



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

OFFICE OF GENERAL COUNSEL

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Patricia Zafiriadis
NYC Department of Preservation and Development
Office of Housing Operations
Division of Tenant Resources
100 Gold Street
New York, NY 10038

Re: Request for Guidance

Dear Ms. Zafiriadis:

We recently received a copy of your October 28, 2008 correspondence to HUD's New York Field Office regarding sex offenders and assisted housing. You referenced a December 21, 2007 letter from HUD to the Legal Aid Society which may be causing your office some confusion. You seek clarification on a public housing agency's (PHA) ability to terminate assistance of sex offenders subject to lifetime registration who are in federally assisted housing.

We reviewed the December 21, 2007 HUD letter and find no inconsistencies between the guidance in that letter and HUD's interpretation of Section 578 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA). Nevertheless, we will address your concerns by outlining how QHWRA applies in the two scenarios cited in your letter.

I. A sex offender subject to a lifetime registration requirement is erroneously admitted to federally assisted housing post-QHWRA.

Section 578 of QHWRA is unambiguous. It states that "[n]otwithstanding any other provision of law, an owner of federally assisted housing shall prohibit admission to such housing for any household that includes any individual who is subject to a lifetime registration requirement . . ." 42 U.S.C. § 13663(a) (emphasis added). We interpret this statutory provision to mean just that – sex offenders subject to lifetime registration can never be admitted into assisted housing. Therefore, any sex offender subject to a lifetime registration that is erroneously admitted into assisted housing must be terminated. It is of no relevance whether the erroneous admission was due to the fault of the owner/agent, PHA, or the applicant. The bar against admitting sex offenders is absolute as Congress provided no statutory exceptions.

While HUD recognizes that there is no regulatory authority in any assisted housing program that provides for termination of assistance based a tenant's lifetime sex offender registration status, HUD believes the statutory authority under section 578 of QHWRA is sound legal basis to terminate the assistance of sex offenders erroneously admitted. Statutory

requirements, as you know, cannot be waived by HUD. Any alternative interpretation of section 578 of QHWRA, such as allowing erroneously admitted sex offenders to continue receiving housing assistance, would appear to circumvent clear statutory authority. HUD cannot accept such an alternative interpretation.

Additionally, your letter suggested applying 24 C.F.R. § 5.856 as a basis to terminate the assistance of sex offenders erroneously admitted into an assisted housing program post-QHWRA. We acknowledge that § 5.856 is not a termination of assistance regulation but rather a denial of admission regulation. We believe the courts may likely also recognize this distinction and may reject the application of § 5.856 as a grounds for termination under these circumstances. However, as stated earlier, HUD's position is that section 578 is clear statutory authority for a PHA to terminate the assistance of a sex offender erroneously admitted into its assisted housing program.

II. A non-sex offender applicant is admitted to assisted housing, either pre- or post-QHWRA, but during his or her tenancy s/he becomes subject to a lifetime sex offender registration requirement.

Under this scenario an owner/agent or PHA cannot rely on section 578 to terminate the assistance. Section 578 relates specifically to admissions of an applicant for assisted housing. If at the time of admission the applicant was not a sex offender then section 578 is inapplicable. Additionally, under this scenario, 24 C.F.R. § 5.856 would also not be applicable.

A PHA may, however, utilize other regulatory grounds, including the regulation you cited at 24 C.F.R. § 982.553(b)(2) (household members who have engaged in violent criminal activity may be terminated) to terminate the assistance. We note that § 982.553(b)(2) is a **permissive ground** to terminate the assistance. Under § 982.553(b)(2), it is within the PHA's discretion whether or not it wants to terminate the assistance, so long as such action is consistent with the PHA's admissions and continued occupancy plan. Similar to § 982.553(b)(2), we also note that the public housing regulation permitting an eviction due to criminal activity is also permissive in nature. See 24 C.F.R. §966.4(l)(5)(B)(ii)(A).

Thank you for your interest in HUD programs. Should you have any additional questions please contact C. Andrew Lee at (202) 402 – 6190.

Sincerely,



Althea M. Forrester
Assistant General Counsel
Assisted Housing Division