

### 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 982.54, 24 CFR 982.4, 24 CFR 982.201(c); HUD-50058 IB, p. 13; FR NOTICE 02/03/12; PIH NOTICE 2014-20; PIH NOTICE 2023-27]

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 groups include, but are 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. 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. LMHA has the discretion to determine if any other group of persons qualifies as a family. Each family must identify the individuals to be included in the family at the time of application, and must notify LMHA if the family's composition changes.

*Gender Identity* means actual or perceived gender characteristics.

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

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~~The HOTMA Final Rule (2023) and PIH Notice 2023-27, have revised the definition of family to also include eligible youth who have attained at least 18 years of age and are not more than 24 years of age who have:~~

~~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 are Homeless or is at risk of becoming homeless at age 16 or older.~~

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

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

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.

#### LMHA Policy

LMHA has the discretion to determine if any other group of persons qualifies as a family. Each family must identify the individuals to be included in the family at the time of application and must notify LMHA if the family's composition changes.

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

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

#### LMHA 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 update this information if the family's composition changes.~~

#### **Household**

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

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

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

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

If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault or stalking, LMHA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault and stalking, see section 16- IX.D of this plan.)

[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, stalking,](#)

and human trafficking, 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, LMHA is bound by the court's determination of which family members continue to receive assistance.

### LMHA 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. For participants in the Veteran's Affairs Supportive Housing Program (VASH), those program rules will apply for family break-ups.

In the absence of a judicial decision, such as a divorce decree or a will, or an agreement among the original family members, LMHA will determine which family will retain their placement on the waiting list or continue to receive assistance. In making its determination, LMHA 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.

### **Remaining Member of a Tenant Family [24 CFR 5.403; PIH Notice 2023-27]**

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. The HOTMA Final Rule (2023) and PIH Notice 2023-27 specify that foster adults/children are not considered family members and must not be included in calculations of income for eligibility and rent determination purposes. However, foster adults/children are considered household members and must be included when determining unit size or subsidy standards based on established policies.

If dependents are the only "remaining members of a tenant family" and there is no family member able to assume the responsibilities of the head of household, see Chapter 6, Section 6-I.B, for the policy on "Caretakers for a Child."

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

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

#### LMHA 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.~~

#### LMHA Policy

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

A *marriage partner* includes the partner in a "common law" marriage as defined in state law; although Ohio no longer recognizes "common law" marriages entered into prior to October 10, 1991. 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.

*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.*

#### LMHA Policy

Minors are *children under 18 years of age*. Minors 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. DEPENDENTS AND MINORS [24 CFR 5.603]

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

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

## **Joint Custody of Dependents**

### LMHA Policy

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

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, LMHA will make the determination based on available documents such as court orders, school enrollment 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 a FTS, other than the head, spouse, or co-head, qualifies the family for a dependent deduction, and (2) the income of such an FTS is treated differently from the income of other family members. **The HOTMA Final Rule (2023) and PIH Notice 2023-27 mandate the exclusion of earned income for full-time dependent students and the exclusion of certain financial aid for both full and part-time students. This will be discussed more in-depth in Chapter 6.**

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

### **Elderly Persons**

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

### **Near-Elderly Persons**

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

### **Elderly Family**

An *elderly family* is one in which the head, spouse, co-head, or sole member is a person who is at least 62 years of age. Identifying elderly families is important because these families qualify for special deductions from income as described in Chapter 6.

### **Near Elderly Family**

A family whose head (including co-head), spouse or sole member is a person who is at least 50-61 years of age ~~but below 62~~; or two or more persons, who are at least 50-61 years of age ~~of age but below the age of 62~~, living together; or one or more persons **who are at least 50-61 years of age.** ~~but below the age of 62.~~

### **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, LMHA 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* means a family whose head (including co-head), spouse, or sole member is a person with disabilities. Identifying disabled families is important because these families qualify for special deductions from income as described in Chapter 6.

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

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

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

#### LMHA Policy

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

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 51 percent of the time, are not subject to the time limitations of guests as described above.

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

### **3-I.K. FOSTER CHILDREN AND FOSTER ADULTS [24 CFR 5.603 (b);PIH Notice 2023-27]**

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

HUD has established the definition of *foster adult and children* through the HOTMA Final Rule (2023) and PIH Notice 2023-27. A foster adult is defined as a member of the household who is 18 years or older and meets the definition of a foster adult under state law. State-level agencies define who is considered a foster adult/child, so the classification may vary from state to state.

In general, a *foster adult* 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 [PIH Notice 2023-27].

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

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

#### LMHA Policy

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

Foster children and foster adults who have been approved by LMHA to live with an applicant, participant, or assisted family are considered household members but not family members.

The income of foster children/adults is not counted in family annual income and must not be included in calculations of income for eligibility and rent determination purposes.

Foster children/adults do not qualify for a dependent deduction [24 CFR 5.603; HUD-50058 IB, p. 13].

Foster children/adults must be included when determining unit size or subsidy standards based on established policies [HOTMA Final Rule (2023); PIH Notice 2023-27].

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**

##### LMHA 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.



## **Absent Students**

### LMHA 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 LMHA 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.

### LMHA Policy

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

Children who are temporarily absent due to placement in foster care who have been placed in another subsidized unit will be reviewed by LMHA on a case-by-case basis.

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

### LMHA Policy

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

## **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].

### LMHA Policy

LMHA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent unless the absence exceeds 180 days and the family member will be considered permanently absent. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.



## Return of Permanently Absent Family Members

### LMHA Policy

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

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

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

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

A live-in aide is a member of the household, not the family, and the income of the aide is not considered in income calculations [24 CFR 5.609(b)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. However, a relative who serves as a live-in aide is not considered a family member and would not be considered a remaining member of a tenant family or have any rights to the voucher under the remaining member rules of this Administrative Plan.

### LMHA Policy

A family's request for a live-in aide must be made in writing. A live-in aide may only reside in the unit with pre-approval from LMHA. 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. For continued approval, the live-in aide will be subject to LMHA's background screening criteria and must annually certify proof of continued residence in the unit. The household will be subject to annual re-certification of the continued disability/need for the live-in aide for those that were not certified with a permanent disability. Permanent disability will be defined as any individual receiving disability benefits for their disability through the Social Security disability insurance program, the Supplemental Security Income (SSI) program or certification through a reliable, knowledgeable professional as provided by the family, such as a doctor, social worker, or case worker.

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

LMHA 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 LMHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

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

## PART II: BASIC ELIGIBILITY CRITERIA

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

#### Income Limits

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

#### Types of Low-Income Families [24 CFR 5.603(b)]

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

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

*Extremely low-income family.* A family whose annual income does not exceed 30 percent of the median income for the area, adjusted for family size.

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; PIH Notice 2023-27]

~~Income limits are used for eligibility only at admission. Eligibility is established by comparing a family's annual income with HUD's published income limits. To be income eligible, a family must be one of the following:~~

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

#### LMHA Policy

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

A low-income family that qualifies for voucher assistance as a non-purchasing household living in HOPE 1 (public housing homeownership), HOPE 2 (multifamily housing homeownership) developments, or other HUD-assisted multifamily homeownership programs covered by 24 CFR 248.173.

A low-income or moderate-income family that is displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract on eligible low-income housing as defined in 24 CFR 248.101.

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

#### LMHA Policy

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

#### LMHA Policy

LMHA will ensure that at least 75 percent of households admitted during each fiscal year in the public housing, Housing Choice Voucher (HCV), and local, non-traditional programs will be very low-income (50%)

Families continuously assisted under the 1937 Housing Act and families living in eligible low-income housing that are displaced as a result of prepayment of a mortgage or voluntary termination of a mortgage insurance contract are not subject to the 75 percent restriction.

#### **3-II.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5, Subpart E]**

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

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

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

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

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

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

### **LMHA Policy**

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

## ***Eligible Noncitizens***

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with LMHA 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 members listing, signed by the head, spouse, or co-head (regardless of citizenship status), indicating their ineligible immigration status. LMHA is not required to verify a family member's ineligible status and is not required to report an individual's unlawful presence in the U.S. to the United States Citizenship and Immigration Services (USCIS).

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

## **Mixed Families**

A family is eligible for assistance as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that their assistance will be 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)]**

LMHA 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 LMHA 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 LMHA in accordance with program requirements [24 CFR 5.512(a)].

### LMHA Policy

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

When LMHA determines that an applicant family does not include any citizens, nationals, or eligible noncitizens, following the verification process, the family will be sent a written notice within 10 business days of the determination.

The notice will explain the reasons for the denial of assistance, 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 LMHA. The informal hearing with LMHA 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, LMHA 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, LMHA 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 once during continuous occupancy.

### LMHA Policy

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

### **3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218, ~~Notice PIH-2012-10~~ PIH Notice 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. A detailed discussion of acceptable documentation is provided in Chapter 7.~~

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 calendar days of the effective date of the initial HAP contract. A detailed discussion of acceptable documentation is provided in Chapter 7.

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

In addition, each participant who has not previously disclosed an SSN; has previously disclosed an SSN that HUD or the SSA determined was invalid or has been issued a new SSN must submit their complete and accurate SSN and the documentation required to verify the SSN at the time of the next interim or

annual reexamination or recertification. Participants age 62 or older as of January 31, 2010, whose determination of eligibility was begun before January 31, 2010, are exempt from this requirement and remain exempt even if they move to a new assisted unit.

LMHA 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; PIH Notice 2023-27; HCV GB, p. 5-13]** \*PIH Notice 2023-27 supersedes relevant portions of HUD's guidance as provided in the HCV Guidebook which is currently subject to applicable revisions per the HOTMA Final Rule (2023)].

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, 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.

In accordance with PIH Notice 2023-27 and the HOTMA Final Rule (2023), all applicants must sign the consent form at admission, and participants must sign the consent form no later than their next interim or regularly scheduled income reexamination. After an applicant or participant has signed and submitted a consent form either on or after January 1, 2024 (regardless of the PHA's compliance date – {see PIH Notice 2023-27}), they do not need to sign and submit subsequent consent forms at the next interim or regularly scheduled income examination except under the following circumstances:

- When any person 18 years or older becomes a member of the family.
- When a member of the family turns 18 years of age; and
- As required by HUD or the PHA in administrative instructions.

HUD allows LMHA discretion to establish policies around when family members must sign the consent forms when they turn 18 between reexaminations.

LMHA ~~PHAs must establish~~ is required to establish ~~these~~ additional policies ~~in their Administrative Plans~~ if requiring family members to sign consent forms at intervals other than at reexamination.

***Revocation of Consent*** [24 CFR 5.230(c)(5)(iii); 24 CFR 5.232(c); 891.105; 891.410(g)(3)(ii); and 891.610(g)(3)(ii)]

### LMHA Policy

LMHA will 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); 24 CFR 891.410(b)-(c); 891.610 (b)-(c)].

LMHA will require all adult family members (18+) to sign and submit subsequent consent forms at the next interim or regularly scheduled income examination.

The executed consent form (Form HUD-9886) will remain effective until the family is denied assistance, the assistance is terminated, or if the family provides written notification to the PHA to revoke consent. HUD allows families to have the right to revoke consent by providing written notice to LMHA.



Revoking consent will result in termination of assistance or denial of admission. LMHA will require all adult family members to sign a new consent form by the next re-examination to avoid termination of assistance (or be reviewed for admission eligibility). LMHA will establish a method to communicate to families the consequences of revoking their consent.

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

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

- If a student enrolled at an institution of higher education:
- Is under the age of 24
- Is not a veteran, is not married
- Does not have a dependent child, and
- Is not a person with disabilities receiving HCV assistance as of November 30, 2005

The student's eligibility must be examined along with the income eligibility of the student's parents. In these cases, both the student and the student's parents must be income eligible for the student to receive HCV assistance. If, however, a student in these circumstances is determined independent from his/her parents in accordance with LMHA 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, LMHA 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***

##### LMHA Policy

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

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

- To be considered an *independent student* according to the Department of Education, a student must meet one or more of the following criteria:
  - Be at least 24 years old by December 31 of the award year for which aid is sought
  - Be an orphan or a ward of the court through the age of 18
  - 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
  - Be a veteran of the U.S. Armed Forces
  - Have one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent)
  - Be a graduate or professional student
  - Be married
  - The individual has one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent).
  - The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:
    - A local educational agency homeless liaison
    - The director of a program funded under subtitle B of title IV of the McKinney Vento Homeless Assistance Act or a designee of the director
    - A financial aid administrator
  - The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances
  - The individual was not claimed as a dependent by his/her parents pursuant to IRS regulations, as demonstrated on the parents' most recent tax forms.
  - The individual provides a certification of the amount of financial assistance that will be provided by his/her parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

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

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

If LMHA determines that an individual meets the definition of a *vulnerable youth* such a determination is all that is necessary to determine that the person is an *independent student* for the purposes of using only the student's income for determining eligibility for assistance. LMHA will verify that a student meets the above criteria in accordance with the policies in Section **7-II.E.**

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

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

## ***Parents***

### LMHA Policy

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

## ***Person with Disabilities***

### LMHA Policy

LMHA 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***

### LMHA 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.

## ***Vulnerable Youth***

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

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

## **Determining Student Eligibility**

If a student is applying for assistance on his/her own, apart from his/her parents, LMHA 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, LMHA must ensure that:

- (1) the student is individually eligible for the program
- (2) either the student is independent from his/her parents or the student's parents are income eligible for the program, and
- (3) the "family" with which the student is applying is collectively eligible for the program.

### LMHA Policy

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

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

- Follow its usual policies in determining whether the student individually and the student's "family" collectively are eligible for the program
- Determine whether the student is independent from his/her parents in accordance with the definition of *independent student* in this section
- Follow the policies below, if applicable, in determining whether the student's parents are income eligible for the program.

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

#### LMHA 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, LMHA will determine the income eligibility of the student's parents as follows:

- If the student's parents are married and living together LMHA will obtain a joint income declaration and certification of joint income from the parents.
- If the student's parent is widowed or single, LMHA will obtain an income declaration and certification of income from that parent.
- If the student's parents are divorced or separated, LMHA will obtain an income declaration and certification of income from each parent.
- If the student has been living with one of his/her parents and has not had contact with or does not know where to contact his/her other parent, LMHA 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. LMHA 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, LMHA 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; AND NOTICE PIH 2023-27]**

#### **Existing Tenant Search**

##### LMHA Policy

Prior to admission to the program, LMH will search for all household members using the EIV Existing Tenant Search module. LMH will review the reports for any SSA matches involving another PHA or a multifamily entity and follow up on any issues identified. LMHA will 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 LMH, and a match is identified at a multifamily property, LMH will contact the other 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. LMH 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.

##### LMHA Policy

LMH 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, LMH will determine if this information warrants a denial in accordance with the policies in Part III of this chapter.

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.

#### **Income and IVT Reports**

For each new admission, LMH is required to review the EIV Income and IVT Reports to confirm and validate family reported income within 90 calendar days of the IMS/PIC submission date of the new admission.

##### LMHA Policy

LMH will ~~print and~~ maintain copies of the EIV Income and IVT reports in the tenant file and resolve any discrepancies with the family within 60 calendar days of the EIV Income or IVT report dates.

## **PART III: DENIAL OF ASSISTANCE**

### **3-III.A. OVERVIEW**

A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied assistance. In addition, HUD requires or permits LMHA to deny assistance based on certain types of current or past behaviors of family members.

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

Denial of assistance includes any of the following:

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

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

HUD rules prohibit denial of program assistance 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 LMHA's jurisdiction under portability. (See Chapter 10.)
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock
- Whether the family includes children
- Whether a family decides to participate in a family self-sufficiency program
- Whether or not a qualified applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking if the applicant is otherwise qualified for assistance (See section 3-III.G.)

### **3-III.B. MANDATORY DENIAL OF ASSISTANCE [24 CFR 982.553(a)]; 24 CFR 960.204(a-d)]**

HUD requires LMHA to deny assistance in the following cases:

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

#### LMHA Policy

LMHA will not admit an otherwise-eligible family, who was evicted from federally assisted housing within the past 5 years for drug-related criminal activity. However, LMHA will admit an otherwise-eligible family who was evicted from federally assisted housing within the past 5 years for drug-related criminal activity, if LMHA is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by LMHA, or the person who committed the crime, is no longer living in the household. LMHA determines that any household member is currently engaged in the use of illegal drugs.

#### LMHA Policy

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

LMHA will not admit an otherwise-eligible family if reasonable cause exists 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.

#### LMHA Policy

In determining reasonable cause, LMHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol.

A conviction will be given more weight than an arrest.

LMHA will also consider evidence from treatment providers or community-based organizations providing services to household members. \*This information will be assessed and subject to LMHA criminal screening procedures and Lookback Specifications referenced in the following section.



Mandatory denials include:

- 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.

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

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

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

LMHA may not use a record of arrest(s) as a basis for determining that an applicant or household member engaged in criminal activity warranting denial of admission, termination of assistance, or eviction. Although a record of arrest(s) may not be used to deny a housing opportunity, LMHA may make an adverse housing decision based on the criminal activity underlying an arrest if the criminal activity indicates the individual is not suitable for tenancy and LMHA has sufficient evidence other than the fact of arrest that the individual engaged in the criminal activity. The criminal activity, not the arrest, is what is relevant for admissions and tenancy decisions. [NOTICE PIH 2015-19].

HUD permits, but does not require, LMHA to deny assistance if LMHA 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.

#### LMHA Policy:

With exception to HUD mandatory criminal requirements as identified in [24 CFR 982.553(a)] Household member and new admission program eligibility is primarily evaluated based on the standards as described below.

Eligibility is also dependent upon current and past engagement in any of the following criminal activities, and criminal activity as designated and further outlined in the following criminal screening procedures and Criminal Lookback Chart. Program eligibility determination will be further evaluated according to this process.

*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] – \*Subject to LMHA criminal screening procedures and Lookback Specifications.

*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] - \*Subject to LMHA criminal screening procedures and Lookback Specifications.

Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the

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premises by other residents or persons residing in the immediate vicinity - \*Subject to LMHA criminal screening procedures and Lookback Specifications.; or

*Criminal activity* that may threaten the health or safety of property owners and management staff and persons performing contract administration functions or other responsibilities on behalf of LMHA (including an LMHA employee or a LMHA contractor, subcontractor, or agent) -  
\*Subject to LMHA criminal screening procedures and Lookback Specifications.

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

**Previous Behavior in Assisted Housing [24 CFR 982.552(c), 960.203(c) and (d) and PH Occ GB, p. 48]**

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

In the event of receipt of unfavorable information with respect to an applicant, LMHA must consider the time, nature, and extent of the applicant's criminal activity (including the seriousness of the offense). LMHA may also need to consider whether the cause of the unfavorable information may be that the applicant is the victim of domestic violence, dating violence, sexual assault, or stalking.

To facilitate that evaluation, consistent with what is set forth below, LMHA may issue a procedure to provide guidance to staff. The purpose of such a procedure or procedures is to ensure compliance with the requirements of this document, to speed the application process where possible and to ensure that each application is reviewed in an as objective and consistent a manner as possible given that each situation will be based on its own unique facts.

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

LMHA Policy

LMHA will deny assistance to an applicant family if:

- The family does not provide information that LMHA or HUD determines is necessary in the administration of the program.
- The family does not provide complete and true information to LMHA.
- Any family member has been evicted from federally assisted housing in the five years.
- LMHA has ever terminated assistance under the program for any member of the family for violations of the family obligations within the last five 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, Moderate Rehabilitation or public housing programs, 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 with LMHA, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.
- A family member has engaged in or threatened violent or abusive behavior toward LMHA personnel or managing agents and owners.
- Abusive or violent behavior 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.
- LMHA 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.

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

### **3-III.D. Criminal Background Screening and Eligibility**

LMHA is authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the HCV program. This authority assists LMHA in complying with HUD requirements and LMHA 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 LMHA must require every applicant family to submit a consent form signed by each adult household member [24CFR 5.903]. LMHA may not pass along to the applicant the costs of a criminal records check.

[24 CFR 960.204(d)]

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

#### LMHA Policy

LMHA will perform criminal background checks for all adult household members. LMHA may use all applicable and appropriate sex offender databases, in conjunction with other criminal databases to screen applicants for admission.

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

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

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

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

#### LMHA Policy

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

- Payment of rent or utilities;
- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;
- Criminal activity that is a threat to the health, safety, or property of others;
- Behavior of all household members as related to the grounds for denial as detailed in Sections 3-III. B and C; and Compliance with any other essential conditions of tenancy.

#### **Criminal Screening Process**

##### **Initial Screening**

This Policy sets forth the duration of time LMHA may look back and consider a past criminal conviction(s) of an applicant to the HCV program. This policy should be read in conjunction with LMHA Procedure 60, which sets forth in detail the process to be used for evaluating the impact of past criminal history on the ability of an applicant to qualify for housing under the HCV program.

LMHA will use this criterion for determining whether past criminal conduct impacts an applicant's ability to participate in LMHA's HCV program. This policy outlines how each application with a criminal history will be reviewed with a determination being made on the facts of that specific application. This policy must be applied in conjunction with other factors that could impact an application like a request for reasonable accommodation and consistent with the need to ensure the safety and security of other residents.

This policy is to be used by all staff performing criminal background screening in the HCV department. If a conviction falls outside the screening parameters of the Chart, which is referenced and incorporated herein or is irrelevant, like a minor misdemeanor for a traffic violation, that conviction is not to be considered when evaluating the qualifications of an applicant. Applications with one or more convictions identified in the Chart that need further review will be processed as outlined below. If an applicant has one or more convictions (for felonies or misdemeanors) that do not fall within the Chart, but the screener has at least one reasonable good faith basis to believe the applicant presents a demonstrable risk to resident safety and/or property, the screener may, after stating case-specific reasons, request written permission from LMHA's President and CEO, or the President's designee, to depart from the Chart and send the individual for further consideration. If the request to deviate from the Chart is granted, the screener sends the application for Further Review as if the conviction(s) were identified in the Chart. Remember: the file must contain the request to deviate and the approval of that request.

### **Rules to Apply the Screening Chart.**

As explained in this section, before referring a case for further review, the screener must ensure that the crime(s) are (a) within the lookback period, (b) ended in conviction, as opposed to an arrest or a dismissed charge, and (c) demonstrate risk to resident safety and/or property. Unless the criminal history meets these criteria, screeners should disregard the crime(s) and should not refer applicants for further review.

*The lookback period begins at conviction and/or the date of release from detention or incarceration.*

The lookback period ensures that further review is triggered if an applicant was convicted of a relevant crime. If an applicant was convicted of a relevant crime, and the conviction or release from incarceration occurred within the lookback period, LMHA will refer the matter for further review. The post-release look-back periods only apply to release from serving a sentence for the crime identified in the Chart. Incarceration for any other reason is not relevant to the post-release lookback periods in the Chart.

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***Consider convictions that present a demonstrable risk to resident safety and/or property***

A conviction may trigger further review when it demonstrates a potential risk to resident safety and/or property based on the underlying facts relevant to screening that applicant. In other words, the underlying facts related to the conviction must be relevant to screening the participant, specifically they must show a risk to resident safety or property.

***Additional considerations***

If an expunged conviction appears on a criminal background report, it will not be considered in the screening process. Convictions for accessory after the fact crimes or of a juvenile also will not be considered.

- The misdemeanors specified in the Chart refer only to those that may reasonably impact community safety, such as domestic violence or a concealed weapon offense.
- Complicity in and conspiracies to commit a crime will be treated the same way as the primary crime.
- If an applicant has more than one conviction, the screener will apply the Chart to each conviction. If any conviction is a crime of concern, the applicant may request an informal review within a specified time frame. If none of the convictions are for crimes of concern, the applicant may be admitted, if otherwise eligible.

The chart below provides specific guidance on how specific situations should be processed consistent with the above.

<b>Classification of Conviction:</b>	<b>Lookback Period:</b>
Pursuant to 24 CFR 960.204(a)(3): <b>Persons convicted of methamphetamine production on the premises of federally assisted housing and (a)(4): Lifetime/Tier III S.O. Registration Only</b>	<b>Permanent Bar</b>
Federal Felony: Class A	Further review if screening within 3 years of conviction or 1 year of release from incarceration.
Federal Felony: Class B	Further review if screening within 2 years of conviction or 1 year of release from incarceration.
Federal Felony: Class C	Further review if screening within 2 years of conviction or 1 year of release from incarceration.
Federal Felony: Class D	Further review if screening within 2 years of conviction or 1 year of release from incarceration.
Federal Felony: Class E	Further review if screening within 2 years of conviction or 1 year of release from incarceration.
Federal Misdemeanors: Class A	Further review if screening within 1 year of conviction or 1 year of release from incarceration.
Federal Misdemeanors: Class B	Further review if screening within 1 year of conviction or 1 year of release from incarceration.
Federal Misdemeanors: Class C	Further review if screening within 1 year of conviction or 1 year of release from incarceration.
First-Degree Felony in Ohio (or equivalent in another state) <i>Including murder and aggravated murder</i>	Further review if screening within 3 years of conviction or 1 year of release from incarceration.
Second-Degree Felony in Ohio (or equivalent in another state)	Further review if screening within 2 years of conviction or 1 year of release from incarceration.
Third-Degree Felony in Ohio (or equivalent in another state)	Further review if screening within 2 years of conviction or 1 year of release from incarceration.
Fourth-Degree Felony in Ohio (or equivalent in another state)	Further review if screening within 2 years of conviction or 1 year of release from incarceration.
Fifth-Degree Felony in Ohio (or equivalent in another state)	Further review if screening within 2 years of conviction or 1 year of release from incarceration.
First-Degree Misdemeanor in Ohio (or equivalent in another state)	Further review if screening within 1 year of conviction or 1 year of release from incarceration.
Second-Degree Misdemeanor in Ohio (or equivalent in another state)	Further review if screening within 1 year of conviction or 1 year of release from incarceration.
Third-Degree Misdemeanor in Ohio (or equivalent in another state)	Further review if screening within 1 year of conviction or 1 year of release from incarceration.
Fourth-Degree Misdemeanor in Ohio (or equivalent in another state)	Review consistent with Procedure 60
Minor Misdemeanors in Ohio (or equivalent in another state): <i>Failure to Aide a Law Officer or Disorderly Conduct</i>	<i>Not relevant except for listed exemptions.</i> Further review if screening within 1 year of conviction or 1 year of release from incarceration.
Any combination of two or more	Further review if screening within 2 years of conviction or 1 year of release from incarceration.



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

#### Standard of review

LMHA will use 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 shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

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

HUD authorizes LMHA to consider all relevant circumstances when deciding whether to deny admission based on a family's history except in the situations for which denial of admission is mandated.

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

#### LMHA Policy

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

- The effect on other residents;
- The effects that denial of admission may have on other members of the family who were not involved in the action or failure;
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 3-III.F) a victim of domestic violence, dating violence, sexual assault/stalking, **human trafficking, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse.**
- The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future;
- Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs; or

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.

LMHA may require an applicant to submit evidence of participation in or successful completion of a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

An individual will be informed in writing when that individual's criminal background information is being considered as part of the application for admission. [24 CFR 5.903(f) and 5.905(d)]. Notice, along with a copy of the relevant record, is to be sent to the address provided by the applicant on the admission information. Notice is to be presumed when the letter is sent to an address (street or email) provided by the applicant to LMHA consistent with its normal business operations. The notice will contain language informing the applicant that a challenge can be made to the accuracy of the conviction information, in accordance with the Fair Credit Reporting Act (FCRA).

The applicant will have seven days from the date of the notice to provide information rebutting or challenging the information provided by a criminal background check. The information can be provided verbally or in writing by the applicant to a member of the HCVP or a designee. The information may include, but is not limited to the following:

- a. Letter or comments from a probation/parole officer;
- b. Letter or comments from a case worker, counselor, or therapist;
- c. Certificates of treatment completion or confirmation of ongoing treatment as relevant to the conduct underlying the conviction(s) (e.g., batterers' intervention, sex offender treatment, drug or alcohol treatment, cognitive behavioral therapy);
- d. Letter or comments from family members or others who know the applicant well;
- e. Document from a community organization with which the applicant has been engaged;
- f. Letter or comments from employers or teachers;
- g. Certificate of completion of a training program;
- h. Proof of employment;
- i. Other relevant documents;
- j. Certificate of Qualification for Employment (CQE);
- k. Certificate of Achievement and Employability (CAE); or
- l. Statement from the applicant.

The application will be evaluated, and a decision of admission or denial will be made based on the totality of all relevant information received by LMHA including but not limited to:

- a. Criminal History;
- b. Rehabilitation;
- c. Community Ties/Support; or
- d. Employment History.

A formal decision on the application will be made allowing for an applicant to appeal a decision if the application is denied consistent with the existing process for appealing a decision denying admission. An applicant will be informed in writing either by mail or electronic communication of the decision denying admission and given instructions on how and when to appeal.

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

### 3-III.F. 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 applicant family if the family's net assets exceed \$100,000 (adjusted annually by HUD). If a participant family's net assets exceed \$250,000 (adjusted annually), the family will be notified and allowed 6 months to cure. If after 6 months, net family assets still exceed the \$250,000 threshold, assistance will be terminated.

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.

#### LMHAPolicy

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;

LMH defines *not sufficient for the size of the family* as being overcrowded based on the space standards in **Chapter 8** of this policy (see criteria below):

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

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, stalking or human trafficking

### LMHAPolicy

When a family asks for an exception because a family member is a victim of domestic violence, dating violence, sexual assault, stalking, human trafficking, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse LMH will comply with all the confidentiality requirements under VAWA. LMH will accept a self-certification from the family member, and the restrictions on requesting documentation under VAWA apply.

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

HUD permits LMHA to impose as a condition of admission, a requirement that family members who participated in or were culpable for an action or failure to act which results in the denial of assistance, to not reside in the unit.

### LMHAPolicy

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

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

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

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

### LMHAPolicy

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

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

If LMHA 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.

### LMHAPolicy

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

If a LMHA 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 LMHA 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)]. LMHA 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)].

### LMHAPolicy

If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible LMHA will notify the family in writing of the proposed denial and the availability of a copy of the record to the applicant and to the subject of the record. The family will be given 7 business days to dispute the accuracy and relevance of the information. If the family does not contact LMHA to dispute the information within that 7-day period, LMHA 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.G.

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

The Violence against Women Act of 2015 (VAWA) and the HUD regulation at 24 CFR 5.2005(b) prohibit LMHA from denying an applicant admission to the HCV program “on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault/stalking, human trafficking, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse (VAWA 2022). if the applicant otherwise qualifies for assistance or admission.”

Definitions of key terms used in VAWA are provided in section 16-IX of this plan and have been updated to reflect the Violence Against Women Act Reauthorization Act of 2022 (“VAWA 2022”). VAWA 2022 reauthorizes, amends, and strengthens VAWA. 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.

General VAWA requirements and policies pertaining to notification, documentation, and confidentiality are also located in ~~this section~~. Section 16-IX.

## Notification

VAWA 2013 expanded notification requirements to include the obligation for PHA's to provide applicants who are denied assistance with a notice of rights and the form **HUD-50066 updated 2025 [INSERT FORM NUMBER HERE]** at the time the applicant is denied.

### LMHA Policy

LMHA acknowledges that a victim of domestic violence, dating violence, sexual assault/stalking, **human trafficking, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse** may have an unfavorable history (e.g., a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under LMHA's policies. Therefore, if LMHA makes a determination to deny assistance to an applicant family, LMHA will include in its notice of denial the VAWA information described in section 16-IX.C of this plan as well as including a copy of the form HUD-50066. LMHA will request that an applicant wishing to claim protection under VAWA notify LMHA within 14 business days.

## Documentation

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

#### LMHA Policy

If an applicant claims the protection against denial of assistance that VAWA provides to victims of domestic violence, dating violence, sexual assault/stalking, **human trafficking, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse**, LMHA will request in writing that the applicant provide documentation supporting the claim in accordance with section 16-IX.D of this plan.

### *Perpetrator Documentation*

#### LMHA Policy

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

- A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the assisted unit
- Documentation that the perpetrator has successfully completed or is successfully undergoing, rehabilitation or treatment.

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

<p style="text-align: center;"><b>EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES</b> <b>Person with Disabilities [24 CFR 5.403]</b></p>
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The term *person with disabilities* means a person who has any of the following types of conditions:

Has a disability, as defined in 42 U.S.C. Section 423(d)(1)(A), which reads:

Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; *or*

In the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.15002(8)], which defines developmental disability in functional terms as follows:

**(A) In General**

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

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

**(B) Infants and Young Children**

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

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

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



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

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

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

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

(1) Physical or mental impairment includes:

(a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

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

(2) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means:

(a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;

(b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment

<p><b>EXHIBIT 3-2: DEFINITION OF INSTITUTION OF HIGHER EDUCATION</b> <b>[20 U.S.C. 1001 and 1002]</b></p>
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**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.

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

Definition of institution of higher education for purposes of student assistance programs

(1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term “institution of higher education” for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—

(A) A proprietary institution of higher education (as defined in subsection (b) of this section);

(B) A postsecondary vocational institution (as defined in subsection (c) of this section); and

(C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.

(2) Institutions outside the United States

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

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

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

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

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

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

(B) Advisory panel

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

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

- And

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

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

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

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

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

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

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

- (C) Has a student enrollment in which more than 25 percent of the students are

incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or

(D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.

(4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—

(A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the

primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or

(B) The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter

34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(5) Certification. The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.

(6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

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

- (A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;
- (B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;
- (C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;
- (D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;
- (E) Has been in existence for at least 2 years; and

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

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

(c) Postsecondary vocational institution.

(1) Principal criteria. For the purpose of this section, the term “postsecondary vocational institution”

means a school that—

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

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

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

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