

## CHAPTER 3

### ELIGIBILITY

#### INTRODUCTION

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

To be eligible for the HCV program:

- The applicant family must:
  - Qualify as a family as defined by HUD and the PHA.
  - Have income at or below HUD-specified income limits.
  - Qualify on the basis of citizenship or the eligible immigrant status of family members.
  - Provide social security number information for household members as required.
  - Consent to the PHA's collection and use of family information as provided for in PHA provided consent forms.
  - Not currently receive a duplicative subsidy
  - **Upon the PHA's full implementation of HOTMA, 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 OHCD 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 Assistance. This part covers factors related to an applicant's past or current conduct (e.g. criminal activity) that can cause the PHA to deny assistance as well as the asset limitation for HCV.

## CHAPTER 3

## CHAPTER 3

### PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

#### 3-I.A. OVERVIEW

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

#### 3-I.B. FAMILY AND HOUSEHOLD [24 CFR 5.403, 24 CFR 5.100, and FR Notice 2-14-23]

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

##### Family

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

##### OHCD 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.

Each family must identify the individuals to be included in the family at the time of application and must notify OHCD if the family's composition changes.

##### Household

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

## CHAPTER 3

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

#### Family Break-up [24 CFR 982.315; Notice PIH 2017-08]

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

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

#### OHCD Policy

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

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

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

**The order in which the voucher will be transferred if the head of household leaves the household or leaves the household through death. For the remaining household members, the order is as follows:**

## CHAPTER 3

1. Spouse
2. Co-Head
3. Other adult Household Member if minors are a part of the household
4. Other adult Household Members who are elderly or disabled
5. If only dependent minors remain in the household, see Chapter 6, Section 6 I.B. regarding caretakers and legal guardianship as being assigned voucher eligibility

### Remaining Member of a Participant Family [24 CFR 5.403]

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

If dependents are the only “remaining members of a participant 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 co-head or spouse.

#### OHCD 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 co-head, but not both [HUD-50058 IB, p. 13].

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

#### OHCD Policy

A *marriage partner* includes the partner in a "common law" marriage as defined in state law. 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 *co-head* 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 co-head.

## CHAPTER 3

### OHCD Policy

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

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

### **3-I.F. DEPENDENT 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, co-head, foster children/adults and live-in aides. Identifying each dependent in the family is important because each dependent qualifies the family for a dependent allowance as described in Chapter 6.

### **Joint Custody of Dependents**

#### OHCD 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 participant family 50 percent or more of the time.

When more than one applicant or participant family is claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, OHCD 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; HCV GB, p. 5-29]**

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

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

## CHAPTER 3

### 3-I.H. ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY

[24 CFR 5.100 and 5.403; FR Notice 2-03-12]

#### 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, co-head, or sole member is an elderly person. Identifying elderly families is important because elderly families qualify for the elderly family allowance as described in Chapter 6.

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

#### Persons with Disabilities

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

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

#### Disabled Family

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

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

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

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

## CHAPTER 3

### OHCD Policy

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

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

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure is expected to last 40 consecutive days). An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return.

When OHCD is determining whether a person should be considered a guest or a household member, the following items apply:

- Statements from neighbors, the landlord, Department of Social Services workers, copies of police reports, or other documentation would be considered in making the determination that a person is residing in the unit.
- Absence of evidence of any other address is considered verification that the visitor/guest is a member of the household. Further, use of the unit address as the visitor/guest's current residence for any purpose not explicitly temporary, i.e. voter's registration, driver's license, vehicle registrations, etc., is construed as evidence of permanent residence.
- The burden of proof that the individual is a visitor rests on the family. In the absence of such proof, the individual is considered an unauthorized member of the household and the rental assistance must be terminated.

In a joint custody arrangement, if the minor is in the household less than 180 days per year, the minor is considered an eligible visitor and not a family member. Such individual must not be counted as a member of the family for voucher size determination, and no dependent allowance is awarded.

All changes in family composition, including absences, must be reported in writing within 10 business days to the OHCD.

Additions to the family composition will only be approved if the participant makes a written request and receives written approval from the OHCD for the individual to be added to the household.

### **3-I.K. FOSTER CHILDREN AND FOSTER ADULTS**

**Foster children or adults are permitted to live in an assisted unit with the PHA's permission. A PHA refusal to allow a family to have a foster child or foster children may constitute a violation of the familial status provisions of the Fair Housing Act.**

## CHAPTER 3

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.

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

The administrative plan must include policies concerning residency by a foster child or foster adult, including defining when PHA consent for occupancy by a foster child or foster adult must be given or may be denied [24 CFR 982.54].

### OHCD Policy

A *foster 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 result in a violation of HQS space standards according to 24 CFR 982.401.

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

### **3-I.L. ABSENT FAMILY MEMBERS**

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

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

### OHCD Policy

Generally, an individual who is or is expected to be absent from the assisted unit for 180 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 assisted unit for more than 180 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

## CHAPTER 3

Participants must notify OHCD in writing at least 10 business days before leaving their unit if they are going to be absent from the unit for more than three consecutive weeks.

### 1. Absences in Excess of Three Weeks, but less than Three Months

The family must provide written notice to OHCD that the unit will be temporarily vacant. The notice must include the beginning and ending dates of the vacancy. OHCD approval is not required for the family to temporarily vacate the unit for up to three months.

### 2. Absences between Three and Six Months

The family must provide written notice to the owner and OHCD that the unit will be temporarily vacant. The notice must include the beginning and ending dates of the vacancy. Written approval is required for temporary absences in excess of three months. Each circumstance will be individually evaluated and authorized by OHCD.

Examples of circumstances where approval may be appropriate include, but are not limited to, the following:

- Hospitalization;
- Temporary placement in a nursing home or similar facility;
- Temporary placement of child(ren) in a foster care situation;
- Family emergency such as serious illness, or death;
- Incarceration (for non-drug related criminal activity);
- Other individual circumstances.

A person with a disability may request a time extension as an accommodation, provided the extension does not go beyond the HUD-allowed 180 consecutive calendar day limit.

### ***Verification of Permanent Absence of a Family Member***

If the family reports an adult member who was formerly a member of the household permanently absent, the following are considered verifications of absence:

- Proof of death;
- Court papers when a husband or wife institutes divorce action or legal separation;
- Proof of another home address, such as listed on utility bills, canceled rent checks, driver's license, or lease or rental agreement, if available;
- Statements from other agencies such as Department of Social Services, or a written statement from the owner or manager that the adult family member is no longer living at that location;
- If the adult family member is incarcerated, a document from the Court or correctional facility stating how long they will be incarcerated is required;
- Protection/ Restraining Order obtained by one family member against another;

If the head of household is the absent member, OHCD will issue the voucher to the spouse or co-head.

## CHAPTER 3

### *Absences Due to Death*

HAP payments must stop at the end of the month that the death occurs for a single member household and single member household with a live-in aide.

### *Absence Due to Incarceration*

Incarceration for more than 90 consecutive days defines a sole member, or any household member, as permanently absent from the unit.

### *Absence Due to Military Service*

Regulations provide support for families and dependents of military personnel (including reservists and guardsmen) called to active duty during designated military operations.

Support can include, but is not limited to, the following:

- Allowing a guardian to move into the unit temporarily to care for the dependents the military person leaves in the unit. The guardian's income is exempt;
- Consideration of whether to allow delayed repayments;
- Allowing family absences from the unit with continued Housing Assistance Payments (HAP) to exceed normal guidelines because a member of the assisted family has been called to active duty as a result of designated military operations.

### **Absent Students**

#### OHCD 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 OHCD 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.

#### OHCD Policy

If a child has been placed in foster care, OHCD 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.

### **Absent Head, Spouse, or Co-head**

#### OHCD Policy

An employed head, spouse, or co-head absent from the unit (a) more than 180 consecutive days or (b) more than half their time, due to employment (e.g. deployed in active military duty or employed in another state), will continue to be considered a family member.

## CHAPTER 3

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

If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted [HCV GB, p. 5-22].

#### OHCD Policy

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

OHCD will request verification of the family member's permanent absence from a responsible medical professional. If the responsible medical professional cannot provide a determination, the person will be considered temporarily absent. If the family certifies that the family member is confined on a permanent basis, they may present, and OHCD will consider, any additional documentation or evidence for that person not to be considered a family member. As long as the family member is considered temporarily absent, his/her income will be counted.

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

#### OHCD Policy

**A request for a returning absent family member is not allowed under the OHCD Admin Policy.**

### **3-I.M. LIVE-IN AIDE [24 CFR 5.403]**

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

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

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

#### OHCD Policy

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

## CHAPTER 3

Within 30 calendar days of receiving a request for a live-in aide, including all required documentation related to the request, the OHCD will notify the family of its decision in writing.

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

The potential live in aide must provide a valid social security number and complete a release of information for a criminal background check.

The OHCD will only approve a particular person if he/she (1) meets HUDS's Citizenship or Eligible Immigration criteria defined in Chapter 3, Section 3.II.B; and (2) is 18 year of age or older.

For continued approval, the family must submit a new, written request at each annual reexamination unless a permanent approval for a live-in aide has been granted by OHCD.

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

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

**The PHA will notify the family of its decision in writing within 10 business days of receiving a request for a live-in aide, including all required documentation related to the request.**

Families must report when the live in aide is no longer part of the household within 10 business days of the event. The family will be allowed 60 days to search for, select, and have OHCD approve a replacement live-in aide.

Live-in aides:

1. Are considered a member of the household for live-in aide purposes only and not a family member; and do not qualify as a remaining tenant.
2. Must utilize the rental unit as his or her sole residence during the time he or she is certified as the participant's live-in aide;
3. Need to comply with citizenship requirements.

The PHA shall document the following annually or when there is a change in live-in aides:

### CHAPTER 3

1. If the Live-in Aide was approved for one year, a new Request for Reasonable Accommodation must be submitted by the family and approved at the next annual reexamination.
2. If the Request for Reasonable Accommodation was approved on a permanent basis, OHCD will verify at annual reexamination that a Live-in Aide is identified as such.

Live-in aide family members and/or their minor children do not count as dependents. Additional bedrooms on the voucher are not granted for the live-in aide's family members.

A person who is currently a live-in aide can become a family member and be added to the family composition if they meet eligibility requirements.

At the annual HQS Inspection, the PHA must verify that the extra bedroom for the live-in aide is being utilized for that purpose.

## CHAPTER 3

### PART II: BASIC ELIGIBILITY CRITERIA

#### 3-II.A. INCOME ELIGIBILITY AND TARGETING

##### Income Limits

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

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

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

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

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

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

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

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

- A *very low-income* family
- A *low-income* family that has been "continuously assisted" under the 1937 Housing Act. A family is considered to be continuously assisted if the family is already receiving assistance under any 1937 Housing Act program at the time the family is admitted to the HCV program [24 CFR 982.4]; 24 CFR 982.201(b)]

##### OHCD Policy

OHCD will consider a family to be continuously assisted if the family was leasing a unit under any 1937 Housing Act program at the time, they were issued a voucher or selected from OHCD Waiting List.

- A *low-income* family is eligible for assistance under VASH [FR Notice 8/13/24]. See Chapter 19 of this policy for more information.

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

## CHAPTER 3

### OHCD Policy

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

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

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

### OHCD Policy

At least 75% of the families admitted to OHCD's program during OHCD's fiscal year must be extremely low-income families and up to 25% may be very-low income.

### **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.

### **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, co-head, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible Noncitizens below). No declaration is required for live-in aides, foster children, or foster adults.

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

**U.S. citizens or U.S. nationals (or the parent/guardian for family members under age 18) must sign a declaration of their status, under penalty of perjury.** In general, citizens and nationals are required to submit only a signed declaration as verification of their status. However, HUD regulations permit OHCD to request additional documentation of their status, such as a passport. **HUD strongly encourages PHAs to require that families provide proof of citizenship by such means as birth certificates, naturalization certificates, passports, or other documentation [HUD Secretary Letter 12/16/25].**

### OHCD Policy

Family members who declare citizenship or national status **will be** required to provide documentation **such as** a United States passport, a United States birth certificate, or a Defense Department Form 214 (DD214), Certificate of Release or Discharge From

## CHAPTER 3

Active Duty, unless OHCD receives information indicating that an individual's declaration may not be accurate.

### *Eligible Noncitizens*

Eligible noncitizens (or the parent/guardian for family members under age 18) must sign a declaration of their status, under penalty of perjury. In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with OHCD 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 non-contending family member listing, signed by the head, spouse, or co-head (regardless of citizenship status), indicating their ineligible immigration status. Family members who do not sign a declaration of their status or provide the required supporting documentation will be considered ineligible for housing assistance.

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.

When reviewing applicants for assistance, if a PHA formally makes a finding of fact or conclusion of law, supported by a determination from the Department of Homeland Security (DHS) or the Executive Office of Immigration Review (e.g., a Final Order of Deportation), that an individual is not lawfully present in the United States, then the PHA must provide to DHS a report of the person's name, address, and other identifying information that the PHA has. Note that a SAVE response of no service record or verification of an immigration status that makes the individual ineligible for housing assistance is not a finding of fact or conclusion of law that the individual is not lawfully present. At least four times annually, PHAs must provide such information to DHS. If a PHA has knowledge of an individual who is not lawfully present in the United States, they must provide a report to DHS within 45 days after the close of the appropriate calendar year quarter [HUD Secretary Letter 12/16/25].

## CHAPTER 3

### **Mixed Families**

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

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

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

#### OHCD Policy

OHCD will not provide assistance to a family before the verification of eligible status for at least one family member.

When OHCD 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 denial notice within 10 business days of the determination.

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

Informal hearing procedures are contained in Chapter 16.

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

For new occupants joining the assisted family, 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.

#### OHCD Policy

OHCD will verify the citizenship status of applicants at the time other eligibility factors are determined.

## CHAPTER 3

### 3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218, Notice PIH 2018-24]

The applicant and all members of the applicant's household must disclose the complete and accurate social security number (SSN) assigned to each household member, and the documentation necessary to verify each SSN. **If a child under age 6 has been added to an applicant family within 6 months prior to voucher issuance, an otherwise eligible family may be admitted to the program and must disclose and document the child's SSN within 90 days of the effective date of the initial HAP contract.** A detailed discussion of acceptable documentation is provided in Chapter 7.

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

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 5.230, HCV GB, p. 5-13]

HUD requires each adult family member, and the head of household, spouse, or co-head, 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 the consent forms for obtaining information in accordance with 24 CFR 5, Subparts B and F [24 CFR 982.552(b)(3) 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 of admission or termination of assistance [24 CFR 5.232(c)].**

#### OHCD Policy

**The OHCD has established a policy that revocation of consent to access financial records will result in denial of admission.**

## CHAPTER 3

### 3-II.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION [24 CFR 5.612, FR Notice 4/10/06 and FR Notice 9/21/16 ]

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

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

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

#### Definitions

In determining whether and how the new eligibility restrictions apply to a student, the PHA will rely on the following definitions [FR 4/10/06, p. 18148, **FR Notice 9-21-16**].

#### *Dependent Child*

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

#### *Independent Student*

##### OHCD Policy

OHCD will consider a student "independent" from their parents and the parents' income will not be considered when determining the student's eligibility if the following four criteria are all met:

1. The individual is of legal contract age under state law.
2. The individual has established a household separate from their parents for at least one year prior to application for occupancy or the individual meets the U.S. Department of Education's definition of independent student.

To be considered an *independent student* according to the Department of Education, a student must meet one or more of the following criteria:

- The individual is at least 24 years old by December 31 of the award year for which aid is sought.

## CHAPTER 3

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

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

### ***Institution of Higher Education***

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

### ***Parents***

#### OHCD Policy

For purposes of student eligibility restrictions, the definition of *parents* includes biological or adoptive parents, stepparents (as long as they are currently married to the

## CHAPTER 3

biological or adoptive parent), and guardians (e.g., grandparents, aunt/uncle, godparents, etc.).

### ***Person with Disabilities***

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

### ***Veteran***

#### OHCD Policy

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

### ***Venerable Youth***

#### OHCD Policy

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

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

### **Determining Student Eligibility**

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

#### OHCD Policy

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

Follow its usual policies in determining whether the student individually and the student's "family" collectively are eligible for the program

## CHAPTER 3

Determine whether the student is independent from their parents in accordance with the definition of *independent student* in this section

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

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

### ***Determining Parental Income Eligibility***

#### OHCD Policy

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

- If the student's parents are married and living together, OHCD will obtain a joint income declaration and certification of joint income from the parents.
- If the student's parent is widowed or single, OHCD will obtain an income declaration and certification of income from that parent.
- If the student's parents are divorced or separated, OHCD will obtain an income declaration and certification of income from each parent.
- If the student has been living with one of their parents and has not had contact with or does not know where to contact their other parent, OHCD will require the student to submit a certification under penalty of perjury describing the circumstances and stating that the student does not receive financial assistance from the other parent. OHCD will then obtain an income declaration and certification of income from the parent with whom the student has been living or had contact.

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

### **3-II.F. EIV SYSTEM SEARCHES [Notice PIH 2018-18; EIV FAQs; EIV System Training 9/30/20]**

#### **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

## CHAPTER 3

document the notification in the tenant file. The family must provide documentation of move-out from the assisted unit, as applicable.

### OHCD Policy

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

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

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

If a current or former tenant disputes the information in the module, the tenant 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.

### OHCD Policy

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

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

### **EIV Income Report**

For each new admission, the PHA is required to review **income information in** EIV to confirm and validate family reported income within 120 days after the admission is transmitted to HUD. of the IMS/PIC submission date of the new admission. The PHA must print and maintain copies of the reports in the tenant file and resolve any discrepancies with the family.

## CHAPTER 3

### PART III: DENIAL OF ASSISTANCE

#### 3-III.A. OVERVIEW

A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied assistance. **A PHA may deny assistance for an applicant because of the family's action or failure to act as described in 24 CFR 982.552 or 982.553.** In this section, we will discuss other situations and circumstances in which denial of assistance is mandatory for the PHA, and those in which denial of assistance is optional for the PHA.

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 HUD does not require the adoption of "One Strike" policies PHAs safeguard the due process rights of applicants and tenants.

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

Denial of assistance includes any of the following:

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

#### **Prohibited Reasons for Denial of Program Assistance [24 CFR 982.202(b), Pub.L. 109-162]**

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

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

## CHAPTER 3

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

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

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

#### OHCD Policy

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

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

#### OHCD Policy

*Currently engaged in* is defined as any use of illegal drugs during the previous six (6) months unless the applicant/participant is currently enrolled in and fully compliant with treatment.

- 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.

#### OHCD Policy

In determining reasonable cause, OHCD will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. OHCD will also consider evidence from treatment providers or community-based organizations providing services to household members.

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program.
- Any member of the family fails to sign and submit consent forms for obtaining information.
- The family does not meet the restrictions on net assets and real property ownership as required by 24 CFR 5.618.

## CHAPTER 3

**Upon the PHA's HOTMA 102/104 compliance date, the following section on the asset limitation is added. The asset limitation does not apply until the PHA's HOTMA compliance date (January 2027).**

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

There are two circumstances under which a family is ineligible to receive assistance based on asset ownership.

First, assistance may not be provided to any family if the family's net assets exceed the HUD-published asset limitation amount (adjusted annually by HUD).

- This amount is listed in HUD's current year Inflation-Adjusted Values tables

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; and
- 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.

The PHA does not have the discretion not to enforce or provide limited enforcement of the asset limitation at admission. 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;

## CHAPTER 3

### OHCD Policy

The OHCD defines *not sufficient for the size of the family* as being overcrowded based on space standards in Chapter 8 of this policy.

- 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);

### OHCD Policy

In general, the OHCD defines a *geographic hardship* to include when a family members' work, school, health care provider, or other necessary service is located an unreasonable distance from the real property or there is a lack of adequate transportation options for the family to access work, school, health care, or other necessary services. The OHCD will consider circumstantial details a family faces when determining whether a geographic hardship is present.

- 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 loca.

If a family meets one of the above exceptions, the real property is not automatically excluded from the calculation of net family assets. Unless the real property is specifically excluded from net family assets as described in 24 CFR 5.603 and Chapter 6 of this policy, it will be included in net family assets. If the value of that real property brings the net family assets above the HUD-published asset limitation amount, the family is out of compliance with the asset limitation.

See Chapter 7 for information on verifying net family assets for purposes of the asset limitation.

### **3-III.C. OTHER PERMITTED REASONS FOR DENIAL OF ASSISTANCE**

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

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

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

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

### OHCD Policy

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

## CHAPTER 3

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].
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].
3. *Criminal activity* that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or
4. *Criminal activity* that may threaten the health, safety or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity.

*Immediate vicinity* means within a **three-block** radius of the premises.

5. **Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse; or**
6. Criminal activity that may threaten the health or safety of property owners, management staff, and persons performing contract administration functions or other responsibilities on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor, or agent)

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

- Any conviction for drug-related criminal activity within the past three years.
- Records of arrests for drug-related or violent criminal activity within the past three years.

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

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

HUD authorizes the PHA to deny assistance based on the family's previous behavior in assisted housing.

PHA's are not permitted to deny assistance to a family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program [24 CFR 984.101(d)].

#### OHCD Policy

OHCD **will not** deny assistance to an otherwise eligible family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program, but the OHCD may deny the family's request to re-enter the FSS program based upon their failure to comply, without good cause, with their FSS contract of participation.

OHCD **will** deny assistance to an applicant family if:

## CHAPTER 3

The family does not provide information that OHCD or HUD determines is necessary in the administration of the program.

The family does not provide complete and true information to OHCD.

*Any* family member has been evicted from federally assisted housing in the last three years.

*Any* family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.

The family owes rent or other amounts to *any* PHA in connection with the HCV, or **other** public housing **assistance under the 1937 Act**, unless the family repays the full amount of the debt prior to being selected from the waiting list.

If the family has not reimbursed any PHA for amounts the PHA or OHCD paid to an owner under a HAP contract for rent, or other amounts owed by the family under the lease, unless the family repays the full amount of the debt prior to being selected from the waiting list.

The family has breached the terms of a repayment agreement entered into with OHCD, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.

When denying admission due to family debts as shown in HUD's EIV system, the PHA will provide the family with a copy of the EIV Debt Owed to PHA and Termination report.

If the family wishes to dispute the information in the report, the family must contact the PHA that entered the information in EIV in writing, explaining why EIV information is disputed. The family must also provide a copy of the letter and all applicable verification to the PHA to support the family's claim. The PHA will consider the information provided by the family prior to issuing a notice of denial.

A family member has engaged in or threatened violent or abusive behavior toward OHCD personnel.

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

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

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

## CHAPTER 3

### 3-III.D. SCREENING

#### Screening for Eligibility

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

#### OHCD Policy

OHCD will perform a criminal background check through local law enforcement for every adult household member. If the results of the criminal background check indicate that there may be past criminal activity, but the results are inconclusive, OHCD will request a fingerprint card and will request information from the National Crime Information Center (NCIC).

If a family is referred to the OHCD by the Department of Veterans Affairs (VA) for participation in the HUD-VASH program, OHCD will only determine the family's income eligibility and screen for lifetime sex-offender status (HUD-VASH Questions and Answers – Supplement to HUD-VASH Operating Requirements published in the Federal Register on May 6, 2008, and May 19, 2008, Department of Veterans Affairs VHA Handbook 1162.05).

If the VASH family is no longer receiving VA supportive services, the family must meet all screening criteria found in Section 3-111.D to receive a regular Housing Choice Voucher.

OHCD will perform a sex-offender background check through use of the Dru Sjodin National Sex Offender database to screen applicants for admission.

While a PHA has regulatory authority to use criminal conviction records for the purpose of applicant screening for admission, there is no corresponding authority to use these records to check for criminal and illegal drug activity by participants, and therefore, PHAs may not use records for this purpose.

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

#### OHCD Policy

The OHCD will use the Dru Sjodin National Sex Offender database to screen applicants for admission.

Additionally, PHA's 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].

## CHAPTER 3

If the PHA proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, OHCD 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)].

### OHCD Policy

The OHCD will notify the household and provide this information within ten (10) business days of the denial of determination.

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

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

### OHCD Policy

**The OHCD will not conduct additional screening to determine an applicant family's suitability for tenancy.** The owner is responsible for conducting additional screening to determine and applicant family's suitability for tenancy.

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

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

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

### OHCD Policy

OHCD will inform owners of their responsibility to screen prospective **tenants and will provide owners with the required known name and address information of Landlords, at the time of the initial Request for Tenancy Approval (RTA) or before.** OHCD will not provide any additional information to the owner, such as tenancy history, or criminal history, *etc.* Required screenings must be performed during the initial eligibility review for all applicants (including portability) and for all active participants at the time of:

## CHAPTER 3

- Annual re-examination;
- Move; or
- IR for an adult added to the household, or when a current family member turns 18.

Note: Live-In Aides are subject to the same screenings as other adult household members.

### 3-III.E. CRITERIA FOR DECIDING TO DENY ASSISTANCE

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

##### OHCD Policy

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

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole show that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

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

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

##### OHCD Policy

OHCD will consider the following factors prior to making its decision:

The seriousness of the case, especially with respect to how it would affect other residents' safety or property.

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

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 3-III.G) a victim of domestic violence, dating violence, sexual assault or stalking

The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future

**When there is a record of arrest, the OHCD may obtain a copy of the police report associated with the arrest and consider the circumstances of the arrest, including:**

## CHAPTER 3

- ✓ Any statement 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.

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

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

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

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

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

#### OHCD Policy

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

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

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

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

#### OHCD Policy

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of assistance, OHCD will determine whether the behavior is related to the stated disability. If so, upon the family's request, OHCD will determine

## CHAPTER 3

whether admitting the family as a reasonable accommodation is appropriate. OHCD will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of assistance. See Chapter 2 for a discussion of reasonable accommodation.

### 3-III.F. NOTICE OF ELIGIBILITY OR DENIAL

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

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

#### OHCD Policy

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

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

#### OHCD Policy

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

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

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

## CHAPTER 3

### **3-III.G. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT AND STALKING [24 CFR Part 5, Subpart L]**

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

- 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 Chapter 16-IX, 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 for (HUD-5382) at the time the applicant is denied.

#### OHCD Policy

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

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

OHCD will include in its notice of denial the VAWA information described in section 16-IX.C of this Plan as well as including a copy of the form HUD-5382. OHCD will request that an applicant wishing to claim protection under VAWA notify OHCD within 14-business days.

## CHAPTER 3

### Documentation

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

##### OHCD Policy

If an applicant claims the protection against denial of assistance that VAWA provides to victims of domestic violence, dating violence, sexual assault, or stalking, OHCD will request in writing that the applicant provide documentation supporting the claim in accordance with Chapter 16-IX.D **of this plan**.

#### *Perpetrator Documentation*

##### OHCD 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:

1. A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the assisted unit.
2. 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.

## CHAPTER 3

## CHAPTER 3

### EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES

#### **Person with Disabilities [24 CFR 5.403]**

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

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

#### **(A) In General**

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

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

#### **(B) Infants and Young Children**

An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) of

## CHAPTER 3

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; or
- (b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(2) *Major life activities* mean functions such as caring for oneself, 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:

### CHAPTER 3

- (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
- (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
- (c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

## CHAPTER 3

## CHAPTER 3

### **EXHIBIT 3-2: DEFINITION OF INSTITUTION OF HIGHER EDUCATION [20 U.S.C. 1001 and 1002]**

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

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

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

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

## CHAPTER 3

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

- (a) Definition of institution of higher education for purposes of student assistance programs
- (1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term “institution of higher education” for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—
- (A) A proprietary institution of higher education (as defined in subsection (b) of this section);
- (B) A postsecondary vocational institution (as defined in subsection (c) of this section); and
- (C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.
- (2) Institutions outside the United States
- (A) In general, for the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless—
- (i) In the case of a graduate medical school located outside the United States—
- (I)(aa) At least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; and
- (bb) At least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or
- (II) The institution has a clinical training program that was approved by a State as of January 1, 1992; or

## CHAPTER 3

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

(B) Advisory panel

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

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

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

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

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

(D) Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.

(3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—

(A) Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;

(B) Enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

### CHAPTER 3

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

## CHAPTER 3

- (A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;
  - (B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;
  - (C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;
  - (D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;
  - (E) Has been in existence for at least 2 years; and
  - (F) Has at least 10 percent of the school's revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.
- (2) Additional institutions. The term “proprietary institution of higher education” also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students' persons who are beyond the age of compulsory school attendance in the State in which the institution is located.
- (c) Postsecondary vocational institution.
- (1) Principal criteria. For the purpose of this section, the term “postsecondary vocational institution” means a school that—
    - (A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;
    - (B) Meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001 (a) of this title; and
    - (C) Has been in existence for at least 2 years.
  - (2) Additional institutions. The term “postsecondary vocational institution” also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular student's persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

## CHAPTER 3