

Chapter 3

ELIGIBILITY

INTRODUCTION

The IHA 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 IHA to confirm eligibility and determine the level of the family's assistance.

In the case of disputes on eligibility/ineligibility criteria that are pending the outcome of legal proceedings (i.e., currently under appeal in a court of law), the IHA will determine the family to be ineligible at that time. If the legal decision is rendered that the person did meet the eligible factors, the IHA shall restore the application to the original date and time, and reinstate the applicant to any other preference factors that the IHA has adopted. If the legal decision is rendered that the person did not meet the eligibility factors, the IHA shall only provide the applicant with access to the grievance process in accordance with applicable requirements.

To be eligible for the HCV program:

- The applicant family must:
 - Qualify as a family as defined by HUD and the IHA.
 - Have income at or below HUD-specified income limits.
 - Qualify on the basis of citizenship or the eligible immigrant status of family members.
 - Provide social security number information for all eligible family members as required.
 - Consent to the IHA's collection and use of family information as provided for in IHA-provided consent forms.
 - Not be ineligible due to criminal or other ineligible conduct.
 - Not be ineligible for assistance in accordance with the restrictions on assistance to students enrolled in an institution of higher education status (24 CFR 5.612).
- The IHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the IHA.

***Restrictions on Assistance to Students Enrolled in Institution of Higher Education**

No assistance shall be provided under Section 8 of the 1937 Act to any individual who:

- Is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965;
- Is under 24 years of age;
- Is not a veteran of the United States military;
- Is unmarried;
- Is not a person with disabilities and was not receiving assistance as of November 30, 2005;
- Does not have a dependent child; and
- Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance under Section 8 of the 1937 Act.

See Exhibit 3-2: Detail on Student Eligibility for further clarification

This chapter contains three parts:

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

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

Part III: Denial of Assistance. This part covers factors related to an applicant's past or current conduct (e.g. criminal activity) that can cause the IHA 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. This part 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 2-3-12 and PIH Notice 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, regardless actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, disabled person, near-elderly person, or any other 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.

The applicant must qualify as a Family. A family may be a single person or a group of persons. Discrimination on the basis of familial status is prohibited, and a group of persons may not be denied solely on the basis that they are not related by blood, marriage or operation of law. For occupancy standards purposes, the applicant may claim a spousal relationship.

A group of persons is defined by IHA as two or more persons who intend to share residency, and whose income and resources are available to meet the family's needs, and will live together in IHA housing.

Gender Identity means actual or perceived gender characteristics.

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

Family includes, but is not limited to, regardless of marital status, actual or perceived sexual orientation, or gender identity, the following:

- (1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or
- (2) A group of persons residing together, and such group includes, but is not limited to:
 - (a) 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);
 - (b) An elderly family;
 - (c) A near-elderly family;
 - (d) A disabled family;
 - (e) A displaced family; and
 - (f) The remaining member of a tenant family.

A single person who is not elderly, displaced, or a person with disabilities, or the remaining

member of a tenant family;

Two or more elderly or disabled persons living together, or one or more elderly or disabled persons living with one or more live-in aides is a family;

Two or more near-elderly persons living together, or one or more near-elderly persons living with one or more live-in aides.

An expectant mother with no children will qualify for assistance as a *family*.

IHA Policy

A family also includes two (2) or more persons who intend to share residency whose income and resources are available to meet the family's needs and who have a history as a family unit or show evidence of a stable family relationship for at least one year.

Evidence of a stable family relationship may include any of the following: birth certificates of the children indicating common children, joint tax returns, prior lease (held jointly), joint bank accounts, insurance policies indicating common status.

A family also includes 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, and must notify the IHA if the family's composition changes.

Children temporarily absent from the home due to placement in foster care are considered family members. This provision only pertains to the foster child's temporary absence from the home, and is not intended to artificially enlarge the voucher size for other family members.

At the time of admission, children in the process of being adopted are considered family members for the purpose of determining bedroom size, but not considered family members for determining income limit.

Household

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

3-I.C. FAMILY BREAK-UP AND REMAINING MEMBER OF TENANT FAMILY

Family Break-up [24 CFR 982.315]

Except under the following conditions, the IHA 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 IHA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, and stalking, see section 16-IX.D. of this plan.)
- If a court determines the disposition of property between members of the assisted family in a divorce or separation decree, the IHA is bound by the court's determination of which family members continue to receive assistance.

IHA Policy

When a family on the waiting list breaks up into two otherwise eligible families, only one of the new families may retain the original application date. Other former family members may make a new application with a new application date if the waiting list is open.

If a family breaks up into two otherwise eligible families while receiving assistance, only one of the new families will continue to be assisted.

In the absence of a judicial decision or an agreement among the original family members, the IHA will determine which family will retain their placement on the waiting list or continue to receive assistance. In making its determination, the IHA will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is the victim of domestic violence, dating 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

Documentation of these factors is the responsibility of the applicant families. If either or both of the families do not provide the documentation within 10 working days of the change of family composition, both may be denied placement on the waiting list.

Remaining Member of a Tenant Family [24 CFR 5.403, PIH 2010-50 and updates]

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.

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, see Chapter 6, Section 6-I.B., for the policy on "Guardians for a Child."

For deceased single member households or a household where the remaining household member is a live-in aide, IHA is required to discontinue HAP to the owner no later than the first of the following month after the month in which the death occurred. IHA is required to immediately terminate program assistance for deceased single member households which will result in

termination of the HAP contract and HAP to the owner in accordance with the aforementioned provisions. The owner is **not entitled** to HAP for any month following the month in which the death occurred. There are no exceptions to this policy.

When the HOH dies and the only remaining household member is the live-in aide, the live-in aide is **not entitled or eligible** for any rental assistance or continued occupancy in a subsidized unit. By definition, the live-in aide would not be living in the subsidized unit except to provide the necessary supportive services on behalf of the elderly or disabled HOH. The IHA may not designate the live-in aide as the new HOH or change the relation code (line item 3h on the form HUD-50058) of the live-in aide to make him or her an eligible household member (eligible for assistance) nor pay HAP on behalf of the live-in aide for any month after the month in which the HOH died.

If the HOH is deceased and the remaining household members are minors, the IHA has an established policy for dealing with situations when the HOH dies during tenancy and the remaining household members are minors. They will use a common practice of PHAs that includes (but is not limited to) allowing a temporary adult guardian to reside in the unit until a court-appointed guardian is established.

In accordance with its screening policies, the IHA may add the new guardian as the new HOH and will work with the local Department of Social Services to ensure that the best interests of the residuals are addressed.

The live-in aide or live-in aide's members can never be considered a resident or residual.

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 co-head or spouse.

IHA 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. A minor who is emancipated under state law may be designated as head of household.

3-I.E. SPOUSE, CO-HEAD, AND OTHER ADULT

A family may have a spouse or co-head, but not both [HUD-50058 IB, p. 13].

Spouse means the partner of the head of household.

IHA Policy

A *co-head* is an adult 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 co-head.

IHA Policy

Minors who are emancipated under state law may be designated as a co-head.

Other adult means a family member, other than the head, spouse, or co-head, 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 over 18 who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, co-head, foster children/adults and live-in aides. Identifying each dependent in the family is important because each dependent qualifies the family for a deduction from annual income as described in Chapter 6.

Joint Custody of Dependents

IHA Policy

When both parents are assisted under the Section 8 Rental Assistance Programs and both parents are trying to claim the child, the parent whose address is listed in the school records will be allowed to claim the school-age child as a dependent.

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 51 percent or more of the time.

Children who are not registered in a school program, including preschool, who are subject to a joint custody agreement but live in the unit at least 51% of the time will be considered members of the household. "51% of the time" is defined as 183 days of the year, which do not have to run consecutively.

For children who are not registered in school, the custodial parent for tax purposes will be considered the custodial parent in determining which family claims the child as a dependent for purposes of household composition, subsidy standards and total tenant payment calculation. 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 them, the IHA will make the determination based on available documents such as court orders, or an IRS return showing which family has claimed the child for income tax purposes.

3-I.G. FULL-TIME STUDENT [24 CFR 5.603, HVC 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 co-head, qualifies the family for a dependent deduction and (2) the earned income of such as an FTS is treated differently from the earned income of other family members.

3-I.H. ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY [24 CFR 5.100 and 5.403]

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 at least 50 years of age but below the age of 62.

For Admission purposes as defined- *Near elderly* households are families whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 year of age but below the age of 62 living with one or more live-in aide.

Elderly Family

An *elderly family* is one in which the head, spouse, co-head, or sole member is an elderly person; two or more individuals above the age of 62 that are residing together, or one or more persons above the age of 62 residing with one or more live-in aides. Identifying elderly families is important because these families qualify for special deductions from income as described in Chapter 6.

3-I.I. PERSONS WITH DISABILITIES, DISABLED FAMILY, LIVE-IN AIDE [24 CFR 5.403 FR Notice 2-3-12]

Disabled Household

For the purposes of the IHA, the term "disabled household" will mean a household where the head of household, spouse or co-head has a disability and is:

- (a) *Disabled* with a physical impairment which is expected to be of a long continuous and indefinite duration and is of such nature that such ability could be improved by more suitable housing conditions;
- (b) *Disabled* within the meaning of Section 223 of the Social Security Act or Section 102(7) or 6001(7) of the Developmentally Disabled Act; or

- (c) "An inability to engage in any substantial gainful activity because of any physical or mental impairment that is expected to result in death, or has lasted, or is expected to continue to last, continuously for at least twelve (12) months; or, for a blind person at least 55 years old, inability, because of blindness to engage in any substantial gainful activities comparable to those in which the person was previously engaged with some regularity and over a substantial period.
- (d) "A developmental disability is a severe, chronic disability which:
- Is attributable to a mental and/or physical impairment;
 - Was manifested before the age of 22;
 - Is likely to continue indefinitely;
 - Results in substantial functional limitations in three or more of the following areas: capacity for independent living; self-care; receptive and expressive language; learning; mobility; self-direction; and economic self-sufficiency, and
 - Requires special interdisciplinary, or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated."

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or co-head is a person with disabilities.

Persons with Disabilities

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

As discussed in Chapter 2, the IHA 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 co-head is a person with disabilities as defined by the occupancy criteria. Identifying disabled families is important because these families qualify for special deductions from income as described in Chapter 6.

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

Live-In Aide

A Family may include a live-in aide provided that such live-in aide:

Is determined by IHA to be essential to the care and well-being of an elderly person, a near-elderly person, or a person with disabilities,

Is not obligated for the support of the person(s), and

Would not be living in the unit except to provide care for the person(s).

A live-in aide is not considered to be an assisted family member and has no rights or benefits under the program:

Income of the live-in aide will not be counted for purposes of determining eligibility or level of benefits.

Live-in aides are not subject to Non-Citizen Rule requirements.

Live-in aides may not be considered as a remaining member of the tenant family.

Relatives are not automatically excluded from being live-in aides, but they must meet all of the elements in the live-in aide definition described above.

Family members of a live-in aide may also reside in the unit, providing doing so does not increase the subsidy by the cost of an additional bedroom and that the presence of the family member(s) does not overcrowd the unit. The family will be eligible to increase the bedroom size by one bedroom to accommodate the live-in aide status.

A Live-in Aide may only reside in the unit with the approval of IHA. Written verification will be required from a reliable, knowledgeable medical professional, such as a doctor, social worker, or caseworker. The verification provider must certify that a live-in aide is needed for the care of the family member who is elderly, near elderly, or disabled.

IHA will screen and qualify the live-in aide and the live-in aide must be eligible under non-criminal background requirements, not owe money to the PHA, not previously been terminated by a PHA, and must also have the necessary skills to meet the needs of the individual requesting the reasonable accommodation.

IHA has the right to disapprove a request for a live-in aide based the "suitability criteria".

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 express or implied authority to so consent.

IHA Policy

A guest can remain in the assisted unit no longer than thirty (30) consecutive days or a total of ninety (90) cumulative calendar days during any 12-month period.

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 identify and provide documentation of the residence to which the guest will return.

3.I.K. FOSTER CHILDREN AND FOSTER ADULTS

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

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

Foster children and foster adults that are living with an applicant or assisted 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 the \$480 dependent deduction [24 CFR 5.603 and HUD-50058 IB, p. 13]. Foster children and foster adults that are permitted to occupy the dwelling unit will be used to determine the voucher size for assistance.

IHA Policy

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.

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.

With the prior written consent of the IHA, a foster child/foster adult may be added to the Section 8 participant family. The factors considered by the IHA in determining whether or not consent is granted may include:

- A. Whether the addition of a new occupant may require the issuance of a new voucher, and whether such voucher subsidy is available.
- B. The Section 8 landlord's written approval of the additional persons being added to the lease.

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

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

IHA Policy

Absence means that no member of the family is residing in the unit. The family may be absent from the unit for up to thirty (30) consecutive days. The family must request permission in writing from the IHA for absences exceeding thirty (30) days. The Housing Authority will make a determination within five (5) business days of the request. An authorized absence may not exceed 180 consecutive calendar days in any circumstance, or for any reason. Any family absent for more than thirty (30) days without authorization will be terminated from the program.

Absent Students

IHA Policy

When someone who has been considered a family member and attends school away from home, the person will continue to be considered a family member unless information becomes available to the IHA indicating that the student has established a separate household or the family declares that the student has established a separate 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.

IHA Policy

In instances in which the children have been removed from the home by a social service agency, the agency will be contacted to determine the approximate length of time the children are expected to be away from the home.

If a child has been placed in foster care, the IHA will verify with the appropriate agency whether and when the child is expected to return 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.

If the agency indicates that the children are expected to return to the home at some point, the children will remain a part of the family composition and will be counted toward the family's subsidy standard.

If the children are not ever expected to be returned to the home, the children will be removed from the family composition and the family's subsidy standard will be reduced accordingly at the next annual review.

If the agency indicates that it is unknown whether the children will be returned to the home, the children will be removed from the family composition. Failure, by the family, to report the absence of the children may result in termination from the program.

Absent Head, Spouse, or Co-head

IHA Policy

An employed head, spouse, or co-head absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member.

When a single parent is absent from the household for an extended period (30 days) as a result of imprisonment, etc. and another adult moves into the home to care for the remaining members, the rental assistance may be terminated. In extenuating cases where the IHA approves the temporary absence, the family composition may be modified to include the name of the temporary guardian as temporary head of household. The IHA shall screen the guardian under the same criteria that it screens a live-in aide. The temporary guardian's income will not be included in the family income. The single parent's name as head of household shall be temporarily removed and the file documented to explain the circumstances.

When the single parent returns to the unit, the guardian will vacate the unit, unless further documentation of need is verified. If the guardian remains after the return of the head of household and does not become a live-in aide, his/her income will be included in the calculation of family income. In addition to all the above, the guardian will be responsible for obtaining the owner's/landlord's approval before occupying the unit.

IHA will review the reason why the head of household is no longer present and may make a determination to terminate the assistance.

If all members of the household are absent for thirty (30) consecutive days during a calendar year, but have not moved from the unit, assistance will be terminated. In order to determine if the family is absent from the unit, IHA may secure various forms of verification including but not limited to: notice and letters to the family at the unit, telephone the family at the unit, interview the owner/landlord and neighbors, and/or verify if utilities are in service. In cases where the family has moved from the unit, assistance will be terminated in accordance with the procedures set forth further in this plan.

When the family consists of only one member and that person vacates the unit to go into a hospital or nursing home for a period of more than two (2) months, a medical source must document that the person is expected to return to the unit in 180 days or less in order for the person to continue to receive assistance. If the person is not back in the unit within 180 days, assistance will be terminated.

Family Members Permanently Confined for Medical Reasons [HCV GB, p. 5-22]

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 [HCV GB, p. 5-22].

IHA Policy

The IHA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. If temporarily absent, the income of the person will be included. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member and be removed from the lease and voucher.

Return of Permanently Absent Family Members

IHA Policy

The family must request IHA approval for the return of any adult family members that the IHA has determined to be permanently absent. The individual is subject to the eligibility and screening requirements discussed elsewhere in this chapter.

3-I.M. LIVE-IN AIDE (PIH 2010-51 and PIH 2013-13)

Live-in aide means 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]. It should be noted that the definition applies to a specific person (i.e., identified live-in aide).

The IHA 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.

A live-in aide is a member of the household, not the family, and the income of the aide is not considered in income calculations [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. However, current members of the family cannot be reclassified as a live-in aide to have the income excluded.** A relative or any other live-in aide or live-in aide's family who serves as a live-in aide is not considered a family member and would not be considered a remaining member of a tenant family or have any rights to the program.

IHA Policy

A family's request for a live-in aide must be made in writing. 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. Although a health care provider must document the need for a live-in aide (which would result in the issuance of an additional bedroom size voucher), the live-in aide must be identified by the family and approved by the IHA first.

The IHA may only approve one additional bedroom for a live-in aide. Although a live-in aide may have IHA-approved family member/s live with him/her in the assisted unit, no additional bedrooms will be provided for the family members of the live-in aide. The IHA must ensure that housing quality standards (HQS) will not be violated and that there will be no more than two people per bedroom or living/sleeping space in the unit in accordance with 24 CFR § 982.401(d)(2)(ii). If the approval of additional family members of a live-in aide would result in the violation of HQS, the additional family members of the live-in aide may not be approved.

A live-in aide may only reside in the unit with pre-approval from the IHA, after proper documentation of need is verified and screening has been completed.

The approval of a live-in aide shall increase the maximum permitted voucher size by 1-bedroom to accommodate the need for a live-in aide.

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. The live-in aide and family will execute an acknowledgement that they are a live-in aide and they have no rights to the program.

The IHA 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 the IHA or to another HA in connection with Section 8 or public housing assistance under the 1937 Act.

- The person has violated any family obligations under the program as published under CFR 982.551;

- The person has been convicted of manufacturing or producing methamphetamine, on the premises of an assisted housing project;

- The person has been evicted from any federally subsidized housing program for any reason;

- The person has been identified as someone who has to register as a sex offender.

- The person cannot provide a current valid social security number, if needed.

- The person fails to provide documentation to permit the IHA to conduct the required screening.

The person is not qualified to provide the needed care.

Within ten (10) business days of receiving a request for a live-in aide, including all required documentation related to the request, the IHA will be required to screen the live-in aide in accordance with the federal regulations and upon final determination will notify the family of its decision in writing.

PART II: BASIC ELIGIBILITY CRITERIA

3-II.A. INCOME ELIGIBILITY AND TARGETING

Income Limits

HUD is required by law to set income limits that determine the eligibility of applicants for HUD's assisted housing programs, including the housing choice voucher program. The income limits are published annually and are based on HUD estimates of median family income in a particular area or county, with adjustments for family size.

Types of Low-Income Families [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. Eligibility is established by comparing a family's annual income with HUD's published income limits. To be income-eligible, a 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]

PHA Policy

The PHA will consider a family to be continuously assisted if the family was leasing a unit under any 1937 Housing Act program at the time they were issued a voucher by the PHA.

- 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 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
- A low-income family that is used for determining eligibility for a student under the student rule provisions.
- A low-income family for determining eligibility under the VASH Program.
- For Project-based units that converted through RAD.

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

IHA Policy

The IHA has not established any additional categories of eligible low-income families through RAD.

Using Income Limits for Targeting [24 CFR 982.201]

At least 75 percent of the families admitted to the IHA's program during a IHA fiscal year must be extremely low-income families. HUD may approve exceptions to this requirement if the IHA 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 subject to the 75 percent restriction.

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 in order for the family to qualify for any level of assistance. The eligible individual on a mixed family does not need to be an adult.

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 IHA's Limited English Proficiency Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English, or oral interpretation may be required.

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 those members who elect not to contend that they have eligible immigration status. (HUD-214) Those who elect not to contend their status are considered to be ineligible noncitizens. For citizens, nationals and eligible noncitizens the declaration must be signed personally by the head, spouse, co-head, and 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 that claims their status. However, HUD regulations permit the IHA to request additional documentation of their status, such as a passport or birth certificate.

IHA Policy

Family members who declare citizenship or national status will be required to provide additional documentation such as a birth certificate or other legal document.

Eligible Non-citizens

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with IHA 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].

Residents that received immunity under the Presidential Declarations

Ineligible Non-citizens

Those non-citizens who do not wish to contend their immigration status are required to have their names listed on a non-contending family members listing, signed by the head, spouse, or co-head (regardless of citizenship status), indicating their ineligible immigration status. The IHA 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)]

IHA may elect to provide assistance to a family before the verification of the eligibility of citizenship 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 IHA that the individual or at least one family member is eligible [24 CFR 5.512(a)].

IHA Policy

The IHA will not provide assistance to a family before the verification of at least one family member. The eligible member does not have to be an adult in order for the IHA to assist the family.

When a IHA 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 ten (10) business days of the determination.

The notice will explain the reasons for the denial of assistance, that the family may be eligible for pro-ration of assistance, and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS), or to request an informal hearing with the IHA. The informal hearing with the IHA 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 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 citizenship status will be verified at the time they are added to the household.

If an individual qualifies for a time extension for the submission of required documents, the IHA 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, provided the verification on file is not one for temporary status to be in the country.

IHA Policy

The IHA will verify the status of applicants at the time other eligibility factors are determined.

3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218] and PIH 2010-3 and PIH 2011-2, and PIH 2012-10]

Families are required to provide verification of Social Security Numbers for all family members if they have been issued a number by the Social Security Administration. This requirement also applies to persons joining the family after admission to the program.

Failure to furnish verification of social security numbers is grounds for denial of admission or termination of tenancy.

The IHA must request the applicant and participant (including each member of the household), who are not exempt under **SSN Disclosure**, to provide documentation of each disclosed SSN. Acceptable evidence of the SSN consists of:

- An original SSA-issued document, which contains the name and SSN of the individual; or
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

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

SSN Disclosure

In accordance with 24 CFR 5.216, applicants and participants (including each member of the household) are required to disclose his/her assigned SSN, with the exception of the following individuals:

- Those individuals who do not contend to have eligible immigration status (individuals who may be unlawfully present in the United States). These individuals in most instances would not be eligible for a SSN.
 - A family that consists of a single household member (including a pregnant individual) who does not have eligible immigration status is **not eligible** for

housing assistance and cannot be housed.

- A family that consists of two or more household members **and at least one** household member that has eligible immigration status, is classified as a mixed family, and **is eligible** for prorated assistance in accordance with 24 CFR 5.520. The IHA may **not** deny assistance to mixed families due to nondisclosure of an SSN by an individual who does not contend to have eligible immigration status.
- Existing program participants as of January 31, 2010, who have previously disclosed their SSN and HUD has determined the SSN to be valid. The IHA may confirm HUD's validation of the participant's SSN by viewing the household's *Summary Report* or the *Identity Verification Report* in the EIV system.
- Existing program participants as of January 31, 2010, who are 62 years of age or older, and had not previously disclosed a valid SSN. This exemption continues even if the individual moves to a new assisted unit.

Disclosure of SSNs is considered information subject to the Federal Privacy Act (5 USC 552a, as amended). In accordance with 24 CFR 5.212, the collection, maintenance, use, and dissemination of SSNs, any information derived from SSNs and income information must be conducted, to the extent applicable, in compliance with that Act and all other provisions of Federal, State, and local law.

There is no provision under HUD regulations which prohibit an individual (head of household with other eligible household members) with ineligible immigration status from executing a lease or other legally binding contract. However, some state laws prohibit an individual with ineligible immigration status from executing a contract (i.e. lease or other legal binding documents). If this is the case in your state, the family must **not** be admitted into the program.

Penalties for Failure to Disclose and/or Provide Documentation of the SSN

In accordance with 24 CFR 5.218, the following penalties apply for noncompliance with the SSN disclosure and documentation requirements:

- a. **Applicants.** The IHA must deny the eligibility of an assistance applicant if s/he (including each member of the household required to disclose his/her SSN) does not disclose a SSN and/or provide documentation of such SSN. However, if the family is otherwise eligible to participate in the program, the family may maintain his/her position on the waiting list for a period of time as determined by the IHA. The IHA should prescribe in its policies, the maximum time the family may remain on the waiting list, pending disclosure of requested information. If all household members have not disclosed their SSN at the time a unit becomes available, the IHA must offer the available unit to the next eligible applicant family on the waiting list.

- b. **Participants.** The IHA must terminate the assistance of Section 8 program participants (the entire household) and terminate the tenancy of Public Housing participants (the entire household) if s/he (including each member of the household required to disclose his/her SSN) does not disclose his/her SSN and provide the required documentation.

However, if the family is otherwise eligible for continued assistance or tenancy in the program, the IHA, at its discretion, may defer the family's termination and provide the family an opportunity to comply with the requirement within a period **not to exceed** 90 calendar days from the date the IHA determined the family noncompliant with the SSN disclosure and documentation requirement, if the PHA determines:

1. The failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside the control of the family; and
2. There is a reasonable likelihood that the family will be able to disclose the SSN and provide such documentation of the SSN by the deadline.

If the family is unable to comply with the requirements by the specified deadline, the PHA must terminate the tenancy or assistance, or both of the entire family.

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 co-head, 18 years or older, to sign form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, 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 IHA must deny admission to the program if any adult 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]

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 his/her parents in accordance with IHA 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 IHA will rely on the following definitions [FR 4/10/06, p. 18148].

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

IHA Policy

The IHA 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 four criteria are all met:

The individual is of legal contract age under state law.

The individual has established a household separate from his/her 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:

Be at least 24 years old by December 31 of the award year for which aid is sought

Be an orphan or a ward of the court through the age of 18

Be a veteran of the U.S. Armed Forces

Have one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent)

Be disabled

Be a graduate or professional student

Be married

The individual was not claimed as a dependent by his/her 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 his/her parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

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

Institution of Higher Education

The IHA 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

IHA 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 guardians (e.g., grandparents, aunt/uncle, godparents, etc.).

Person with Disabilities

The IHA 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

IHA Policy

A *veteran* is a person who served in the active military, naval, or air service and who was discharged or released from such service under conditions other than dishonorable.

Determining Student Eligibility

If a student is applying for assistance on his/her own, apart from his/her parents, the IHA 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 IHA must ensure that: (1) the student is individually eligible for the program, (2) either the student is independent from his/her 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.

IHA Policy

For any student who is subject to the 5.612 restrictions, the IHA 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 his/her 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

If the IHA determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, the IHA 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

IHA Policy

For any student who is subject to the 5.612 restrictions and who does not satisfy the definition of *independent student* in this section, the IHA will determine the income eligibility of the student's parents as follows:

If the student's parents are married and living together, the IHA will obtain a joint income declaration and certification of joint income from the parents.

If the student's parent is widowed or single, the IHA will obtain an income declaration and certification of income from that parent.

If the student's parents are divorced or separated, the IHA will obtain an income declaration and certification of income from each parent.

If the student has been living with one of his/her parents and has not had contact with or does not know where to contact his/her other parent, the IHA will require the student to submit a certification under penalty of perjury describing the circumstances and stating that the student does not receive financial assistance from the other parent. The IHA will then obtain an income declaration and certification of income from the parent with whom the student has been living or had contact.

In determining the income eligibility of the student's parents, the IHA will use the low-income limits for the jurisdiction in which the parents live.

3-II.F. SPECIAL PROGRAMS

Over time, HUD has awarded the Housing Authority with funding for specific voucher types to serve specific voucher types to serve specific populations. In some instances, these special programs offer vouchers to eligible persons from the Housing Choice Voucher (HCV) waiting list. In other instances, vouchers are issued on referrals from service providers. All special voucher programs are listed and described below.

Foster Youth to Independence – Tenant Protection Vouchers

The Department of Housing and Urban Development (HUD) introduced the Foster Youth to Independence for Public Housing Authorities to request Tenant Protection Vouchers to serve youth under the age of 24 with a history of child welfare involvement, for up to 36 months.

The initiative aims to address gaps in availability of Family Unification Programs, increases housing options for youth with a current history of child welfare involvement that are homeless or at risk of homelessness, and contribute to the federal goal of preventing and ending youth homelessness.

The Independence Housing Authority (IHA) created a formal partnership with the Missouri Department of Social Services – Children’s Division to establish the criteria and referral process and to identify the youth population. The IHA has applied for up to 25 additional FYI vouchers from HUD to administer in Jackson County, MO to assist homeless and at risk homeless youth in the IHA jurisdiction of Jackson County, MO.

Once the 36 month timeline for the Foster Youth to Independence – Tenant Protection Voucher has ran its course, the youth that had the FYI TPV can obtain a regular HCV voucher if the IHA has the available vouchers and budget authority to handle the request at that time.

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 IHA, and those in which denial of assistance is optional for the IHA.

In addition, HUD requires or permits the IHA to deny assistance based on certain types of current or past behaviors of family members.

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, or
- Refusing to process a request for or to provide assistance under portability procedures.

Prohibited Reasons for Denial of Assistance [24 CFR 982.202(b) 24 CFR 5.2005(b)]

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

- Age, disability, race, color, religion, sex, sexual orientation, 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 IHA's jurisdiction (See Chapter 10, Portability.)
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock

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- Whether the family includes children
 - Whether a family decides to participate in a family self-sufficiency or homeownership program
 - 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. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING [VAWA 2013]

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 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 notice of rights and the form HUD-50066 at the time the applicant is denied.

IHA Policy

The IHA acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history (e.g., a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under the IHA’s policies. Therefore, if the IHA makes a determination to deny assistance to an applicant family, the IHA will include in its notice of denial the VAWA information described in section 16-IX.C of this plan as well as including a copy of the form HUD-50066. The IHA will request that an applicant wishing to claim protection under VAWA notify the IHA within ten (10) business days.

- That an applicant or participant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking is not an appropriate reason for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission.

As used in VAWA:

- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an

adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship
 - The type of relationship
 - The frequency of interaction between the persons involved in the relationship
- The term *stalking* means:
 - To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
 - To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
 - In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.
- The term affiliated individual means, with respect to a person: VAWA 2013 defines an "affiliated individual," with respect to an individual, as a spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis, or any individual, tenant, or lawful occupant living in the household of that individual.
- The term *perpetrator* means a person who commits an act of domestic violence, dating violence or stalking against a victim.

IHA Policy

The IHA acknowledges that a victim of domestic violence, dating violence, or stalking may have an unfavorable history (e.g. poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under the IHA's policies. Therefore, if the IHA makes a determination to deny admission to an applicant family, the IHA will include in its notice of denial:

A description of IHA confidentiality requirements

A request that an applicant wishing to claim this protection submit to the IHA documentation meeting the specifications below with her or his request for an informal review (see section 16-II.D.)

Documentation

Victim Documentation

IHA 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, the IHA will request in writing that the applicant provide documentation supporting the claim in accordance with section 16-IX.D. of this plan.

An applicant claiming that the cause of an unfavorable history is that a member of the applicant family is or has been a victim of domestic violence, dating violence, sexual assault or stalking must provide documentation (1) demonstrating the connection between the abuse and the unfavorable history and (2) naming the perpetrator of the abuse, if known and there is no fear of retaliation. The documentation may consist of any of the following:

A statement signed by the victim certifying that the information provided is true and correct and that it describes bona fide incident(s) of actual or threatened domestic violence, dating violence or stalking.

A police or court record documenting the domestic violence, dating violence, or stalking.

Documentation signed by a person who has assisted the victim in addressed domestic violence, dating violence, or stalking, or the effects of such abuse. This person may be an employee, agent, mental health professional or volunteer of a victim service provider; an attorney; or a medical or other knowledgeable professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in the question are bona fide incidents of abuse. The victim must also sign the documentation.

Perpetrator Documentation

IHA 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 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.

Time Frame for Submitting Documentation

IHA Policy

The applicant must submit the required documentation with his or her request for an informal review (see section 16-III.D) or must request an extension in writing at that time. If the applicant so requests, the IHA will grant an extension of ten (10) business days, and will postpone scheduling the applicant's informal review until after it has received the documentation or the extension period has elapsed. If after reviewing the documentation provided by the applicant the IHA determines that the family is eligible for assistance, no informal review will be scheduled and the IHA will proceed with admission of the applicant family.

IHA Confidentiality Requirements

All information provided to the IHA regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may either be entered into any shared database nor provided to any relative identity, except to the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.

IHA Policy

If disclosure for use in an eviction proceeding or is otherwise required by applicable law, the IHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

Emergency Transfer

The purpose of the Emergency Transfer under VAWA is for the victim to get away from the situation as soon as possible.

IHA Policy

Participant will have 30 days from date of request for Emergency Transfer to vacate the Unit. Voucher will be issued at the time the participant requests the Emergency Transfer. The voucher will be good for 30 days.

If the family is within the 1st year of the lease, they must vacate the unit within 30 days. If they remain in the unit past 30 days, they will have to fulfill the 1-year lease agreement before being allowed to move.

If the family goes into a shelter or safe house, the voucher will be extended for the full 120 days.

Goals and Objectives

This policy has the following principal goals and objectives:

- A. Maintaining compliance with all applicable legal requirements imposed by VAWA;
- B. Ensuring the physical safety of victims of actual or threatened domestic violence, dating violence, or stalking who are assisted by IHA;
- C. Providing and maintaining housing opportunities for victims of domestic violence dating violence, or stalking;
- D. Creating and maintaining collaborative arrangements between IHA, law enforcement authorities, victim service providers, and others to promote the safety and well-being of victims of actual and threatened domestic violence, dating violence and stalking, who are assisted by IHA; and
- E. Taking appropriate action in response to an incident or incidents of domestic violence, dating violence, or stalking, affecting individuals assisted by IHA.

3-III.C. MANDATORY DENIAL OF ASSISTANCE [24 CFR 982.553(a)]

HUD requires the IHA to deny assistance in the following cases:

Any member of the household has been evicted from federally assisted housing in the last five (5) years for drug-related criminal activity. HUD permits but does not require the IHA to admit an otherwise-eligible family if the household member has completed a IHA- 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).

IHA Policy

The IHA will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past five (5) years for drug-related criminal activity, if the IHA is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the IHA, or the person who committed the crime, is no longer living in the household.

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

IHA Policy

Currently engaged in is defined as any use of illegal drugs during the previous six months.

- The IHA 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.

IHA Policy

In determining reasonable cause, the IHA 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. The IHA 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
- If a family member has been convicted of manufacturing or producing methamphetamine (speed) on an assisted housing site, Section 8 housing, or in Public Housing.
- Denied if convicted for murder, rape, and/or other sex-related crimes, kidnapping, arson, production or manufacturing of methamphetamine, or lifetime sex offenders.

IHA Policy

Any person who, within five (5) years of the date of application for assistance with the Authority, has previously been evicted from any assisted rental housing program because of criminal activity, or drug-related criminal activity shall not be eligible for assistance with the Authority.

The IHA finds that those persons who have demonstrated a history of criminal activity involving certain crimes of physical violence, certain crimes relating to personal property, certain crimes relating to illegal narcotics activity, and certain other criminal acts, present a significant danger to the current law-abiding residents of the community, as such

Criminal activity represents a clear and immediate threat to their health, safety and continued well-being. Accordingly, any person who has committed one or more of the following specified criminal offenses, as evidenced by arrest, formal charge, conviction or other competent evidence, and has not thereafter demonstrated complete rehabilitation by remaining conviction-free or arrest-free for a period of at least five (5) years after the date of the most recent occurrence, arrest, formal charge, conviction, release from imprisonment, or the successful termination of probation, community control or parole, whichever shall occur later, *shall be denied* consideration for tenancy with IHA assistance.

For the purposes of this policy, an “arrest” shall include an actual physical arrest by a law enforcement officer, a notice-to-appear issued by a law enforcement officer, an information, indictment or other charging document. A “conviction” shall include either a formal adjudication of guilt or a withholding of adjudication of guilt by a court of competent jurisdiction, whether or not such finding is predicated upon a jury verdict or plea of guilty or nolo contendere.

3-III.D. OTHER PERMITTED REASONS FOR DENIAL OF ASSISTANCE

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

Criminal Activity [24 CFR 982.553]

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

IHA Policy

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

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; or

Criminal activity that may threaten the health or safety of property owners, management staff, and persons performing contract administration functions or other responsibilities on behalf of the IHA (including a IHA employee or a IHA contractor, subcontractor, or agent).

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

Conviction for drug-related or violent criminal activity within the past five (5) years.

Circumstantial evidence, a preponderance of evidence, or any conviction for drug-related or violent criminal activity within the past five (5) years.

Any record of eviction from federally assisted housing as a result of criminal activity within the past five (5) years.

If on probation or parole for any conviction, assistance will be denied until discharged from probation or parole.

Convictions of any household member for crimes of physical violence including but not limited to intentionally or recklessly causing another's death, arson, rape, sexual assault and convictions which require one to register as a sex offender.

In making its decision to deny assistance, the IHA will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the IHA 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 IHA to deny assistance based on the family's previous behavior in assisted housing:

IHA Policy

The IHA **will not** deny assistance to an otherwise eligible family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program or the Welfare to Work voucher program.

The IHA **will** deny assistance to an applicant family if the family was a previous participant in a Section 8 or other federally assisted housing program and violated their family obligations within a period of two (2) years prior to the new full application date.

If the family's assistance was terminated for the following reasons the family will be denied assistance:

The family failed to provide information that the IHA or HUD determines is necessary in the administration of the program.

The family failed to provide complete and true information to the IHA.

The family failed to disclose and verify social security numbers and submit and sign consent forms for obtaining information.

The family failed to allow IHA to inspect the unit at reasonable times and after reasonable notice.

The family failed to keep scheduled appointments with IHA staff.

The family failed to notify IHA and the owner before the family moved out of the unit or terminated the lease on notice to the owner (skip).

The family failed to promptly notify inform IHA of the birth, adoption, or court-awarded custody of a child.

The family failed to promptly notify IHA if any family member no longer resides in the unit.

The family failed to obtain IHA approval prior to having a foster child or live-in aide reside in the unit.

The family failed to supply any information or certification requested by IHA to verify that the family is living in the unit, or relating to family absence from the unit, including any IHA-requested information or certification of the purpose of family absences. Failure of the family to cooperate with IHA for this purpose. Failure to promptly notify IHA of absence from the unit.

If the family's assistance was terminated for the following reasons the family will be denied assistance:

The family failed to request IHA approval prior to adding family members to the household (other than additions by birth, adoption, or court-awarded custody).

The family failed to primarily use the assisted unit for residence by the family and the unit was not the family's only residence (except owner-approved legal profit-making activities incidental to the use of the unit).

If any family member owned or had any interest in the assisted unit (other than in a cooperative, HCV Homeownership, or the owner of a manufactured home leasing a manufactured home space).

If any family member committed any serious and/or repeated violation of the lease and the lease violation(s) resulted in termination of housing assistance.

If the family subleased or let the unit or assigned the lease or transferred the unit.

If any family member received Section 8 tenant-based program assistance while receiving another housing subsidy, for the same unit or a different unit under any Federal, state or local housing assistance program.

If any family member damaged the unit or premises (other than damage from ordinary wear and tear) or permitted any guest to damage the unit or premises, and such damage resulted in termination of assistance due to family's failure to repair the damages.

Any family member has been evicted from federally assisted housing in the last two (2) years.

Any member was terminated by a PHA or failed to comply with the community service requirements in public housing.

Any PHA has ever terminated assistance under the program for any member of the family subject to timeframes as provided in this section.

Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program in the last two (2) years.

The family owes rent or other amounts to any PHA in connection with the HCV, Moderate Rehabilitation or public housing programs, unless the family repays the full amount within thirty (30) days of such notice or enter into a repayment agreement of the debt prior to being issued a voucher.

If the family owes IHA in connection with the HCV program, the family must repay the full amount within thirty (30) days of such notice. If the family owes IHA in connection with the public housing program, they may pay in full prior to being issued a voucher.

The family has breached the terms of a repayment agreement entered into with the IHA or other PHA, unless the family repays the full amount of the debt covered in the repayment agreement prior to receiving a voucher.

A family will be given the opportunity to pay the monies owed within thirty (30) days of the eligibility interview. If the family fails to meet their obligation to repay the debt, the applicant will be denied assistance.

A family member has engaged in or threatened violent or abusive behavior toward IHA personnel in the last two (2) years.

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

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

In making its decision to deny assistance for all the above-noted timeframes, the IHA will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the IHA may, on a case-by-case basis, decide to reduce the period of ineligibility.

3-III.E. SCREENING

Screening for Eligibility

IHA is authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the HCV program. This authority assists the IHA in complying with HUD requirements and IHA 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 IHA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

IHA Policy

The IHA will perform a criminal background check through local law enforcement for every adult household member.

The IHA may perform a check on the National Sex Offenders web site for every adult household member.

The IHA may require a criminal background check through other law enforcement entities if local information is not available.

IHA is 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)].

IHA will verify the information provided by the applicant by searching the Dru Sjodin National Sex Offender Database. The Dru Sjodin National Sex Offender Database is an online, searchable database, hosted by the Department of Justice, which combines the data from individual state sex offender registries. The website for the database is located at: <http://www.nsopw.gov>. A record of this screening, including date performed, will be retained. IHA must destroy the results of the search in accordance with 24 CFR 5.903 (g) unless required by other provisions of the law to retain the documents used to determine eligibility. If required to retain, IHA must retain the results of the search, along with the application, for a period of three years if the applicant is denied housing or, if the applicant is admitted to the program, for the term of tenancy plus three years.

If the IHA proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, the IHA 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**. The family will be given ten (10) business days to dispute the accuracy and relevance of the information. [24 CFR 5.903(f) and 5.905(d)]. The record will be provided to the applicant in person upon presentation of valid government-issued photo identification. The family must be given the opportunity and may remove the life-time sex offender to gain eligibility status for the other members. IHA will require documentation of the removal in accordance with verification requirements.

Screening for Suitability as a Tenant [24 CFR 982.307]

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

IHA Policy

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

Criminal background checks will be performed at the following points:

- A. Final Eligibility Determination

When the family's name comes to the top of the wait list, before the family is offered a voucher, a criminal background screening will be completed to determine whether any violent criminal activity or drug-related criminal activity has occurred between wait listing and final eligibility determination.

B. Investigation Initiated by a Tip, Referral, or Complaint

Upon receiving a tip, referral, complaint or

other source, a criminal background screening may be performed if it is possible that the screening may provide information pertinent to the investigation.

The owner is responsible for screening and selection of the family to occupy the owner's unit. The IHA 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 IHA to provide prospective owners with the family's current and prior address (as shown in IHA records) and the name and address (if known) of the owner at the family's current and prior addresses. HUD permits the IHA 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 IHA may not disclose to the owner any confidential information provided to the IHA by the family in response to an IHA 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)].

IHA Policy

The IHA 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 the initial HQS inspection or before, if requested. The IHA will not provide any additional information to the owner, such as tenancy history, criminal history, credit background, etc.

3-III.F. CRITERIA FOR DECIDING TO DENY ASSISTANCE

Evidence [24 CFR 982.553(c)]

IHA Policy

The IHA 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.

Consider all evidence. In determining whether an issue has been proved by a preponderance of the evidence, you should consider all of the evidence, regardless of who produced it.

Equally balanced. If the weight of the evidence is equally balanced, or if you are unable to determine which side of an issue has the preponderance, the party who has the burden of proof has not established such issue by a preponderance of the evidence.

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

HUD authorizes the IHA 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 mandated (see Section 3-III.B).

IHA Policy

The IHA will consider the following factors prior to making its decision:

The seriousness of the case, especially with respect to how it would affect other residents

The effects that denial of assistance may have on other members of the family who were not involved in the action or failure

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities

The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future

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

The IHA 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.

VASH will only consider over-income and lifetime sex-offender for ineligibility.

Removal of a Family Member's Name from the Application [24 CFR 982.552(c)(2)(ii)]

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)].

IHA 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 visit or to stay as a guest in the assisted unit.

The IHA may terminate assistance or an owner/manager may bifurcate the lease to terminate assistance to remove a lawful occupant or tenant who engages in criminal acts of violence to family members or others without terminating assistance/evicting victimized lawful occupants.

Before admission to the program, the family must present evidence of the former family member's current address upon IHA request.

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

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

IHA Policy

If the family indicates the behavior of a family member with a disability is the reason for the proposed denial of assistance, the IHA will determine whether the behavior is related to the disability. If so, upon the family's request, the IHA will determine whether alternative measures are appropriate as a reasonable accommodation. The IHA 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.G. NOTICE OF ELIGIBILITY OR DENIAL

Eligible for Assistance

If the family is eligible for assistance, the IHA will notify the family when it extends the invitation to attend the voucher briefing appointment, as discussed in Chapter 5.

If the IHA 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) any and all evidence for the reason of the denial or termination (3) the family's right to an informal review, and (4) the process for obtaining the informal review [24 CFR 982.554 (a)]. See Chapter 16, for informal review policies and procedures.

IHA Policy

The family will be notified of a decision to deny assistance in writing within 10 business days of the determination.

If a IHA 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 IHA 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 IHA 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)]

IHA Policy

If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible the IHA will notify the family in writing of the proposed denial and, upon request, will provide a copy of the record to the applicant and to the subject of the record. The record will be provided to the applicant in person upon presentation of valid government-issued photo identification. The family will be given 10 business days to dispute the accuracy and relevance of the information. If the family does not contact the IHA to dispute the information within that 10-business day period, the IHA will proceed with issuing the notice of denial of admission. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal review process.

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

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 [42 U.S.C.6001(8)], which defines developmental disability in functional terms as:

A severe, chronic disability of a person 5 years of age or older which:

 - Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - Is manifested before the person attains age twenty-two;
 - Is likely to continue indefinitely;
 - Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and responsive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; *and*
 - Reflects the person’s need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated; except that such term, when applied to infants and young children, means individuals from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.”
- 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: HCV STUDENT ELIGIBILITY PROVISIONS

Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937

Summary

On December 30, 2005, HUD published a final rule (FR-5036-F-01), entitled, “Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937,” implementing section 327 of the Appropriations Act of Fiscal Year (FY) 2006.

In brief, the law and final rule require that if a student is enrolled at an institution of higher education, is under the age of 24, is not a veteran, is unmarried and does not have a dependent child, is not disabled, is individually ineligible for section 8 assistance, or the student’s parents are, individually or jointly, ineligible for assistance, no section 8 assistance can be provided to the student.

To assist public housing agencies (PHAs) in implementing the new law and final rule, and to ensure that section 8 assistance is provided to those truly in need of and eligible for assistance, the Department issued supplement guidance on April 10, 2006, entitled, “Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplemental Guidance.”

Following are two groups of questions and answers: Group I and Group II concerning Section 327 of the Act and the implementing final rule. Group III is definitions.

Group I:

- Section 8 eligibility
- Income determinations
- Rent

Group II:

- Applicability
- Agency policies
- Reexamination of Family Income
- Reexamination of Family Income and Termination of Assistance
- Pro-ration of Assistance

Group III:

- HCV Student Rule Definitions

Group IV:

- McKinney Vento Student / Foster Care Requirements (Lesser thereof)

Group I: Section 8 Eligibility, Income Determinations, and Rent

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
1	Sections 327(a) and (b)	Section 5.612 and 5.609(b)(9)	Do the Act and final rule apply to the Public Housing program?	No. The Act and the implementing final rule (FR-5036-F-01) do not apply to the Public Housing program. The Act and final rule apply only to Section 8 programs.
2	Sections 327(a) and (b)	Section 5.612 and 5.609(b)(9)	Do the Act and final rule apply to students that currently reside with parents in a section 8 rental assisted unit or students applying for section 8 assistance with their parents?	No. The new law and final rule do not apply to these students. The law and final rule focus on students who are under the age of 24, are not veterans, are unmarried, or are without children who seek or receive section 8 assistance separate from their parents.
3	Section 327(a)(1)	Section 5.612(a)	Do the student eligibility requirements apply to full and part-time students who are enrolled at an institution of higher education?	Yes. The eligibility requirements apply to both full and part-time students enrolled at an institution of higher education, as defined under 102 of the Higher Education Act of 1965 (20 U.S.C. 1002).
4	Section 327(a)(1)-(6)	Section 5.612(a)-(f)	Do the Act and final rule provisions mean that a student enrolled at an institution of higher education who is under the age of 24, not a veteran, unmarried, and does not have any dependent children applying for Section 8 assistance in the Section 8 program is ineligible for Section 8 assistance?	Yes. The Act and final rule provisions mean that a student enrolled at an institution of higher education who is under the age of 24, not a veteran, unmarried, and does not have any children IS NOT ELIGIBLE for Section 8 programs, jointly, are income eligible for Section 8 assistance.

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
5	Section 327(a)(6)	Section 5.612(f)	Concerning the eligibility of parents, individually or jointly, do parents have to meet all HUD program eligibility requirements in order for the student to be eligible for Section 8 housing assistance?	No. Since Section 327 is focused on income eligibility of a higher education student, the Department interprets the section's reference to the eligibility of the parents to also refer to income eligibility.

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
6	Section 327(a)(6)	Section 5.612(f)	Also concerning the eligibility of parents, individually or jointly, how does the PHA know whether to determine the eligibility of the parents “individually” or “jointly”? Are there any established criteria a PHA may use in making this determination?	<p>PHAs may adopt and implement the following criteria for determining whether to obtain the declaration and certification of income from parents, individually or jointly.</p> <ul style="list-style-type: none"> • If the student’s parents are married and living with each other, obtain the declaration and certification of income from each parent. • If the student’s parent is widowed or single, obtain the declaration and certification of income from that parent. • If the student’s parents are divorced or separated, obtain the declaration and certification of income from each parent. • If the student has been living with one of his or her parents and has not had contact with or does not know where to contact his or her other parent, obtain from the student a certification under penalty of perjury, addressing the circumstances (including a statement that the student has not received financial assistance from the parent) and obtain from the parent whom the student has been living or has contact with the declaration and certification of income.

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
7	Section 327(a)(6)	Section 5.612(f)	In determining the eligibility of the parent(s) to receive assistance, which HUD Income Limit area should the PHA use: the income limit for the area where the student intends to reside, or the income limit for the area where the parent(s) currently resides? For example, if the student is applying for Section 8 housing assistance in Johnson City, Tennessee, but the parent(s) lives in New York City, New York, which HUD Income Limit area should be used in determining the parent(s) program eligibility?	The PHA should use the Income Limit for the area where the parent(s) resides (24 CFR 982.201(b)(4)). In the example provided, the PHA should use the income limit for the area in New York where the parent(s) lives.
8	Section 327(a)(6)	Section 5.612(f)	Which income limit (i.e., extremely low income, very-low income, or low income) should a PHA use in determining the income eligibility of the parent(s)?	Both students and parents must meet the low-income limit.
9	Section 327(a)(6)	Section 5.612(f)	How should the PHA define parents? What if the student lives with a grandparent, aunt, uncle, guardian, etc., do they have to meet the qualifications also?	For purposes of the student eligibility restrictions, and consistent with longstanding HUD policy regarding eligibility for the section 8 programs, the term “parents” means the biological or adoptive parents, or guardians (e.g., stepparents, grandparents, aunt/uncle, godparents, etc.), or such other definition as may be adopted by the PHA, Owner, or Manager through appropriate amendment to its admissions policies.

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
10	Section 327(a)(6)	Section 5.612(f)	<p>In admitting college students to Section 8 rental programs, it appears that the PHA will now have to determine the eligibility of the:</p> <ol style="list-style-type: none"> 1. Student 2. Parent(s), unless the income of demonstrate to the absence of, or his or her independence from Parents 3. Student family household 	<p>Correct. The PHA will have to determine the eligibility of each student family member, parents (in cases where the student has not established independence from parents), and the student family household as a unit. For example, three college students applying for Section 8 rental housing assistance, as a family unit, would have to be income eligible for Section 8 assistance (24 CFR 982.201). Also, under 5.612(f), each student individually would have to be eligible and the parent(s) of each student would have to be the student's parents are not relevant or the student can eligible for Section 8 rental assistance, unless the student can show the income of the student's parents is not relevant or the student can demonstrate to the absence of, no financial support from parent(s) or his or her independence from, parents.</p>

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
11	Section 327(b)	Section 5.609(b)(9)	What exactly are the types of “financial assistance” under the Higher Education Act of 1965 that must be considered as income under Section 327?	Types of financial assistance under the Higher Education Act of 1965 would include: the Pell Grant, the Federal Supplemental Educational Opportunity Grant (FSEOG), Academic Achievement Incentive Scholarships, State assistance under the Leveraging Educational Assistance Partnership Program, the Robert C. Byrd Honors Scholarship Program, and federal Work-Study (FWS) programs. Although considered “financial assistance” under the Higher Education Act of 1965, Perkins loans, Stafford loans, and Plus loans are not considered income for purposes of determining student eligibility for Section 8 housing assistance. For complete information, see Title IV, Part A, under the Higher Education Act of 1965, as amended, located at: http://www.ed.gov/policy/highered/leg/hea98/index.html
12	Section 327(b)	Section 5.609(b)(9)	Is the income students receive from federal Work-Study (FWS) programs considered earned income for purposes of determining income eligibility?	Yes. It is considered financial assistance under the Higher Education Act of 1965. If its financial assistance under the Act, then it is counted as income under 327.

Group II: Applicability, Agency Policies, Verifications/Reexaminations, Continuation and Termination of Assistance (24 CFR 982.552(b)(5)).

	Category	Question	Answer
13	Applicability	Will the students currently participating in HUD’s Section 8 program be grandfathered into the program? Does the rule apply to existing Section 8 student participants?	No. Neither section 327 nor the final rule provides for a grandfathering clause for current Section 8 student participants. Therefore, section 327 and the final rule apply to existing Section 8 student participants. However, as previously stated, the law and final rule do not focus on students residing with their parents in a section 8 assisted unit or students who reside with their parents who are applying to receive section 8 assistance. Rather, it focuses on certain students who seek or receive Section 8 assistance separate from their parents.
14	Agency Policies	Do PHAs have to update their Administrative Policies (24 CFR 982.54) before implementing Section 327 and final rule?	Yes. PHAs must immediately update their Administrative Plans to reflect discretionary policies concerning the new income eligibility restrictions for students (24 CFR 982.54).
15	Verifications	Will PHAs now be required to obtain income information on the parents, in determining the eligibility of parents for Section 8 rental assistance?	Yes. To satisfy this requirement, PHAs may accept from a parent (s) a declaration <and> certification of income, which includes a penalty of perjury. The PHA retains the right to request and review, supporting documentation at any time the PHA determines the declaration, certification, and eligibility are in question. Supporting documentation includes, but is not limited to: IRS tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, Temporary Assistance to Needy Families (TANF) award letter, Social Security Administration (SSA) award letter, other official and authentic documents from a federal, State, or local agency.

	Category	Question	Answer
16	Verifications	Since Section 8 assistance can no longer be provided to certain students (24 CFR 5.612), and this may include a parent’s income reexamining eligibility test, does this mean that PHAs will have to verify the parent’s income eligibility annually, during reexamination, to determine whether the student continues to be eligible for the program after admissions? Prior to the effective date of the final rule, PHAs administering Section 8 programs did not have to verify the income of eligibility (i.e., family meets income limits) of the family after admissions.	PHAs administering the Section 8 program will have to verify the income eligibility of the parent(s), at least annually, to determine whether the student remains eligible for the Section 8 program. In accordance with 24 CFR 982.552(b)(5), if after the parent’s income, the student is determined to be ineligible for Section 8 assistance, as specified in 24 CFR 5.612, the PHA must terminate assistance to that family member (i.e., student). Again, the family is entitled to an informal hearing to discuss the termination of assistance.
17	Reexamination of Family Income	The preamble of the final rule “strongly encourages PHAs, Owners, and Management Agents administering Section 8 programs to, as soon as it is practicable, recertify existing Section 8 participants that have family members that may meet the requirements of Section 327 of the Act.” What does this mean? What happens if the PHA cannot recertify Section 8 participants until the family’s next annual recertification? Will the PHA be penalized?	HUD understands that some PHAs may not have the resources or the capability to recertify participant family income until the family’s next annual recertification. However, in order to remedy the problem of ineligible college students participating in HUD’s Section 8 rental assistance programs, as quickly as possible, the Department recommends recertification sooner rather than later (i.e., as soon as it is practicable). If a PHA is unable to recertify family income until the next annual reexamination, that PHA will not be penalized. The latest time, however, that the eligibility and income requirements can be implemented is at the time of annual reexamination.
18	Reexamination of Family Income and Termination of Assistance	As it concerns 24 CFR 982.552(b)(5) of the final rule, if after reexamining a student household’s income (the student’s or parent(s) income), the PHA determines the student is no longer eligible for Section 8 rental assistance, is the student family entitled to a grievance hearing?	Yes. Applicant and participant student households are entitled to request and receive an informal hearing to discuss the reasons for the denial or termination of assistance, in accordance with established program procedures and requirements (See 24 CFR 982.554 and 24 CFR 982.555, respectively).

	Category	Question	Answer
19	Continuation and Termination of Assistance	Scenario I: Three full-time college students apply for Section 8 housing. Two are eligible under Section 327(a) of the Act and 24 CFR 5.612 of the final rule, and one student is ineligible. Does the PHA deny Section 8 rental housing assistance to the entire family—all three students—or can the student family choose to remove the ineligible student from the family application so the two eligible students can be admitted to the program?	In scenario I described, the PHA will notify the applicant student family of its decision to deny assistance to the student household because of one of the students' ineligibility for Section 8 assistance. The notice will state that the student household may request an informal review of the PHA's decision and how to obtain the review (24 CFR 982.554). During the informal review, the student family may choose to remove the ineligible student from the family application for assistance so that the two eligible students may be admitted to the program. The PHA must notify the student household of the PHA's final decision after the informal review, including a brief statement of the reasons for the final decision.
20	Continuation and Termination of Assistance	Scenario II: Three full-time college students are residing in a Section 8 rental assistance unit. Two are eligible under Section 327(a) of the Act and 24 CFR 5.612 of the final rule, and one student is ineligible. Does the PHA terminate the Section 8 rental assistance to the entire family—all three students—or can the student family choose to remove the ineligible student from the student household so the two eligible students can continue to be assisted under the program.	In scenario II described, the PHA will notify the student household of its decision to terminate Section 8 rental assistance to the family. The notice will contain a brief reason for the PHA's decision (i.e., ineligibility of a college student 24 CFR 5.612) and inform the student household of its right to an informal hearing. For the housing choice voucher (HCV) program, eligible students residing in households with ineligible students shall not have their assistance terminated, but shall be issued a voucher to move with continued assistance in accordance with program regulations or shall be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit. HUD will issue separate guidance for PHAs administering the Moderate Rehabilitation, Project-Based Certificate, and Project- Based Voucher programs.
21	Pro-ration of Assistance	Can the PHA prorate the student household's assistance, based on a percentage of the total number of members of the family household that are eligible for assistance?	No. PHAs may not prorate assistance to family households composed of eligible and ineligible students.

Group III: HCV Student Rule Definitions

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
22	Section 327(a)(1)	Section 5.612(a)	What is the definition of an institution of higher education under section 102 of the Higher Education Act of 1965?	Also provided in Appendix A of the supplemental guidance, a complete definition of an institution of higher education under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002) can be found on GPO Access, United States Code Main Page at: http://www.gpoaccess.gov/uscode/index.html .
23	Section 327(a)(3)	Section 5.612(c)	What is the definition of a “veteran”?	For purposes of administering the student eligibility restrictions, PHAs may find it useful to adopt the term “veteran” as used by the Department of Veterans Affairs (38 U.S.C. 101(2)): (2) the term “veterans” means a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable. A complete definition of veteran (38 U.S.C. 101) can be found on GPO Access, United States Code Main Page at: http://www.gpoaccess.gov/uscode/index.html .

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
24	Sections 327(a) and (b)	Sections 5.612(e) and 5.609(b)(9)	As used in the Act and final rule, how are the terms “dependent child” and “dependent children” defined?	“Dependent child” and “dependent children,” as used in the Act and final rule, have the same meaning as provided at 24 CFR 5.603: Dependent: A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or a person with a disability, or is a full-time student. To be sure, the child or children must reside in the student family household.
25	Section 327(b)	Section 5.609(b)(9)	Does financial assistance include federal, State, and local grants, scholarships, and loans? Section 327(b) states: “any financial assistance (in excess of amounts received for tuition) that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except for a person over the age of 23 with dependent children.”	Student financial assistance, as used in the Act and final rule, means any assistance (in excess of amounts received for tuition) that an individual receives: <ul style="list-style-type: none"> (1) Under the Higher Education Act of 1965 (2) From private sources (3) From an institute of higher education Such financial assistance may include federal, State, and local grants and scholarships (athletic and academic), fellowships and student educational financial assistance from parents, guardians, or other persons residing outside of the student family household. HUD has interpreted the term “financial assistance,” as used in Section 327(b) to not include loan proceeds for the purpose of determining income.
26	Section 327(b)	Section 5.609(b)(9)	In the new law, how is student to be defined?	Student means all students enrolled either full-time or part-time at an institution of higher education. The new law does not exempt part-time students.

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
27	Section 327(b)	Section 5.609(b)(9)	What is included in tuition? Does it include other fees charged by the educational institution?	Tuition shall have the meaning given this term by the institution of higher education in which the student is enrolled.