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## Chapter 3 Eligibility

### Introduction

The PHA is responsible for ensuring that every individual and family admitted to the HCV program meets all program eligibility requirements. This includes any individual approved to join the family after the family has been admitted to the program. The family must provide any information needed by the PHA to confirm eligibility and determine the level of the family's assistance.

To be eligible for the HCV program the applicant family must:

- Qualify as a family as defined by HUD and the PHA;
- Have income at or below HUD's most recent published income limits;
- Qualify on the basis of citizenship or the eligible immigrant status of family members;
- Provide social security number information for all household members as required;
- Consent to the PHA's collection and use of family information as required in PHA-provided consent forms;
- Not currently be receiving duplicative housing assistance; and
- The PHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the PHA.

This chapter contains three parts:

Part I: Definitions of Family and Household Members. Part I contains HUD and PHA definitions of family and household members and explains initial and ongoing eligibility issues related to these members.

Part II: Basic Eligibility Criteria. Part II discusses income eligibility and rules regarding citizenship, social security numbers, and family consent.

Part III: Denial of Assistance. Part III covers factors related to an applicant's past or current conduct (e.g. criminal activity) that can cause the PHA to deny assistance.

## Part I: Definitions of Family and Household Members

### 3-I.A. Overview

Some eligibility criteria and program rules vary depending upon the composition of the family requesting assistance. In addition, some requirements apply to the family as a whole and others apply to individual persons who will live in the assisted unit. Part I provides information that is needed to correctly identify family and household members, and to apply HUD's eligibility rules.

### 3-I.B. Family and Household [24 CFR 982.201(c); FR Notice 02/03/12; Notice PIH 2014-20]

The terms *family* and *household* have different meanings in the HCV program.

#### **Family**

To be eligible for assistance, an applicant must qualify as a family. *Family* as defined by HUD includes, but is not limited to the following: actual or perceived sexual orientation, gender identity, or marital status, a single person, or a group of persons residing together. Such group includes but is not limited to a family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family), an elderly family, a near-elderly family, a disabled family, a displaced family, or the remaining member of a tenant family. The PHA has the discretion to determine if any other group of persons qualifies as a family.

*Gender identity* means actual or perceived gender characteristics.

*Sexual orientation* means homosexuality, heterosexuality, or bisexuality.

#### **Commerce Policy**

**A family is a single person, a group of persons residing together, or two or more individuals who are not related by blood, marriage, adoption, or other operation of law but who either can demonstrate that they have lived together previously or certify that each individual's income and other resources will be available to meet the needs of the family.**

**Each family must identify the individuals to be included in the family at the time of application. Once a family reaches the top of the waiting list to receive a housing choice voucher, the family must update its composition with any pertinent changes that have occurred since application was made or since last change submitted.**

~~Once the family becomes a participant in the HCV program, the family must notify MDOC of any changes in the family's composition within 30 calendar days.~~

**Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.**

## Household

*Household* is a broader term that includes additional people who, with the PHA's permission, live in an assisted unit, such as live-in aides, foster children, and foster adults.

### 3-I.C. Family Breakup and Remaining Member of Tenant Family

#### **Family Breakup [24 CFR 982.315; Notice PIH 2017-08]**

Except under the following conditions, the PHA has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up:

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the PHA must ensure that the victim retains assistance. (For documentation requirements and policies related to the Violence Against Women Act of 2013, domestic violence, dating violence, sexual assault, and stalking, see section 16-IX.D. of this plan.)
- In accordance with Notice PIH 2017-08, for HUD-VASH vouchers, when the veteran is the perpetrator of domestic violence, dating violence, sexual assault, or stalking, the victim must continue to be assisted. Upon termination of the perpetrator's HUD-VASH voucher, the victim should be given a regular HCV if one is available, and the perpetrator's HUD-VASH voucher should be used to serve another eligible family. If a regular HCV is not available the victim will continue to use the HUD-VASH voucher, which must be issued to another eligible family upon the voucher's turnover.
- If a court determines the disposition of property between members of the assisted family, the PHA is bound by the court's determination of which family members continue to receive assistance.

#### **Commerce Policy**

**When a family on the Waiting List breaks up into two otherwise eligible families, the head of household may choose to relinquish their right to retain the original application date in writing. The original application date may be assigned to the remaining eligible family. If the head of household does not relinquish their original application date, they will retain it on the Waiting List. The remaining eligible family members will have an application date based on the submission of their new application for the Waiting List.**

**In the absence of a judicial decision, or an agreement among the original family members, Commerce will determine which family retains their placement on the waiting list or will continue to receive assistance. In making its determination, Commerce will take into consideration the following factors: (1) the interest of any minor children including custody arrangement; (2) the interest of any ill, elderly, or disabled family members; (3) any possible risks to family members as a result of domestic violence, sexual assault, or stalking, including a family member who was forced to leave an assisted unit as a result of such actual or threatened abuse; (4) any possible risks to family members as a result of criminal activity; and (5) the recommendations of social service professionals.**

### **Remaining Member of Tenant Family [24 CFR 5.403]**

The HUD definition of family includes the *remaining member of a tenant family*, which is a member of an assisted family who remains in the unit when other members of the family have left the unit. Household members such as live-in aides, foster children, and foster adults do not qualify as remaining members of a family.

See Chapter 6, section 6-I.B., Caretakers for a Child, for Commerce policy if dependents are the only remaining members of a tenant family and there is no family member able to assume the responsibilities of the head of household.

### **3-I.D. Head of Household [24 CFR 5.504(b)]**

*Head of household* means the adult member of the family who is considered the head for purposes of determining income eligibility and rent. The head of household is responsible for ensuring that the family fulfills all of its responsibilities under the program, alone or in conjunction with a cohead or spouse.

#### **Commerce Policy**

**The family may designate any qualified family member as the head of household.**

**The head of household must have the legal capacity to enter into a lease under state and local law. Commerce requires that a minor be emancipated and granted the right to legally contract for housing before they can be offered housing under [Med-Rehabqualifying special programs](#), or HCV programs.**

### **3-I.E. Spouse, Cohead, and Other Adult**

A family may have a spouse or cohead, but not both [HUD-50058 IB, page 13].

*Spouse* means the marriage partner of the head of household.

#### **Commerce Policy**

**The head of household may designate a person as a spouse or cohead. Certification by the head of household is generally sufficient verification; however, Commerce may require additional forms of verification on a case by case basis.**

A cohead is an individual in the household who is equally responsible with the head of household for ensuring that the family fulfills all of its responsibilities under the program but who is not a spouse. A family can have only one cohead.

#### **Commerce Policy**

**Minors who are emancipated under state law may be designated as a cohead.**

*Other adult* means a family member, other than the head, spouse, or cohead, who is 18 years of age or older. Foster adults and live-in aides are not considered other adults.

### 3-I.F. Dependent [24 CFR 5.603]

A *dependent* is a family member who is under 18 years of age or a person of any age who is a person with a disability or a full-time student. The following persons can never be dependents: head of household, spouse, cohead, foster children/adults, and live-in aides. It is important to identify all dependents in the family because each dependent qualifies the family for a dependent allowance as described in Chapter 6.

#### **Joint Custody of Dependents**

##### **Commerce Policy**

**Dependents that are subject to a joint custody arrangement will be considered a member of the family. Please note that a child cannot be assisted in more than one household without a waiver from HUD.**

**When more than one applicant or participant family is claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim dependents, Commerce will make the determination based on available documents such as, [but not limited to](#), court orders, an IRS return showing which family has claimed the child for income tax purposes, or school records.**

### 3-I.G. Full-Time Student [24 CFR 5.603; HCV GB, p. 5-29]

A full-time student (FTS) is a person who is attending school or vocational training on a full-time basis. The time commitment or subject load that is needed to be full-time is defined by the educational institution.

Identifying each FTS is important because: (1) each family member that is an FTS, other than the head, spouse, or cohead, qualifies the family for a dependent allowance, and (2) the earned income of such an FTS is treated differently from the income of other family members.

### 3-I.H. Elderly and Near-Elderly Persons, and Elderly Family [24 CFR 5.100 and 5.403, FR Notice 02/03/12]

#### **Elderly Persons**

An *elderly person* is a person who is at least 62 years of age.

#### **Near-Elderly Persons**

A *near-elderly person* is a person who is 50-61 years of age.

#### **Elderly Family**

An *elderly family* is one in which the head, spouse, cohead, or sole member is an elderly person. Identifying elderly families is important because elderly families qualify for the elderly family allowance as described in Chapter 6.



### 3-I.I. Persons with Disabilities and Disabled Family [24 CFR 5.403, FR Notice 02/03/12]

#### **Persons with Disabilities**

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or cohead is a person with disabilities. The technical definitions of individual with handicaps and persons with disabilities are provided in Exhibit 3-1 at the end of this chapter. These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability.

As discussed in Chapter 2, the PHA must make all aspects of the HCV program accessible to persons with disabilities and consider reasonable accommodations requested based upon a person's disability.

#### **Disabled Family**

A *disabled family* is one in which the head, spouse, or cohead is a person with disabilities. Identifying disabled families is important because these families qualify for the disabled family allowance as described in Chapter 6.

Even though persons with drug or alcohol dependencies are considered persons with disabilities, this does not prevent the PHA from denying assistance for reasons related to alcohol and drug abuse in accordance with the policies found in Part III of this chapter, or from terminating assistance in accordance with the policies in Chapter 12.

### 3-I.J. Guests [24 CFR 5.100]

A guest is a person temporarily staying in the unit with the consent of a member of the household who has expressed or implied authority to so consent.

#### **Commerce Policy**

**A guest can remain in the assisted unit no longer than 30 consecutive days or a total of 90 cumulative calendar days during any 12-month period, or in accordance with the terms of the lease agreement, whichever is more restrictive.**

**Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the assisted household ~~more than 50 percent of the time~~, are not subject to the time limitations of guests as described above.**

**A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure is expected to last 40 consecutive days). An exception will**

**not be made unless the family can provide a lease or other documentation identifying where the person legally resides. Exceptions must also be approved from the landlord.**

### 3-I.K. Foster Children and Foster Adults

The term *foster child* is not specifically defined by the regulations.

*Foster adults* are usually persons with disabilities, unrelated to the tenant family, who are unable to live alone [24 CFR 5.609].

Foster children and foster adults who are living with an applicant or who have been approved by the PHA to live with a participant family are considered household members but not family members. The income of foster children/adults is not counted in family annual income, and foster children/adults do not qualify for a dependent deduction [24 CFR 5.603; HUD-50058 IB, p. 13].

Children that are temporarily absent from the home as a result of placement in foster care are discussed in Section 3-I.L.

#### **Commerce Policy**

**A foster child is a child that is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency. Commerce will verify with the foster care agency how many foster children resided in the unit within the last 12 months to determine the family subsidy standard. For a family that has not yet fostered a child but has approval to do so, Commerce may increase the subsidy size of the voucher on a case-by-case basis based on documentation supporting the need for an increased voucher size.**

**A foster child or foster adult may be allowed to reside in the unit if their presence would not result in a violation of HQS space standards according to 24 CFR 982.401.**

### 3-I.L. Absent Family Members

Individuals may be absent from the family, either temporarily or permanently, for a variety of reasons including educational activities, placement in foster care, employment, illness, incarceration, and court order.

#### **Definitions of Temporarily and Permanently Absent**

#### **Commerce Policy**

**A family may be absent from a unit for brief periods. If a family is going to be absent for more than 30 consecutive days, the family is required to notify Commerce in advance of the absence, in writing, of the duration of time the family will be absent and justification for the absence. Commerce will determine if the absence is justified and the family that the absence is approved. Absence means that no member of the family is residing in the unit.**

If the family fails to contact Commerce that they are going to be absent for more than 30 days, assistance may be terminated for the family.

If the family is absent from the unit for more than 180 consecutive calendar days, the family's assistance will automatically be terminated.

A family's absence from a unit does not excuse the family for failure to notify Commerce of income or family composition changes or respond to Commerce requests for information on income, family composition changes, or reexamination requests.

## **Absent Students**

### **Commerce Policy**

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to Commerce indicating that the student has established a separate household, or the family declares that the student has established a separate household. The head of household will make the determination as to whether they wish to keep the student in the household.

## **Absences Due to Placement in Foster Care [24 CFR 5.403]**

Children temporarily absent from the home as a result of placement in foster care are considered members of the family.

### **Commerce Policy**

If a child has been placed in foster care or temporarily removed, Commerce will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member. Commerce will review the case annually.

## **Absent Head, Spouse, or Cohead**

### **Commerce Policy**

An employed head, spouse, or cohead absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member. Commerce must obtain third-party verification for any absences longer than 180 consecutive days. Commerce will make exceptions for military personnel who are deployed longer than 180 days and have family members residing in the subsidized unit. Single member households may not be absent from an assisted unit for 180 consecutive days or more as defined in 3-I.L.

This policy is not applicable to households comprised of a single head of household with dependents. Commerce may review those situations on a case-by-case basis.

## **Family Members Permanently Confined for Medical Reasons**

If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted.

**Commerce Policy**

**Commerce may request verification of the family member's permanent absence from a responsible knowledgeable professional if the family member has been absent for 180 consecutive days and there is uncertainty as to whether the placement is permanent or temporary.**

**An individual confined to a nursing home or hospital on a permanent basis is not considered a family member.**

**3-I.M. LIVE-IN AIDE**

*A live-in aide* is a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the persons, (2) is not obligated for the support of the persons, and (3) would not be living in the unit except to provide the necessary supportive services [24 CFR 5.403].

The PHA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR 8, to make the program accessible to and usable by the family member with disabilities.

The income of a live-in aide is not counted in the calculation of annual income for the family [24 CFR 5.609(b)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. Because live-in aides are not family members, a relative who serves as a live-in aide would not be considered a remaining member of a tenant family.

**Commerce Policy**

**A family's request for a live-in aide must be made in writing and the live-in aide must be identified at the time of the request. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member.**

**In addition, the family and live-in aide will be required to submit a certification stating that the live-in aide is (1) not obligated for the support of the person(s) needing the care, and (2) would not be living in the unit except to provide the necessary supportive services.**

**Occasional, intermittent, multiple, or rotating care givers typically do not reside in the unit and would not qualify as live-in aides. Therefore, an additional bedroom will not be approved for a live-in aide under these circumstances.**

**Commerce will not approve a particular person as a live-in aide, and may withdraw such approval if [24 CFR 982.316(b)]:**

- The person commits fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program;
- The person commits drug-related criminal activity or violent criminal activity; or
- The person currently owes rent or other amounts to Commerce or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

Commerce will notify the family of its decision in writing within 14 calendar days of receiving a [completed](#) request for a live-in aide, including all required documentation related to the request.

## Part II: Basic Eligibility Criteria

### 3-II.A. Income Eligibility and Targeting

#### Income Limits

HUD establishes income limits for all areas of the country and publishes them annually in the Federal Register. They are based upon estimates of median family income with adjustments for family size. The income limits are used to determine eligibility for the program and for income targeting purposes as discussed in this section.

#### Definitions of the Income Limits [24 CFR 5.603(b)]

*Low-income family.* A family whose annual income does not exceed 80 percent of the median income for the area, adjusted for family size.

*Very low-income family.* A family whose annual income does not exceed 50 percent of the median income for the area, adjusted for family size.

*Extremely low-income family.* A family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever number is higher.

Area median income is determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

#### Using Income Limits for Eligibility [24 CFR 982.201]

Income limits are used for eligibility only at admission. Income eligibility is determined by comparing the annual income of an applicant to the applicable income limit for their family size. To be income eligible, an applicant family must be one of the following:

- A very low-income family
- A low-income family that has been "continuously assisted" under the 1937 Housing Act. A family is considered to be continuously assisted if the family is already receiving assistance under any 1937 Housing Act program at the time the family is admitted to the HCV program [24 CFR 982.4; [24 CFR 982.201\(b\)](#)]
- A low-income family that qualifies for voucher assistance as a non-purchasing household living in HOPE 1 (public housing homeownership), HOPE 2 (multifamily housing homeownership) developments, or other HUD-assisted multifamily homeownership programs covered by 24 CFR 248.173.
- A low-income or moderate-income family that is displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract on eligible low-income housing as defined in 24 CFR 248.101.

HUD permits the PHA to establish additional categories of low-income families that may be determined eligible. The additional categories must be consistent with the PHA plan and the consolidated plans for local governments within the PHA's jurisdiction.

### **Commerce Policy**

**Commerce has not established any additional categories of eligible low-income families.**

#### **Using Income Limits for Targeting [24 CFR 982.201]**

At least 75 percent of the families admitted to the PHA's program during a PHA fiscal year must be extremely low-income families. HUD may approve exceptions to this requirement if the PHA demonstrates that it has made all required efforts but has been unable to attract an adequate number of qualified extremely low-income families.

Families continuously assisted under the 1937 Housing Act and families living in eligible low-income housing that are displaced as a result of prepayment of a mortgage or voluntary termination of a mortgage insurance contract are not counted for income targeting purposes.

#### **3-II.B. Citizenship or Eligible Immigration Status [24 CFR 5, Subpart E]**

Housing assistance is available only to individuals who are U.S. citizens, U.S. nationals (herein referred to as citizens and nationals), or noncitizens that have eligible immigration status. At least one family member must be a citizen, national, or noncitizen with eligible immigration status for the family to qualify for any level of assistance.

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply. Where feasible, and in accordance with the PHA's Limited English Proficiency Plan (see Chapter 2), the notice must be in a language that is understood by the individual if the individual is not proficient in English.

#### **Declaration [24 CFR 5.508]**

HUD requires each family member to declare whether the individual is a citizen, a national, or an eligible noncitizen, except for those members who elect not to contend that they have eligible immigration status. Those who elect not to contend their status are considered ineligible noncitizens. For citizens, nationals, and eligible noncitizens the declaration must be signed personally by the head, spouse, cohead, any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible Noncitizens below). No declaration is required for live-in aides, foster children, or foster adults.

#### **U.S. Citizens and Nationals**

In general, citizens and nationals are required to submit only a signed declaration as verification of their status. However, HUD regulations permit the PHA to request additional documentation of their status, such as a passport.

### **Commerce Policy**

**Family members who declare citizenship or national status will not be required to provide additional documentation unless Commerce receives information indicating that an individual's declaration may not be accurate.**

**Commerce will determine citizenship status of applicants at the time of their briefing. See Chapter 5 for additional information.**

### **Eligible Noncitizens**

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with PHA efforts to verify their immigration status as described in Chapter 7. The documentation required for establishing eligible noncitizen status varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

Lawful residents of the Marshall Islands, the Federated States of Micronesia, and Palau, together known as the Freely Associated States, or FAS, are eligible for housing assistance under section 141 of the Compacts of Free Association between the U.S. Government and the Governments of the FAS [Public Law 106-504].

### **Ineligible Noncitizens**

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a noncontending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. The PHA is not required to verify a family member's ineligible status and is not required to report an individual's unlawful presence in the U.S. to the United States Citizenship and Immigration Services (USCIS).

Providing housing assistance to noncitizen students is prohibited [24 CFR 5.522]. This prohibition extends to the noncitizen spouse of a noncitizen student as well as to minor children who accompany or follow to join the noncitizen student. Such prohibition does not extend to the citizen spouse of a noncitizen student or to the children of the citizen spouse and noncitizen student. Such a family is eligible for prorated assistance as a mixed family.

### **Mixed Families**

A family is eligible for assistance as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered mixed families. Such families will be given notice that their assistance will be prorated, and that they may request a hearing if they contest this determination. See Chapter 6 for a discussion of how rents are prorated, and Chapter 16 for a discussion of informal hearing procedures.



## **Ineligible Families [24 CFR 5.514(d), (e), and (f)]**

A PHA may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member [24 CFR 5.512(b)]. Otherwise, no individual or family may be assisted prior to the affirmative establishment by the PHA that the individual or at least one family member is eligible. Verification of eligibility for this purpose occurs when the individual or family members have submitted documentation to the PHA in accordance with program requirements [24 CFR 5.512(a)].

### **Commerce Policy**

**Commerce will not provide assistance to a family before the verification of at least one family member.**

**When Commerce determines that an applicant family does not include any citizens, nationals, or eligible noncitizens, following the verification process, the family will be sent a written notice within 14 calendar days of its determination.**

**The notice will explain the reasons for the denial of assistance, that the family may be eligible for proration of assistance and will advise the family of its right to request an appeal to the USCIS, or to request an informal hearing with Commerce. The informal hearing with Commerce may be requested in lieu of the USCIS appeal, or at the conclusion of the USCIS appeal process. The notice must also inform the applicant family that assistance may not be delayed until the conclusion of the USCIS appeal process, but that it may be delayed pending the completion of the informal hearing process.**

Informal [review requests and informal](#) hearing procedures are contained in Chapter 16.

## **Timeframe for Determination of Citizenship Status [24 CFR 5.508(g)]**

For new occupants joining the assisted family, the PHA must verify status at the first interim or regular reexamination following the person's occupancy, whichever comes first.

If an individual qualifies for a time extension for the submission of required documents, the PHA must grant such an extension for no more than 30 days [24 CFR 5.508(h)].

Each family member is required to submit evidence of eligible status only one time during continuous occupancy.

## **3-II.C. Social Security Numbers [24 CFR 5.216 and 5.218, Notice PIH 2018-24]**

The applicant and all members of the applicant's household must disclose the complete and accurate social security number (SSN) assigned to each household member, and the documentation necessary to verify each SSN. If a child under age 6 who has not been assigned a SSN has been added to an applicant family, the eligible family must disclose and document the child's SSN within 90 days of the effective date of the initial HAP contract. A detailed discussion of acceptable documentation is provided in Chapter 7.

Note: These requirements do not apply to noncitizens who do not contend eligible immigration status.

In addition, each participant who has not previously disclosed an SSN, has previously disclosed an SSN that HUD or the SSA determined was invalid, or has been issued a new SSN, must submit their complete and accurate SSN and the documentation required to verify the SSN at the time of the next interim or annual reexamination or recertification. Participants age 62 or older as of January 31, 2010, whose determination of eligibility was begun before January 31, 2010, are exempt from this requirement and remain exempt even if they move to a new assisted unit.

The PHA must deny assistance to an applicant family if they do not meet the SSN disclosure and documentation requirements contained in 24 CFR 5.216.

#### **Related Commerce Policy – Protection of Personal Information**

**MCA 2.6.1502 Protection of personal information – compliance.** Each state agency that maintains the personal information of an individual shall develop procedures to protect the personal information while enabling the state agency to use the personal information as necessary for the performance of its duties under federal or state law.

**Commerce, as a PHA is responsible for adhering to HUD’s regulatory requirements in 24 CFR 5.212 regarding Compliance with the Privacy Act and other requirements regarding SSNs, EINs, and other sensitive data including family composition, employment history, financial information etc. which states “The collection, maintenance, use, and dissemination of SSNs, EINs, and any information derived from SSNs and Employer Identification Numbers (EINS) and income information under this subpart shall be conducted, to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law”. The Programs utilize party software and have established appropriate administrative, technical, and information technology safeguards to protect the information.**

#### **3-II.D. Family Consent to Release of Information [24 CFR 5.230; HCV GB, p. 5-13]**

HUD requires each adult family member, and the head of household, spouse, or cohead, regardless of age, to sign form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, the form HUD-52675 Debts Owed to Public Housing Agencies and Terminations, and other consent forms as needed to collect information relevant to the family’s eligibility and level of assistance. Chapter 7 provides detailed information concerning the consent forms and verification requirements.

The PHA must deny admission to the program if any member of the applicant family fails to sign and submit the consent forms for obtaining information in accordance with 24 CFR 5, Subparts B and F [24 CFR 982.552(b)(3)].

### 3-II.E. Students Enrolled in Institutions of Higher Education [24 CFR 5.612, FR Notice 4/10/06, FR Notice 9/21/16]

Section 327 of Public Law 109-115 and the implementing regulation at 24 CFR 5.612 established new restrictions on the eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be examined along with the income eligibility of the student's parents. In these cases, both the student and the student's parents must be income eligible for the student to receive HCV assistance. If, however, a student in these circumstances is determined independent from their parents in accordance with Commerce Policy, the income of the student's parents will not be considered in determining the student's eligibility.

The new law does not apply to students who reside with parents who are applying to receive HCV assistance. It is limited to students who are seeking assistance on their own, separately from their parents.

#### **Definitions**

In determining whether and how the new eligibility restrictions apply to a student, the PHA will rely on the following definitions [FR Notice 4/10/06, FR Notice 9/21/16].

#### **Dependent Child**

In the context of the student eligibility restrictions, dependent child means a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of dependent in 24 CFR 5.603, which states that the dependent must be a member of the assisted family, other than the head of household or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student. Foster children and foster adults are not considered dependents.

#### **Independent Student**

The PHA will consider a student "independent" from his or her parents and the parents' income will not be considered when determining the student's eligibility if the following criteria are all met:

- The individual is of legal contract age under state law.
- The individual has established a household separate from their parents for at least one year prior to application for occupancy or the individual meets the U.S. Department of Education's definition of independent student.
- To be considered an independent student according to the Department of Education, a student must meet one or more of the following criteria:
  - The individual is at least 24 years old by December 31 of the award year for which aid is sought.

- The individual is an orphan, in foster care, a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older.
- The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence.
- The individual is a veteran of the U.S. Armed Forces or is currently serving on active duty in the Armed Forces for other than training purposes.
- The individual is a graduate or professional student.
- The individual is married.
- The individual has one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent)
- The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:
  - A local educational agency homeless liaison
  - The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director.
  - A financial aid administrator
  - The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.
  - The individual was not claimed as a dependent by their parents pursuant to IRS regulations, as demonstrated on the parents' most recent tax forms.
  - The individual provides a certification of the amount of financial assistance that will be provided by their parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

If the PHA determines that an individual meets the definition of a vulnerable youth such a determination is all that is necessary to determine that the person is an independent student for the purposes of using only the student's income for determining eligibility for assistance.

The PHA will verify that a student meets the above criteria in accordance with the policies in Section 7-II.E.

### **Institution of Higher Education**

The PHA will use the statutory definition under section 102 of the Higher Education Act of 1965 to determine whether a student is attending an institution of higher education (see Exhibit 3-2).

### **Parents**

#### **Commerce Policy**

**For purposes of student eligibility restrictions, the definition of parents includes biological or adoptive parents, stepparents (as long as they are currently married to the biological or adoptive parent), and legal guardians (e.g., grandparents, aunt/uncle, godparents, etc.).**

## **Person with Disabilities**

The PHA will use the statutory definition under section 3(b)(3)(E) of the 1937 Act to determine whether a student is a person with disabilities (see Exhibit 3-1).

## **Veteran**

A veteran is a person who served in the Armed Forces of the United States (as defined in subsection (c) (1) of Higher Education Act (HEA) or is currently serving on active duty in the Armed Forces for other training purposes.

## **Vulnerable Youth**

A vulnerable youth is an individual who meets the U.S. Department of Education's definition independent student in paragraphs (b), (c), or (h), as adopted in Section II of FR Notice 9/21/16:

- The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older
- The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence
- The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting:
  - A local educational agency homeless liaison. The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director, and
  - A financial aid administrator.

## **Determining Student Eligibility**

If a student is applying for assistance on their own, apart from their parents, the PHA must determine whether the student is subject to the eligibility restrictions contained in 24 CFR 5.612. If the student is subject to those restrictions, the PHA must ensure that: (1) the student is individually eligible for the program, (2) either the student is independent from their parents or the student's parents are income eligible for the program, and (3) the "family" with which the student is applying is collectively eligible for the program.

For any student who is subject to the 5.612 restrictions, the PHA will:

- Follow its usual policies in determining whether the student individually and the student's "family" collectively are eligible for the program
- Determine whether the student is independent from their parents in accordance with the definition of independent student in this section

- Follow the policies below, if applicable, in determining whether the student’s parents are income eligible for the program

**Commerce Policy**

**If Commerce determines that the student, the student’s parents (if applicable), or the student’s “family” is not eligible, Commerce will send a notice of denial in accordance with the policies in Section 3-III.F, and the applicant family will have the right to request an informal review in accordance with the policies in Section 16-III.B.**

**Determining Parental Income Eligibility**

**Commerce Policy**

**For any student who is subject to 24 CFR 5.612 restrictions and who does not satisfy the definition of independent student in this section, Commerce will consider their parent(s) income information in determining the income eligibility.**

**In determining the income eligibility of the student’s parents, Commerce will use the income limits for the jurisdiction in which the parents live.**

**3-II.F. EIV System Searches [Notice PIH 2018-18, EI FAQs, EIV System Training 09/30/2020]**

**Existing Tenant Search**

Prior to admission to the program, the PHA must search for all household members using the EIV Existing Tenant Search module. The PHA must review the reports for any Social Security Administration (SSA) matches involving another PHA or a multifamily entity and follow up on any issues identified. The PHA must provide the family with a copy of the Existing Tenant Search results if requested. At no time may any family member receive duplicative assistance.

If the tenant is a new admission to the PHA, and a match is identified at a multifamily property, the PHA must report the program admission date to the multifamily property and document the notification in the tenant file. The family must provide documentation of move-out from the assisted unit, as applicable.

**Commerce Policy**

**Commerce will contact the PHA or owner identified in the report to confirm that the family has moved out of the unit and obtain documentation of current tenancy status, including form HUD-50058 or 50059, as applicable, showing an end of participation. Commerce will only approve assistance contingent upon the move-out from the currently occupied assisted unit.**

**Debts Owed to PHAs and Terminations**

All adult household members must sign the form HUD-52675 Debts Owed to Public Housing and Terminations. Prior to admission to the program, the PHA must search for each adult family member in the Debts Owed to PHAs and Terminations module.

If a current or former tenant disputes the information in the module, the tenant may contact the PHA directly in writing to dispute the information and provide any documentation that supports the dispute. If the PHA determines that the disputed information is incorrect, the PHA will update or delete the record from EIV. Former tenants may dispute debt and termination information for a period of up to three years from the end of participation date in the program.

### **Commerce Policy**

**Commerce will require each adult household member to sign the form HUD-52675 once at the eligibility determination. Any new members added to the household after admission will be required to sign the form HUD-52675 prior to being added to the household.**

**Commerce will search the Debts Owed to PHAs and Terminations module as part of the eligibility determination for new households and as part of the screening process for any household members added after the household is admitted to the program. If any information on debts or terminations is returned by the search, Commerce will determine if this information warrants a denial in accordance with the policies in Part III of this chapter.**

### **Income and Income Validation Tool (IVT) Reports**

For each new admission, the PHA is required to review the EIV Income and IVT Reports to confirm and validate family reported income within 120 days of the IMS/PIC submission date of the new admission. The PHA must print and maintain copies of the EIV Income and IVT reports in the tenant file and resolve any discrepancies with the family within 60 days of the EIV Income or IVT report dates.

## Part III: Denial of Assistance

### 3-III.A. Overview

A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied assistance. In this section we will discuss other situations and circumstances in which denial of assistance is mandatory for the PHA, and those in which denial of assistance is optional for the PHA.

While the regulations state that the PHA must prohibit admission for certain types of criminal activity and give the PHA the option to deny for other types of previous criminal history, more recent HUD rules and Office of General Council (OGC) guidance must also be taken into consideration when determining whether a particular individual's criminal history merits denial of admission.

When considering any denial of admission, PHAs may not use arrest records as the sole basis for the denial. Further, HUD does not require the adoption of "One Strike" policies and reminds PHAs of their obligation to safeguard the due process rights of applicants and tenants [Notice PIH 2015-19].

HUD's OGC issued a memo on April 4, 2016, regarding the application of Fair Housing Act standards to the use of criminal records. This memo states that a PHA violates the Fair Housing Act when their policy or practice has an unjustified discriminatory effect, even when the PHA had no intention to discriminate. Where a policy or practice that restricts admission based on criminal history has a disparate impact on a particular race, national origin, or other protected class, that policy or practice is in violation of the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the PHA, or if that interest could be served by another practice that has a less discriminatory effect.

PHAs who impose blanket prohibitions on any person with any conviction record, no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then will be unable to show that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even a PHA with a more tailored policy or practice that excludes individuals with only certain types of convictions must still prove that its policy is necessary. To do this, the PHA must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and property and criminal conduct that does not.

#### **Forms of Denial [24 CFR 982.552(a)(2); HCV GB, p. 5-35]**

Denial of assistance includes any of the following:

- Not placing the family's name on the waiting list,
- Denying or withdrawing a voucher,
- Not approving a request for tenancy or refusing to enter into a HAP contract, and/or
- Refusing to process a request for or to provide assistance under portability procedures.



## **Prohibited Reasons for Denial of Program Assistance [24 CFR 982.202(b), 24 CFR 5.2005(b)]**

HUD rules prohibit denial of program assistance based on any of the following criteria:

- Age, disability, race, color, religion, sex, or national origin (see Chapter 2 for additional information about fair housing and equal opportunity requirements.);
- Where a family lives prior to admission to the program;
- Where the family will live with assistance under the program. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside the PHA's jurisdiction under portability (see Chapter 10.);
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock;
- Whether the family includes children;
- Whether a family decides to participate in a family self-sufficiency program; and
- Whether or not a qualified applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking if the applicant is otherwise qualified for assistance (see section 3-III.G.).

### **3-III.B. Mandatory Denial of Assistance [24 CFR 982.553(a)]**

- **HUD requires the PHA to deny assistance in the following cases:** Any member of the household has been evicted from federally-assisted housing in the last three years for drug-related criminal activity. HUD permits, but does not require, the PHA to admit an otherwise-eligible family if the household member has completed a PHA-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g., the person involved in the criminal activity no longer lives in the household).

#### **Commerce Policy**

**Commerce will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past three years for drug-related criminal activity, if Commerce is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by Commerce, or the person who committed the crime, is no longer living in the household.**

- The PHA determines that any household member is currently engaging in the use of illegal drugs.

#### **Commerce Policy**

**Currently engaging in is defined as any use of illegal drugs during the previous six months, except in the case of medical marijuana. In the case of medical marijuana, currently engaging is defined as an active medical marijuana card at the time of admission to the program.**

The PHA has reasonable cause to believe that any 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.

#### **Commerce Policy**

**In determining reasonable cause, Commerce 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 or records of arrest will not be used as the sole basis for determining reasonable cause. Commerce will also consider evidence from treatment providers or community-based organizations providing services to household members.**

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing.
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program (PIH Notice 2012-28).

### 3-III.C. Other Permitted Reasons for Denial of Assistance

HUD permits, but does not require, the PHA to deny assistance for the reasons discussed in this section.

#### **Criminal Activity [24 CFR 982.553]**

HUD permits, but does not require, the PHA to deny assistance if the PHA determines that any household member is currently engaged in or has engaged in during a reasonable time before (as defined by the PHA) the family would receive assistance, certain types of criminal activity.

#### **Commerce Policy**

**If any household member is currently engaged in or has engaged in any of the following criminal activities, within the past three years, the family will be denied assistance:**

- **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] except the use of medical marijuana.**
  - **In the case of medical marijuana use, Commerce may deny assistance to a family if any household member has engaged in the use of medical marijuana defined as an active medical marijuana card. If the family can show such household member(s) is/are not currently engaging in the use of medical marijuana prior to admission to the program, Commerce may admit them to the HCV program.**
- **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 right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity including property owner(s), property management staff, or persons performing contract administration functions or other responsibilities on behalf of Commerce (including an Commerce employee or an Commerce contractor, subcontractor, or agent).**

**Evidence of such criminal activity includes, but is not limited to:**

- **An active medical marijuana card at the time of eligibility determination.**
- **Any conviction for drug-related or violent criminal activity within the past three years.**

- Records of arrests for drug-related or violent criminal activity within the past three years; although a record or records of arrest will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying criminal activity.
- Any record of eviction from public or privately-owned housing as a result of criminal activity within the past three years.
- A conviction for drug-related or violent criminal activity will be given more weight than an arrest for such activity.

In making its decision to deny assistance, Commerce will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, Commerce may, on a case-by-case basis, decide not to deny assistance.

### Previous Behavior in Assisted Housing [24 CFR 982.552(c)]

HUD authorizes the PHA to deny assistance based on the family's previous behavior in assisted housing. ~~Per the alternative requirements listed in the Federal Register notice dated December 29, 2014,~~ PHAs are ~~no longer not~~ permitted to deny assistance to a family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program [~~FR Notice 12/29/14~~ 24 CFR 984.101(d)].

### Commerce Policy

Commerce will deny assistance to an applicant family if:

- The family does not provide information that Commerce or HUD determines is necessary in the administration of the program.
- The family does not provide complete and true information to Commerce.
- Any family member has been evicted from federally-assisted housing in the last three years.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family owes rent or other amounts to Commerce or any PHA in connection with Section 8 or other public housing assistance under the 1937 Housing Act, unless the family repays the full amount of the debt prior to being selected from the waiting list.
- The family has not reimbursed Commerce or any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, unless the family repays the full amount of the debt prior to being selected from the waiting list.
- The family has breached the terms of a repayment agreement entered into with Commerce, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.
  - When denying admission due to family debts as shown in HUD's EIV system, Commerce will provide the family with a copy of the EIV Debt Owed to PHA and Termination report.
  - If the family wishes to dispute the information in the report, the family must contact the PHA that entered the information in EIV in writing, explaining why EIV information is disputed. The family must also provide a copy of the letter

and all applicable verification to the PHA to support the family's claim. Commerce will consider the information provided by the family prior to issuing a decision.

- A family member has engaged in or threatened violent or abusive behavior toward Commerce or Field Agency personnel.
- Abusive or violent behavior towards Commerce or Field Agency personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other vulgar 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.
- In making its decision to deny assistance, Commerce will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, Commerce may, on a case-by-case basis, decide not to deny assistance.

### 3-III.D. Screening

#### **Screening for Eligibility**

PHAs are authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the HCV program. This authority assists the PHA in complying with HUD requirements and PHA policies to deny assistance to applicants who are engaging in or have engaged in certain criminal activities. In order to obtain access to the records the PHA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

#### **Commerce Policy**

**Commerce will perform a criminal background check through National Sex Offender Public Website (NSOPW), Sexual Violent Offender Registry (SVOR), and Con Web for every adult household member.**

PHAs are required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 982.553(a)(2)(i)].

#### **Commerce Policy**

**Commerce will use [ConWeb](#), ~~the NSOPW~~, and SVOR to screen applicants for admission.**

Additionally, PHAs must ask whether the applicant, or any member of the applicant's household, is subject to a lifetime registered sex offender registration requirement in any state [Notice PIH 2012-28].

If the PHA proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, the PHA must notify the household of the proposed action and must provide the subject of the record and the applicant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to a denial of admission. [24 CFR 5.903(f) and 5.905(d)].

## **Screening for Suitability as a Tenant [24 CFR 982.307]**

The PHA has no liability or responsibility to the owner for the family's behavior or suitability for tenancy. The PHA has the authority to conduct additional screening to determine whether an applicant is likely to be a suitable tenant.

### **Commerce Policy**

**Commerce will not conduct additional screening to determine an applicant family's suitability for tenancy.**

The owner is responsible for screening and selection of the family to occupy the owner's unit. The PHA must inform the owner that screening and selection for tenancy is the responsibility of the owner. An owner may consider a family's history with respect to factors such as: payment of rent and utilities, caring for a unit and premises, respecting the rights of other residents to the peaceful enjoyment of their housing, criminal activity that is a threat to the health, safety or property of others, and compliance with other essential conditions of tenancy.

HUD requires the PHA to provide prospective owners with the family's current and prior address (as shown in PHA records) and the name and address (if known) of the owner at the family's current and prior addresses. HUD permits the PHA to provide owners with additional information, as long as families are notified that the information will be provided, and the same type of information is provided to all owners.

The PHA may not disclose to the owner any confidential information provided to the PHA by the family in response to a PHA request for documentation of domestic violence, dating violence, sexual assault, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(a)(4)].

### **Commerce Policy**

**Commerce will inform owners of their responsibility to screen prospective tenants and will provide owners with the required known name and address information, at the time of prospective owner request. Commerce will not provide any additional information to the owner, such as tenancy history or criminal history, etc.**

## **3-III.E. Criteria for Decision to Deny Assistance**

### **Evidence [24 CFR 982.553(c)]**

#### **Commerce Policy**

**Commerce will use the concept of the preponderance of the evidence as the standard for making all admission decisions.**

**Preponderance of the evidence is defined as 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. Preponderance of**

the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

### **Consideration of Circumstances [24 CFR 982.552(c)(2)]**

HUD authorizes the PHA to consider all relevant circumstances when deciding whether to deny assistance based on a family's past history except in the situations for which denial of assistance is mandatory (see Section 3-III.B).

#### **Commerce Policy**

**Commerce will consider the following facts and circumstances prior to making its decision:**

- **The seriousness of the case, especially with respect to how it would affect other residents' safety or property;**
- **The effects that denial of assistance may have on other members of the family who were not involved in the action or failure to act;**
- **The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 3-III.G) a victim of domestic violence, dating violence, sexual assault, or stalking; and**
- **The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future.**

While a record or records of arrest will not be used as the sole basis for denial, an arrest may, ~~however,~~ trigger an investigation to determine whether the applicant actually engaged in disqualifying criminal activity. As part of its investigation, Commerce may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. Commerce may also consider:

- **Any statements made by witnesses or the applicant not included in the police report;**
- **Whether criminal charges were filed;**
- **Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal; and**
- **Any other evidence relevant to determining whether or not the applicant engaged in disqualifying activity.**

**Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property.**

**In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully.**

**Commerce will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.**

## **Removal of a Family Member's Name from the Application**

Should the PHA's screening process reveal that an applicant's household includes an individual subject to state lifetime registered sex offender registration, the PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA must deny admission to the family [Notice PIH 2012-28].

For other criminal activity, the PHA may permit the family to exclude the culpable family members as a condition of eligibility. [24 CFR 982.552(c)(2)(ii)].

### **Commerce Policy**

**As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to reside in the assisted unit.**

**After admission to the program, the family must present evidence of the former family member's current address upon PHA request.**

### **Reasonable Accommodation [24 CFR 982.552(c)(2)(iv)]**

If the family includes a person with disabilities, the PHA's decision concerning denial of admission is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

### **Commerce Policy**

**If a family indicates that the behavior of a family member with a disability is the reason for a proposed denial of assistance, Commerce will determine whether the behavior is related to the disability. If so, upon the family's request, Commerce will determine whether alternative measures are appropriate as a reasonable accommodation. Commerce will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of assistance. See Chapter 2 for a discussion of reasonable accommodation.**

### **3-III.F. Notice of Eligibility or Denial**

If the family is eligible for assistance, the PHA will notify the family in writing and schedule a tenant briefing, as discussed in Chapter 5.

If the PHA determines that a family is not eligible for the program for any reason, the family must be notified promptly. The notice must describe: (1) the reasons for which assistance has been denied, (2) the family's right to an informal review, and (3) the process for obtaining the informal review [24 CFR 982.554 (a)]. See Chapter 16, for informal review policies and procedures.

### **Commerce Policy**

**The family will be notified of a decision to deny assistance in writing within 14 calendar days of the determination.**

If a PHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the PHA can move to deny the application. In addition, a copy of the record must be provided to the subject of the record [24 CFR 5.903(f) and 5.905(d)]. The PHA must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirements [24 CFR 982.553(d)].

### **Commerce Policy**

**Based on a criminal record or sex offender registration information, if an applicant family appears to be ineligible, Commerce will notify the family in writing of the proposed denial and provide a copy of the record to the applicant and to the subject of the record. The family will be given 20 calendar days from the date of the denial letter to dispute the accuracy and relevance of the information. If the family does not contact Commerce to dispute the information within that 20 calendar-day period, Commerce will proceed with the denial of admission.**

Notice requirements related to denying assistance to noncitizens are contained in Section 3-II.B.

Notice policies related to denying admission to applicants who may be victims of domestic violence, dating violence, sexual assault or stalking are contained in Section 3-III.G.

### **3-III.G. Prohibition Against Denial of Assistance to Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking**

The Violence against Women Act of 2013 (VAWA) and the HUD regulation at 24 CFR 5.2005(b) prohibit PHAs from denying an applicant admission to the HCV program on the basis or as a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking, if the applicant otherwise qualifies for assistance or admission.

Definitions of key terms used in VAWA are provided in section 16-IX of this plan, where general VAWA requirements and policies pertaining to notification, documentation, and confidentiality are also located.

### **Notification**

VAWA 2013 expanded notification requirements to include the obligation for PHAs to provide applicants who are denied assistance with a VAWA Notice of Occupancy Rights (form HUD-5380) and a domestic violence certification form (HUD-5382) at the time the applicant is denied.

### **Commerce Policy**

**Commerce acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history (e.g., poor rental history, a record of previous damage to an apartment, a prior arrest record) due to adverse factors that would warrant denial under Commerce's policies.**



While Commerce is not required to identify whether adverse factors that resulted in the applicant's denial are a result of domestic violence, dating violence, sexual assault, or stalking, the applicant may inform Commerce that their status as a victim is directly related to the grounds for the denial. Commerce will request that the applicant provide enough information to Commerce to allow Commerce to make an objectively reasonable determination, based on all circumstances, whether the adverse factor is a direct result of their status as a victim.

PHAs are required to inform program applicants and participants of their rights under VAWA, including their right to confidentiality and the limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits. Commerce will include in its notice of denial the VAWA forms HUD-5380 and HUD-5382 Commerce will request in writing that an applicant wishing to claim protection under VAWA notify Commerce within 20 calendar days.

## Documentation

### *Victim Documentation [24 CFR 5.2007]*

#### **Commerce Policy**

If an applicant claims the protection against denial of assistance that VAWA provides to victims of domestic violence, dating violence, sexual assault or stalking, Commerce will request in writing that the applicant provide the HUD-5382 Domestic Violence Certification form.

### *Perpetrator Documentation*

#### **Commerce Policy**

If the perpetrator of the abuse is a member of the applicant family, the applicant must provide additional documentation consisting of one of the following:

- A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the assisted unit.
- Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

## Exhibit 3-1: Detailed Definitions Related to Disabilities

### Person with Disabilities [24 CFR 5.403]

The term *person with disabilities* means a person who has any of the following types of conditions:

- Has a disability, as defined in 42 U.S.C. Section 423(d)(1)(A), which reads:  
Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; *or*  
In the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.
- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.15002(8)], which defines developmental disability in functional terms as follows:

#### (A) In General

The term “developmental disability” means a severe, chronic disability of an individual that:

- (i) is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (ii) is manifested before the individual attains age 22;
- (iii) is likely to continue indefinitely;
- (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity: (I) Self-care, (II) Receptive and expressive language, (III) Learning, (IV) Mobility, (V) Self-direction, (VI) Capacity for independent living, (VII) Economic self-sufficiency; and
- (v) reflects the individual’s need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

#### (B) Infants and Young Children

An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) of subparagraph (A) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

- Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

People with the acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for AIDS are not excluded from this definition.

A person whose disability is based solely on any drug or alcohol dependence does not qualify as a person with disabilities for the purposes of this program.

For purposes of reasonable accommodation and program accessibility for persons with disabilities, the term person with disabilities refers to an individual with handicaps.

### **Individual with Handicaps [24 CFR 8.3]**

*Individual with handicaps* means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

- (1) Physical or mental impairment includes:
  - (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
  - (b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.
- (2) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- (3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (4) *Is regarded as having an impairment* means:
  - (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
  - (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
  - (c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

**Exhibit 3-2: Definition of Institution of Higher Education [20 U.S.C. 1001 and 1002]**

**Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance; Notice [Federal Register, April 10, 2006]**

*Institution of Higher Education* shall have the meaning given this term in the Higher Education Act of 1965 in 20 U.S.C. 1001 and 1002.

*Definition of “Institution of Higher Education” From 20 U.S.C. 1001*

- (a) Institution of higher education. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term “institution of higher education” means an educational institution in any State that
- (1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
  - (2) Is legally authorized within such State to provide a program of education beyond secondary education;
  - (3) Provides an educational program for which the institution awards a bachelor’s degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;
  - (4) Is a public or other nonprofit institution; and
  - (5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.
- (b) Additional institutions included. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term “institution of higher education” also includes—
- (1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and
  - (2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.
- (c) List of accrediting agencies. For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

*Definition of “Institution of Higher Education” From 20 U.S.C. 1002*

- (a) Definition of institution of higher education for purposes of student assistance programs
- (1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term “institution of higher education” for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—
    - (A) A proprietary institution of higher education (as defined in subsection (b) of this section);
    - (B) A postsecondary vocational institution (as defined in subsection (c) of this section); and
    - (C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section

1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.

(2) Institutions outside the United States

(A) In general. For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless—

(i) In the case of a graduate medical school located outside the United States—

(I)(aa) At least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; and

(bb) At least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or

(II) The institution has a clinical training program that was approved by a State as of January 1, 1992; or

(ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States.

(B) Advisory panel

(i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—

(I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and

(II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.

(ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.

(C) Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.

(D) Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility,

- continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.
- (3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—
- (A) Offers more than 50 percent of such institution’s courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;
  - (B) Enrolls 50 percent or more of the institution’s students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;
  - (C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor’s degree, or an associate’s degree or a postsecondary diploma, respectively; or
  - (D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor’s degree or an associate’s degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.
- (4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—
- (A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution’s management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or
  - (B) The institution, the institution’s owner, or the institution’s chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.
- (5) Certification. The Secretary shall certify an institution’s qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.
- (6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility

for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

(1) Principal criteria. For the purpose of this section, the term “proprietary institution of higher education” means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;

(C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;

(D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;

(E) Has been in existence for at least 2 years; and

(F) Has at least 10 percent of the school’s revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.

(2) Additional institutions. The term “proprietary institution of higher education” also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) Postsecondary vocational institution.

(1) Principal criteria. For the purpose of this section, the term “postsecondary vocational institution” means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001 (a) of this title; and

(C) Has been in existence for at least 2 years.

(2) Additional institutions. The term “postsecondary vocational institution” also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.