

## Chapter 3

### ELIGIBILITY

#### INTRODUCTION

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

To be eligible for the public housing program:

- The applicant family must:
  - Qualify as a family as defined by HUD and the PHA.
  - 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 family members as required.
  - Consent to the PHA's collection and use of family information as provided for in PHA-provided consent forms.
  - Not currently be receiving a duplicative subsidy.
  - **Meet net asset and property ownership restriction requirements**
- The PHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the PHA.

This chapter contains three parts:

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

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

Part III: Denial of Admission. This part covers factors related to an applicant's past or current conduct (e.g. criminal activity) that can cause the PHA to deny admission **as well as the asset limitation for public housing.**



## 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 public housing 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 5.105(a)(2), 24 CFR 5.403 and HUD-50058 IB, p. 13, FR Notice 02/03/12, Notice PIH 2014-20, Notice PIH 2023-27, and FR Notice 2/14/23]

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

#### Family

~~To be eligible for admission, an applicant must qualify as a family. *Family* as defined by HUD, includes but is not limited to the following, regardless of 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.~~

~~To be eligible for admission, an applicant must qualify as a family. *Family* as defined by HUD, includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; an otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age and who has left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)), and is homeless or is at risk of becoming homeless at age 16 or older; 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, and the remaining member of a tenant family. The PHA has the discretion to determine if any other group of persons qualifies as a family.~~

~~*Gender Identity* means actual or perceived gender characteristics.~~

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

## CDA Policy

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.

Families who meet these criteria will not be awarded an extra bedroom.

Each family must identify the individuals to be included in the family at the time of application, and must update this information if the family's composition changes.

A household consisting exclusively of one or more full-time college students does not qualify as a family unless each individual in the household satisfies the following conditions:

- The individual either must have established a household separate from his/her parents or legal guardians for at least one year prior to application for admission or must meet the U.S. Department of Education's definition of independent student
- The individual must not be claimed as a dependent by his/her parents or legal guardians pursuant to Internal Revenue Service (IRS) regulations

To be classified as an independent student according to the Department of Education, a student must meet at least one of the following criteria:

- Be at least 24 years old by December 31 of the award year for which aid is sought
- Be married
- Have a child or other dependents who receive more than half their support from the student and who also live with the student
- Be enrolled as a graduate or professional student (e.g. medicine, dentistry, law)
- Be a veteran of the U.S. military
- Be an orphan or ward of the court through age 18
- Have special and unusual circumstances that can be documented to his or her college financial aid administrators. Only an experienced financial aid administrator can make this "dependency override"

## **Household**

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

## **3-I.C. FAMILY BREAKUP AND REMAINING MEMBER OF TENANT FAMILY**

### **Family Breakup**

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

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the PHA must ensure that the victim retains

assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, stalking, and human trafficking, see section 16-VII.D of this ACOP.)

- If a court determines the disposition of property between members of the assisted family, the PHA is bound by the court's determination of which family members continue to receive assistance.

#### CDA 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 living in public housing, only one of the new families will retain occupancy of the unit.

If a court determines the disposition of property between members of the applicant or resident family, the CDA will abide by the court's determination.

In the absence of a judicial decision or an agreement among the original family members, the CDA will determine which family will retain their placement on the waiting list or continue in occupancy. In making its determination, the CDA 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 or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, including a family member who was forced to leave a public housing unit as a result of such actual or threatened abuse, and provides documentation in accordance with section 16-VII.D of this ACOP;
- (4) any possible risks to family members as a result of criminal activity, and
- (5) the recommendations of social service professionals.

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

The HUD definition of family includes the *remaining member of a tenant family*, which is a member of a resident family who remains in the unit when other members of the family have left the unit [PH Occ GB, p. 26]. 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 “Caretakers for a Child.”

### **3-I.D. HEAD OF HOUSEHOLD [24 CFR 5.504(b)]**

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

#### CDA 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, COHEAD, AND OTHER ADULT**

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

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

#### CDA Policy

A *marriage partner* includes the partner in a "common law" marriage as defined by certain states. The term "spouse" does not apply to friends, roommates, or significant others who are not marriage partners. A minor who is emancipated under state law may be designated as a spouse.

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

#### CDA Policy

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

*Other adult* means a family member, other than the head, spouse, or cohead, who is 18 years of age or older. Foster adults and live-in aides are not considered other adults [HUD-50058 IB, p. 14].

### **3-I.F. DEPENDENT'S AND MINORS [24 CFR 5.603]**

*A minor is a member of the family, other than the head of family or spouse, who is under 18 years of age.*

*A dependent is a family member who is under 18 years of age or a person of any age who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, cohead, 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**

##### CDA Policy

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or resident family 50 percent or more of the time.

When more than one applicant or assisted family (regardless of program) are 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 CDA 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]**

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

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

### **3-I.H. ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY [24 CFR 5.100, 5.403, 945.105, and FR Notice 02/03/12]**

#### **Elderly Persons**

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

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

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

#### **Elderly Family**

An *elderly family* is one in which the head, spouse, cohead, or sole member is an elderly person. Identifying elderly families is important because these families qualify for special deductions from income as described in Chapter 6 and may qualify for a particular type of development as noted in Chapter 4.

### **3-I.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403, FR Notice 02/03/12]**

#### **Persons with Disabilities**

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

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

#### **Disabled Family**

A *disabled family* is one in which the head, spouse, or cohead is a person with disabilities. Identifying disabled families is important because these families qualify for special deductions from income as described in Chapter 6 and may qualify for a particular type of development as noted in Chapter 4.

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent the PHA from denying admission for reasons related to alcohol and drug abuse following policies found in Part III of this chapter, or from enforcing the lease following the policies in Chapter 13.



### **3-I.J. GUESTS [24 CFR 5.100]**

A *guest* is defined as a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

The lease must provide that the tenant has the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, including reasonable accommodation of their guests [24 CFR 966.4(d)]. The head of household is responsible for the conduct of visitors and guests, inside the unit as well as anywhere on or near PHA premises [24 CFR 966.4(f)].

#### CDA Policy

The family is responsible for the conduct of visitors and guests inside the unit, as well as anywhere on or near the premises of CDA property.

A CDA dwelling unit is specifically for the resident and the individuals specifically listed on the lease. Residents may not take in boarders or permit visitors or guests to reside in a CDA unit in a “doubling-up,” roommate, or other housing arrangement that changes the structure of the family household composition as established by the lease.

A resident family must notify the CDA when overnight guests will be staying in the unit for more than 3 days. A guest can remain in the unit no longer than 7 consecutive days or a total of 14 cumulative calendar days during any 12 month period.

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure expected to last 20 consecutive days). An exception will not be made unless the family can provide verifiable documentation for the need and provide verifiable documentation of the residence to which the guest will return.

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 public housing unit more than 50 percent of the time, are not subject to the time limitations of guests as described above.

The CDA may prohibit any guest from visiting, temporarily staying, or living in the resident family’s unit or on CDA property for a stated period of time if the guest:

- has engaged in negative behavior or certain criminal activity as prescribed in 3-III.B., and 3-III.C., of Chapter 3; or
- has engaged in or threatened violent or abusive behavior toward CDA personnel, CDA contractors, or CDA residents on or off CDA property

The CDA will notify guests that they are prohibited from CDA property by issuing a no-trespassing notice with the resident (if known) and the guest (in person, by mail to a known address, or by posting a notice on the CDA’s property).

Former residents who have been evicted are not permitted as overnight guests.

Guests who represent the unit address as their residence address for receipt of benefits or other purposes will be considered unauthorized occupants. In addition, guests who

remain in the unit beyond the allowable time limit will be considered unauthorized occupants, and their presence constitutes violation of the lease.

### **3-I.K. FOSTER CHILDREN AND FOSTER ADULTS [24 CFR 5.603]**

~~Foster adults are usually persons with disabilities, unrelated to the tenant family, who are unable to live alone [24 CFR 5.609(e)(2)].~~

~~A foster adult is a member of the household who is 18 years of age or older and meets the definition of a foster adult under state law. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition, and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.~~

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

~~A foster child is a member of the household who meets the definition of a foster child under state law. In general, a foster child is placed with the family by an authorized placement agency (e.g., public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction.~~

Foster children and foster adults that are living with an applicant or resident family are considered household members but not family members. The income of foster children/adults is not counted in family annual income and foster children/adults do not qualify for a dependent deduction [24 CFR 5.603 and HUD-50058 IB, pp. 13-14].

#### CDA Policy

~~A foster child is a child that is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency.~~

~~A foster child or foster adult may be allowed to reside in the unit if their presence would not overcrowd the unit.~~

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, and illness.

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

##### CDA Policy

Generally an individual who is or is expected to be absent from the public housing unit for 90 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally an individual who is or is expected to be absent from the public housing unit for more than 90 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

#### **Absent Students**

##### CDA Policy

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to the CDA 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.

##### CDA Policy

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

#### **Absence Due to Incarceration**

##### CDA Policy

If the sole member of the household is incarcerated for more than 30 consecutive days, s/he will be considered permanently absent. Any member of the household, other than the sole member, will be considered permanently absent if s/he is incarcerated for 30 consecutive days. The rent and other charges must remain current during this period.

The CDA will determine the incarcerated family member's eligibility for the program in accordance with the policies in Chapter 3.

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

##### CDA Policy

An employed head, spouse, or cohead absent from the unit more than 90 consecutive days due to employment will continue to be considered a family member.

## **Individuals Confined for Medical Reasons**

### CDA Policy

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

If there is a question about the status of a family member, the CDA 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. 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.

## **Return of Permanently Absent Family Members**

### CDA Policy

Any adult family member, who moves from the dwelling unit to establish a new household:

- shall be removed from the lease;
- will be considered as permanently absent;
- may not re-join the household or be re-admitted to the unit; and
- must apply as a new applicant for placement on the waiting list if they intend to become a program participant.

The tenant must notify the CDA of any adult family member's move-out within 10 business days of its occurrence.

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

*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].

The PHA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR 8, to make the program accessible to and usable by a 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(c)(5)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. However, a relative 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.

#### CDA Policy

A family's request for a live-in aide must be made in writing. Written verification will be required from a reliable, knowledgeable healthcare provider that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member. ~~For continued approval, the family must submit a new, written request—subject to CDA verification—at each annual reexamination.~~

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.

Live-in aides must be at least 18 years of age.

The CDA has the discretion not to approve a particular person as a live-in aide, and may withdraw such approval, if [24 CFR 966.4(d)(3)(i)]:

The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

The person has a history of drug-related criminal activity or violent criminal activity, has engaged in negative behavior or criminal activity as prescribed in 3-III.B., and 3-III.C., of Chapter 3, or if the person has engaged in or threatened violent or abusive behavior toward CDA personnel, CDA contractors, or CDA tenants.

The person currently owes rent or other amounts to the CDA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

The CDA will notify the family in writing of its decision to approve or not to approve a particular person as a live-in aide upon receiving a request for a live-in aide, and all required documentation related to the request.

Live-in aides or their family members are not entitled to the CDA's grievance hearing process.



## 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 public housing 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.

HUD also publishes over-income limits annually, but these are not used at admission. Over-income limits will be discussed in Chapter 13.

#### Using Income Limits for Eligibility [24 CFR 960.201 and Notice PIH 2023-27]

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 a *low-income* family. **Income and net family assets of household members are excluded when determining income eligibility; however, household members are considered for purposes of unit size and subsidy standards.**

### **Using Income Limits for Targeting [24 CFR 960.202(b)]**

At least 40 percent of the families admitted to the PHA's public housing program during a PHA fiscal year from the PHA waiting list must be *extremely low-income* families. This is called the “basic targeting requirement”.

If admissions of extremely low-income families to the PHA’s housing choice voucher program during a PHA fiscal year exceed the 75 percent minimum targeting requirement for that program, such excess shall be credited against the PHA’s public housing basic targeting requirement for the same fiscal year.

The fiscal year credit for housing choice voucher program admissions that exceed the minimum voucher program targeting requirement must not exceed the lower of:

- Ten percent of public housing waiting list admissions during the PHA fiscal year
- Ten percent of waiting list admission to the PHA’s housing choice voucher program during the PHA fiscal year
- The number of qualifying low-income families who commence occupancy during the fiscal year of public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low-income family means a low-income family other than an extremely low-income family.

For discussion of how income targeting is used in tenant selection, see Chapter 4.



### **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.

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

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

HUD requires each family member to declare whether the individual is a citizen, a national, or an eligible noncitizen, except those members who elect not to contend that they have eligible immigration status. 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, cohead, 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 PHA to request additional documentation of their status, such as a passport.

#### **CDA Policy**

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

#### ***Eligible Noncitizens***

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

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

### ***Ineligible Noncitizens***

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

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

### **Mixed Families**

A family is eligible for admission 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 14 for a discussion of informal hearing procedures.

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

A PHA may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member [24 CFR 5.512(b)]. Otherwise, no individual or family may be assisted prior to the affirmative establishment by the PHA that the individual or at least one family member is eligible [24 CFR 5.512(a)].

#### CDA Policy

The CDA will not provide assistance to a family before the verification of at least one family member as a citizen, national, or eligible noncitizen.

When the CDA 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 10 business days of the determination.

The notice will explain the reasons for the denial 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 CDA. The informal hearing with the CDA 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 14.

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

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

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

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

#### CDA Policy

The CDA 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, Notice PIH 2012-10]**

The applicant and all members of the applicant's household must disclose the complete and accurate social security number (SSN) assigned to each household member, and the documentation necessary to verify each SSN. If a child under age six has been added to an applicant family within the six months prior to program admission, an otherwise eligible family may be admitted to the program and must disclose and document the child's SSN within 90 days of admission. A detailed discussion of acceptable documentation is provided in Chapter 7.

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

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

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

### **3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.2302]**

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

The PHA must deny admission to the program if any member of the applicant family fails to sign and submit consent forms which allow the PHA to obtain information that the PHA has determined is necessary in administration of the public housing program [24 CFR 960.259(a) and (b) **and 24 CFR 5.232(a)**].

**However, this does not apply if the applicant or participant, or any member of their family, revokes their consent with respect to the ability of the PHA to access financial records from financial institutions, unless the PHA establishes a policy that revocation of consent to access financial records will result in denial or termination of assistance or admission [24 CFR 5.232(c)].**

#### CDA Policy

**The CDA has established a policy that the family's revocation of consent to allow the CDA to access records from financial institutions will result in denial of admission.**

### **3-II.E. EIV SYSTEM SEARCHES [~~Notice PHH 2018-18~~; EIV FAQs; EIV System Training 9/30/20; **and Notice PIH 2023-27**]**

#### **Existing Tenant Search**

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

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

#### CDA Policy

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

## **Debts Owed to PHAs and Terminations**

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

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

### CDA Policy

The CDA will require each adult household member to sign the form HUD-52675 prior to an eligibility determination. Any new members added to the household after admission will be required to sign the form HUD-52675 prior to being added to the household.

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

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

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

## PART III: DENIAL OF ADMISSION

### 3-III.A. OVERVIEW

A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied admission.

In addition, HUD requires or permits the PHA to deny admission based on certain types of current or past behaviors of family members as discussed in this part. The PHA's authority in this area is limited by the Violence against Women Reauthorization Act (VAWA), which prohibits the denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been the victim of domestic violence, dating violence, sexual assault, stalking or human trafficking [24 CFR 5.2005(b)].

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

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

HUD's Office of General Counsel issued a memo on April 4, 2016, regarding the application of Fair Housing Act standards to the use of criminal records. This memo states that a PHA violates the Fair Housing Act when their policy or practice has an unjustified discriminatory effect, even when the PHA had no intention to discriminate. Where a policy or practice that restricts admission based on criminal history has a disparate impact on a particular race, national origin, or other protected class, that policy or practice is in violation of the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the PHA, or if that interest could be served by another practice that has a less discriminatory effect [OGC Memo 4/4/16]. HUD codified this stance on disparate impact and discriminatory effects in a final rule dated March 31, 2023. In doing so, HUD also standardized its long-practiced three-step approach to assessing burdens of proof.

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

This part covers the following topics:

- Required denial of admission
- **The asset limitation in public housing**
- Other permitted reasons for denial of admission
- Screening

- Criteria for deciding to deny admission
- Prohibition against denial of admission to victims of domestic violence, dating violence, sexual assault, stalking or human trafficking
- Notice of eligibility or denial

### **3-III.B. REQUIRED DENIAL OF ADMISSION [24 CFR 960.204]**

PHAs are required to establish standards that prohibit admission of an applicant to the public housing program if they have engaged in certain criminal activity or if the PHA has reasonable cause to believe that a household member’s current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

Where the statute requires that the PHA prohibit admission for a prescribed period of time after some disqualifying behavior or event, the PHA may choose to continue that prohibition for a longer period of time [24 CFR 960.203(c)(3)(ii)].

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

- Any member of the household has been evicted from federally-assisted housing in the last 3 years for drug-related criminal activity. HUD permits but does not require the PHA to admit an otherwise-eligible family if the household member has completed a PHA-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g. the person involved in the criminal activity no longer lives in the household).

#### CDA Policy

The CDA will deny admission to a family for three years from the date of eviction if any member of the household has been evicted from federally assisted housing for drug-related criminal activity. However, the CDA will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity if the CDA is able to verify that the household member who engaged in the criminal activity has successfully completed a supervised drug rehabilitation program approved by the CDA, or the CDA is able to verify through proof of current residence that the person who committed the crime is no longer living in the household

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]

- The PHA determines that any household member is currently engaged in the use of illegal drugs. *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]. *Currently engaged in the illegal use of a drug* means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member [24 CFR 960.205(b)(1)].

#### CDA Policy

*Currently engaged in* is defined as any use of illegal drugs during the previous 12 months.

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]

The PHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

#### CDA Policy

*Pattern of use of drugs or abuse of alcohol* is defined as more than one incident on or off the premises during the previous 24 months.

In determining reasonable cause, the CDA will consider all credible evidence, including but not limited to, any record of convictions, arrests, police contacts, civil ordinance violations, 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, police contact, or civil ordinance violation. The CDA will also consider evidence from treatment providers or community-based organizations providing services to household members.

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]

- 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.

#### CDA Policy

The CDA will deny admission to a family if 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.

#### CDA Policy

The CDA will deny admission to a family if any household member is subject to a lifetime registration requirement under a state sex offender registration program.



### 3-III.C. RESTRICTION ON ASSISTANCE BASED ON ASSETS [24 CFR 5.618]

There are two circumstances under which a family is ineligible for the program based on asset ownership.

First, assistance may not be provided to any family if the family's net assets exceed \$100,000 (adjusted annually by HUD).

Second, the family has real property that is suitable for occupancy by the family as a residence and the family has:

- A present ownership interest in the real property;
- A legal right to reside in the real property; and
- The effective legal authority to sell (based on state or local laws of the jurisdiction where the property is located) the real property.

However, the real property restriction does not apply in the following circumstances:

- Any property for which the family is receiving assistance for a manufactured home under 24 CFR 982.620 or under the HCV Homeownership program;
- Any property that is jointly owned by a member of the family and at least one non-household member who does not live with the family, if the non-household member resides at the jointly owned property;
- Any family that is offering the property for sale; or
- Any person who is a victim of domestic violence, dating violence, sexual assault, or stalking.
  - When a family asks for an exception because a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the PHA must comply with all the confidentiality requirements under VAWA. The PHA must accept a self-certification from the family member, and the restrictions on requesting documentation under VAWA apply.

A property is considered *suitable for occupancy* unless the family demonstrates that it:

- Does not meet the disability-related needs for all members of the family (e.g., physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.);
- Is not sufficient for the size of the family;

#### CDA Policy

The CDA defines *not sufficient for the size of the family* as being overcrowded based on the CDA's occupancy standards in Chapter 5.

- Is geographically located so as to be a hardship for the family (e.g., the distance or commuting time between the property and the family's place of work or school would be a hardship to the family, as determined by the PHA or owner);

- Is not safe to reside in because of the physical condition of the property (e.g., property's physical condition poses a risk to the family's health and safety and the condition of the property cannot be easily remedied); or
- Is not a property that a family may reside in under the State or local laws of the jurisdiction where the property is located.

### 3-III. ~~ED~~. OTHER PERMITTED REASONS FOR DENIAL OF ADMISSION

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

#### **Criminal Activity [24 CFR 960.203(c)]**

The PHA is responsible for screening family behavior and suitability for tenancy. In doing so, the PHA may consider an applicant's history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety, or welfare of other tenants.

#### CDA Policy

“*Disposition Date*” means

- The date the applicant household member completed probation, completed parole, or was released from incarceration for the criminal activity that is being considered as a basis for denial.
- If sentencing includes a fine and does not include confinement, parole, or probation, the disposition will be the date the applicant household member was ordered to pay a fine for the criminal activity or civil offense that is being considered as a basis for denial.
- For criminal activity for which there was not a conviction, the disposition date will be the date the activity occurred.
- For cases involving deferred prosecution, the disposition date will be the date the deferred prosecution agreement is fulfilled.

If any household member is currently engaged in, has engaged in, or has a disposition date for any of the following criminal activities, within the past two years, the family will be denied admission:

1. *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 and 960.203(c)(3)]

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 803]

The CDA considers any drug-related civil activity as drug-related criminal activity.

The CDA will also consider criminal acts involving drug paraphernalia to be drug-related criminal activity. *Drug paraphernalia* is defined as any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under the Controlled Substances Act [21 USC 863(d)]; or

2. *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 and 960.203(c)(3)]; or
3. Criminal activity on or off the premises that may threaten the health, safety, or welfare of other tenants [24 CFR 960.203(c)(3)]; or
4. Criminal activity on or off the premises that may threaten the health or safety of CDA staff, contractors, subcontractors, or agents of the CDA [960.203(c)(3)]; or
5. Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse [960.203(c)(3)].

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

**Convictions:** Any conviction for criminal activity listed in 1. through 5. above and with a disposition date within the past two (2) years.

**Arrests:** Any arrests for criminal activity listed in 1. through 5. above with a disposition date within the last two (2) years.

**Police Contacts:** Any police contact for criminal activity listed in 1. through 5. above with a disposition date within the last two (2) years.

**Civil Ordinance Violations:** Any civil ordinance violations for criminal activity listed in 1. through 5. above with a disposition date within the last two (2) years.

**Evictions:** Any record of an eviction resulting in an eviction judgment from public or privately-owned housing as a result of criminal activity listed in 1. through 5. above within the past two (2) years (See section 3-111B. REQUIRED DENIAL OF ADMISSION, for mandatory denial based upon an eviction for drug-related criminal activity.)

A conviction for criminal activity will be given more weight than an arrest or police contact for such activity. A record or records of arrest will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying criminal activity.

In making its decision to deny assistance, the CDA may consider the factors discussed in Sections 3-III.EF and 3-III.FG. Upon consideration of such factors, the CDA may, on a case-by-case basis, decide not to deny assistance at any point during the admissions process, including an informal hearing.

The CDA considers the following criminal activity as egregious and of an extreme nature that would warrant the CDA to consider the criminal activity even if the disposition is more than two years from the date of application:

6. *Heinous Crimes:* Defined as criminal activity that is shockingly brutal, highly disturbing, sensationalized, involves cruelty or dehumanizing acts, or where life or quality of life has been taken, including but not limited to kidnap, torture, arson, homicide, or criminal drug activity where the victim is a minor or resulting in the death of a victim [960.203(c)(3)]; or

7. *Gang or Gun Crimes*: Defined as criminal activity related to gang membership or affiliation, or criminal activity involving the use or threatened use of a gun [960.203(c)(3)]; or
8. *Sex Offenders with Less than Lifetime Registration Requirements*: Any criminal activity that results in any household member's requirement to register as a sex offender under any state sex offender registry for a period of less than lifetime. See Section III-3.B., Required Denial of Admission, for treatment of lifetime sex offender registrants [960.203(c) and 960.204(a)(4)]

If any household member has engaged in criminal activity listed in 6. through 8. above, or if any household member is currently required to register as a sex offender on any state sex offender registry for a period of less than a lifetime, the CDA will consider all credible evidence, including but not limited to convictions and arrests with a disposition date more than two (2) years from the date of application as permitted by 24 CFR 960.203(c)(3)(ii).

A conviction for criminal activity will be given more weight than an arrest for such activity.

In making its decision to deny assistance, the CDA may consider the factors discussed in Sections 3-III.~~EF~~ and 3-III.~~FG~~. Upon consideration of such factors, the CDA may, on a case-by-case basis, decide not to deny assistance at any point during the admissions process, including an informal hearing.

## **Previous Behavior [960.203(c) and (d) and PH Occ GB, p. 48]**

HUD authorizes the PHA to deny admission based on relevant information pertaining to the family's previous behavior and suitability for tenancy.

In the event of the receipt of unfavorable information with respect to an applicant, the PHA must consider the time, nature, and extent of the applicant's conduct (including the seriousness of the offense). As discussed in Section 3-III.F, the PHA may also need to consider whether the cause of the unfavorable information may be that the applicant is the victim of domestic violence, dating violence, sexual assault, or stalking.

### CDA Policy

The CDA will deny admission to an applicant family if the CDA determines that the family:

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

Has a history of disturbance of neighbors, destruction of property, not meeting City of Madison health or building codes, not passing CDA or HUD inspections, or living or housekeeping habits at prior residences within the past two years which may adversely affect the health, safety, or welfare of other tenants

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

Has been evicted from federally-assisted housing in the last five (5) years (See Section 3-III.B., REQUIRED DENIAL OF ADMISSION for situations when denial is mandatory based on eviction from federally-assisted housing. See Section 3-III.C., OTHER PERMITTED REASONS FOR DENIAL OF ADMISSION, Criminal Activity, for criteria to apply when applicant has been evicted from federally-assisted housing based on criminal activity)

Has ever been terminated under the program by the CDA. Termination includes drug nuisance, judgment for eviction, vacating without required notice (also referred to as "skipping"), or mutual lease-termination

Has ever been terminated under any other CDA housing program for lease violations or for violating family obligations

Owes rent or other amounts to the CDA or to any other PHA or owner in connection with any assisted housing program. In cases where the CDA determines that any member of an applicant household owes a debt to the CDA or to another PHA and the applicant family member has included the PHA in a bankruptcy filing or the PHA debt has been discharged by the bankruptcy court, the CDA will consider the amount owed to the PHA to be discharged, but will deny admission based on the previous negative behavior and suitability for tenancy

Does not supply any information that the CDA or HUD determines is necessary in administration of the Public Housing program, including submission of required evidence of citizenship or eligible immigration status. "Information" includes any requested certification, release, or other documentation

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

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

Has engaged in or threatened violent or abusive behavior toward CDA tenants, CDA personnel, or CDA contractors on or off CDA property

*Abusive or violent behavior towards CDA personnel or CDA contractors* 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 admission, the CDA may consider the factors discussed in Sections 3-III.~~EF~~ and 3-III.~~FG~~. Upon consideration of such factors, the CDA may, on a case-by-case basis, decide not to deny admission.

The CDA will consider the existence of mitigating factors, such as loss of employment or other financial difficulties, before denying admission to an applicant based on the failure to meet prior financial obligations.

### **3-III.D.E. SCREENING**

#### **Screening for Eligibility**

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

The PHA may not pass along to the applicant the costs of a criminal records check [24 CFR 960.204(d)].

#### CDA Policy

The CDA will perform criminal background checks through national, state, multi-state, and local law enforcement criminal background check systems for all adult household members.

If the results of the criminal background check indicate there may have been past criminal activity, but the results are inconclusive, the CDA will request a fingerprint card and will request information from the National Crime Information Center (NCIC).

PHAs are required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 960.204(a)(4)].

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

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

#### CDA Policy

The CDA will screen each household member for a sex offender registration requirement under any state, including juvenile members of the applicant's household. In doing so, the CDA will utilize the Dru Sjodin National Sex Offender Database, or any online, searchable database hosted by the Department of Justice [Notice PIH 2012-28].



### ***Obtaining Information from Drug Treatment Facilities [24 CFR 960.205]***

HUD authorizes PHAs to request and obtain information from drug abuse treatment facilities concerning applicants. Specifically, the PHA may require each applicant to submit for all household members who are at least 18 years of age, and for each family head, spouse, or cohead regardless of age, one or more consent forms signed by such household members that requests any drug abuse treatment facility to inform the PHA whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use.

*Drug Abuse Treatment Facility* means an entity that holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use, and is either an identified unit within a general care facility, or an entity other than a general medical care facility.

*Currently engaging in illegal use of a drug* means illegal use of a drug that occurred recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member.

Any consent form used for the purpose of obtaining information from a drug abuse treatment facility to determine whether a household member is currently engaging in illegal drug use must expire automatically after the PHA has made a final decision to either approve or deny the admission of such person.

Any charges incurred by the PHA for information provided from a drug abuse treatment facility may not be passed on to the applicant or tenant.

If the PHA chooses to obtain such information from drug abuse treatment facilities, it must adopt and implement one of the two following policies:

Policy A: The PHA must submit a request for information to a drug abuse treatment facility for all families before they are admitted. The request must be submitted for each proposed household member who is at least 18 years of age, and for each family head, spouse, or cohead regardless of age.

Policy B: The PHA must submit a request for information only for certain household members, whose criminal record indicates prior arrests or conviction for any criminal activity that may be a basis for denial of admission or whose prior tenancy records indicate that the proposed household member engaged in destruction of property or violent activity against another person, or they interfered with the right of peaceful enjoyment of the premises of other residents.

If the PHA chooses to obtain such information, it must abide by the HUD requirements for records management and confidentiality as described in 24 CFR 960.205(f).

#### CDA Policy

The CDA may obtain information from drug abuse treatment facilities to determine whether any applicant family's household members are currently engaging in illegal drug activity only when the CDA has determined that the family will be denied admission based on a family member's drug-related criminal activity, and the family claims that the culpable family member has successfully completed a supervised drug or alcohol rehabilitation program.

## **Screening for Suitability as a Tenant [24 CFR 960.203(c)]**

The PHA is responsible for the screening and selection of families to occupy public housing units. The PHA may consider all relevant information. Screening is important to public housing communities and program integrity, and to ensure that assisted housing is provided to those families that will adhere to lease obligations.

### CDA Policy

The CDA will consider the family's history with respect to the following factors:

Payment of housing-related expenses, including 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

Behavior of all household members as related to the grounds for denial as detailed in Sections 3-III. B and C

Compliance with any other essential conditions of tenancy

## **Resources Used to Check Applicant Suitability [PH Occ GB, pp. 47-56]**

PHAs have a variety of resources available to them for determination of the suitability of applicants. Generally, PHAs should reject applicants who have recent behavior that would warrant lease termination for a public housing resident.

### CDA Policy

In order to determine the suitability of applicants the CDA will examine applicant history for the past two years. Such background checks will include:

#### *Current and Past Performance in Meeting Financial Obligations, Especially Rent*

The CDA will review PHA and landlord references for the past two years. The CDA may obtain records prior to the last 24 months, if needed to obtain a minimum of 24 months of rental history. With the exception of debts owed to the CDA or any other PHA, the CDA will only consider records within the last five (5) years. The CDA will gather information about current and past performance in meeting rental obligations such as rent payment record, late payment record, whether the PHA/landlord ever began or completed lease termination for non-compliance, and whether utilities were ever disconnected in the unit. PHAs and landlords will be asked if they would rent to the applicant family again. References from landlords, who are related to the applicant family by blood or marriage, will be considered to be insufficient.

The CDA will check court records of eviction actions and other financial judgments. Eviction records older than five years will not be considered by the CDA.

The CDA will examine third-party verifications and undertake a balancing test. The CDA may deny an applicant if the applicant has a history of being late with rent payments; was evicted or asked to leave from their residence(s) during the past two years; or had other legal action initiated against them for negative behavior or for lease violations. Other factors which the CDA may consider include the amount of former rent, loss of employment, death or divorce from primary financial support, illness, and other verifiable changes-in-circumstances beyond the applicant's control.

Applicants must be able to demonstrate the ability to pay rent and other charges as required by the lease. The CDA must verify that applicants can pay the CDA's minimum rent payment, utilities if applicable, and a security deposit. Insufficient income to pay the cost of rent, utilities if applicable, and to make standard security deposit payments will be grounds for denial of admission.

*Disturbances of Neighbors, Destruction of Property or Living or Housekeeping Habits at Prior Residences that May Adversely Affect Health, Safety, or Welfare of Other Tenants, or Cause Damage to the Unit or the Development*

The CDA will review PHA and landlord references covering a 24 month period of time. The CDA may obtain records prior to the last 24 months, if needed to obtain a minimum of 24 months of rental history. The CDA will only consider records within the last five (5) years. The CDA will gather information on whether the applicant kept a unit clean, safe, and sanitary; whether the applicant violated health or safety codes; whether any damage was done by the applicant or their visitor or their guests to a current or previous unit or the development, and, if so, how much the repair of the damage cost; whether the applicant's housekeeping habits caused insect or rodent infestation; whether the applicant allowed unauthorized guests to stay in the unit; whether the neighbors complained about the applicant; and whether the police were ever called because of disturbances.

Police records and court records will be used to check for any evidence of disturbance of neighbors or destruction of property that might have resulted in police contact, arrest, fine, conviction.

*Lack of Verification*

The CDA will make two efforts to obtain information from current and previous landlords. If landlords do not respond to verification requests from the CDA within a reasonable amount of time, the applicant will be asked to provide up to three professional references regarding their ability to comply with lease terms. The number of references requested will be in conjunction with the amount of rental history lacking. If the applicant is not connected to professional references, or is lacking the appropriate number of professional references, the applicant will also be asked to complete a questionnaire regarding their ability to comply with lease terms.

Professional references include, but are not limited to: present and former employers, school officials, volunteer work providers, healthcare providers, social workers, clergy, police officers, and parole/probation officers. The references will be requested to complete a verification of the applicant's ability to live responsibly, to take care of their living space, to handle their own finances, to avoid disturbing neighbors, and to follow the essential provisions of the lease (ability to pay rent, care for the unit, and not disrupt other tenants' right to the peaceful enjoyment of the premises).

The CDA will consider verification of completion or graduation from a CDA-approved, two-year transitional housing program in lieu of a professional reference and the completion of a questionnaire.

*First-Time Renters*

The CDA will not deny admission to the housing program based solely on a determination by the CDA that an applicant has never been party to a lease contract, with no rental payment history.

### **3-III.EF. CRITERIA FOR DECIDING TO DENY ADMISSION**

#### **Evidence**

##### CDA Policy

The CDA admissions staff will keep in mind the concept of the “preponderance of the evidence” when making admission decisions. If an informal hearing is requested to dispute the denial of admission, the person conducting the informal hearing will use “preponderance of the evidence” as the burden of proof for findings of fact.

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

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

#### **Consideration of Circumstances [24 CFR 960.203(c)(3) and (d)]**

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

In the event the PHA receives unfavorable information with respect to an applicant, consideration must be given to the time, nature, and extent of the applicant’s conduct (including the seriousness of the offense). In a manner consistent with its policies, PHAs may give consideration to factors which might indicate a reasonable probability of favorable future conduct.

##### CDA Policy

The CDA may consider the following factors when making a decision to admit or deny an applicant, and may do so at any time during the admissions process up to and including the informal hearing, but the CDA is not required to make a finding as to each factor:

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

The effects that denial of admission 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, or (as discussed further in section 3-III.F) a victim of domestic violence, dating violence, sexual assault, stalking or human trafficking

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

While a record or records of arrest will not be used as the sole basis for denial, an arrest may trigger an investigation to determine whether the applicant actually engaged in disqualifying criminal activity. As part of its investigation, the CDA

may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The CDA may also consider:

Any statements made by witnesses or the applicant not included in the police report

Whether criminal charges were filed

Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal

Any other evidence relevant to determining whether or not the applicant engaged in disqualifying activity

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

Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs

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

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

### **Removal of a Family Member's Name from the Application [24 CFR 960.203(c)(3)(i)]**

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 960.203(c)(3)(i)].

#### CDA Policy

As a condition of receiving assistance, the CDA may, on a case-by-case basis, agree to allow a family 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 public housing unit, and the family must provide verifiable evidence of the former applicant family household member's current living address.

## **Reasonable Accommodation [PH Occ GB, pp. 58-60]**

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

### CDA Policy

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of admission, the CDA will ask for information to determine whether the behavior is related to the disability and whether an accommodation will alleviate the behavior. The family must make the reasonable accommodation request within 10 business days from the date of the denial notice. Upon the family's request, the CDA will determine whether alternative measures are appropriate as a reasonable accommodation. The CDA will only consider accommodations that can reasonably be expected to address the behavior, action, or non-action that is the basis of the proposed denial of admission. See Chapter 2 for the procedures for processing a request for reasonable accommodation.

If a request for an accommodation has been made, the CDA will consider disability-related circumstances when deciding to admit or deny an applicant. The CDA may provide an exception to CDA rules, policies, practices, or services, but the CDA will not lower or waive the essential eligibility requirements of the Public Housing program, as doing so would alter the fundamental nature of the program. Even for a family that includes a person with disabilities, the CDA will not grant exceptions for the following [24 CFR 960.204]:

- Individuals currently using controlled substances illegally.
- Individuals who abuse alcohol to the detriment of others.
- Convicted sexual offenders who are required to register under the law.
- Individuals who have been evicted from federally assisted housing due to drug-related criminal activity within the previous three years, unless a CDA approved rehabilitation program has been successfully completed.

Even with accommodation, the CDA is not required to admit the following:

- Individuals who are not "otherwise qualified" for the Public Housing program.
- Individuals who would cause undue financial and administrative burdens, or would require a fundamental alteration in the nature of the program.
- Individuals whose request for accommodation is not necessary or will not be effective.

### **3-III.FG. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, STALKING, AND HUMAN TRAFFICKING**

The Violence against Women Act (VAWA) and the HUD regulation at 24 CFR 5.2005(b) prohibit PHAs from denying admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

- Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

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

#### **Notification**

VAWA requires PHAs to provide applicants who are denied assistance with a VAWA Notice of Occupancy Rights (form HUD-5380) and a domestic violence certification (form HUS-5382) at the time the applicant is denied.

#### CDA Policy

The CDA acknowledges that a victim of domestic violence, dating violence, sexual assault, stalking or human trafficking may have an unfavorable history (e.g., a record of previous damage to an apartment) that would warrant denial under the CDA's policies.

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

The CDA will include in its notice of denial information about the protection against denial provided by VAWA in accordance with section 16-VII.C of this ACOP, a notice of VAWA rights, and a copy of the form HUD-5382. The CDA will request in writing that an applicant wishing to claim this protection notify the CDA within 14 business days.



## **Documentation**

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

#### CDA Policy

If an applicant claims the protection against denial of admission that VAWA provides to victims of domestic violence, dating violence, sexual assault, stalking or human trafficking, the PHA will request in writing that the applicant provide documentation supporting the claim in accordance with section 16-VII.D of this ACOP.

### ***Perpetrator Documentation***

#### CDA 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 public housing unit

Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to their belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

### **3-III.GH. NOTICE OF ELIGIBILITY OR DENIAL**

The PHA will notify an applicant family of its final determination of eligibility in accordance with the policies in Section 4-III.E.

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

#### CDA Policy

If an applicant family appears to be ineligible, the CDA will notify the family of the proposed decision to deny admission in writing. The denial notice will include a brief statement of the reason(s) for the proposed denial, citation to the applicable regulation(s) or CDA policy, and a summary of the facts that form the basis for each reason for denial (see also Chapter 14.I.B.) The details related to the factual basis for the denial will include, but are not limited to, information such as the following (as applicable):

- criminal, police case, or other court case number;
- name or description of offense;
- offense date;
- disposition date;
- housing provider information or rental address if related to negative rental information, and eviction, or if related to debts owed to a housing provider or housing authority;
- credit reporting agency name and contact information, if related to negative credit or unsuitable past performance in meeting financial obligations; and
- any other facts relevant to the basis for the denial of admission.

The family will be given 10 business days from the date of the denial notice to provide a written request for an informal hearing to dispute the accuracy and relevance of the information in the denial notice. If the family does not request an informal hearing within that 10 day period, the denial of admission will stand. A second opportunity to request an informal hearing will not be provided.

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

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



## 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

In the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.
- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.15002(8)], which defines developmental disability in functional terms as follows:

(A) IN GENERAL – The term *developmental disability* means a severe, chronic disability of an individual that-

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

(B) INFANTS AND YOUNG CHILDREN – An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) of subparagraph (A) if the individual, without services and supports, has a high probability of meeting those criteria later in life.
- Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes their 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
- (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
- (c) Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment