

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 out program applicants and for evicting or terminating assistance of persons who engage in illegal drug use, alcohol abuse, or other criminal activity. Fort Worth Housing Solutions (FWHS) will adhere to SEDACA as set forth in this policy.

FWHS shall consider the requirements of FWHS 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. FWHS designated staff shall be responsible for obtaining all criminal history reports. The applicant/tenant shall not be charged for any costs incurred by obtaining said reports.
- C. FWHS 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 FWHS.
- D. All information received shall be examined and evaluated by appropriate FWHS 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- E. Applications shall be withdrawn in a fair and consistent manner to ensure the procedure does not discriminate on the basis of race, color, religion, sex, national or ethnic origin, familial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 actual or perceived sexual orientation or gender identity.
- 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 FWHS 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, and upon request copies will be made readily available to applicants, residents, and/or program participants.

III. SCREENING

A. Applicants

FWHS will screen all public housing and Housing Choice Voucher (HCV) applicants and members of the applicant household 18 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 an 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) FWHS reserves the right to apply the screening criteria to Public Housing residents, Housing Choice Voucher participants, and members of their household 18 years of age or older at any time the housed family has requested to add a member (18 years of age or older) to the household.
- (2) FWHS reserves the right to conduct a criminal background check on all household members 18 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, FWHS 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 18 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. Corroborating evidence may be used prior to conviction including but not limited to police testimony, eye-witness testimony,

defendant's admission and other documentation with a preponderance of evidence of guilt.

- (1) Manufacturing or producing methamphetamine on the premises of federally assisted housing.
- (2) Any household member who is currently subject to any 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, will result in denial and/or termination of assistance:

- (1) Murder
- (2) Kidnapping
- (3) Rape or crimes of sexual assault
- (4) Indecency with a child
- (5) Arson

However, at the sole discretion of the Vice President of Resident and Community Services and/or the Vice President of Assisted Housing, exceptions may be given based on the totality of the circumstances including corrective actions taken in accordance with the Re-entry policy set forth herein, and other FWHS policies.

C. **Any type of felony drug-related criminal activity by** the applicant/tenant, program participant, household member, or guests within the past five (5) years will result in denial of admission or continued occupancy in FWHS housing programs. The five-year period begins on the date of the offense. 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, **or** distribute **illegal** drugs.
- Eviction from Federally Assisted Housing for drug-related criminal activities.

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 five (5) years will result in denial of admission or continued occupancy in FWHS housing programs. The five-year period begins on the date of the offense. Conviction of a crime is not required in order for assistance to be denied or occupancy to be terminated. Corroborating evidence, including but not limited to police testimony, eye-witness testimony, admission of guilt, and other documentation with a preponderance of evidence of guilt, may be considered.
- (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 may be denied if during screening process an applicant has evidenced a pattern over last 5 years 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 FWHS 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 past 12 months.
- (2) Results of current drug testing, showing no positive test results for at least past 12 months.
- (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. FWHS will be the final judge of what constitutes adequate and credible documentation.

G. Admissions and continued occupancy eligibility criteria for applicants and participants in permanent supportive housing programs with active case management will be based on the requirements of the permanent supportive housing programs. Eligibility will be denied for the following reasons:

- (1) Manufacturing or producing methamphetamine on the premises of federally assisted housing.
- (2) Any household member who is currently subject to any registration requirements under a state sex offender registration program.

V. RE-ENTRY

Consideration will be given to ex-offenders transitioning back into the community from incarceration, allowing them to reunite with their families in public or assisted housing under the following circumstances:

- A. The ex-offender must be referred in writing by an office of the Department of Probation and Parole and be under their supervision.
- B. The ex-offender must engage in active case management by an agency that works with ex-offenders. Family members with whom the ex-offender plans to reunite may also be required to engage in case management.
- C. The ex-offender must demonstrate evidence of rehabilitation that is acceptable to the housing authority.
- D. The ex-offender must either be the spouse, parent, grandparent, child, grandchild or sibling of the head of household.
- E. The addition of the ex-offender to the household must not result in a need to increase the bedroom size of the family.
- F. The ex-offender must not have committed any crimes that would disqualify the person from admission to a FWHS housing program.
- G. The ex-offender must not currently abuse alcohol, use illegal drugs, or be involved in any illegal activity.

VI. DENIAL/EVICTION/TERMINATION PROCESS

- A. Written withdrawal, eviction, and termination of assistance notices are issued in accordance with FWHS 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 FWHS Informal Hearing Policy as established under the HCV Administrative Plan.

VII. RECORDS MANAGEMENT

- A. FWHS will use criminal records from law enforcement agencies to screen applicants for admission to public and assisted housing programs.
- B. FWHS may disclose criminal records to officers, employees or authorized representatives of FWHS 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.

VIII. 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.

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.

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.

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.

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 **felony possession or possession** of a drug with intent to manufacture, sell, distribute the drug.

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Five-year period refers to the five (5) years from the date of an offense.

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 and Annual Contributions Contract with HUD. For all other federally assisted housing, the responsible entity means the owner of the housing.

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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.

