



**U.S. Department of Housing and Urban
Development**

New York State Office
Jacob K. Javits Federal Building
26 Federal Plaza
New York, New York 10278-0068
<http://www.hud.gov/local/nyn/>

December 21, 2007

BY FAX NO. (212) 509-8753 AND U.S. MAIL

Ellen Davidson, Esq.
The Legal Aid Society
199 Water Street
New York, New York 10038

Re: Sex Offender Inquiry

Dear Ms. Davidson:

This responds to your November 26, 2007 request for an opinion from HUD regarding the applicability of section 578 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA), 42 U.S.C. § 13663, to a public housing tenant who was classified as a sex offender by a New York State court 4 years after his tenancy began.

Section 578 of QHWRA 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 under a State sex offender registration program." 42 U.S.C. § 13663(a) (emphasis supplied). QHWRA further states "a public housing agency shall carry out criminal history background checks on *applicants* for federally assisted housing . . . to determine whether an *applicant* for federally assisted housing is subject to a lifetime registration requirement under a State sex offender registration program . . ." *Id.* § 13663(b)(1) (emphasis supplied). The term "federally assisted housing" includes public housing, but the statute does not define the term "admission" or "applicant." *See* 42 U.S.C. § 13664.

HUD issued a final rule entitled "Screening and Eviction for Drug Abuse and Other Criminal Activity." 66 Fed. Reg. 28805 (May 24, 2001). The final rule stated, among other things, "[t]he PHA must establish standards that prohibit *admission* to the

program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration. In this screening of *applicants*, the PHA must perform criminal history checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the State where the housing is located and in other States where the household members are known to have resided." 24 C.F.R. § 982.553(b)(2)(i) (emphasis supplied).

While undefined in QHWRA, the regulations define "applicant" as "[a] family that has applied for admission to a program but is not yet a participant in the program," and "admission" as "[t]he point when the family becomes a participant in the program." 24 C.F.R. § 982.4(b).

It is clear from section 578 of QHWRA and 24 C.F.R. § 982.553(b)(2)(i) that the bar against sex offenders subject to lifetime registration requirements applies only to "applicants" seeking "admission" to a federally assisted housing program. Thus, the statute has no applicability to an individual who has already been admitted to public housing under the circumstances described in your letter.

Please let me know if you have any questions.

Sincerely,



John J. Cahill

Regional Counsel for
New York/New Jersey

cc: Ricardo Morales
General Counsel
NYCHA