

Chapter 6

SCREENING CRITERIA

RAD Requirements [Notice H 2019-09]

This section describes the RAD requirements per RAD statute. **No policy decisions are required. If your property does not have any RAD units, delete the RAD section.**

6-A. REQUIRED DENIAL OF ADMISSION [HUD Handbook 4350.3, REV-1, CHG-4, Section 4-7; 24 CFR Part 5, Subpart I]

O/As are required to establish standards that prohibit admission of an applicant to the PBRA program if they have engaged in certain criminal activity or if the O/A has reasonable cause to believe that a household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.



Decision Point: Will the O/A make an exception and admit an otherwise-eligible family if the household member has completed an O/A-approved drug rehabilitation program or the circumstances which led to eviction no longer exist? (Model TSP, p. 6-1)

Things to Consider

- If any member of the household has been evicted from federally assisted housing in the last three years for drug-related criminal activity, the family must be denied assistance. However, HUD permits the O/A to make an exception and admit an otherwise-eligible family if the household member has completed the O/A-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g., the person involved in criminal activity no longer lives in the household).
- The model TSP policy is based on the premise that the O/A can be reasonably sure that the behavior that caused a family to be previously evicted will not occur again if the offending family member has either undergone rehabilitation or is no longer a family member.
- If the O/A believes it is too risky to admit a family that has been evicted from federally assisted housing in the last three years for drug-related criminal activity under any circumstances, the O/A may select Option 2.

Instructions for Preparing Chapter 6: Screening Criteria

- Option 1: Use the model TSP language shown below. No changes to the model TSP are needed.*

The O/A will admit an otherwise-eligible family who was evicted from federally assisted housing within the past three years for drug-related criminal activity, if the O/A is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the O/A, or the person who committed the crime is no longer living in the household.

- Option 2: Delete model TSP language and substitute language as shown below.*

The O/A will not admit an otherwise-eligible family who was evicted from federally assisted housing within the past three years for drug-related criminal activity under any circumstances.

- Option 3: Use O/A-established policy. Edit the model TSP language or delete it and insert the O/A's policy.*



Decision Point: How will the O/A define *currently engaged in*? (Model TSP, p. 6-1)

Things to Consider

- According to the regulations, *currently engaged in the illegal use of a drug* means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member.
- To ensure consistency in the way staff handle denials of admission, this term should be further defined. You may wish to consult with your attorney to determine whether any state laws or tenant-landlord ordinances require the use of another definition.
- Option 2 provides an exception to the definition for those enrolled in and compliant with treatment.

Instructions for Preparing Chapter 6: Screening Criteria

- Option 1: Use the model TSP language shown below. No changes to the model TSP are needed.*

Currently engaged in is defined as any use of illegal drugs during the previous three months.

- Option 2: Delete model TSP language and substitute language as shown below.*

Currently engaged in is defined as any use of illegal drugs during the previous three months, unless the applicant is currently enrolled in and fully compliant with treatment.

- Option 3: Use O/A-established policy. Edit the model TSP language or delete it and insert the O/A's policy.*



Decision Point: How will the O/A determine “reasonable cause” when trying to ascertain whether or not a household member’s current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents? (Model TSP, p. 6-2)

Things to Consider

- To allow for both consistency and flexibility, the model policy gives examples of evidence to be considered when determining “reasonable cause,” but does not limit evidence to these categories.
- The model policy clarifies that a conviction will be given more weight than an arrest due to the more serious nature of a conviction.
- The model policy language calls for the O/A to consider positive evidence along with negative evidence. This type of approach is fairer to the applicant and is also consistent with the concept of preponderance of evidence discussed later in this chapter.
- If your O/A has established specific indicators to determine “reasonable cause,” the model policy language should be replaced or edited to contain these indicators.

Instructions for Preparing Chapter 6: Screening Criteria

- Option 1: Use the model TSP language shown below. No changes to the model TSP are needed.*

In determining reasonable cause, the O/A will consider all credible evidence, including but not limited to, any record of convictions or arrests of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. A record of arrests will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying criminal activity. The O/A will also consider evidence from treatment providers or community-based organizations providing services to household members.

- Option 2: Use O/A-established policy. Edit the model TSP language or delete it and insert the O/A's policy.*



Decision Point: Will the O/A use a national database covering sex offender registries in all states to screen applicants for admission in lieu of asking for a complete list of all states in which any household member has resided? Will the owner check lifetime sex offender status at annual recertification? (Model TSP, p. 6-2)

Things to Consider

- HUD Handbook 4350.3, Chapter 4 requires the O/A to establish standards prohibiting the admission of individuals who are subject to a state lifetime sex offender registration program, and to describe the screening criteria for such individuals.
- As part of these screening criteria, the O/A must either screen for state lifetime sex offender registration in all states in which any household member has resided, or to use a national database covering sex offender registries in all states, if access exists. Whatever method the O/A chooses must be included in the TSP.
- In the 4350.3 and Notice H 2012-11, HUD encourages the use of the Dru Sjodin National Sex Offender Database, an online, searchable database that combines the data from individual state sex offender registries and other national, state, or local resources. The Dru Sjodin database is available at <http://www.nsopw.gov>.
- Because using such a database streamlines the process, we have included it here as the default policy in place of screening in each state in which any household member has resided. This adheres to the regulatory requirement.
- O/As have the authority to require a criminal background check, including a state lifetime sex offender registration check, at rectification. While the owner is not required to perform this check annually, if the owner does adopt this policy they must conduct the check on all tenants at recertification. Since HUD recommends this policy in Notice H 2012-11, the model policy states that the owner will check state lifetime sex offender registration status as part of the annual recertification.

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- Note that per Notice H 2015-10, O/As must consider all circumstances relevant to an admission prior to denying assistance based on criminal activity. While 24 CFR 5.856 requires that persons subject to a lifetime sex offender registration requirement must be denied admission, this prohibition does not extend to those who are not subject to lifetime bans. As a result, blanket denial policies that deny admission based on any non-lifetime sex offender status at any time are not recommended since they do not consider the recency of the criminal activity.



Option 1: Use the model plan language below. No changes to the model TSP are needed.

O/A Policy

At the time of application processing, the O/A will screen all applicants and household members for state sex offender registration in all states where the applicant and members of the applicant's household have resided using the Dru Sjodin National Sex Offender Database (<http://www.nsopw.gov>).

If it is determined that a household member is subject to a state lifetime sex offender registration requirement, the household will be denied, or assistance will be terminated, unless the ineligible household member is removed from the household. For applicant households, the ineligible household member must be removed from the application, or the application will be denied.

The O/A will screen all household members for state sex offender registration and criminal history at the time of each resident's annual recertification. Should there be any evidence that any member of the applicant/resident household is subject to a state lifetime sex offender registration program or that any prior records have been falsified or not properly disclosed, or that a criminal history is discovered that violates the above policies in effect at the time of the annual recertification, the resident's lease may be immediately terminated or the family will be given the opportunity to remove the offender from the household.

In the cases listed above, proof that the ineligible member has been removed from the household must be provided to management. This would include (1) executing a new lease without the eligible household member, or (2) established utility account at another address, or (3) verification of a change in address from the U. S. Postal Service for the ineligible member.



Option 2: Use O/A-established policy. Edit the model TSP language or delete it and insert the O/A's policy.

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6-B. RESTRICTION ON ASSISTANCE BASED ON ASSETS [24 CFR 5.618]

Assistance may not be provided to any family if their net assets exceed \$100,000 (adjusted annually); or the family has a present ownership interest in, a legal right to reside in, and the effective legal authority to sell real property that is suitable for occupancy by the family as a residence.

For the restriction to apply, a property must be considered suitable for occupancy. The regulations state that one of the criteria for a property to be considered suitable for occupancy is that it must be sufficient for the size of the family, however, HUD does not define size parameters in the regulation.



Decision Point: How will the PHA define *not sufficient for the size of the family* with regard to real property that is suitable for occupancy? (Model TSP, p. 6-3)

Things to Consider

- The model plan uses the O/A's own occupancy standards as the standard for units of a sufficient size for ease of administration. The O/A may instead wish to use local building codes or another methodology.



Option 1: Use the model plan language shown below. No changes to the model plan are needed.

The O/A defines *not sufficient for the size of the family* as being overcrowded based on the O/A's occupancy standards in Chapter 4 of this policy.



Option 2: Use PHA-established policy. Edit the model plan language or delete it and insert the PHA's policy.