

## STAFF REPORT

### National Background Checks Section 8 Housing Subsidy Program

At the December 16, 2008 meeting, the Governing Board directed staff to explore an expansion of its current program policies and procedures to require conducting national background checks for the Section 8 Housing Subsidy Program.

#### BACKGROUND:

As part of the administration of the Section 8 Rental Housing Subsidy Programs, all Public Housing Authorities (PHA's) are required to adopt a written administrative plan that establishes local policies for program administration. The plan must conform with HUD regulations and state the PHA's policy, **in those areas where the PHA has discretion** to establish a local policy. The plan is a formal document which communicates, to all interested parties, the policy choices the local agency has made where federal regulations or law does not direct the PHA's actions or decisions. The Plan must be adopted by the PHA's Governing Board, and the PHA is responsible to insure that the plan is kept up to date and staff operates under the policies spelled out in the plan.

At the December 16, 2008, Governing Board meeting, the Board directed staff to explore revising the administrative plan to incorporate policies and procedures regarding implementing national background checks.

Staff, in consultation with the resident advisory board, has attached for the Board's review and consideration, the following:

- a) Implications for implementing national background checks for both applicants and current participants (see tables beginning on the next page). The full impact of the cost and other possible implications will not be known until they are implemented.
- b) Sample proposed policies and procedures language to conduct national background checks as part of the day-to-day program administration for both applicants and current participants.

As outlined in the Implication table below, adding national background checks either to applicants or to current participants will be time consuming, but more so on the "current participant" side. **This will also have budget implications that will likely require other funding sources, since administrative funds from HUD are not sufficient to cover these additional costs.** This change will impact the performance and regulatory requirements of our contractual agreement with HUD.

**Time Implications**

**Applicants**

- The processing time to incorporate national background screening checks for determining the eligibility of applicants will add an additional 4-6 weeks, if finger-print checks are required. This is in addition to the already 2-week process for the regular paperwork and may add an additional week for the initial screening paperwork to come back from the DCI. This does not include the down time in getting members scheduled to get finger-printed.
- The process can affect the requirements from HUD for Housing Authorities to meet a 95% lease-up rate or 95% expenditure rate of their Section 8 funding allocation. This can result in the reduction of administrative fees and Housing Assistance Payments in order to receive continued funding to assist qualified families.

**Current Participants**

- The processing time to incorporate national background screening checks for determining the eligibility of participants during annual re-exams will be the same as applicants, if finger-print checks are required. However, the paperwork side would involve extending the process time for August re-exams (which is our largest annual review period) to 4 months in order to make accommodation for the downtime for the initial screening paperwork to come back from the DCI. This as well does not include the down time in getting members scheduled to get finger-printed.

**Expense Implications**

**Applicants**

- The anticipated cost could be approximately \$3,193.25 for the first year (see explanation below):

*The cost for nationwide checks would vary based on the number of names that would be selected from the waiting list. For example, 102 names were pulled from the waiting list from January 2008 through December 2008. Of this total, 106 were adults in the household over 18. Based on this number, the City would have spent \$1,590(106 x\$15) and an additional cost of \$30.25 for each applicant that required finger printing for further background checking. If, for example, half (53) required fingerprint checks, that would total \$1,603.25 (53 x \$30.25).*

- The Housing staff consist of 1.5 members assigned to Administer and implement the day to day program activities, like Iowa City Housing Agency, we would need the Assistance of the Ames Police Department to collect and absorb the cost for finger-printing.

**Current Participants**

- The anticipated cost could be approximately \$9,132 for the first year (see explanation below) and roughly \$4566 per year thereafter:

*The cost for national background checks would vary based on the number of annual re-exams conducted monthly. For example, as of January 2009 their currently 396 adults (18 and older). Based on this number, the City would spend \$5,940 (396 x \$15) and an additional cost of \$30.25 for each participant that required finger printing for further background checking. So, for example, if 25 % of the 396 (99) required fingerprint checks, that would total approximately \$3,193 (99 x \$30.25).*

• The process can effect the requirements from HUD for Housing Authorities to meet a 95% lease-up rate or 95% expenditure rate of their Section 8 funding allocation. This can result in the reduction of administrative fees and Housing Assistance Payments in order to receive continued funding to assist qualified families.

• HUD also requires that participants must be provided with at least a 30-days notice of their rent share prior to the beginning of their lease term. Therefore, waiting for background screening would impact the staff in meeting this requirement and could affect our performance ratings that could impact our administrative fees and housing assistance payments.

• This process may have an impact on participants (customers), in particular those who are elderly and disabled. The administration of the program is heavily burdened with paperwork and deadlines and this will add to that process.

Currently, there are no additional cost other than time and material for conducting local and state background checks.

In speaking with the Iowa City Housing Authority, they do not repeat national background checks on participants during their annual re-exams. They rely on police reports, arrest reports, jail bookings, newspaper, e-mails/calls from law enforcement, etc., to monitor and enforce program integrity.

While waiting on information from the DCI, staff will need to continue the annual re-exam process, which would mean incurring cost to conduct inspections, cost to conduct informal hearings (which includes Legal staff time) and the continuation of paying the rental subsidy on participants who request hearings regarding their possible termination based on the information received. We are unable to anticipate what this additional cost would require.

Our Housing staff consists of 1.5 full time employees assigned to administer and implement the day to day program activities. By contrast the Iowa City Housing Agency has a staff of 13.5 to administer their Section 8 & Public Housing Programs.

Staff has identified the following three options for the Board's consideration:

**OPTION 1:**

This option would continue the **current practice** of performing **local and state of Iowa background checks** for drug-related or violent criminal activity on "new applicants" applying for assistance. These checks review a three-year history from the date their names come to the top of the waiting list. For "current participants," background checks are conducted on those who are being recertified each year for continuing assistance. These checks review a one-year history from the date of their last annual recertification.

**OPTIONS 2:**

This option would require **local, state and national background checks only** on "new applicants." These checks would continue to be for a three-year history from the date their names come to the top of the waiting list. For "current participants," **only local and state background checks** would be conducted. Staff would also continue to rely on police reports, arrest reports, jail bookings, calls from property owners/managers, etc., to monitor current participants' activities. These checks would continue to review a one-year history from the date of their last annual recertification.

**OPTION 3:**

This option would require **local, state and national background checks for both** "new applicants" **applying for assistance and** on "current participants" **that are being recertified**. As noted in the previous options, the background checks for new applicants would review a three-year history from the date their names come to the top of the waiting list, while the background checks for current participants would review a one-year history from the date of their last annual recertification.

Under all three options, the background checks would include all adults over the age of 18, live-in aides, persons porting (transferring) from other Housing Authorities, and any new members being added to the household.

Additionally, in any options the administrative plan will need to be updated to address the HUD requirements for Confidentiality of Criminal Records and Disclosure of Criminal Records to the Family.

**If the Governing Board desires to add national background steps to the current administrative plan, staff will need to bring back an amended plan that includes whichever option is chosen, even if that includes additional language or another option.**

### Sample Policies & Procedures for Applicants

Section	
<p>Screening for Drug-Related, Violent Criminal Activity and Other Criminal Activity                      [24 CFR §982.552 – 982.553] as indicated in the following 3 sections listed below:</p>	<p>This section describes the guidelines the Ames Housing Authority (AHA) has established for criminal background screening (see definition) of applicants for drug related, violent criminal and other criminal activity. The section includes HUD-required screening standards, as well as discretionary standards allowed by HUD. The AHA may deny program admission if there is reasonable cause to believe that an applicant family has engaged in activity prohibited by these guidelines.</p> <p>These guidelines will apply to applicant families (including live-in Aides pursuant to 24 CFR 5.903), and any new members being added to the household of a family currently participating in a rental assistance program administered by the AHA.</p> <p>The AHA will also screen families porting (transferring) into its jurisdiction from other housing authorities, as authorized at 24 CFR §982.355(c)(9) and §982.355(c)(10).</p> <p>The AHA may prohibit program admission to households if any household member is found to have engaged in activities listed in this criminal background screening standards section. Applicants convicted of an act listed in this section are ineligible to receive assistance. However, at the discretion of the AHA, the AHA may consider the household eligible for rental assistance if the household member who committed the criminal act will not be a part of the assisted household; as long as all other admission requirements are met. The family will be required to submit written certification that the ineligible family member(s) will not reside in and/or visit the household.</p> <p>1. Applicant(s) previously evicted from federally assisted housing for drug-related criminal activity. The AHA is required to deny admission to the applicant or any household member evicted from public housing, Indian housing, Section 23, or any federally assisted housing program because of a drug-related criminal activity for a 3-year period beginning on the date of such eviction. However, the AHA may waive the 3-year probation period if the person who committed the drug-related crime has successfully completed an approved supervised drug rehabilitation program after the date of the eviction or if the circumstances leading to the eviction no longer exist (i.e. the individual responsible for the original eviction is imprisoned or is deceased).</p> <p>2. Applicant(s) currently engaging in the illegal use of a drug. The AHA is required to deny admission to an applicant or any household member who the AHA determines is currently engaging in illegal use of a drug. The AHA is required to deny admission if the AHA has reasonable cause to believe that there is a pattern of illegal use of a drug by the applicant or any household member and that this pattern may threaten the health, safety, or right to peaceful enjoyment of the premises by others, regardless of whether the household member has been arrested or convicted. The AHA may approve admission if the person provides sufficient evidence that they are no longer engaging in illegal drug use and have successfully completed a supervised drug rehabilitation program.</p>

Section	Sample Policies & Procedures for Applicants
<p>Drug Related and Criminal History Screening Standards [24 CFR §982.552(i) and §982.553(a)], cont.</p>	<p>3. Applicant(s) subject to a lifetime sex offender registration requirement. The AHA is required to deny admission if the applicant or any household member is subject to lifetime registration as a sex offender under a state registration program, regardless of longevity of conviction or completion of any rehabilitative program.</p> <p>4. Applicant(s) with a pattern of alcohol abuse. The AHA is required to deny admission if the AHA has reasonable cause to believe that there is a pattern of abuse of alcohol by the applicant or any household member and this pattern may threaten the health, safety, or peaceful enjoyment of the premises. The AHA may approve admission if the person provides sufficient evidence that they are no longer engaging in the abuse of alcohol and has successfully completed a supervised alcohol rehabilitation program.</p> <p>5. Applicant(s) currently engaging in, or who have engaged in violent criminal activities. The AHA shall deny admission if the applicant or any household member has been convicted for any of the following activities, for a period of 3 years following the end of a conviction or incarceration (whichever is later), with no further arrest or convictions other than minor traffic violations:</p> <ul style="list-style-type: none"> <li>• Drug-related criminal activity;</li> <li>• Violent criminal activity;</li> <li>• Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; and</li> <li>• Other criminal activity which may threaten the health or safety of the owner or AHA staff;</li> <li>• The AHA may waive the 3-year period for drug-related criminal activity if the person provides sufficient evidence that they are no longer engaging in the illegal use of a controlled substance and have successfully completed a supervised drug rehabilitation program.</li> </ul> <p>6. Applicant(s) engaging in fraud or bribery associated with any federal housing program. The AHA shall deny admission if the applicant or any household member has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program. The AHA may make an exception in determining admission if the family member(s) who participated or was culpable for the action do not reside in the assisted unit.</p> <p>7. Applicant(s) has not completed parole or probation. The AHA shall deny admission if the applicant or any household member has not completed parole or probation, including summary probation.</p>

<b>Sample Policies &amp; Procedures for Applicants</b>	
<b>Section</b>	
<p>2. Criminal Background Checks [24 CFR §982.552 – §982.553, §5.903 – §5.905]</p>	<p>The AHA will request a criminal background check for all applicant household members (including live-in aides) 18 years of age and older. The criminal background check is used as a factor in screening applicants for violent criminal activities that would prohibit admission to the AHA's Section 8 rental assistance program.</p> <p>All adult members of an applicant household must submit a signed Criminal Background Consent Form [24 CFR §5.903(b)], authorizing the release of criminal conviction records from law enforcement agencies. Failure to sign the consent form will result in the denial of assistance.</p> <p>A criminal conviction alone may or may not result in the denial of assistance. Factors such as disclosure, completion of a drug or alcohol rehabilitative treatment program, type and longevity of the conviction may also be taken into consideration.</p> <p>The AHA is additionally authorized by HUD to obtain access to sex offender registration information, in order to prevent program admission to any household member (including live-in aides and minors) subject to a lifetime sex offender registration under a State sex offender registration program.</p>
<p>3. Confidentiality of Criminal Records [24 CFR §5.903(g)]</p>	<p>Criminal records received by the AHA are maintained confidentially, not misused, nor improperly disseminated and kept locked during non-business hours. All criminal records will be destroyed no later than 30 calendar days after a final determination is made.</p>
<p>4. Disclosure of Criminal Records to Families</p>	<p>The applicant or family member requesting to be added to the household will be provided with a copy of the criminal record upon request and an opportunity to dispute the record. Applicants will be provided an opportunity to dispute the record at an informal review. Participants may contest such records at an informal hearing [24 CFR §982.553(d)].</p>

<b>Subject</b>	<b>Sample Policies &amp; Procedures for Participants</b>
<p>Annual Screening for Drug Related, Violent Criminal Activity and Other Criminal Activity [24 CFR §982.552 – 982.553]</p>	<p>During the Annual Reexamination to determine continued eligibility for assistance in the Section 8 Rental Subsidy Program, the AHA will implement, in addition to the local and state annual checks, the Screening for Drug Related, Violent Criminal Activity and Other Criminal Activity as outlined in the criminal background screening Section for applicants, <b>but will only review for a 12-month timeframe from the date of the prior re-exam or admittance to the program.</b></p>
<p>Required Evidence [24 CFR §982.553(c)]</p>	<p>In determining whether to terminate assistance based on criminal activity, the AHA may terminate assistance if the preponderance of evidence (see definition) indicates that a family member has engaged in such activity, regardless of whether the family member has been arrested or convicted.</p> <p>The AHA may consider arrests, convictions, no contest pleas, fines, city ordinance violations or other credible preponderance of evidence in determining if a violation has occurred.</p>
<p>Confidentiality of Criminal Records [24 CFR §5.903(g)]</p>	<p>Criminal records received by the AHA shall be maintained confidential, not misused, nor improperly disseminated and kept locked during non-business hours. Also, all criminal records will be destroyed no later than 30 calendar days after a final determination is made.</p>
<p>Disclosure of Criminal Records to Families [24 CFR §5.903(f) and §982.553(d)]</p>	<p>The participant or household member requesting to be added to the lease will be provided with a copy of the criminal record upon request and an opportunity to dispute the record. Applicants will be provided with the opportunity to dispute the record at an informal review. Participants may contest such records at an informal hearing.</p>
<p>Criminal Background Checks for Incoming Portability [24 CFR §982.355(c)(9) – (10) and PIH Notice 2004-12)</p>	<p>The AHA will conduct criminal background and sex offender registration checks for all incoming portability families and will not delay issuing the family a voucher but will take subsequent necessary action, including up to termination of a family's assistance as outlined in the criminal background screening section.</p> <p>The AHA will take the following steps to minimize the number of terminations for families that are porting into its jurisdiction:</p> <ul style="list-style-type: none"> <li>• At voucher issuance, families be will informed of the AHA's criminal background policies and that they will be going through a background check and offered an opportunity to return to their originating PHA.</li> <li>• If it is determined before a contract is effective that a family member is unsuitable due to a criminal background check the family will be given the options of returning to the originating PHA or excluding the culpable family member.</li> <li>• If it is determined after a contract is effective that a family member is unsuitable and the AHA is billing the originating PHA, the AHA will provide the participant the right to an informal hearing, but they will not be</li> </ul>



Subject	Sample Policies & Procedures for Participants
	<p>allowed to transfer back to the initial PHA (cont. on page 2)</p> <ul style="list-style-type: none"> <li>• If it is determined after the contract is effective that a family member is unsuitable and the AHA has absorbed the contract, the family will only have the option of excluding the culpable household member and will not be allowed to return to the initial PHA.</li> </ul> <p>The contract will be terminated if it has been absorbed and if the family chooses not to exclude the culpable household member or there are no other adult eligible household members.</p> <p><u>Terminations:</u> In cases where the AHA is administering a contract on behalf of another PHA, the AHA will notify the initial PHA in writing of any termination of assistance within 30 calendar days of the termination.</p> <p><b>a. Criminal Background Screenings:</b> Will include, but are not limited to, utilizing court records, local, state, and federal law enforcement agencies (FBI's National Crime Information Center (NCIC), and regulatory agencies that have records pertaining to criminal histories.</p> <p><b>b. Multiple Families in the Same Household:</b> When families consisting of two families living together, (such as a mother and father, and a daughter with her own husband or children), apply together as a family, they will be treated as one-family unit.</p> <p><b>c. "Family"</b> is used interchangeably with "applicant" or "participant" and can refer to a single person family. <b>"Tenant"</b> refers to participants in terms of their relation to landlords. <b>"Landlord"</b> and <b>"owner"</b> are used interchangeably.</p> <p><b>d. "Pattern"</b> is defined as the use of a controlled substance or alcohol if there is more than one incident during the previous 12 months.</p> <p><b>e. "Incident"</b> includes, but is not limited to arrests, convictions, no contest pleas, fines, and city ordinance violations.</p> <p><b>f. "Premises"</b> is the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.</p> <p><b>g. "Sufficient evidence"</b> may include all or a number of personal certification along with supporting documentation from the following sources 1) probation officer; 2) landlord; 3) neighbors; 4) social service workers; 5) review of verified criminal records.</p> <p><b>h. "AHA"</b> is the Ames Housing Authority for the City of Ames, Iowa.</p> <p><b>i. "Housing Authority Discretion"</b> [24 CFR §982.552(c)(2)] In deciding whether to terminate assistance because of action or failure to act by members of the family, the AHA has discretion to consider all of the circumstances in each case, including:</p>

**Subject**

**Sample Policies & Procedures for Participants**

• The seriousness of the case,

- The extent of participation or culpability of individual family members, and
- The length of time since the violation occurred and more recent record of compliance, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure to act.
- On a case by case basis the Housing Authority may counsel the family before proposing termination. The AHA may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure will not reside and/or visit in the unit. The AHA may permit the other members of a family to continue in the program.

**j. Preponderance of evidence:** evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. The intent is not to prove criminal liability, but to establish that the act(s) occurred. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.