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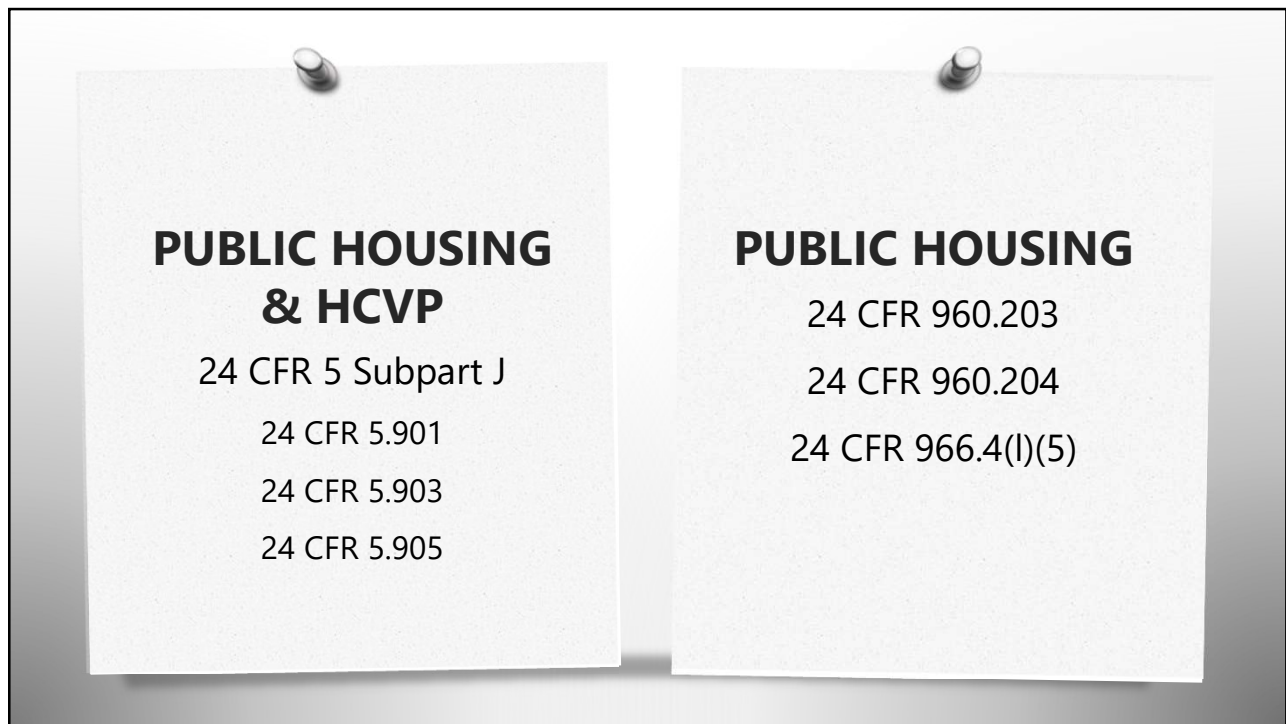
CRIMINAL HISTORY RECORDS

Presented by Derek Antoine

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**REGULATIONS –
PIH NOTICES**

**FAIR HOUSING
GUIDANCE**



CRIMINAL BACKGROUND

- **MUST** Perform a drug and criminal activity background check on each household member aged 18 and older **PRIOR** To determining eligibility
- **MUST** Require each adult household member to submit a consent form to obtain access

DRUG & CRIMINAL BACKGROUND CHECKS

→ Utilize State and National Databases

<http://www.nsopw.gov>

→ May request info from drug abuse treatment facility ONLY if PHA has adopted Policy A or Policy B as stated in 24 CFR 960.205(e)

5

NON-DISCRIMINATION

Admission processes **MUST** be consistent with all Fair Housing requirements



EQUAL HOUSING
OPPORTUNITY

FAIR HOUSING & NON-DISCRIMINATION

PHA Offices must have a posted policy on nondiscrimination, which must state that the PHA will not discriminate on the basis of:

RACE

COLOR

RELIGION

NATIONAL ORIGIN

SEX

FAMILIAL STATUS

DISABILITY

7

SCREENING FOR CRIMINAL ACTIVITY FAIR HOUSING IMPLICATIONS

- Discrimination against individuals
- Disparate impact
- State and local restrictions on PHA access to criminal records

8

CONSIDERATION OF CIRCUMSTANCES

- **MAY** consider all relevant circumstances when deciding whether to deny admission based on an applicant's history, except in those situations for which denial of admission is mandatory
- **MUST** consider the time, nature and extent of the applicant's conduct, including the seriousness of the offense
- **MAY** consider information that indicates, with reasonable probability, that the applicant will act favorably in the future

9

STANDARDS OF EVIDENCE

- There is no standard of evidence provided in the Public Housing regulations or in HUD guidance related to Public Housing
- Section 8 regulations use a preponderance of evidence as the evidence standard thus providing "Safe Harbor" for use in the PH program

10

WHAT TO CONSIDER



11

PIH NOTICE 2015-19

USE OF ARREST RECORDS IN HOUSING DECISIONS

- Applicability:
 - ✓ Denials
 - ✓ Terminations
- An arrest alone is not enough proof that a person engaged in criminal activity

12

PIH NOTICE 2015-19

USE OF ARREST RECORDS IN HOUSING DECISIONS

→ What you can do...

- ✓ Request a deposition of the case from the applicant/participant or the court itself
- ✓ Use arrest records to compile a "preponderance of evidence"
- ✓ Use arrest records, or other public sourced information, to trigger an inquiry into whether there is sufficient evidence to pursue denial or termination of assistance

13

PIH NOTICE 2015-19

USE OF ARREST RECORDS IN HOUSING DECISIONS

→ What does it all mean?

- ✓ Information is the key
- ✓ "One Strike" policies are becoming antiquated
- ✓ Totality of circumstances should be considered
- ✓ Housing as a path away from crime
- ✓ Suggestions/Best Practices for policy revisions

14

FAIR HOUSING CONSIDERATIONS

- When denying admission to the program, PHA must consider the reasons for "failure to act" if the applicant is:
 - ✓ Disabled
 - ✓ Survivor of violence/abuse (VAWA)

15

SCREENING FOR CRIMINAL ACTIVITY

- Four types of "Criminal Records"
 - ✓ Arrest records
 - ✓ Criminal court records
 - ✓ Corrections records
 - ✓ State criminal repository records
- PHA defines "reasonable time"

16

MANDATORY v. DISCRETIONARY

DENIALS & TERMINATIONS

MANDATORY DENIALS OF ADMISSION

Persons evicted for drug-
related criminal activity from
Federally assisted housing

For 3 years from date of
eviction



MANDATORY DENIALS OF ADMISSION

Persons currently engaging in
illegal use of a drug

"Currently engaged" – recently
enough to justify a reasonable
belief that the behavior is current;
or

Reasonable cause to believe that
the illegal use or pattern of illegal
use of a drug may threaten the
health, safety, or right to peaceful
enjoyment of the premises by
other residents



MANDATORY DENIALS OF ADMISSION

Persons that abuse or show a
pattern of abuse of alcohol

To the extent that the health,
safety, or right to peaceful
enjoyment of the premises by
other residents may be threatened



PERMANENTLY PROHIBITED

Any household member convicted
of production of
methamphetamine on Federally
assisted housing premises

Any household member that is
subject to a lifetime registration
requirement under a State sex
offender registration program



HISTORY OF CRIMINAL ACTIVITY SUITABILITY

- Drug-related criminal activity
- Violent crimes
- Registered sex offenders
- Criminal acts which adversely affect health, safety or welfare of other residents, PHA staff and PHA representatives

DEFINITIONS

COVERED PERSON

A tenant, any member of the tenant's household, a guest, or another person under the tenant's control

DRUG

A controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]

23

DEFINITIONS

DRUG-RELATED CRIMINAL ACTIVITY

The illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug

GUEST

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

24

DEFINITIONS

HOUSEHOLD

The family and PHA-approved Live-In Aide. Also includes foster children/adults that have been approved to reside in the unit

OTHER PERSON UNDER TENANTS CONTROL

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

25

DEFINITIONS

PREMISES

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

VIOLENT CRIMINAL ACTIVITY

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

26

MANDATORY TERMINATIONS

- PHA determines that any member of the household has been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing

27

DISCRETIONARY TERMINATIONS

CRIMINAL ACTIVITY OR ALCOHOL ABUSE

- Drug-related criminal activity on or off the premises by any tenant, member of the tenant's household, or guest
- Use of illegal drugs or alcohol or pattern of illegal use of drugs or alcohol that interferes with the health, safety, or right to peaceful enjoyment of the premises....*including medical marijuana*

28

DISCRETIONARY TERMINATIONS

CRIMINAL ACTIVITY OR ALCOHOL ABUSE

- Any criminal activity that threatens health, safety, or right to peaceful enjoyment of premises by other residents, or persons residing in immediate vicinity
- PHA discovers a member of assisted household is subject to a lifetime sex offender registration requirement
- Tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony

29



CRIMINAL BACKGROUND CHECK

Before denying admission based on a criminal record,

PHA must notify the family of the proposed action that is based on the information, and

Must provide the subject of the record and the applicant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record



RECORDS MANAGEMENT

- Do not maintain criminal conviction and drug-related records in the applicant/participant file folder
- File all criminal conviction and drug-related records in the Supervisor's area under lock

WHO CAN ACCESS RECORDS?

- PHA employees, or authorized representatives, who have a **JOB-RELATED NEED** to have access to the information
- PHA may only disclose to private owners for use in connection with judicial eviction proceedings by the owner

33

USING THIRD-PARTY SCREENING SERVICE

- Must be compliant with the Fair Credit Reporting Act (FCRA)
- Follow reasonable procedures to ensure accuracy
- Provide applicant with information about the FCRA
- Get applicant certification
- Honor rights of applicants

34

BEST PRACTICES

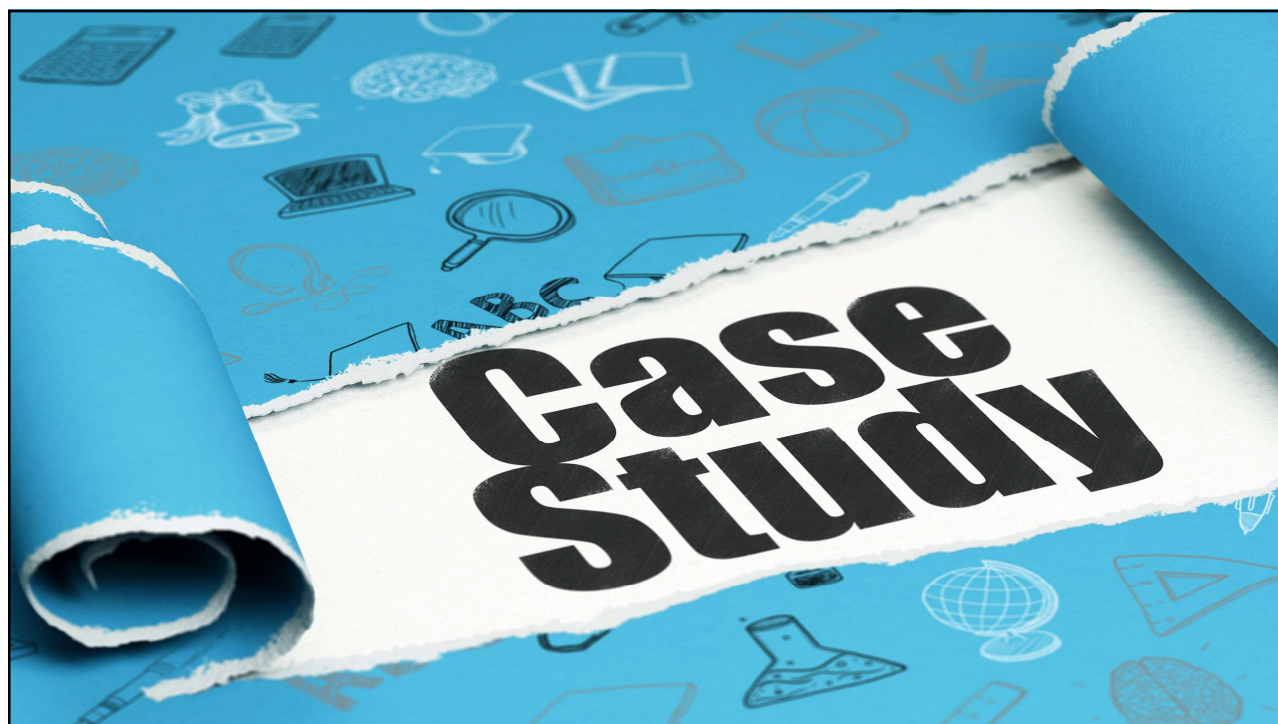
- Application/recertification materials should outline criteria for criminal history
- Adopt “lookback” periods that limit what criminal conduct is considered
- Allow formerly incarcerated persons who have been recently released to be added to existing family with agreement to participate with supportive services

35

HUD’S ACTION PLAN

- In the near future (???), HUD will introduce rulemaking, establish a process for individualized assessments, and outline guidelines for PHAs
- HUD Secretary challenges PHAs to review current processes
- HUD is also stepping up Fair Housing investigations and enforcements

36



TENANT ACTION	MAY EVICT	MUST EVICT
Alcohol abuse that threatens the health, safety, or peaceful enjoyment of residents	✓	
Illegal use of drugs by household member	✓	
Drug crime on or off premises by tenant, household member, or guest	✓	
Conviction for manufacturing or producing methamphetamine on premises of federally assisted housing		✓
Tenant becomes a lifetime sex offender registrant	✓	
Tenant fighting with another tenant	✓	

CASE STUDY #1

- ✓ Derek has applied for public housing. On his application are his wife Amy (39) and their three children – Bryce (16), Rhys (16), and Phoebe (13)
- ✓ The family is income eligible; all have provided their SSNs, and all are U.S. Citizens
- ✓ Upon running criminal background checks on Amy and Derek, it is discovered that Amy was arrested nearly 3 years ago for battery
- ✓ Additionally, you've been made aware that Rhys has recently been arrested for manufacture and delivery of a controlled substance, but you can't officially confirm that with the police department because Rhys is a minor

39

CASE STUDY #1

Is this family eligible for public housing?

- A. Yes
- B. No

40

CASE STUDY #1

Does Amy's arrest pose a problem for this family's admission to the program?

- A. Yes
- B. No

41

CASE STUDY #1

What are viable options for obtaining information concerning Rhys' arrest?

- A. Arrest report
- B. Newspaper
- C. Juvenile court records
- D. Parents/family provides information
- E. None of the above

42

CASE STUDY #1

Is this family suitable for Public Housing?

- A. Yes
- B. No
- C. Need more information

43

CASE STUDY #1

- Through a meeting with Derek, Amy, and Rhys, you determine that Rhys was a passenger in the car with older friends when the car was pulled over
- The older friends had been smoking marijuana in the car, which led the police to do a search of the vehicle
- Upon searching, they discovered several plastic baggies in the center console containing crystal methamphetamine
- None of the occupants in the vehicle, including Rhys, would admit to having any knowledge of the meth in the vehicle, so the officer charged all three with manufacture and delivery

44

CASE STUDY #1

- Rhys tells you the drugs belonged to the driver of the vehicle, that he had no idea they were in the car, and he was too scared to admit this to the police officers
- You then have a meeting with the arresting officer, who officially can neither confirm nor deny any of the information Rhys provided. The officer does tell you it's her suspicion that the drugs belonged to the driver, who has been arrested multiple times for drug-related charges, and that no one else in the car admitted knowledge of the drugs' presence
- Rhys' court date, his first appearance, is a month out

45

CASE STUDY #1

- ✓ Now assume the family gives you no information concerning Rhys' involvement in the case. Assume further the police department also provides no further information.
- ✓ At this point, the only information you have concerning Rhys' arrest came to you second-hand, and you have no official way to document or prove it

46

CASE STUDY #1

What is the best option this family has pertaining to admission into Public Housing?

- A. Admission of the full family
- B. Removal of Rhys from the application
- C. Denial of admission
- D. Wait until Rhys' case plays out in court
- E. None of the above

47

CASE STUDY #2

- Mark is a single tenant in your Public Housing program. He pays rent on time, causes no disturbances in his building, and has a good rapport with his neighbors.
- Mark has been arrested, though never convicted, of minor crimes from time to time. To this point, nothing he has done would be considered grounds for termination.
- Upon arrival at work on Monday, you have a police report waiting on your desk. Mark was arrested over the weekend and charged with manufacture and delivery of a controlled substance.

48

CASE STUDY #2

- The police report details Officer Arnett attempted to pull over a car because of a missing taillight.
- Upon initiating the traffic stop, the car sped up and attempted to flee. After a chase through town, the vehicle pulled onto Public Housing property and parked.
- The passenger, later identified as Mark, exited the vehicle carrying a black bag and began to flee on foot. Officer Arnett gave chase, during which Mark was seen discarding the black bag, which was instantly recovered by another officer. Officer Arnett was able to catch up to Mark and subdue him after a brief struggle which resulted in injuries to Officer Arnett.

49

CASE STUDY #2

- Once back at the squad car, the K9 unit is called and the dog "hits" on the black bag discarded during the chase by Mark. Officers open the bag and discover three football sized bricks of marijuana inside.
- At first, Mark denies it was his bag, then later confesses to owning the bag and being aware the marijuana was inside. When asked where he got the marijuana, he replied, "If i told you, they would kill me. That's my marijuana."
- Mark is arrested and charged with manufacture and delivery of a controlled substance, aggravated fleeing to avoid arrest, aggravated battery of a police officer, and resisting arrest.

50

CASE STUDY #2

- You call and speak with Officer Arnett, who corroborates the information contained in the police report. Further, she advises the other officers field tested the substance recovered, and it tested positive for marijuana.
- You then review camera footage from the night of the report and observe a car pull into the parking lot followed by several police cruisers. You observe an individual resembling Mark exit the passenger side of the vehicle and flee the scene.
- The camera doesn't positively identify the individual as Mark because of the angle and darkness. You do, however, recognize the jacket worn by the individual as one Mark possesses.

51

CASE STUDY #2

- You meet with Mark to discuss the report, and to offer him an opportunity to dispute the accuracy and relevance of the report.
- Mark claims he is innocent, that the police officers planted the marijuana in the bag, and that he didn't fight with officers or resist arrest.
- Further, Mark informs you he will take legal action against the agency if his lease is terminated.

52

CASE STUDY #2

Based on the information you have can you initiate termination of Mark's lease?

- A. Yes
- B. No

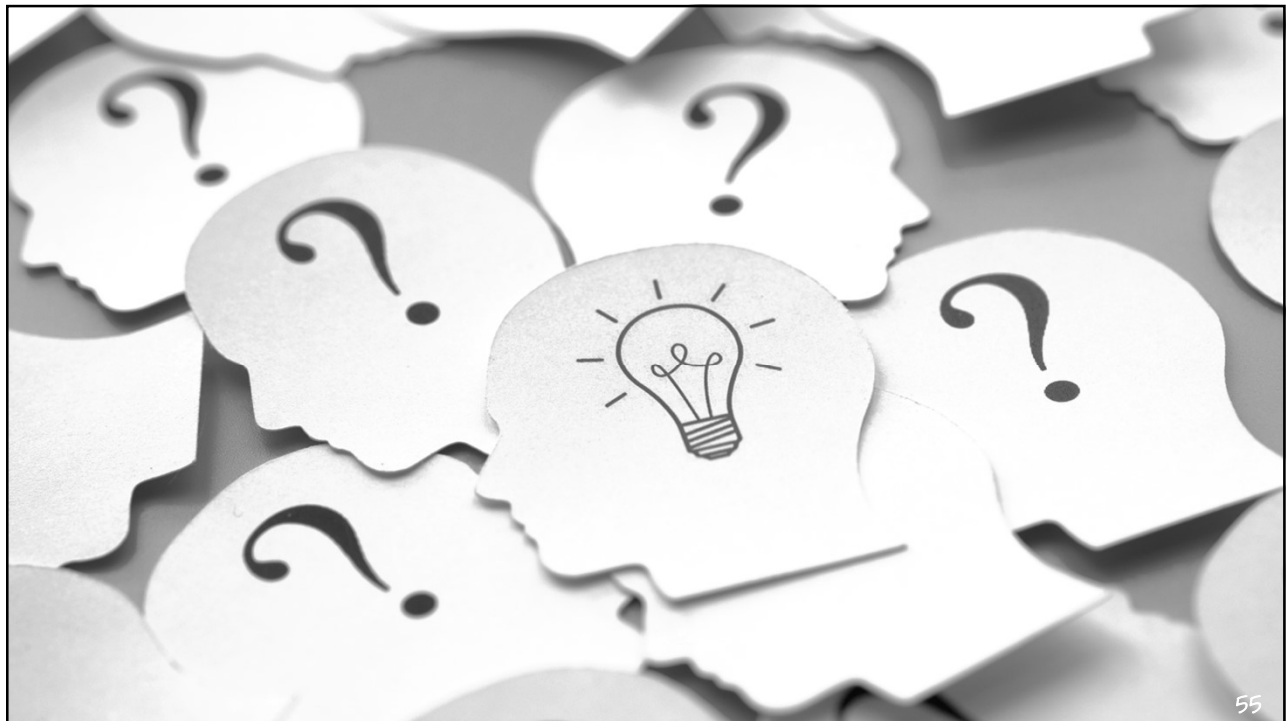
53

CASE STUDY #2

If you're not going to terminate the lease at this point, what options do you have in dealing with this incident?

- A. Ask Mark to voluntarily vacate
- B. Wait until Mark's case is adjudicated
- C. Elect non-renewal of Mark's lease at his lease anniversary
- D. All the above
- E. None of the above

54



55

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56