

CRIMINAL HISTORY SCREENING OF APPLICANTS FOR ASSISTED HOUSING

Loren Forbes, GBLS, 10/21

1

PROGRAM RULES DIFFER

- Federally assisted housing—certain mandatory denials, others permissive; some lifetime prohibitions; reasonable lookback periods. Not all programs—Shelter Plus Care, CoC exceptions.
- State assisted housing—no mandatory denials, but no lookback limit, either. Balancing factors.

2

2

SOURCES OF LAW

- Federal: 42 U.S.C. §§ 1437d(q), 1437n, 13661, 13663; 24 C.F.R. Part 5, Subparts F & I. (For PBV or HCVP, PHA does screening, but owner may elect to do additional screening.)
- State: M.G.L. c. 121B, § 32; 760 CMR 5.00; MHFA Tenant Selection Plan.

3

3

PROJECT-BASED SECTION 8, MANDATORY DENIALS I

- Current illegal users of controlled substances (note true for marijuana even though lawful under state law)
- Current pattern of substance abuse affecting health/safety (not just CORI)
- Methamphetamine conviction associated with past occupancy of federal housing

4

4

PROJECT-BASED SECTION 8, MANDATORY DENIALS II

- Evicted in prior 3 years for drug-related criminal activity by household member (exception if rehab or no longer there)—often found through housing history, not CORI
- Lifetime registered sex offender status in MA or elsewhere where resided (for MA, see G.L. c. 6, § 178G)

5

5

PROJECT-BASED SECTION 8, PERMISSIVE DENIALS I

- Engaged in drug-related criminal activity (possession, possession with intent, distribution, manufacture)
- Engaged in violent criminal activity (use, or attempted/threatened use, of physical force substantial enough to cause/be reasonably likely to cause bodily injury or property damage)

6

6

PROJECT BASED SECTION 8, PERMISSIVE DENIALS II

- Engaged in other unlawful activity which would pose a threat to the health/safety of other residents or those residing in the vicinity (fairly broad, but think of it as the kind of activity that if it occurred after leased up, would be a serious lease violation)

7

7

IMPORTANT THINGS TO REMEMBER WITH FEDERAL RULES

- Don't have to have a conviction. However, just being arrested is not enough to deny an applicant—see HUD Notice 2015-19.
- Standard is not “beyond a reasonable doubt”, but “more likely than not” that certain conduct was engaged in.
- Can give opportunity to explain plea.

8

8

SCREENING FACTORS FOR STATE ASSISTED HOUSING

- Substantively, similar to permissive denial factors used by feds (drug-related or violent criminal activity, or with health/safety impact on others). Look at a variety of factors: age of offenses, pattern of offenses, how serious they were, likely impact if they were to recur after admitted.

9

9

OPPORTUNITY TO REVIEW & RESPOND PRIOR TO DENIAL

- Both CORI policy & applicable Federal/state law give applicant right to know what negative information owner has and opportunity to respond to it prior to denial. Notice & sharing material.
- CORI may not be accurate (actual disposition/charge incorrect, identity theft issues) or may not be relevant.

10

10

EXTENUATING CIRCUMSTANCES & MITIGATING FACTORS

- Should always be considered.
- *Extenuating circumstances*: why did offense occur (may go to likelihood of recurrence, or whether should be regarded same way).
- *Mitigating factors*: What's changed in person's life so that this isn't likely to happen again.

11

11

CROSS-CUTTING CONSIDERATIONS: VAWA, REASONABLE ACCOMMODATION, AND LEP

- Violence Against Women Act (VAWA) requires consideration of domestic/dating violence, stalking, and sexual assault in policies related to admission for federally assisted housing.
- Owners have duties under 504, FHAA, and ADA to reasonably accommodate those with disabilities, including admissions actions. Interactive process.
- Owners must have forms/notices and policies that address the needs of those with Limited English Proficiency (LEP), including in admissions.

12

12

USING RA, VAWA, LEP I

- Procedurally: Overcoming communication barriers or having alternatives.
- Examples: RA--doing phone interview, applications to mail in, notices in braille, lip-readers, someone to help.
- VAWA: Safety risks caused by certain contacts, alternatives.
- LEP: Interpreters, translated materials.

13

13

USING RA, VAWA, LEP II

- Substantively—discount negative information/action, workable future plan.
- Examples: RA—misconduct related to disability, and now moderated (former substance abuser in rehab; on meds or in counseling); appointment missed
- VAWA: was related to victim status
- LEP: perhaps miscommunications

14

14

REVIEW & SHARE OWNER POLICIES

- Ask what policies/forms owner or PHA has. Often particular certification or request forms must be used for VAWA/RA.
- Ask for translation/interpreter, identify what's needed.
- For RA, process is to be interactive—may be alternative accommodations.

15