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TO: Milan Ozdinec, Deputy Assistant Secretary for Public Housing and Voucher Programs, PE

Carole Galante, Deputy Assistant Secretary for Multifamily Housing Programs, HT

//**signed**//

FROM: Ronald J. Hosking, Regional Inspector General for Audit, 7AGA

SUBJECT: HUD Subsidized an Estimated 2,094 to 3,046 Households That Included Lifetime Registered Sex Offenders

HIGHLIGHTS

What We Audited and Why

We audited the U.S. Department of Housing and Urban Development's (HUD) requirement prohibiting lifetime registered sex offenders from admission to HUD-subsidized housing. We initiated this audit as part of our national annual audit plan.

Our audit objective was to determine the extent to which HUD-subsidized housing was occupied by lifetime registered sex offenders.

What We Found

HUD subsidized an estimated 2,094 to 3,046 households that included lifetime registered sex offenders. As a result, it did not accomplish the objective of the statute to prevent admission of dangerous sex offenders, and the same offenders

who were deemed too dangerous for admission were allowed to continue living in subsidized housing.

What We Recommend

We recommend that HUD seek legislative and program rule changes to require denial of continued occupancy and termination of tenancy, or continued subsidy as appropriate, for all lifetime registered sex offenders residing in subsidized housing. If legislative changes are passed, we recommend that HUD develop and implement a plan to detect lifetime registered sex offenders occupying subsidized housing.

Additionally, we recommend that HUD require projects and housing authorities to revise their admission, screening, and recertification procedures and urge them to aggressively pursue termination of assistance for lifetime sex offenders to the extent currently allowed by law.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3. Please furnish us copies of any correspondence or directives issued because of the audit.

Auditee's Response

We provided the discussion draft to HUD on June 30, 2009, requesting comments within 30 days. We provided a revised draft for comment on July 17, 2009. We received comments from the Office of Public and Indian Housing and the Office of Multifamily Housing dated August 5, 2009, and July 31, 2009, respectively. While HUD agreed with some recommendations, it generally disagreed with the key recommendations relating to requesting legislative changes and implementing additional requirements and controls.

The complete text of the auditee's response, along with our evaluation of that response, can be found in appendix B of this report.

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BACKGROUND AND OBJECTIVE

The U.S. Department of Housing and Urban Development's (HUD) Office of Multifamily Housing Programs is responsible for the overall management, development, direction, and administration of HUD's multifamily housing programs. These programs include the project-based Section 8 program, which provides rental subsidies for eligible program participants residing in apartment projects.

HUD's Office of Public and Indian Housing is responsible for ensuring the availability of safe, decent, and affordable housing for eligible program participants. This office is responsible for administering and managing the public housing and Housing Choice Voucher programs.

The Quality Housing and Work Responsibility Act of 1998 (the Act), Section 578, established the ineligibility of dangerous sex offenders for admission to federally subsidized housing. The Act was proposed in part because of a 1997 case in which a previously convicted sex offender living in public housing was charged with assaulting and molesting a nine-year-old girl who lived in the same building. The Act states that projects and housing authorities must prohibit admission to subsidized housing of any household that includes a person who is subject to a lifetime registration requirement under a state sex offender registration program.

While sex offender registration programs are different from state to state, the Sex Offender Registration and Notification Act of 2006 provides a comprehensive set of minimum standards for sex offender registration, including standards for requiring lifetime registration. The U.S. Department of Justice maintains the Dru Sjodin National Sex Offender Public Website, which searches registries for all 50 states, the District of Columbia, and the five principal U.S. territories. Additionally, the Federal Bureau of Investigation (FBI) maintains the National Sex Offender Registry database.

HUD established regulations for this requirement in 24 CFR (*Code of Federal Regulations*) 5.850-5.905. The requirement became effective on June 25, 2001. HUD provided additional guidance in Public and Indian Housing Notice 2002-22 and HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs.

HUD requires that projects and housing authorities adopt and incorporate into their screening and admission policies the following mandatory provision: to deny admission to federally subsidized housing if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. During the admissions screening process, projects and housing authorities must perform the necessary criminal history background checks in the state where the housing is located and in other states where the household members are known to have resided. Additionally, they must follow up with state and local agencies as necessary to determine whether an applicant is subject to a lifetime registration requirement under a state sex offender registration program.

Our audit objective was to determine the extent to which HUD-subsidized housing was occupied by lifetime registered sex offenders.

RESULTS OF AUDIT

Finding: HUD Subsidized an Estimated 2,094 to 3,046 Households That Included Lifetime Registered Sex Offenders

HUD subsidized an estimated 2,094 to 3,046 households that included lifetime registered sex offenders. This condition occurred because HUD did not have adequate controls, monitoring, and authority to ensure that projects and housing authorities prevented admission and continued subsidy of lifetime registered sex offenders. As a result, it did not accomplish the objective of the statute to prevent admission of dangerous sex offenders, and the same offenders who were deemed too dangerous for admission were allowed to continue living in subsidized housing.

HUD Subsidized Lifetime Registered Sex Offenders

To conduct this audit, we identified 4,784 households in which one or more members' Social Security numbers matched an offender in the FBI's National Sex Offender Registry. We then selected a statistical sample of 67 of those households for review (see scope and methodology).

Of the 67 sample households reviewed, 36 households included a lifetime registered sex offender. This number includes

- 18 household members who were ineligible at the time of admission due to lifetime registration status,
- 10 household members who were admitted and convicted before the current law was enacted, and
- Eight household members who were eligible at the time of admission but later became lifetime registered sex offenders.

Based on the sample review results, we estimate that HUD actually subsidized between 2,094 and 3,046 households with lifetime registered sex offenders of the 4,784 households initially indicated as including registered sex offenders.

The 36 lifetime registered sex offenders identified in our sample were convicted of a variety of offenses, including rape, sexual assault, lewd or lascivious acts, and sexual abuse.

Many of their offenses were against children. For example, one member who was admitted in 1990 was still living in subsidized housing despite a 2002 conviction of criminal attempt to commit rape of a five-year-old child. Another lifetime

registered sex offender was improperly admitted in 2008 despite a 2003 conviction for first degree sexual abuse of a four-year-old child.

Several offenders had multiple convictions. For example, one lifetime registered sex offender was improperly admitted in 2003 despite having four convictions spanning 15 years, including indecent assault and battery against a child under 14 years of age.

Additionally, several of the offenders were convicted as juveniles. For example, an eligible member who was admitted in 2007 at age 15 became a lifetime registered sex offender nearly two years later when he was convicted of criminal sexual assault and classified as a sexual predator. Another lifetime registered sex offender was improperly admitted in 2003 at age 13 despite having been convicted in 2002 for criminal sexual contact.

HUD Did Not Have Adequate Controls, Monitoring, and Authority

HUD did not have adequate controls, monitoring, and authority to ensure that projects and housing authorities prevented admission and continued subsidy of lifetime registered sex offenders.

For example, HUD did not expressly require projects and housing authorities to

- Ask applicants whether any member of the household was subject to a lifetime registration requirement;
- Ask applicants to list the states previously lived in so that all required criminal history background checks could be performed;
- Perform background checks on juvenile household members to the extent allowed by state and local law; and
- Retain documentation showing the date, type, and results of all criminal history background checks performed with law enforcement agencies when actual reports were destroyed as required by law.

Additionally, because current laws and regulations only prohibit admission and do not prohibit offenders convicted after admission or those who were both admitted and convicted before the current law was enacted, HUD also did not require projects and housing authorities to

- Ask households at each recertification whether any member was subject to a lifetime registration requirement or
- Check the Dru Sjodin National Sex Offender Public Website for all household members at each recertification.

Further, current laws do not include a provision prohibiting continued subsidy of lifetime registered sex offenders, including those improperly admitted. As a result, HUD had not established authority to terminate tenancy, or continued subsidy as appropriate, of lifetime registered sex offenders and had not developed procedures to detect lifetime registered sex offenders currently living in subsidized housing, such as by matching National Sex Offender Registry data to its databases.

Dangerous Offenders Continued to Live in Subsidized Housing

HUD did not accomplish the objective of the statute to prevent admission of dangerous sex offenders. Also, because current laws do not prohibit continued subsidy of lifetime registered sex offenders and HUD had not established the authority to prevent this situation, the same types of offenders who were deemed too dangerous for admission were allowed to continue living in subsidized housing.

Long-Term and Short-Term Changes Are Needed To Protect Residents

If HUD implements our recommendations, it will be better equipped to prevent and detect admission and continued subsidy of lifetime registered sex offenders. Specifically, if HUD can persuade Congress to pass appropriate legislation, we estimate that it could prevent more than $12 million in housing assistance and subsidies from being spent over the next year on households with dangerous sex offenders. It will also provide a safer living environment for people in the immediate vicinity of these households.

Because legislative changes may take time, we also recommend that HUD urge projects and housing authorities to aggressively pursue termination of tenancy, or continued subsidy as appropriate, for lifetime sex offenders to the extent currently allowed by law. This could include those who have lied on application or recertification forms or are otherwise covered by project or housing authority policies to terminate assistance of residents whose criminal activity threatens the safety of other residents.

To assist with the implementation of these long-term and short-term solutions, we also recommend that HUD require projects and housing authorities to revise admission and recertification procedures to better detect lifetime registered sex offenders.

Recommendations

We recommend that the Deputy Assistant Secretary for Public Housing and Voucher Programs

1A. Seek legislative and program rule changes to require denial of continued occupancy and termination of tenancy, or continued subsidy as appropriate, for all lifetime registered sex offenders residing in subsidized housing to annually put more than $12 million to better use[1].

1B. Require housing authorities to formally ask households before admission for a list of all states in which they have resided and whether any member is subject to a lifetime registration requirement.

1C. Require housing authorities to document their consideration before admission of whether each household member is subject to lifetime registration (including the date, type, and results of criminal history background checks performed with law enforcement agencies; and any other contact with sex offender registries and law enforcement agencies) when actual reports are destroyed as required by law.

1D. Develop and implement controls to monitor housing authority use of the required application questions and retention of appropriate background check documentation.

1E. Urge housing authorities to ask households at each recertification whether any member is subject to a lifetime registration requirement.

1F. Urge housing authorities to check the Dru Sjodin National Sex Offender Website for all household members at each recertification.

1G. Urge housing authorities to aggressively pursue termination of tenancy, or continued subsidy as appropriate, for lifetime sex offenders to the extent currently allowed by law, to include those who have lied on application or recertification forms or are otherwise excluded by housing authority policy.

1H. If legislative changes are passed (see recommendation 1A), require housing authorities to ask households at each recertification whether any member is subject to a lifetime registration requirement.

[1] Because our sample universe consisted of both public housing and multifamily programs, we cannot statistically break the $12 million estimate out between the two program areas. Therefore, while this estimate is cited in both recommendations 1A and 1L, we are only claiming the funds to put to better use once (see appendix A).

1I. If legislative changes are passed (see recommendation 1A), require housing authorities to check the Dru Sjodin National Sex Offender Website for all household members at each recertification.

1J. If legislative changes are passed (see recommendation 1A), develop and implement controls to monitor housing authority use of the required recertification questions and use of the Dru Sjodin National Sex Offender Public Website.

1K. If legislative changes are passed (see recommendation 1A), develop and implement a plan to detect lifetime registered sex offenders occupying subsidized housing, such as by matching National Sex Offender Registry database to its own data and then following up on preliminary matches.

We recommend that the Deputy Assistant Secretary for Multifamily Housing Programs

1L. Seek legislative and program rule changes to require denial of continued occupancy and termination of tenancy for all lifetime registered sex offenders residing in subsidized housing to annually put more than $12 million to better use[2].

1M. Require properties to formally ask households before admission for a list of all states in which they have resided and whether any member is subject to a lifetime registration requirement.

1N. Require properties to document their consideration before admission of whether each household member is subject to lifetime registration (including the date, type, and results of criminal history background checks performed with law enforcement agencies; and any other contact with sex offender registries and law enforcement agencies) when actual reports are destroyed as required by law.

1O. Develop and implement controls to monitor properties' use of the required application questions and retention of appropriate background check documentation.

1P. Urge properties to ask households at each recertification whether any member is subject to a lifetime registration requirement.

1Q. Urge properties to check the Dru Sjodin National Sex Offender Website for all household members at each recertification.

[2] Because our sample universe consisted of both public housing and multifamily programs, we cannot statistically break the $12 million estimate out between the two program areas. Therefore, while this estimate is cited in both recommendations 1A and 1L, we are only claiming the funds to put to better use once (see appendix A).

1R. Urge properties to aggressively pursue termination of tenancy for lifetime sex offenders to the extent currently allowed by law, to include those who have lied on application or recertification forms or are otherwise excluded by property policy.

1S. If legislative changes are passed (see recommendation 1L), require properties to ask households at each recertification whether any member is subject to a lifetime registration requirement.

1T. If legislative changes are passed (see recommendation 1L), require properties to check the Dru Sjodin National Sex Offender Website for all household members at each recertification.

1U. If legislative changes are passed (see recommendation 1L), develop and implement controls to monitor properties' use of the required recertification questions and use of the Dru Sjodin National Sex Offender Public Website.

1V. If legislative changes are passed (see recommendation 1L), develop and implement a plan to detect lifetime registered sex offenders occupying subsidized housing, such as by matching National Sex Offender Registry database to its own data and then following up on preliminary matches.

SCOPE AND METHODOLOGY

To accomplish our objective, we

- Reviewed applicable laws and regulations,
- Interviewed key HUD staff to gain an understanding of relevant controls,
- Analyzed computer-processed data contained in HUD's Public and Indian Housing Center (PIC) and Tenant Rental Assistance Certification System (TRACS),
- Analyzed computer-processed data contained in the FBI's National Sex Offender Registry (NSOR),
- Used auditing software to select a statistical sample of households likely to include sex offenders,
- Evaluated the results of the statistical sample to estimate the number of HUD-subsidized households that included lifetime registered sex offenders.

To assess the reliability of PIC and TRACS data, we reviewed prior audits and assessments, performed analytical procedures to verify that data fields contained expected values, and traced information to source documents for sampled items. We determined that the computer-processed data were sufficiently reliable for our purposes because the data were corroborated by documentary evidence supplied by projects and housing authorities.

To assess the reliability of NSOR data, we performed analytical procedures to verify that data fields contained expected values and reviewed reports. To the extent possible, we also traced the data to state sex offender registry web sites and confirmed key information with relevant state law enforcement agencies. We determined that the computer-processed data were sufficiently reliable for our purposes because the data were corroborated by the state registry web sites and law enforcement agencies.

We identified records in PIC and TRACS for 4,158,133 households nationwide participating in various public housing and multifamily programs. We identified records in NSOR for 570,699 registered sex offenders. We then matched the household member Social Security numbers contained in PIC and TRACS to the available Social Security numbers contained in NSOR. We determined that 4,784 households had at least one member's Social Security number that matched a Social Security number contained in NSOR.

We developed an attribute sampling plan using a 90 percent confidence level with 10 percent desired precision and 50 percent estimated error rate. We then used the Army Audit Agency's statistical sampling software to calculate the sample size and a random number generator to identify the sample items. The sampling plan resulted in a sample size of 67 households.

For each of the 67 households sampled, we contacted the project or housing authority to obtain all relevant documentation for the subject household members. This documentation included the date of admission, initial application, identifications obtained, list of background checks completed, initial and current Form HUD-50058 or -50059 certification forms, and policies and procedures for determining eligibility at admission.

We then evaluated each sample household to determine whether households included a lifetime registered sex offender by performing a comprehensive review of relevant HUD and NSOR data, project and housing authority documentation, and sex offender web site information. We also followed up with state and local law enforcement to confirm conviction and length of registration information.

After evaluating all of the sample items, we projected the results of 36 lifetime registered sex offenders to the sampling universe. We statistically estimate that of the 4,784 households we identified as including a registered sex offender, between 2,094 and 3,046 include lifetime registered sex offenders, resulting in an estimated $12,564,000 in annual housing assistance and subsidies that could be better spent on households without dangerous sex offenders. This estimate is based on a weighted cost figure of the average annual housing assistance and subsidies cost for each of the three major programs covered in our sample universe (public housing, tenant-based rental assistance, and project-based rental assistance) using 2009 actual budget figures and the number of units for each program according to HUD's web site.

Our audit period generally covered December 2008 through March 2009. Specifically, the data contained in PIC and TRACS were as of January 2009 and December 2008, respectively, and the data contained in NSOR were as of March 2009. We expanded the period as necessary. We conducted the audit from our office in St. Louis, Missouri, from October 2008 through May 2009.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

INTERNAL CONTROLS

Internal control is an integral component of an organization's management that provides reasonable assurance that the following controls are achieved:

- Program operations,
- Relevance and reliability of information,
- Compliance with applicable laws and regulations, and
- Safeguarding of assets and resources.

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. They include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objective:

- Policies and procedures to prevent lifetime registered sex offenders from admission to HUD-subsidized housing**.**

We assessed the relevant controls identified above.

A significant weakness exists if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet the organization's objectives.

Significant Weaknesses

Based on our review, we believe that the following item is a significant weakness:

- HUD did not have adequate controls to prevent the admission of lifetime registered sex offenders to HUD-subsidized housing (see finding).

APPENDIXES

Appendix A

SCHEDULE OF FUNDS TO BE PUT TO BETTER USE

Recommendation number	Funds to be put to better use 1/
1A	$12,564,000

1/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified.

In this instance, if HUD can persuade Congress to pass appropriate legislation as recommended, we estimate that it could prevent more than $12 million in housing assistance and subsidies from being spent over the next year on households with dangerous sex offenders. Projects and housing authorities will instead spend those funds to house other residents. Once appropriate legislation is passed and HUD can implement relevant controls, monitoring, and detection, this will be a recurring benefit. However, our estimate only reflects the initial year of this benefit. These amounts do not include potential offsetting costs incurred by HUD to implement our recommendations.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation **Auditee Comments**

Comment 1

Comment 2

Comment 3

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

AUG 05 2009

MEMORANDUM FOR: Ronald J. Hosking, Regional Inspector General for Audit, 7AGA

FROM: Milan Ozdinec, Deputy Assistant Secretary for the Office of Public Housing and Voucher Programs, PE

SUBJECT: Sex Offender Audit

Thank you for the opportunity to review the Office of the Inspector General's draft audit report of the U.S. Department of Housing and Urban Development's requirement prohibiting lifetime registered sex offenders from admission to HUD-subsidized housing. The Office of Public and Indian Housing's (PIH) comments on your recommendations are provided below.

General Comments:

PIH is generally concerned that the audit report implies that public housing agencies (PHAs) are not complying with the law prohibiting admission of sex offenders subject to a lifetime registration into its housing programs. PIH has been working to ensure that PHAs are in compliance with the law through promulgation of regulations and monitoring of PHA operations. The statutory requirement that PHAs must destroy any information regarding sex offender status after the research is conducted makes it difficult to confirm through file documentation the extent to which PHAs have been doing an exceptional job in background screening of the participants. However, the indications in this report show, out of the over 4 million records reviewed by OIG, only an estimated 1500 families were improperly admitted, or an error rate of between .03 percent and .04 percent. Notwithstanding the extremely low error rate, to address the incidence of error that has been identified, PIH will issue guidance reminding PHAs of their statutory and regulatory obligations relative to lifetime registered sex offenders.

Additionally, OIG states that the housing of sex offenders improperly admitted costs the programs $12 million dollars that could be put to "better use" (as described in the recommendation below). It is important to note that this number reflects all households that contain a lifetime sex offender, including those families admitted in accordance with the law. The number needs to be changed to reflect only the dollars applicable to improper admissions and only those related to PIH Programs.

www.hud.gov espanol.hud.gov

Ref to OIG Evaluation **Auditee Comments**

Specific Comments:

Recommendation 1A. Seek legislative and program rule changes to require denial of continued occupancy and termination of tenancy, or continued subsidy as appropriate, for all lifetime registered sex offenders residing in subsidized housing to annually put more than $12 million to better use.

PIH Response:

Comment 4

PIH disagrees with this recommendation and believes that additional legislation is not necessary. There is already sufficient authority under the voucher and public housing programs for a PHA to remove an individual that is subject to a lifetime sex offender registration from residing in a unit and receiving rental assistance. The contracts, including the annual contributions contract (ACC), reference regulations that allow for the PHA to terminate an individual's tenancy, or a participant's assistance, for criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents, management staff residing on the premises or by persons residing in the immediate vicinity of the premises. There are also provisions for terminating an individual's tenancy or assistance for providing false information.

PIH believes that these provisions, taken singly or in conjunction with one another, provide ample grounds for termination of assistance such that legislative changes are not necessary to address this problem.

Recommendation 1B. Require housing authorities to formally ask households before admission for a list of all states in which they have resided and whether any member is subject to a lifetime registration requirement.

PIH Response

Comment 5

PIH requests that this recommendation be removed from the audit report as there are already requirements in place (982.553(a) (2) and 960.204(a) (4) for the housing choice voucher (HCV) and public housing programs, respectively) whereby the PHA must obtain background checks in the state where the housing is located and in other states where the household members are known to have resided.

PIH will issue guidance encouraging PHAs to request information including a list of all states in which all members of the household have resided in order to facilitate their background check. In addition, PIH will seek an opinion from the Office of General Counsel (OGC) to determine what information requests regarding lifetime registrant status may be preserved. Once receiving an opinion regarding what information needs to be destroyed PIH will incorporate OGC's recommendations in the guidance reminding PHAs of information that they may collect and what needs to be destroyed.

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Recommendation 1C. Require housing authorities to document their consideration before admission of whether each household member is subject to lifetime registration (including the date, type, and results of criminal history background checks performed with law enforcement agencies; and any other contact with sex offender registries and law enforcement agencies) when actual reports are destroyed as required by law.

PIH Response:

Comment 6

PIH does not agree with the recommendation. There are already requirements in place for records management related to documentation obtained for determining whether an applicant is registered as a lifetime sex offender. Specifically, PHAs must destroy records upon completion of the originally intended use as addressed in 24 CFR 5.903(g). The statute requires destruction of any criminal record or information regarding a lifetime registration requirement. PIH will seek legal advice from OGC regarding what documentation can be destroyed versus maintained. PIH will then incorporate OGC's recommendations in guidance to PHAs. In no case should PHAs be responsible for retaining any documentation of background checks that it has conducted through its authority for other subsidized federal housing outside of PIH programs.

Recommendation 1D. Develop and implement controls to monitor housing authority use of the required application questions and retention of appropriate background check documentation.

PIH Response:

Comment 7

PIH does not accept this recommendation and requests that it be removed from the audit report. PIH conducts an in depth risk analysis each year which incorporates many factors (including regulatory compliance) that impact the management and operations of a PHA. This risk analysis informs PIH's decisions of where to direct its limited resources by identifying public housing agencies that represent the greatest risk to the Department. Monitoring plans are established as a result. Requiring additional monitoring outside the scope of the risk assessment undermines PIH's ability to focus its resources on the identified risks.

Recommendation 1E: Urge housing authorities to ask households at each recertification whether any member is subject to a lifetime registration requirement.

PIH Response:

Comment 8

PIH accepts this recommendation. Current residents are not subject to the statutory and regulatory prohibition. Therefore, unless legislation is passed making this a requirement PIH can only recommend that the PHA ask at recertification whether any member of the household is subject to sex offender lifetime registration. Subject to OGC's advice regarding destruction of information, PIH will issue guidance that will clarify what information PHAs may obtain and retain in the tenant file, and what information must be destroyed.

Recommendation 1F. Urge housing authorities to check the Dru Sjodin National Sex Offender

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Ref to OIG Evaluation **Auditee Comments**

Website for all household members at each recertification.

PIH Response:

Comment 8

PIH accepts this recommendation. Current residents are not subject to the statutory and regulatory prohibition. Therefore, unless legislation is passed making this a requirement PIH can only recommend that PHAs check the Dru Sjodin National Sex Offender Website, as well as other data base options available at the Federal and State levels that will produce comprehensive results, at recertification. Because PIH and the OIG agree that the Dru Sjodin National Sex Offender Public website is not comprehensive and its accuracy is not guaranteed by the Department of Justice, the guidance will identify the limitations of the website.

Recommendation 1G. Urge housing authorities to aggressively pursue termination of tenancy, or assistance as appropriate, for lifetime sex offenders to the extent currently allowed by law, to include those who have lied on application or recertification forms or are otherwise excluded by housing authority policy.

PIH Response:

Comment 9

PIH accepts the recommendation and believes that PHAs are already pursuing terminations for those who are engaging in criminal activity that threatens the health, safety, or right to peaceful enjoyment of others, or who have been admitted improperly as a result of providing false information on their applications. PIH has implemented regulations to ensure that participants can be terminated for such activity. With respect to the public housing program and in accordance with 24 CFR 960.259(a) (4), any information supplied by the family must be true and complete. For the Section 8 program, this is evidenced by the regulatory requirement (24 CFR 982.551(b)) that it is a family obligation to provide true and complete information. PIH will issue guidance reminding PHAs of their authority and encouraging them to pursue terminations in such cases.

Recommendation 1H. If legislative changes are passed (see recommendation 1A), require housing authorities to ask households at each recertification whether any member is subject to a lifetime registration requirement.

PIH Response:

Comment 10

PIH disagrees that additional legislation is necessary (see response to recommendation 1A), but if legislation is enacted a plan should be developed to comply with the language of the statutory authority, which may include requiring housing authorities to ask households at each recertification whether any member is subject to a lifetime registration requirement.

Recommendation 1I. If legislative changes are passed (see recommendation 1A), require housing authorities to check the Dru Sjodin National Sex Offender Website for all household members at each recertification.

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Comment 10

PIH Response:

PIH disagrees that additional legislation is necessary (see response to recommendation 1A), but if legislation is enacted, a plan should be developed to comply with the language of the statutory authority. However, further research would have to be done by HUD before mandating the use of one website, as there may be known limitations.

Recommendation 1J. If legislative changes are passed (see recommendation 1A), develop and implement controls to monitor housing authority use of the required recertification questions and use of the Dru Sjodin National Sex Offender Public Website.

Comment 10

PIH Response:

PIH disagrees that additional legislation is necessary (see response to recommendation 1A), but if legislation is enacted, a plan should be developed to comply with the language of the statutory authority and operational issues, which may include recertification questions and use of the Dru Sjodin National Sex Offender Public Website will be incorporated into PIH's monitoring protocol.

Recommendation 1K. If legislative changes are passed (see recommendation 1A), develop and implement a plan to detect lifetime registered sex offenders occupying subsidized housing, such as by matching National Sex Offender Registry database to its own data and then following up on preliminary matches.

Comment 10

PIH Response:

PIH disagrees that additional legislation is necessary (see response to recommendation 1A), but if legislative changes are passed, a plan should be developed to comply with the language of the statutory authority.

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

JUL 31 2009

MEMORANDUM FOR: Ronald J. Hosking, Regional Inspector General for Audit, 7AGA

FROM: Carol J. Galante, Deputy Assistant Secretary for Multifamily Housing Programs, HT

SUBJECT: Sex Offender Audit

Thank you for the opportunity to review your draft audit report of the U.S. Department of Housing and Urban Development's requirement prohibiting lifetime registered sex offenders from admission to HUD-subsidized housing. The Office of Multifamily Programs' (Multifamily Housing) comments on your recommendations are provided below:

General Comments:

Comment 1

Multifamily Housing is generally concerned about the tone of the audit report which implies it is not complying with the law prohibiting admission of sex offenders subject to a lifetime registration into its assisted housing programs. Multifamily Housing is in full compliance with the law and has been working to ensure that owners and management agents (O/As) are also in compliance with the law through promulgation of regulations and issuance of handbooks and memorandums. As found during the audit, there was only a small percentage, .07%, of households that included a lifetime registered sex offender. Therefore, O/As ensured that 99.93% of the households did not include a registered lifetime sex offender. Multifamily Housing's most recent guidance to O/As was issued on June 23, 2009, with the release of Change 3 to Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, whereby clarification on retention of screening documentation was provided.

Comment 2

On March 10, 2007, a memorandum was sent to the Multifamily Hub Directors, Multifamily Program Center Directors, Owners, Management Agents and Contract Administrators that emphasized HUD's requirements that O/As must screen the applicant and the applicant's household members to determine if the applicant or any household member is subject to a lifetime registration requirements under a state sex offender registration program. Multifamily Housing will issue another memorandum recommending use of the Dru Sjodin National Sex Offender website for screening applicants and the applicant's household members. It will also recommend that O/As should include in their application, questions on whether the applicant or any member of the applicant's household is subject to a lifetime sex offender registration requirement and all of the states where they or their household members have resided.

Multifamily Housing is willing to consider other audit recommendations as noted in the specific comments below and make changes as necessary to ensure quality of life for residents living in one of its assisted properties. Multifamily Housing recommends that all recommendations

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that rely solely upon future statutory authority be combined into one recommendation.

Specific Comments:

Recommendations:

1L. **Seek legislation and program rule changes to require denial of continued occupancy and termination of tenancy, for all lifetime registered sex offenders residing in subsidized housing to annually put more than $12 million to better use.**

Comment 4

Additional legislation is not necessary due to the fact that Multifamily Housing already has sufficient requirements in place to remove an individual that is subject to a lifetime sex offender registration from residing in a unit and receiving rental assistance. The leases required for use at the assisted properties all contain clauses that allow for the O/A to terminate the individual's tenancy for criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents, management staff residing on the premises or by persons residing in the immediate vicinity of the premises. There are also provisions for terminating an individual's tenancy for providing false information for determining eligibility to reside at a property and for erroneous admission of a sex offender by the O/A.

Comment 3

The $12 million dollars reflects both Public and Indian Housing and Multifamily Housing programs. This needs to be changed to reflect only the dollars applicable to Multifamily Housing Programs.

1M. **Require properties to formally ask households before admission for a list of all states in which they have resided and whether any member is subject to a lifetime registration requirement.**

Comment 5

Multifamily Housing believes that the practices currently in place whereby the O/A obtains background checks in the State where the housing is located and in other States where the household members are known to have resided are in compliance with your recommendation and request that your recommendation be removed from the audit report.

The Regulations at 24 CFR 5.856 require owners to perform necessary criminal history background checks (which includes sex offender registration) in the State where the housing is located and in other states where the household members are known to have resided.

Paragraphs 8-14.C.3 and 9 of Handbook 4350.3 REV-1, *Occupancy Requirements of Multifamily Housing Programs*, address the regulatory requirement by providing the O/A the option to request the Public Housing Authority (PHA) to obtain criminal (includes sex offender registration) conviction records from the State where the applicant and the applicant's household members reside and, based on information provided by the applicant, from other States where the applicant and applicant's household members may have resided or to obtain the information through other sources. Where the O/A does not use the PHA to obtain the criminal conviction records but obtains the information through other sources, we

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will make it clear in future guidance issued to O/As that the O/A must obtain the records in the State where the applicant and the applicant's household members reside and from other States where the household members are known to have resided.

1N. **Require properties to document their consideration before admission of whether each household member is subject to lifetime registration (including the date, type, and results of criminal history background checks performed with law enforcement agencies, and any other contact with sex offender registries and law enforcement agencies) when actual reports are destroyed as required by law.**

Comment 11

Multifamily Housing believes that this is already being done and that we are in compliance with this recommendation and requests that this recommendation be removed from the audit report.

Paragraph 8-14.C.13 and 14 of Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, addresses the requirements for retention of documents obtained by the PHA or by the O/A to determine whether or not an applicant or any household members are subject to registration as a lifetime sex offender. PHAs must destroy records upon completion of the originally intended use as addressed in 24 CFR 5.905(g). O/As must retain information provided by the PHA as a result of their performing the criminal background check to determine if an individual is subject to a lifetime sex offender registration in the tenant files for the term of tenancy plus 3 years. With the release of Charge 3 to the Handbook on June 23, 2009, clarification was issued whereby O/As who do not use a PHA to conduct their criminal background checks but who conduct the criminal background checks themselves through other sources must retain the records for the term of tenancy plus 3 years. Background checks on applicants who are not admitted must be retained, along with the application, for 3 years. Prior to the release of Change 3 to the Handbook, O/As were destroying records they obtained in accordance with the requirements for PHAs.

1O. **Develop and implement controls to monitor properties' use of the required application questions and retention of appropriate background check documentation.**

Comment 12

Multifamily Housing believes there are already controls in place to monitor the O/A's compliance and requests that this recommendation be removed from the audit report.

Form HUD-9834, Management Review of Multifamily Housing Projects, contains information that the entity serving as the contract administrator conducting a Management and Occupancy Review (MOR) uses for determining O/A compliance. The HUD-9834 contains a Tenant File Worksheet (Addendum A) that contract administrators must use when reviewing tenant files. One of the questions they must complete on the addendum is whether or not the O/A has verified and documented screening for criminal and drug activity and sex offender registration in accordance with the O/A's Tenant Selection Plan. If the contract administrator finds that the O/A is not documenting their screening for criminal activity (includes sex offender registration) this will be a finding on the report provided to the owner. The owner has 30 days in which to cure the finding.

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1P. Urge properties to ask households at each recertification whether any member is subject to a lifetime registration requirement.

Comment 8

Multifamily Housing accepts this recommendation. However, the regulations at 24 CFR Part 5 do not require that O/As ask households at recertification if any member of the household is subject to sex offender lifetime registration. Therefore, unless legislation is passed making this a requirement, Multifamily Housing can only recommend that the O/A include asking at recertification whether any member of the household is subject to sex offender lifetime registration. This recommendation will be included in the revised memorandum referenced above and will be incorporated in the next revision to Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs.*

1Q. Urge properties to check the Dru Sjodin National Sex Offender Website for all household members at each recertification.

Comment 8

Multifamily Housing accepts this recommendation. However, the regulations at 24 CFR Part 5 do not require that O/As use the Dru Sjodin National Sex Offender website at recertification. Therefore, Multifamily Housing can only recommend that O/As use this website at the time of recertification. This recommendation will be included in the revised memorandum referenced above and will be incorporated in the next revision to Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs.*

1R. Urge properties to aggressively pursue termination of tenancy for lifetime sex offenders to the extent currently allowed by law, to include those who have lied on application or recertification forms or are otherwise excluded by property policy.

Comment 8

Multifamily Housing is in agreement with this recommendation and will urge O/As to aggressively pursue termination of tenancy for lifetime sex offenders to the extent allowed by law.

Multifamily Housing already has requirements for tenancy for criminal activity (including sex offender registration) in the HUD model leases required to be used by O/As (see Appendix 4 of Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, for copies of the leases). All of the leases contain as a reason for termination of tenancy, criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises) or that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises. The HUD Model Lease for Subsidized Programs (Appendix 4-A – form HUD-90105a) also includes penalties for submitting false information with one of the penalties being termination of tenancy.

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1S. **If legislative changes are passed (see recommendation 1A), require properties to ask households at each recertification whether any member is subject to a lifetime registration requirement.**

Reference to recommendation 1A should be 1L for Multifamily Housing Programs.

Comment 13

Multifamily Housing will only accept this recommendation provided a legislative change is implemented. Multifamily Housing recommends that all recommendations (1S, 1T, 1U and 1V) that rely upon future statutory authority be combined into one recommendation.

1T. **If legislative changes are passed (see recommendation 1A), require properties to check the Dru Sjodin National Sex Offender Website for all household members at each recertification.**

Comment 13

Reference to recommendation 1A should be 1L for Multifamily Housing Programs.

Multifamily Housing will only accept this recommendation provided a legislative change is implemented.

1U. **If legislative changes are passed (see recommendation 1A), develop and implement controls to monitor properties' use of the required recertification questions and use of the Dru Sjodin National Sex Offender Public Website.**

Comment 13

Reference to recommendation 1A should be 1L for Multifamily Housing Programs.

Multifamily Housing will only accept this recommendation provided a legislative change is implemented.

1V. **If legislative changes are passed (see recommendation 1A), develop and implement a plan to detect lifetime registered sex offenders occupying subsidized housing, such as by matching National Sex Offender Registry database to its own data and then following up on preliminary matches.**

Comment 13

Reference to recommendation 1A should be 1L for Multifamily Housing Programs.

Multifamily Housing will only accept this recommendation provided a legislative change is implemented.

OIG Evaluation of Auditee Comments

Comment 1 In accordance with our audit objective, we tested to determine the extent to which HUD-subsidized housing was occupied by lifetime registered sex offenders and our recommendations address the weaknesses identified which allowed these lifetime offenders to occupy subsidized housing. Because our focus was on the extent of exceptions, we did not perform testing which would allow us to make a general conclusion on housing authority (and project) compliance with the law. We did not perform testing to determine the extent to which housing authorities (and projects) have properly denied admission to other lifetime offenders or the extent to which they performed proper background screening on remaining participants.

Comment 2 The Office of Public and Indian Housing's purpose is to ensure safe, decent, and affordable housing. Similarly, the Office of Multifamily Housing oversees assisted properties to assure they meet the Department's goal to provide decent, safe, and sanitary housing to low-income families. While the percentage of lifetime sex offenders in assisted housing is relatively small, HUD can better fulfill this purpose by implementing additional procedures and controls to prevent these instances.

Comment 3 We added a footnote to the recommendation further explaining the $12 million estimate. However, because our sample universe consisted of both public housing and multifamily programs, we cannot break this estimate out between the two program areas. Additionally, our projection is based on household members who were ineligible at the time of admission as well as those admitted and convicted before the current law and those who became lifetime offenders after admission because we are requesting legislative changes impacting all three groups.

Comment 4 We strongly believe that additional legislation is necessary for several reasons:

- In a March 2009 case (Miller v. McCormick), a United States District Court pointed out that current regulations do not authorize termination of lifetime offenders who avoid the ban and become program participants. This precedent presents problems for housing authorities (and projects) seeking to terminate assistance for sex offenders improperly admitted.
- Further, current regulations do not expressly address offenders who were admitted prior to the current law or those who became offenders after admission. While it is true that housing authorities (and projects) have some authority to terminate assistance for activity that threatens the safety of other residents, current regulations do not require it.
- Accordingly, as highlighted in the finding and in recommendations (see 1E, 1F, 1H, 1I, 1P, 1Q, 1S, 1T), there are currently no detection methods in place to identify members who become lifetime registered sex offenders after admission.

Comment 5 We believe that this recommendation is necessary. In order for housing authorities (and projects) to perform the required background checks in all states

in which households are known to have resided in, they must first ask for a list of these states. Our sample testing indicated that housing authorities (and projects) are not currently doing this. Therefore, we are simply asking for HUD to require housing authorities (and projects) to properly document this question, along with a question asking if any household member is subject to a lifetime registration requirement.

Comment 6 While housing authorities are currently required to destroy actual criminal history background checks, we believe it is necessary for them to document performance of the required checks, including the date, type and general results. Without this basic documentation, HUD cannot confirm whether housing authorities are properly screening applicants.

Comment 7 While HUD does not need to change its risk analysis, it can add these specific items to the monitoring plans once housing authorities are selected for review.

Comment 8 HUD agrees to implement our recommendation. HUD's response to this recommendation highlights the importance of new legislation. Without it, HUD can only recommend this improved control, but it has no authority to require it.

Comment 9 HUD agrees to implement our recommendation. However, note that housing authorities are unable to pursue termination for those who become lifetime registered sex offenders after admission unless they first detect the change in status. We would not currently expect housing authorities to detect members who become lifetime offenders after admission because HUD does not require proactive detection at recertification (see finding and recommendations 1E, 1F, 1H, 1I).

Comment 10 HUD agrees to implement our recommendation if legislative changes are enacted.

Comment 11 The June 2009 clarification to HUD Handbook 4350.3 should satisfy this recommendation in cases where the owner/agent obtains the criminal background check. However, in cases where housing authorities obtain the criminal background check, we believe it is necessary for the project to document performance of the required checks, including the date, type and general results (when actual reports are destroyed). Without this basic documentation, HUD cannot confirm whether housing authorities are properly screening applicants.

Comment 12 Recommendations 1M and 1N are requesting HUD to implement new requirements for projects. Accordingly, HUD needs to add these specific requirements to its current review process.

Comment 13 HUD agrees to implement our recommendation if legislative changes are enacted. We will revise this recommendation to reference 1L. However, because they are separate actions, we will not combine recommendations 1S through 1V.