.205 <ul style="list-style-type: none"> <li>▪ The PHA <i>is not required</i> to seek such information and is not liable for damages for failing to seek such information. 960.205</li> <li>▪ The household members’ consent forms <i>must</i> expire and be destroyed no later than five business days after the PHA makes a final decision to approve or disapprove admission or after the final disposition of any litigation. <ul style="list-style-type: none"> <li>▪ The drug treatment facility <i>may</i> charge a fee for the information and the PHA is prohibited from passing such costs the applicant. 960.205</li> <li>▪ The PHA <i>must</i> adopt one of two policies for implementing this procedure. Policy A in which the PHA <i>must</i> submit a request to a drug treatment facility for each adult member of each applicant household or, Policy B: the PHA <i>must</i> submit a request to the drug treatment facility for certain household members. 960.205 <ul style="list-style-type: none"> <li>▪ PHAs <i>may</i> target only household members whose criminal records indicates prior arrest or conviction for activities that may be a basis for denial of assistance, or whose prior tenancy records show that the person has engaged in destruction of property, violent activity toward another, or has interfered with the peaceful enjoyment of other residents. 960.205</li> </ul> </li> </ul> </li> </ul> </li></ul>	<ul style="list-style-type: none"> <li>▪ An owner <i>may</i> prohibit admission for 1) drug-related criminal activity; 2) violent criminal activity; 3) other criminal activity that would threaten the health, safety or right to peaceful enjoyment of the premises by other residents; or 4) other criminal activity that would threaten the health, safety of the PHA or owner, or any employee, contractor, subcontractor or agent of the PHA or owner who is involved in the housing operations. 5.855 (a) <ul style="list-style-type: none"> <li>▪ The owner may establish a set period, a “reasonable time” in which the applicant must not have engaged in these activities before admission. 5.855 (b)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ The PHA <i>may</i> prohibit admission (under the PHA’s standards) for 1) drug-related criminal activity; 2) violent criminal activity; 3) other criminal activity which may threaten health, safety or right to peaceful enjoyment of the premises by other residents; 4) other criminal activity that would threaten health or safety of the owner, PHA staff, contractor or subcontractor. 882.5180(b) <ul style="list-style-type: none"> <li>▪ The PHA may establish a set period, a “reasonable time” in which the applicant must not have engaged in these activities before admission. 882.518(b)</li> </ul> </li> </ul>

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<p>“Sufficient evidence” for considering admission of applicant denied because of recent criminal activities</p>	<ul style="list-style-type: none"> <li>▪ A PHA may admit a person if a family member is no longer engaged in criminal activity. 982.553 (a)</li> <li>▪ If the PHA had previously denied admission to an applicant for criminal activities but now has sufficient evidence that the household member has not engaged in the activity for a reasonable length of time, the owner <i>may</i> admit the applicant. 5.855 (c)</li> <li>▪ <i>Sufficient evidence</i> that the person is no longer engaged in the activity <i>may</i> include a personal certification along with supporting documentation from probation officer, landlord, neighbors, social service workers, and review of verified criminal records. 982.553 (a)</li> </ul>		<ul style="list-style-type: none"> <li>▪ If the owner had previously denied admission to an applicant for criminal activities but now has sufficient evidence that the household member has not engaged in the activity for a reasonable length of time, the owner <i>may</i> admit the applicant. 5.855 (c)</li> <li>▪ <i>Sufficient evidence</i> that the person is no longer engaged in the activity <i>may</i> include a personal certification along with supporting documentation from probation officer, landlord, neighbors, social service workers, and review of verified criminal records. 882.518(b)</li> </ul>	<ul style="list-style-type: none"> <li>▪ A PHA may reconsider an applicant if a family member is no longer engaged in criminal activity. 882.5180(b)</li> <li>▪ If the owner had previously denied admission to an applicant for criminal activities but now has sufficient evidence that the household member has not engaged in the activity for a reasonable length of time, the owner <i>may</i> admit the applicant. 5.855 (c)</li> <li>▪ <i>Sufficient evidence</i> that the person is no longer engaged in the activity <i>may</i> include a personal certification along with supporting documentation from probation officer, landlord, neighbors, social service workers, and review of verified criminal records. 882.518(b)</li> </ul>
<p>Owner and PHA options</p>	<ul style="list-style-type: none"> <li>▪ If an owner action (denial or termination of tenancy) is permitted by law or regulation, but not required, the owner <i>may</i> or <i>may not</i> take action in accordance with local standards for admission. 982.310 (h)</li> </ul>		<ul style="list-style-type: none"> <li>▪ If an owner action (denial or termination of tenancy) is permitted by law or regulation, but not required, the Owner <i>may</i> or <i>may not</i> take action in accordance with the owner’s standards for admission. 5.852 (a)</li> <li>▪ The provisions of the regulation <b>do not constrain</b> the owner’s authority to screen out applicants who the owner determines are unsuitable under the owner’s standards for admission. (5.851 (a))</li> </ul>	

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<p>Considerations when deciding to deny admission or terminate tenancy</p>	<ul style="list-style-type: none"> <li>The owner may consider 1) the seriousness of the offense; 2) the effect on the community of denial or termination; 3) extent of participation by the leaseholder; 4) the effect on the family that denial or termination would have; 5) the other families who are waiting for housing who will adhere to lease conditions; 6) the action of the leaseholder to mitigate or prevent offending action; 7) the effect the owners action will have on the integrity of the program. 982.310 (h) <ul style="list-style-type: none"> <li>When denying or terminating assistance, the PHA may consider all relevant circumstances including 1) the seriousness of the case; 2) extent of participation by the individual family member; 3) mitigating circumstances related to the disability of a family member; and, 4) the effects denial or eviction would have on the family members not engaged in the activity. 982.552(c)</li> </ul> </li> <li>If a household member has committed acts that would require termination of tenancy, the PHA may require the household to exclude the offending family member to continue receiving assistance. 982.552 (c)</li> </ul>	<ul style="list-style-type: none"> <li>A PHA may consider all relevant information including 1) an applicant's past performance meeting financial obligations, such as rent payments, 2) records of disturbances of neighbors or housekeeping habits, or behaviors that may adversely affect other residents; 3) history of criminal activity, especially crimes of physical violence. 960.203 (b) <ul style="list-style-type: none"> <li>If the PHA receives unfavorable information with respect to an applicant, consideration shall be given to the time, nature, and extent of the applicant's conduct, (including the seriousness of the offense.) 960.203 (d) <ul style="list-style-type: none"> <li>Such considerations may include evidence of rehabilitation and evidence the family willingness to participate in social service or other counseling programs. 960.203 (d)</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Consistent with the owner's admission and eviction standards, the owner may consider all relevant circumstances, such as: 1) the seriousness of the offense; 2) the effect on the community; 3) extent of participation by the leaseholder; 4) the effect that denial of admission or termination of assistance would have on other members of the household; 5) the demand for assisted housing by other families who will adhere to lease responsibilities; 6) the extent that the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action; 7) the effect on the integrity of the program. 5.852 (a)</li> </ul>	
<p>Exclusion of culpable family member</p>	<ul style="list-style-type: none"> <li>If a household member has committed acts that would require termination of tenancy, the PHA may require the household to exclude the offending family member to continue receiving assistance. 982.552 (c)</li> </ul>	<ul style="list-style-type: none"> <li>If a household member has committed acts that would require denial of admission or termination or tenancy, the PHA may require the household to exclude the offending family member to be admitted to the program or to continue to reside in the assisted unit. 960.203 (c) and 966.4 (f)</li> </ul>	<ul style="list-style-type: none"> <li>If a household member has committed acts that would result in denial of admission the owner may require the household to exclude the offending family member to be admitted to the program or to continue to reside in the assisted unit. 5.852 (b)</li> </ul>	
<p>Longer term of denial</p>	<ul style="list-style-type: none"> <li>Where a statute requires the PHA to prohibit admission for a prescribed period of time after some disqualifying behavior, the PHA may choose to continue the prohibition for a longer period of time. 960.203 (c) and 966.4 (f)</li> </ul>	<ul style="list-style-type: none"> <li>Where a statute requires the PHA to prohibit admission for a prescribed period of time after some disqualifying behavior, the owner may choose to continue the prohibition for a longer period of time. 5.852 (d)</li> </ul>	<ul style="list-style-type: none"> <li>If a statute requires the owner to prohibit admission for a prescribed period of time after some disqualifying behavior, the owner may choose to continue the prohibition for a longer period of time. 5.852 (d)</li> </ul>	



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Nondiscrimination	<ul style="list-style-type: none"> <li>▪ The <b>owner's</b> termination of assistance must be consistent with fair housing and equal opportunity provisions. 982.310 (h)</li> <li>▪ The <b>PHA's</b> admission and eviction actions must be consistent with fair housing and equal opportunity provisions. 982.552 (v)</li> <li>▪ An <b>owner may</b> consider participation in or completion of a supervised drug rehabilitation program if denial of admission or termination of tenancy is based on illegal use of drugs or alcohol abuse and the family member is no longer engaged in using the substance. 982.310(h)</li> <li>▪ A <b>PHA may</b> consider participation in or completion of supervised drug rehabilitation program if denial of admission or termination of tenancy is based on illegal use of drugs or alcohol abuse and the family member is no longer engaged in using the substance. 982.552 (c)</li> </ul>	<p>The <b>PHA's</b> admission and eviction actions must be consistent with fair housing and equal opportunity provisions. 966.4 (f)</p> <ul style="list-style-type: none"> <li>▪ A <b>PHA may</b> consider participation in or completion of supervised drug rehabilitation program if denial of admission is based on illegal use of drugs or alcohol abuse and the family member is no longer engaged in using the substance. 960.203 (d) and 966.4 (f)</li> <li>▪ The <b>PHA may</b> require the applicant to submit verification of rehabilitation. 960.203 (d) and 966.4 (f)</li> <li>▪ <b>PHAs may</b> consider, in accordance with the agency's policies, practices, and procedures, factors that might indicate a reasonable probability of favorable future conduct. Examples include evidence of rehabilitation or willingness to participate in counseling. 960.203 (d)</li> </ul>	<p>Owner admission and eviction actions <i>must</i> be consistent with fair housing and equal opportunity provisions. 5.852 (e)</p> <ul style="list-style-type: none"> <li>▪ An <b>owner may</b> consider participation in or completion of a supervised drug rehabilitation program if denial of admission or termination of tenancy is based on illegal use of drugs or alcohol abuse and the family member is no longer engaged in using the substance. 5.852 (c)</li> <li>▪ The <b>owner may</b> require the applicant or tenant to submit verification of rehabilitation or participation in program. 5.852 (c)</li> </ul>	
<p><b>TERMINATING TENANCY: LEASE REQUIREMENTS AND TERMINATION ACTIONS</b></p> <p>Conviction for manufacturing methamphetamine on the premises of federally assisted housing</p>	<p>The <b>PHA must</b> immediately terminate assistance if the <b>PHA</b> determines that any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine <b>on the premises</b> of federally assisted housing. 982.553 (b)</p>	<p>The <b>PHA must</b> immediately terminate assistance if the <b>PHA</b> determines that any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine <b>on the premises</b> of federally assisted housing. 966.4 (f)</p>	<ul style="list-style-type: none"> <li>▪ The <b>PHA must</b> immediately terminate assistance if the <b>PHA</b> determines that any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine <b>on the premises</b> of federally assisted housing. 882.518 (c)</li> </ul>	

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<p>Evicting drug criminals due to drug crime</p>	<ul style="list-style-type: none"> <li>▪ The lease must state that drug-related criminal activity <b>in, on or near the premises</b> by any tenant, household member, or guest is grounds for the owner to terminate the tenancy. 982.310 (c)</li> <li>▪ In addition, such activity by any other person under the tenant's control, <b>on the premises</b> is grounds for terminating the tenancy. 982.310 (c)</li> <li>▪ The PHA <i>must</i> establish standards that allow the PHA to terminate assistance for a family if the PHA determines that any household member is currently engaged in any illegal use of a drug or a pattern of illegal use of a drug that <b>interferes</b> with the health, safety, or right of peaceful enjoyment of the premises by other residents. 982.553 (b)</li> </ul>	<ul style="list-style-type: none"> <li>▪ The lease <i>must</i> state that drug-related criminal activity engaged <b>in, on, or off the premises</b>, is grounds for termination of tenancy if the tenant, a household member, a guest engages in such activity. 966.4 (f)</li> <li>▪ The lease must also state that if another person under the tenant's control engages in such activity <b>on the premises</b>, the activity is grounds for the PHA to terminate tenancy. 966.4 (f)</li> </ul>	<ul style="list-style-type: none"> <li>▪ The lease <i>must</i> state that 1) drug-related criminal activity engaged <b>in, on, or near the premises</b>, by the tenant, a household member, of a guest, is grounds for termination of tenancy, and that 2) if any person under the tenant's control engages in such activity <b>on the premises</b>, it is grounds for termination. 5.858</li> </ul>	<ul style="list-style-type: none"> <li>▪ The lease <i>must</i> state that drug-related criminal activity engaged <b>in, on, or near the premises</b>, is grounds for termination of tenancy if the tenant, a household member, or guest engages in the activity. In addition, if any other person under the tenant's control engages in drug-related criminal activity <b>on the premises</b>, it is grounds for termination. 882.511(a)</li> <li>▪ The PHA <i>may</i> terminate assistance for drug related criminal activity engaged <b>in, on, or near the premises</b> by the tenant, household member, or guest or any such activity engaged in <b>on the premises</b> by any other person under the tenant's control. 882.518(c)</li> </ul>
<p>Illegal use of drug or pattern of illegal use</p>	<ul style="list-style-type: none"> <li>▪ The lease <i>must</i> provide that the owner <i>may</i> evict if household member is illegally using a drug or if an established pattern of illegal use of a drug <b>interferes</b> with the health, safety, or right of peaceful enjoyment of premises by others. 982.310 (c)</li> <li>▪ The PHA <i>must</i> establish standards that allow the PHA to terminate assistance for a family currently engaged in any illegal use of a drug, or a pattern of illegal use of a drug <b>interferes</b> with the health, safety or right to peaceful enjoyment of the premises by other residents. 982.553(b)</li> </ul>	<p>The lease <i>must</i> provide that the PHA <i>may</i> terminate assistance if the PHA determines that a household member is illegally using a drug or when the PHA determines that a pattern or illegal use of a drug <b>threatens</b> the health, safety, or right to peaceful enjoyment of the premises by other residents. 966.4 (f)</p>	<p>The lease <i>must</i> permit eviction if a household member is illegally using a drug or if a pattern of illegal use of a drug <b>interferes</b> with the health, safety, or right of peaceful enjoyment of the premises by other residents. 5.858</p>	<ul style="list-style-type: none"> <li>▪ The lease <i>must</i> permit eviction if household member is illegally using a drug or if an established pattern of illegal use of a drug <b>interferes</b> with the health, safety, or right of peaceful enjoyment of premises by other residents. 882.511 (a)</li> <li>▪ The PHA <i>may</i> terminate assistance if a household member is illegally using a drug or when the PHA determines that a pattern of illegal use of a drug <b>interferes</b> with the health, safety or right to peaceful enjoyment of the premises by other residents. 882.518 (c)</li> </ul>

TOPIC	TENANT-BASED SECTION 8	PUBLIC HOUSING	OTHER FEDERALLY ASSISTED PROJECTS (EXCLUDING TENANT-BASED, PUBLIC HOUSING AND MOD REHAB)	MODERATE REHABILITATION
Fugitive felon or parole violator	<p>The lease <i>must</i> provide that the owner <i>may</i> terminate assistance if a tenant is fleeing to avoid prosecution, or custody or confinement after conviction for a crime that is a felony under the laws of the place the individual is fleeing (except New Jersey where it is a high misdemeanor). In addition, the lease <i>must</i> provide that the <b>owner may</b> terminate the tenancy if a tenant is violating a condition of probation or parole imposed under Federal or State law. 982.310 (c)</p>	<p>The PHA may terminate the tenancy if a tenant is fleeing to avoid prosecution, or custody or confinement after conviction for a crime that is a felony under the laws of the place the individual is fleeing (except New Jersey where it is a high misdemeanor). In addition, the PHA <i>may</i> terminate the tenancy if a tenant is violating a condition of probation or parole imposed under Federal or State law. 966.4 (f)</p>	<p>The lease <i>must</i> permit termination of tenancy if the tenant is fleeing to avoid prosecution, custody, or confinement after conviction for a felony (or high misdemeanor in New Jersey) or if the tenant is violating a condition of parole or probation under Federal or State law. 5.859 (b)</p>	<ul style="list-style-type: none"> <li>The PHA <i>may</i> terminate assistance if the PHA determines that a member of the household is fleeing to avoid prosecution, or custody or confinement after conviction for a crime that is a felony under the laws of the place the individual is fleeing (except New Jersey where it is a high misdemeanor.) The PHA <i>may</i> terminate assistance if a member of the household is violating a condition of probation or parole imposed under Federal or State law. 882.518 (c)</li> </ul>
Threat to other residents	<ul style="list-style-type: none"> <li>The lease <i>must</i> permit the owner to terminate the tenancy for any criminal activity by a covered person that <b>threatens</b>: 1) the health, safety, or right to peaceful enjoyment of the premises by other residents (including staff residing on premises); 2) the health safety or right to peaceful enjoyment of those residing <b>in the immediate vicinity</b> of the premises; or 3) any violent criminal activity <b>on or near the premises</b> by tenant, guest or 4) by any other person under the tenant's control <b>on the premises</b>. 982.310 (c)</li> </ul>	<ul style="list-style-type: none"> <li>The lease <i>shall</i> provide that the tenant shall be obligated to assure that no tenant, member of the tenant's household or guest engages in any criminal activity that threatens the health safety or right to peaceful enjoyment of the premises by other residents or any drug-related criminal activity <b>on or off the premises</b>; and <ul style="list-style-type: none"> <li>To assure that no other person under the tenant's control engages in any activity that threatens the health safety or right to peaceful enjoyment of the premises by other residents or any drug-related criminal activity <b>on the premises</b>. 966.4 (f)</li> </ul> </li> </ul>	<p>The lease <i>must</i> permit the owner to terminate the tenancy for any criminal activity by a covered person that <b>threatens</b>: 1) the health safety or right to peaceful enjoyment of the premises by other residents (including staff residing on premises); or 2) the health safety or right to peaceful enjoyment of those residing <b>in the immediate vicinity</b> of the premises. 5.859 (a)</p>	<p>The PHA <i>must</i> establish standards that allow the PHA to terminate assistance for a family if any household member is engaged in criminal activity that <b>threatens</b> the health, safety, or right of peaceful enjoyment of the premise by other residents or by persons <b>residing in the immediate vicinity</b>. 882.518 (c)</p>

TOPIC	TENANT-BASED SECTION 8	PUBLIC HOUSING	OTHER FEDERALLY ASSISTED PROJECTS (EXCLUDING TENANT-BASED, PUBLIC HOUSING AND MOD REHAB)	MODERATE REHABILITATION
Evicting alcohol abusers	<ul style="list-style-type: none"> <li>The PHA <i>must</i> establish standards that allow termination of tenancy if the PHA determines that a household member's abuse or pattern of abuse of alcohol may <b>threaten</b> the health, safety, or right to peaceful enjoyment of the premises by other residents. 982.553 (b)</li> </ul>	<ul style="list-style-type: none"> <li>The PHA <i>must</i> establish standards that allow termination of tenancy if the PHA determines that a household member's abuse or pattern of abuse of alcohol <b>threatens</b> that health, safety, or right to peaceful enjoyment of the premises by other residents. 966.4 (f)</li> <li>The PHA <i>must</i> establish standards allowing termination of tenancy if the tenant furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation. 966.4 (f)</li> </ul>	<ul style="list-style-type: none"> <li>The owner's lease <i>must</i> include provisions to evict if a household member's use or abuse of alcohol <b>threatens</b> the health, safety, or right to peaceful enjoyment of the premises by other residents. 5.860</li> </ul>	The PHA <i>must</i> establish standards that allow termination of assistance for a family if the PHA determines that a household member's abuse or pattern of abuse of alcohol <b>threatens</b> that health, safety, or right to peaceful enjoyment of the premises by other residents. 882.518 (c)
Evidence needed for eviction or termination	<ul style="list-style-type: none"> <li>The owner <i>may</i> terminate the tenancy and evict the tenant by judicial action for criminal activity regardless of whether the covered person has been arrested or convicted for such activity without satisfying the standard of proof used for criminal conviction. 982.310 (c)</li> <li>The PHA <i>may</i> terminate assistance for criminal activity based on a "preponderance of the evidence" that a household member has engaged in the criminal activity regardless of whether the household member has been arrested or convicted for such activity. 982.553 (c)</li> </ul>	The PHA <i>may</i> evict the tenant by judicial action for criminal activity regardless of whether the covered person has been arrested or convicted for such activity without satisfying the standard of proof used for criminal conviction. 966.4 (f)	The owner <i>may</i> terminate tenancy and evict the tenant through judicial action if the owner determines that the person has engaged in criminal activity. The owner does not need an arrest or conviction to pursue an eviction for criminal activity nor is there any need to satisfy a criminal conviction standard of proof. 5.861	The PHA <i>may</i> terminate assistance for criminal activity based on a "preponderance of the evidence" that a covered person has engaged in the criminal activity regardless of whether the household member has been arrested or convicted for such activity. 882.518 (c)
<b>ACCESS TO CRIMINAL RECORDS</b>				
Access to criminal conviction records	<ul style="list-style-type: none"> <li>PHAs (but not owners) have authority to obtain criminal conviction records from the National Crime Information Center (NCIC), police departments and other law enforcement agencies. 5.903 (a)</li> <li>To obtain criminal history records, <b>every</b> applicant family member (18 years of age or older) <i>must</i> sign a release form for the search of criminal records. 5.903 (b)</li> </ul>	<ul style="list-style-type: none"> <li>PHAs (but not owners) have authority to obtain criminal conviction records from the National Crime Information Center (NCIC), police departments and other law enforcement agencies. 5.903 (a)</li> <li>To obtain criminal history records, <b>every</b> applicant family member (18 years of age or older) <i>must</i> sign a release form for the search of criminal records. 5.903 (b)</li> </ul>	<ul style="list-style-type: none"> <li>Owners <i>may</i> request a PHA to obtain criminal conviction records regarding applicants or residents of the owner's federally assisted housing. 5.903 (d)</li> <li>The PHA <i>must</i> request provide the records but <i>may</i> charge the owner a reasonable fee for the cost of obtaining the criminal records. 5.903 (d)</li> <li>The PHA determines the appropriate source for obtaining the</li> </ul>	<ul style="list-style-type: none"> <li>PHAs have authority to obtain criminal conviction records from the National Crime Information Center (NCIC), police departments and other law enforcement agencies. 5.903 (a)</li> <li>To obtain criminal history records, <b>every</b> applicant family member (18 years of age or older) <i>must</i> sign a release form for the search of criminal records. 5.903 (b)</li> </ul>

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	<ul style="list-style-type: none"> <li>▪ The law enforcement agency is required to release information “promptly” but may charge a fee for the service. 5.903 (c)</li> <li>▪ The regulation does not prohibit PHAs from gathering or using criminal history information from other sources (such as the Internet or private databanks.) If PHAs obtain criminal history information from other sources, the regulatory provisions for handling the data do not apply. 5.901 (c) and 5.905 (c)</li> <li>▪ The PHA <i>must</i> obtain criminal conviction records, when requested, for the owner of a federally assisted housing. The PHA <i>may</i> charge the owner a reasonable fee for the cost of obtaining the criminal records. 5.903 (d)</li> <li>▪ The PHA determines the appropriate source for obtaining the records. 5.903 (d)</li> </ul>	<ul style="list-style-type: none"> <li>▪ The law enforcement agency is required to release information “promptly” but may charge a fee for the service. 5.903 (c)</li> <li>▪ The regulation does not prohibit PHAs from gathering or using criminal history information from other sources (such as the Internet or private databanks.) If PHAs obtain criminal history information from other sources, the regulatory provisions for handling the data do not apply. 5.901 (c)</li> <li>▪ The PHA <i>must</i> obtain criminal conviction records, when requested, for the owner of a federally assisted housing. The PHA <i>may</i> charge the owner a reasonable fee for the cost of obtaining the criminal records. 5.903 (d)</li> <li>▪ The PHA determines the appropriate source for obtaining the records. 5.903 (d)</li> </ul>	<p>appropriate source for obtaining the records. 5.903 (d)</p>	<ul style="list-style-type: none"> <li>▪ The law enforcement agency is required to release information “promptly” but may charge a fee for the service. 5.903 (c)</li> <li>▪ The regulation does not prohibit PHAs from gathering or using criminal history information from other sources (such as the Internet or private databanks.) If PHAs obtain criminal history information from other sources, the regulatory provisions for handling the data do not apply. 5.901 (c)</li> </ul>

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<p>Owner request to PHA for criminal conviction records</p>	<ul style="list-style-type: none"> <li>▪ Owners (excludes section 8 tenant-based owners; includes project-based section 8) may request that a PHA obtain criminal conviction records regarding applicants or residents of the owner's properties. The PHA must request the records as requested, but may charge a fee for doing so. 5.903 (d)</li> <li>▪ When the PHA obtains criminal conviction records at the request of an owner, the PHA <i>must</i> determine if the criminal conviction records "may be basis for applicant screening, lease enforcement or eviction" under HUD regulations and the owner's criteria (as provided by the owner with the request for the records.) The household member's consent form must accompany the owner's record request. 5.903 (d)</li> <li>▪ The PHA <i>must not</i> disclose the contents of the criminal record to the owner unless the owner is proceeding with a judicial eviction process. 5.903 (d) and (e)</li> <li>▪ If the owner requests the records for a judicial eviction, the owner must provide the PHA with a certification that the criminal records are necessary to proceed with the eviction. 5.903 (e)</li> <li>▪ The PHA is "not responsible for controlling access to knowledge of such records" after disclosure to the owner. 5.903 (e)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Owners (excludes section 8 tenant-based owners; includes project-based section 8) may request that a PHA obtain criminal conviction records regarding applicants or residents of the owner's properties. The PHA must request the records as requested, but may charge a fee for doing so. 5.903 (d)</li> <li>▪ When the PHA obtains criminal conviction records at the request of an owner, the PHA <i>must</i> determine if the criminal conviction records "may be basis for applicant screening, lease enforcement or eviction" under HUD regulations and the owner's criteria (as provided by the owner with the request for the records.) The household member's consent form must accompany the owner's record request. 5.903 (d) and (e)</li> <li>▪ The PHA <i>must not</i> disclose the contents of the criminal record to the owner unless the owner is proceeding with a judicial eviction process. 5.903 (d)</li> <li>▪ If the owner requests the records for a judicial eviction, the owner must provide the PHA with a certification that the criminal records are necessary to proceed with the eviction. 5.903 (e)</li> <li>▪ The PHA is "not responsible for controlling access to knowledge of such records" after disclosure to the owner. 5.903 (e)</li> </ul>	<ul style="list-style-type: none"> <li>▪ The PHA <i>must</i> determine and notify the owner "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" under HUD regulations and the owner's criteria (as provided by the owner with the request for the record.) 5.903 (d)</li> <li>▪ The household member's consent form must accompany the owner's record request. 5.903 (d)</li> <li>▪ The PHA <i>must not</i> disclose the contents of the criminal record to the owner unless the owner is proceeding with a judicial eviction process. 5.903 (d)</li> <li>▪ If the owner requests the records for a judicial eviction, the owner must provide the PHA with a certification that the criminal records are necessary to proceed with the eviction. 5.903 (e)</li> <li>▪ The PHA is "not responsible for controlling access to knowledge of such records" after disclosure to the owner. 5.903 (e)</li> </ul>	

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Use of criminal conviction records	<ul style="list-style-type: none"> <li>▪ The PHA may use information to screen applicants and to enforce lease compliance, and to support eviction actions in project-based Section 8 programs (including new construction and substantial rehabilitation.) 5.903</li> <li>▪ PHAs may not use criminal conviction records for lease enforcement or eviction of residents receiving <b>Section 8 tenant-based</b> assistance but may use the information for screening applicants to the program. 5.903 (e)</li> </ul>	<ul style="list-style-type: none"> <li>▪ PHAs may use criminal history information and conviction records to screen applicants, to enforce lease provisions, and for use in eviction actions. 5.903 (e)</li> </ul>	<ul style="list-style-type: none"> <li>▪ The owner may use the criminal history information provided by the PHA records for screening applicants, enforcing lease provisions, or commencing eviction proceedings. 5.903 (d)</li> </ul>	<p>PHAs may use criminal history information and conviction records to screen applicants, and for use in eviction actions. 5.903 (e)</p>
Records management and penalties for improper release of information	<ul style="list-style-type: none"> <li>▪ PHA must ensure that any criminal records received by the PHA under the regulatory provisions 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 (g)</li> <li>▪ Criminal penalty: conviction for a misdemeanor and imposition of a penalty of not more than \$5,000 for knowingly and willfully accessing or disclosing or misusing criminal history information in an unauthorized manner. 5.903 (h)</li> <li>▪ Civil liability: an applicant or tenant may bring civil action against PHA or person in district court. 5.903 (h)</li> </ul>	<ul style="list-style-type: none"> <li>▪ PHA must ensure that any criminal records received by the PHA under the regulatory provisions 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 (g)</li> <li>▪ Criminal penalty: conviction for a misdemeanor and imposition of a penalty of not more than \$5,000 for knowingly and willfully accessing or disclosing or misusing criminal history information in an unauthorized manner. 5.903 (h)</li> <li>▪ Civil liability: an applicant or tenant may bring civil action against PHA or person in district court. 5.903 (h)</li> </ul>	<p>Criminal penalty: Conviction for a misdemeanor and imposition of a penalty of not more than \$5,000 is the potential for 1) 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 tenant of, covered housing assistance under the authority of this section under false pretenses; or 2) 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. 5.903(h)</p>	<ul style="list-style-type: none"> <li>▪ PHA must ensure that any criminal records received by the PHA under the regulatory provisions 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 (g)</li> <li>▪ Criminal penalty: conviction for a misdemeanor and imposition of a penalty of not more than \$5,000 for knowingly and willfully accessing or disclosing or misusing criminal history information in an unauthorized manner. 5.903 (h)</li> <li>▪ Civil liability: an applicant or tenant may bring civil action against PHA or person in district court. 5.903 (h)</li> </ul>

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Opportunity to dispute	<ul style="list-style-type: none"> <li>▪ Before denying admission or terminating tenancy, the PHA <i>must</i> provide the subject of the record, (and the applicant or the household) with a copy of the criminal conviction record. The PHA <i>must</i> notify the family of the proposed action, and <i>must</i> provide the family an opportunity to contest the accuracy and relevance of the information. 5.903 (f) and 982.553 (d)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Before denying admission, beginning an eviction proceeding or using the criminal conviction information for lease enforcement actions, the PHA <i>must</i> give the family a copy of the criminal conviction record, must notify the family of the proposed action, and <i>must</i> provide the family an opportunity to contest the accuracy and relevance of the information. 5.903 (f), 960.204 (c) and 966.4 (f)</li> </ul>		
Cost for criminal records	The PHA <i>may not</i> pass along to the applicant the costs of a criminal records check. 982.553 (d)	The PHA <i>may not</i> pass along to the applicant the costs of a criminal records check. 960.204 (c) 966.4 (f)		

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