

SCREENING AND EVICTION FOR DRUG ABUSE AND OTHER CRIMINAL ACTIVITY (SEDACA) POLICY

I. INTRODUCTION

The Final Rule for Screening and Eviction for Drug Abuse and other Criminal Activity (SEDACA) published in the Federal Register on May 24, 2001 amends the 1996 Extension Act and the 1998 Quality Housing and Work Responsibility Act for the Public Housing and Section 8 assisted housing programs.

The SEDACA amendments give public housing agencies (PHAs) and assisted housing owners the tools for adopting and implementing fair, effective, and comprehensive policies for screening program applicants and for evicting or terminating assistance of persons who engage in illegal drug use, alcohol abuse, or other criminal activity. The Fort Worth Housing Authority (FWHA) will adhere to SEDACA as set forth in this policy.

FWHA shall consider the requirements of the FWHA Violence Against Women Act (VAWA) policy when enforcing the SEDACA policy.

II. ADMINISTRATION

- A. The provisions for the implementation of this policy shall be reflected in the terms and conditions of the Lease Agreement and the Admissions Policy for all residents of Public Housing and the Housing Choice Voucher (formerly Section 8) Administrative Plan for voucher applicants/participants.
- B. The Safety and Crime Management Division shall be responsible for obtaining all criminal history reports. The applicant shall not be charged for any costs incurred by obtaining said reports.
- C. FWHA program staff shall be responsible for obtaining relevant information from the applicant, resident, participant, former landlord, neighbors, informants, newspaper, police incident reports, or other reliable sources deemed appropriate by FWHA.
- D. All information received shall be examined and evaluated by appropriate FWHA staff.
- E. Applications shall be withdrawn in a fair and consistent manner to ensure the procedure does not discriminate on the basis of race, color, religion, sex, national or ethnic origin, familial status, disability, or sexual orientation.

- F. Eviction and termination procedures are to be fair and consistent. Public housing residents are permitted due process through the Grievance Policy as established under the Admissions and Occupancy Policy. Housing Choice Voucher (HCV) participants are permitted due process through the FWHA Informal Hearing Policy as established under the HCV (Section 8) Administrative Plan.
- G. The SEDACA policy will be posted on the agency's bulletin board and website. Upon request copies will be made readily available to applicants, residents, and/or program participants.

III. SCREENING

A. Applicants

FWHA will screen all public housing and Housing Choice Voucher (HCV) applicants and members of the applicant household 16 years of age or older to determine if any household member is currently engaging in, or has engaged in, one or more of the following:

- (1) Drug-related criminal activity;
 - Persons who have been evicted from any federal housing assisted program for drug related activity.
 - Persons who have been convicted of drug related criminal activity that includes the illegal manufacture, sale, or production of methamphetamine on the premises of any federal assisted or other property.
 - Evidence of a drug-related criminal activity which includes 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 controlled substance.
- (2) Violent criminal activity;
 - A history of any violent criminal activity that includes the use, attempted use, or threatened use of physical force substantial enough to cause or be reasonably likely to cause serious bodily injury or property damage.
- (3) Other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents

- For public housing only, a history of any other criminal activity by a household that is defined as a felony by local law enforcement.
- (4) Other criminal activity that would threaten the health or safety of the PHA owner or any employee, contractor, subcontractor, or agent of the PHA or owner who is involved in the housing operations.
- Acts of verbal or physical confrontation or violence towards management, maintenance, or security personnel.
- (5) Alcohol abuse
- A history of alcohol abuse or pattern of abuse, by any household member that may threaten the health, safety or right to peaceful enjoyment of the premises by other residents.

B. Residents/Participants

- (1) FWHA reserves the right to apply the screening criteria to Public Housing residents, Housing Choice Voucher participants, and members of their household 16 years of age or older at any time the housed family has requested to add a member (16 years of age or older) to the household.
- (2) FWHA reserves the right to conduct a criminal background check on all household members 16 years of age or older annually if permitted in the Admissions and Occupancy Policy and the HCVP Administrative Plan.
- (3) If at any time during program participation, FWHA has reasonable cause (e.g., newspaper articles, credible informants, police reports, or any other information) to believe that a household member is engaging in drug-related or other criminal activity, which would pose a threat to the health, safety, or right to peaceful enjoyment of the premises by other residents or agency employees, the agency will run a criminal background check on all household members 16 years of age or older.

IV. **INELIGIBILITY FOR ADMISSIONS & CONTINUED OCCUPANCY**

- A. The existence of any of the following behavior by applicant, tenant, program participant, live-in aide, guest, any household member, or other person under the tenant's/ participant's control, regardless of the tenant's/participant's knowledge of the household members' guest's, or other person's behavior, shall require the denial and/or termination of assistance. Conviction of a crime is not required in order for assistance to be denied or occupancy to be terminated.
- (1) Manufacturing or producing methamphetamine on the premises of federally assisted housing.
 - (2) Any household member who is subject to a lifetime registration requirement under a state sex offender registration program.
 - (3) Current abuse of alcohol or use of illegal drugs.
- B. Any of the following conduct committed by an applicant, tenant or participant, household member or guest, regardless of the date committed:
- (1) Murder
 - (2) Kidnapping
 - (3) Indecency with a child
 - (4) Rape or crimes of sexual assault
 - (5) Arson
- C. Any type of drug-related criminal activity by the applicant/tenant, program participant, household member, or guests within ten (10) years will result in denial of admission or continued occupancy in FWHA housing programs. The ten-year period begins on the date of the offense and must include at least three (3) years without incarceration or additional arrests. The term "drug-related criminal activity" means:
- The manufacture, sale, distribution, or use of an illegal drug, or;
 - The possession with the intent to manufacture, sell, distribute or use an illegal drug.
 - Eviction from Federally Assisted Housing for drug-related criminal activities.

"Eviction" includes program participants who received eviction notice and/or moves without explanation prior to or during eviction process as a result of involvement in drug related, violent or other criminal activity,

which posed a threat to health, safety and right to peaceful enjoyment of the premises by others.

An otherwise-eligible family who was evicted from federally-assisted housing for drug-related criminal activity may be admitted if the household member engaged in the criminal activity satisfactorily meets evidence of rehabilitation as described in Section IV.E, or if the circumstances leading to the eviction no longer exist (e.g. the individual involved in drugs is no longer in the household).

- D. Any of the following types of conduct committed by an applicant/tenant, program participant, household member, or guests within ten (10) years will result in denial of admission or continued occupancy in FWHA housing programs. The ten-year period begins on the date of the offense and must include at least three (3) years without incarceration or additional arrests. Conviction of a crime is not required in order for assistance to be denied or occupancy to be terminated.
- (1) Manslaughter;
 - (2) Robbery;
 - (3) Illegal possession/discharge/display/carrying of firearm or illegal weapon/deadly weapon;
 - (4) Assault, aggravated assault, assault by threat, stalking; and
 - (5) Physical violence to persons or property, or criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.
- E. Admission for Public Housing or Housing Choice Voucher Program will be denied if during screening process an applicant has evidenced a pattern or history of continuing conduct/acts, regardless of type or severity which may interfere with the health, safety or right to peaceful enjoyment of the premises by others, unless the family has provided satisfactory evidence of rehabilitation. Such conduct includes:
- (1) A pattern of past conduct of illegal use of controlled substances; and;
 - (2) Past conduct of abuse or pattern of abuse of alcohol;
 - (3) A pattern of theft or fraud;
 - (4) A pattern of burglary or automobile theft;

- (5) Threatened abuse or violent behavior towards FWHA staff, management, maintenance, or security personnel.
- (6) Acts of prostitution and/or a pattern of prostitution.

This section also applies to current tenants of public housing and program participants in the Housing Choice Voucher Program.

F. Satisfactory evidence of rehabilitation may include the following:

- (1) Evidence of completion of an appropriate substance abuse rehabilitation program and no additional involvement in such behavior for one (1) year.
- (2) Results of current drug testing, showing no positive test results for at least one (1) year.
- (3) For Public Housing, evidence of a stable rental and/or financial history for one to five years.
- (4) Certification by a parole or probation officer demonstrating current compliance with parole or probation requirements.
- (5) Certification of completion of any relevant behavior modification/counseling course.
- (6) Reports and/or letters from social service agencies or case managers who have been working with the applicant for the past twelve (12) months.

The applicant/participant may provide any other written documentation from any reliable source that may be deemed appropriate for determination of eligibility. FWHA will be the final judge of what constitutes adequate and credible documentation.

V. DENIAL/EVICTION/TERMINATION PROCESS

- A. Written withdrawal, eviction, and termination of assistance notices are issued in accordance with the FWHA Occupancy Policy, Public Housing Lease, or the HCV Administrative Plan.
- B. Eviction and termination procedures are to be fair and consistent. Public housing residents are permitted due process through the Grievance Policy as established under the Admissions Policy. HCV participants are

permitted due process through the FWHA Informal Hearing Policy as established under the HCV Administrative Plan.

- C. Consideration may be given to extenuating circumstances surrounding crimes in Section IV.B. The Senior Vice President of Housing Operations and the Vice President of Assisted Housing may make exceptions based on the extenuating circumstances.

VI. RECORDS MANAGEMENT

- A. FWHA will use criminal records from law enforcement agencies to screen applicants for admission to public and assisted housing programs.
- B. FWHA may disclose criminal records to officers, employees or authorized representatives of FWHA who have job-related need to have access to the information.
- C. All criminal reports received will be maintained in a confidential manner.
- D. If the applicant is determined to be eligible, the criminal history report shall be shredded in accordance with policies outlined in the Admissions and Continued Occupancy Policy and HCV Administrative Plan. If the applicant is denied housing, the criminal history report shall be shredded upon completion of the hearing or due process procedure when a final decision has been made.
- E. When an applicant has been denied assistance, a public housing resident has been evicted, or a HCV participant's rental assistance has been terminated, the agency will document the circumstances of the criminal report, and the date the report was destroyed in the client file.
- F. Legal penalties for misuse are contained in Section 411.085 of the Texas Government Code. Misuse or improper dissemination of the above information will be grounds for termination of employment.

VII. DEFINITIONS OF CRIMINAL HISTORY

Adult means 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.

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

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Covered person, for purposes of 24 CFR 5, subpart I, and parts 966 and 982, means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.

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Criminal history is defined as: Criminal background histories that show activity by the applicant, household members, live-in aide, or guests in drug-related criminal activity; criminal activity involving crimes of physical violence to persons or property; or activity that has as one of its elements the use, attempted use, or threatened use of physical force against a person or property of another; other criminal or drug-related criminal activity which leads to a reasonable cause to believe the person's behavior would adversely affect the health, safety, or welfare of other tenants or neighbors, current use by applicant or household members of illegal controlled substances; or pattern of illegal use by the applicant or household members of a controlled substance, or abuse or pattern of abuse of alcohol, which may interfere with the health, safety, or right to peaceful enjoyment of the premises by others.-

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Currently engaging in is with respect to behavior such as illegal use of a drug, other drug-related criminal activity, or other criminal activity, *currently engaging in* means that the individual has engaged in the behavior recently enough to justify a reasonable belief that the individual's behavior is current.

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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.

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Guest, only for purposes of 24 CFR part 5, subparts A and I, and parts 882, 960, 966, and 982, 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. The requirements of parts 966 and 982 apply to a guest as so defined.

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Household, for purposes of 24 CFR part 5, subpart I, and parts, 960, 966, 882, and 982, means the family and PHA-approved live-in aide.

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

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Other person under the tenant's control, for the purposes of the definition of *covered person* and for parts 5, 882, 966, and 982 means that the person, although not staying as a guest (as defined in this section) in the unit, is, or was at the time of the activity in question, on the premises (as *premises* is defined in this section) 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. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purpose is not *under the tenant's control*. *Premises*, for purposes of 24 CFR part 5, subpart I, and parts 960 and

966, means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

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Owner means the owner of federally assisted housing or owner participating in a tenant-based assistance program.

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Responsible entity for the Section 8 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 federally assisted housing, the responsible entity means the owner of the housing.

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Ten-year period refers to the ten (10) years from the date of an offense. The 10-year period MUST include at least 3 years since incarceration or else 3 years post-incarceration time is additional. Example: 1) Offense occurs 10/1/2000, applicant is released from incarceration in 2005. The applicant would not be eligible until 2010, whether still on parole or not. 2) Offense occurs 10/1/2000, applicant is released 2010 from incarceration. Applicant is not eligible until 2013.

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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, serious bodily injury or property damage.

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