

Chapter 6

SCREENING CRITERIA

RAD Requirements [Notice H 2017-03, REV-3]

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.

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- 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.

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- 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 six 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 six 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.

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- 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, arrests, or evictions 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 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: Should the O/A deny admission to a family if any household member is subject to any sex offender registration program, regardless of whether or not it is a “lifetime” registration requirement? (Model TSP, p. 6-2)

Things to Consider

- The model TSP uses the regulatory requirement rather than imposing a stricter policy.
- However, the O/A could opt to adopt a stricter policy by denying admission to anyone who is a registered sex offender even if they are not registered under a “lifetime” registration requirement.
- Some states do not have a “lifetime” registration requirement. Therefore, unless a policy is adopted to address this issue, the O/A’s policy could inadvertently lead to the admission of sex offenders. In the case of the model TSP, the default policy under the next decision point in Section 6-B. regarding “criminal activity” still allows the O/A to deny admission to someone who has committed criminal sexual offenses even if the stricter policy is not selected under this decision point.
- If you wish to restrict admission to someone during the time period they are registered as a sex offender, even if it is not a “lifetime” requirement, you may select Option 2.
- Before O/As adopt Option 2, they should be familiar with the sex offender registration laws within their states. Human Rights Watch, an independent, nongovernmental organization dedicated to protecting the human rights of people around the world, has expressed concern that some state sex offender registries are very broad and include people convicted of minor and/or consensual offenses that may pose no risk to the community.

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- Option 1: If you do not want to impose a stricter requirement, 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: If you want to impose a stricter policy regarding sex offender registration, insert the following 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.

If any household member is currently registered as a sex offender under a state registration requirement, the family will be denied admission.

- Option 3: 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. OTHER PERMITTED REASONS FOR DENIAL OF ADMISSION

HUD permits, but does not require the O/A to deny admission for the reasons discussed in this section. Whenever HUD gives the O/A discretion about denying admission, the O/A will take into consideration the factors discussed in Sections 6-C, 6-D, and 6-E.



Decision Point: For which criminal activities will the O/A deny admission and what time frame will be considered? (Model TSP, p. 6-3)

Things to Consider

- The model TSP language states that the O/A will deny admission for any drug-related criminal activity, violent criminal activity, criminal sexual conduct, and criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents, or the property management staff or contractors, if the behavior has occurred within the past five years.
- In determining the time frame to be considered, the O/A will want to establish that the family member has refrained from committing prohibited offenses for a long enough time to justify a belief that the individual is likely to continue to maintain the good behavior.
- O/As differ in their assessments of what constitutes a reasonable period. The model TSP establishes a moderate standard of five years. A shorter period of three years is also acceptable.
- Many O/As establish different time frames for different offenses—the more serious the offense, the longer the period for which someone will be denied admission. For example, a low-level nonviolent offender does not pose the same risk as a convicted violent offender. If the O/A chooses to adopt a graduated schedule for criminal activities, it is important for the O/A to be familiar with the definition and categorization of criminal offenses under state laws.
- For ease of administration, the model TSP establishes a single cut-off period.

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

If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past five years, the family will be denied admission.

Drug-related criminal activity, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100].

Violent criminal activity, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].

Criminal activity that may threaten the health, safety, or welfare of other tenants.

Criminal activity that may threaten the health or safety of O/A staff, contractors, subcontractors, or agents.

Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse.

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

- Decision Point: What type of evidence will the O/A consider when determining if someone has engaged in any of the prohibited criminal activities? (Model TSP, p. 6-3)**

Things to Consider

- To allow for both consistency and flexibility, the model TSP gives examples of evidence, but does not limit evidence to these categories.
- If the O/A has established specific indicators to determine whether or not someone has engaged in criminal activity, the model policy language should be replaced or edited, to contain these indicators.
- The model policy language clarifies that a conviction will be given more weight than an arrest or an eviction due to the more serious nature of a conviction.
- If the O/A adopts a different time period for considering an applicant's criminal activity than in the default policy above (five years), that change should be reflected in this policy.

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

Evidence of such criminal activity includes, but is not limited to any record of convictions, arrests, or evictions for suspected drug-related or violent criminal activity of household members within the past five years. A conviction for such activity will be given more weight than an arrest or an eviction. A record of arrest will not be used as the basis for the denial or proof that the applicant engaged in disqualifying criminal activity.

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



Decision Point: For what types of previous behavior will the O/A deny admission? (Model TSP, p. 6-4)

Things to Consider

- In developing this policy, the O/A needs to think about what behaviors would most likely have an adverse affect on the financial condition of the O/A, the physical condition of the housing stock and premises, and the social environment of the development.
- In considering past behaviors, the O/A needs to determine what would indicate a strong likelihood of continued problems in the future if the family is admitted.
- The model policy states that the O/A will consider whether or not an applicant has a “pattern” of certain types of disqualifying behaviors rather than just looking at one occurrence.
- In the event of the receipt of unfavorable information with respect to an applicant, consideration must be given to the time, nature, and extent of the applicant’s conduct (including the seriousness of the offense). In accordance with the Violence against Women Act of 2013 (VAWA), the O/A may also need to consider whether the cause of the unfavorable information may be that the applicant is the victim of domestic violence, dating violence, sexual assault, or stalking. To ensure consistency in the treatment of families, it is important to define the factors (or circumstances) that will be considered. This policy simply states that the O/A will consider the specific circumstances of each case. The actual factors are defined in Sections 6-C, 6-D, and 6-E.
- The O/A will need more detailed procedures describing the specific requirements applicable to each of the screening criteria and how staff should document applicant compliance with the criteria. Such procedures are beyond the scope of this model policy or guide.

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

The O/A will deny admission to an applicant family if the O/A determines that the family:

Has a pattern of unsuitable past performance in meeting financial obligations, including rent within the past five years

Has a pattern of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences within the past five years which may adversely affect the health, safety, or welfare of other tenants

Has a pattern of eviction from housing or termination from residential programs within the past five years (considering relevant circumstances)

Owes rent or other amounts to this or any other O/A or PHA in connection with any assisted housing program

Misrepresented or does not provide complete information related to eligibility, including income, award of preferences for admission, expenses, family composition, or rent

Has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program

Has engaged in or threatened violent or abusive behavior toward O/A personnel

Abusive or violent behavior towards O/A personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.



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