**Chapter 3**

**ELIGIBILITY**

**INTRODUCTION**

This chapter contains three parts:

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

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

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

The first paragraph is introductory. **No policy decisions are required**.

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

**3-I.A. OVERVIEW**

This section provides an overview for Part I. **No policy decisions are required.**

**3-I.B. FAMILY AND HOUSEHOLD [24 CFR 5.105(a)(2), 24 CFR 5.403, FR Notice 02/03/12, Notice PIH 2014-20, Notice PIH 2023-27, and FR Notice 2/14/23]**

This section of the ACOP clarifies the meaning of the terms *family* and *household*, and presents HUD’s definitions of the terms. HUD permits, but does not require, the PHA to elaborate on the definition of family.

**☑ Decision Point:** **Does the PHA wish to elaborate on HUD’s definition of family?**

Things to Consider

* Although the PHA is permitted to elaborate on the HUD definition, the PHA cannot limit the definition of family in a way that discriminates against a protected class or other group protected under the HUD regulations.
* In the past, some PHAs required family members to be related by blood, marriage, adoption, or other operation of law in order to be considered a “family” by the PHA. However, the equal access final rule prohibits administrators of HUD-assisted housing from using this definition of family, since HUD-assisted programs must be open to all eligible individuals regardless of sexual orientation, gender identity, or marital status.
* In Notice PIH 2005-16, Policy Guidance on College Student Admissions, HUD offers the following recommendations to PHAs regarding households including full-time college students where there are no parents/guardians in the household. The notice states that implementing these recommendations is one way to better assure that families in need of assistance are able to participate in HUD’s programs. Although this notice has expired, PHAs may still want to consider adopting these recommendations:
  + Adopting additional eligibility criteria for full-time college students of non-parental/guardian households: (1) the college student must have established a household separate from their parents or legal guardians for at least one year prior to applying to the voucher program, and (2) the college student must not be claimed as a dependent by parent(s) or legal guardian(s) on their Internal Revenue Service (IRS) tax return.
  + Limit the definition of family to “independent” students (as defined by the U.S. Department of Education) in cases where there are no parents/guardians in the household.
* The Office of Multifamily requires students who are the head or cohead of a household to have established a household separate from parents or legal guardians for at least one year prior to application for occupancy or meet the definition of independent student as defined by the U.S. Department of Education [HB 4350.3, p.3-35].
* To be classified as an independent student according to the Department of Education, a student must meet at least one of the following criteria:
  + Be at least 24 years old by December 31 of the award year for which aid is sought
  + Be married
  + Have a child or other dependents who receive more than half their support from the student and who also live with the student
  + Be enrolled as a graduate or professional student (e.g. medicine, dentistry, law)
  + Be a veteran of the U.S. military
  + Be an orphan or ward of the court through age 18
  + Have special and unusual circumstances that can be documented to their college financial aid administrators. Only an experienced financial aid administrator can make this “dependency override.”
* PHAs would likely experience an additional administrative burden as a result of implementing optional policies related to full-time college students. Therefore, unless you have a large number of full-time college students in non-parental/guardian households on your waiting list and/or you have determined that assisting these types of families will prevent you from assisting families in greater need, these additional policies may not be necessary or advisable.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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.

🞎 *Option 2: Add the language below to the model ACOP.*

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

The individual either must have established a household separate from their parents or legal guardians for at least one year prior to application for admission or must meet the U.S. Department of Education’s definition of independent student.

The individual must not be claimed as a dependent by their parents or legal guardians pursuant to Internal Revenue Service (IRS) regulations

🞎 *Option 3: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

**Family Breakup**

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

* If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the PHA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, stalking, and human trafficking, see section 16-VII.D of this plan.)
* If a court determines the disposition of property between members of the assisted family, the PHA is bound by the court’s determination of which family members continue to receive assistance.

**☑ Decision Point: How will the PHA handle families who break up while on the waiting list?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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 submit a new application with a new application date if the waiting list is open.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**☑ Decision Point: How will the PHA handle break-ups of resident families?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

If a family breaks up into two otherwise eligible families while living in public housing, only one of the new families will retain occupancy of the unit.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**☑ Decision Point:** **What factors will the PHA consider when determining which family members will remain on the waiting list or in occupancy?**

Things to Consider

* Public housing is a valuable resource and decisions about who gets to maintain their position on the waiting list or remain in occupancy can be controversial. Having a policy that ensures consistency is important. Although each family situation will be somewhat different, the PHA can be consistent in what it takes into consideration. The model ACOP identifies some appropriate considerations. The PHA may not consider any factors that would discriminate against a protected class.
* The model ACOP also makes it clear that if there is a judicial decision as to the disposition of property, the PHA will abide by the court’s decision.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

In the absence of a judicial decision or an agreement among the original family members, the PHA will determine which family will retain their placement on the waiting list or continue in occupancy. In making its determination, the PHA will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, including a family member who was forced to leave a public housing unit as a result of such actual or threatened abuse, and provides documentation in accordance with section 16-VII.D of this ACOP; (4) any possible risks to family members as a result of domestic violence or criminal activity; and (5) the recommendations of social service professionals.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

The HUD definition of family includes the *remaining member of a tenant family,* which is a member of an assisted family who remains in the unit when other members of the family have left the unit.

If dependents are 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 has been designated by the family as 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 coheador spouse.

**☑ Decision Point: What criteria must an individual meet to be designated the head of household?**

Things to Consider

* The regulations do not give any clear way of designating the head of household when more than one family member would qualify. The model policy assigns the family the responsibility of designating a head of household.
* The model policy provides a clarification of who the family may designate as head of household. If "emancipated minor" (someone under 18 who has been designated as an adult for legal purposes) is not the terminology used in your state, you should edit the model ACOP accordingly.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**3-I.E. SPOUSE, COHEAD, AND OTHER ADULT**

This section specifies who may be considered a spouse, cohead, or other adult. A family may have a spouse or cohead, but not both [HUD-50058 IB, p. 13].

**☑ Decision Point:** **How does the PHA define the term marriage partner?**

Things to Consider

* HUD guidance states that *spouse* means the marriage partner of the head of household. The model policy clarifies the meaning of the term *marriage partner*.
* In the case of spouse and cohead, the PHA policy includes the term "emancipated minor." If "emancipated minor" (someone under 18 who has been designated as an adult for legal purposes) is not the terminology used in your state you should edit the model policy language accordingly.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**☑ Decision Point:** **Can emancipated minors be designated as cohead?**

Things to Consider

* The term *cohead* is used by HUD to identify a family member who is equally responsible with the head of household for ensuring that the family fulfills all of its responsibilities under the program, but who is not a spouse.
* A family can have only one cohead.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**3-I.F. DEPENDENTS AND MINORS [24 CFR 5.603]**

**☑ Decision Point:** **How will the PHA determine whether or not dependents subject to joint custody arrangements will be considered part of the resident family?**

Things to Consider

* Two major considerations in making this decision are whether or not the family has primary custody, and the amount of time dependents subject to a joint custody arrangement actually live in the household.
* The model ACOP states that a dependent in these circumstances must live in the unit 50 percent or more of the time, in order to be considered a member of the resident family. This language is based on guidance in Handbook 4350.3, *Occupancy Requirements of Subsidized Multifamily Housing Programs.*
* This policy is also contained in Section 6-I.B., Household Composition and Income. If changes are made to the policy here, they must also be made in Section 6-I.B.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**☑ Decision Point:** **How will the PHA handle the dependent deduction when two applicant or assisted families have joint custody?**

Things to Consider

* When there are two separate households on the waiting list or receiving assistance, whether in the same program or not, only one family will be allowed to claim the dependents as family members.
* The model language is based on guidance in Handbook 4350.3, *Occupancy Requirements of Subsidized Multifamily Housing Programs.*

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

When more than one applicant or assisted family (regardless of program) are claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the PHA will make the determination based on available documents such as court orders, an IRS income tax return showing which family has claimed the child for income tax purposes, school records, or other credible documentation.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**3-I.G. FULL-TIME STUDENT [24 CFR 5.603]**

This section provides the regulatory definition of a full-time student. **No policy decisions are required.**

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

This section provides the regulatory definitions for the three terms listed. **No policy decisions are required.**

**3-I.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403]**

This section provides the regulatory definitions for these two terms. Key aspects of the definitions are provided in this section of the ACOP. The full definitions are included in Exhibit 3-1 at the end of the chapter. **No policy decisions are required.**

**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.

**☑ Decision Point:** **How long will the PHA permit an individual to stay with a resident family as a guest before the person must either be approved as a new family member or be considered an unauthorized occupant?**

Things to Consider

* The PHA's major concern is to avoid instances of program abuse in which an individual receives the benefit of public housing on a continuing basis but the family does not report the individual's income. Although rules are sometimes hard to enforce and program abuse will be a challenge to document, the PHA's ACOP should specify the policy that will guide the PHA’s actions.
* The consecutive and cumulative days included in the model ACOP are not regulatory and may be changed, but the guest policy should not infringe on a family's ability to have legitimate guests.
* The model policy requires residents to report guests who will be staying for more than 3 days. This type of policy allows the PHA to have a better sense of who is on the property and enables them to identify guests with particular units.
* In the model ACOP, the guest policy does not apply to children that are subject to joint custody arrangements or for whom a family has visitation privileges. In addition, other exceptions may be granted by the PHA for good cause, as long as the family can document that the guest has a residence to which they will return.
* The model policy language clarifies that former residents who have been evicted are not permitted as overnight guests at any time.
* The model policy language also clarifies who will be considered unauthorized occupants.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

A resident family must notify the PHA when overnight guests will be staying in the unit for more than three days. A guest can remain in the unit no longer than 14 consecutive days or a total of 30 cumulative calendar days during any 12-month period.

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure is expected to last 20 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.

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

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

Guests who represent the public housing unit address as their residence address or address of record for receipt of benefits or any other purposes will be considered unauthorized occupants. In addition, guests who remain in the unit beyond the allowable time limit will be considered unauthorized occupants, and their presence constitutes a violation of the lease.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

This section discusses what types of relationships qualify as foster care.

**☑ Decision Point: Under what circumstances may a foster child be approved to reside in a unit?**

Things to Consider

* PHAs have the discretion to adopt reasonable policies concerning residence by a foster child (or foster adult), and to define when PHA consent may be given or denied.
* This policy clarifies that foster children and adults may only be approved if their presence in the unit would not result in overcrowding.
* Section 9.III.B., New Family and HouseholdMembers Requiring Approval, includes a similar policy on the approval of a foster children and adults. If changes are made to the policy here, changes will also need to be made to the policy in Section 9.III.B.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model plan are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

This section of the ACOP includes a general policy regarding absent family members and then provides clarifications for specific types of absent family members.

The policies in this section also appear in Part I of Chapter 6. Therefore, if any changes are made to the policies here, they must also be changed in Chapter 6.

**Definitions of Temporarily and Permanently Absent**

**☑ Decision Point:** **How will the PHA determine whether a family member is temporarily or permanently absent?**

Things to Consider

* It may or may not be financially advantageous for the family to continue to consider an absent person as a member of family. The model ACOP uses 180 days as the dividing line between temporary and permanent absences. This is not regulatory, so a different threshold may be established.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

Generally, an individual who is or is expected to be absent from the public housing 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 public housing 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.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Absent Students**

**☑ Decision Point:** **When will students living away from home still be considered family members?**

Things to Consider

* HUD rules do not specifically address students who are absent from a household. Although this issue would also apply to students under 18 years who are living away from the family, the major focus of this policy is to deal with students 18 and above who may or may not still be family members.
* Since the earned income of a full-time student above $480 is excluded from annual income, a family generally benefits by continuing to count the student as a family member. The family retains the dependent deduction. The student’s presence in the family may or may not make a difference in unit size.
* The policy in the model ACOP enables staff to assume the student is a family member unless evidence to the contrary is available or the family declares the student is no longer a family member.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Absences Due to Placement in Foster Care**

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

**☑ Decision Point:** **How will the PHA determine whether children in foster care have been temporarily or permanently removed from the household?**

Things to Consider

* The model ACOP says that the PHA will assume the child is temporarily absent unless it is clear that the child has been permanently removed. This approach ensures that the PHA will not hinder return of a child because of questions about the adequacy of the family’s housing. This policy also ensures that all staff will be consistent in their handling of absences due to foster care placement when a decision about permanent care has not yet been made.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

If a child has been placed in foster care, the PHA 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.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Absent Head, Spouse, or Cohead**

**☑ Decision Point:** **Will the PHA permit an exception to the 180-day rule for absent persons in the case of an absent head, cohead or spouse?**

Things to Consider

* The model ACOP makes an exception for persons designated as the head, cohead, or spouse if the reason for the absence is employment. This would include, for instance, a head of household who does construction work in another state, or a spouse who has been called to active military duty. In such circumstances the absent family member remains a member of the family and all of the employment income is considered available to the household.
* Alternatively, the PHA could follow the general 180 day policy, determine that the absent person is no longer a member of the family, and count only regular income that the absent person sends to the family.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

🞎 *Option 3: Delete the model ACOP language.*

*Note: This means that a head, spouse, or cohead absent more than 180 consecutive days will not be considered a member of the family.*

**Individuals Confined for Medical Reasons**

**☑ Decision Point:** **How will the PHA determine whether a family member has been permanently or temporarily confined for medical purposes?**

Things to Consider

* The *PH Occupancy Guidebook* does not address this issue, however, the *HCV Guidebook* specifies that a family member permanently confined to a nursing home or hospital is not considered a family member [HCV GB, p. 5-22]. The model ACOP includes this as safe harbor language and elaborates on this guidance by establishing how the PHA will determine if the family member is permanently absent.
* Using the same regulation, Handbook 4350.3 (for multifamily housing programs) permits the family to decide whether to consider the person a family member but specifies that a permanently absent family member cannot be the head or spouse. This policy is offered as Option 2. However, you should be aware that using this policy means not following HUD’s safe harbor recommendation in PIH (HCV program). Although a HUD reviewer could question the decision, using Option 2 should not result in a monitoring finding.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

If there is a question about the status of a family member, the PHA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

🞎 *Option 2: Use the policy permitted by Handbook 4350.3. Delete the language in the model ACOP and insert the language below.*

An individual permanently confined to a nursing home or hospital may not be named family head, spouse, or cohead but may continue as a family member at the family’s discretion. The family has a choice with regard to how the permanently confined individual’s income will be counted. The family may elect either of the following:

*Include* the individual’s income and receive allowable deductions related to the medical care of the permanently confined individual.

*Exclude* the individual’s income and do not receive allowances based on the medical care of the permanently confined individual.

🞎 *Option 3: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Return of Permanently Absent Family Members**

**☑ Decision Point:** **Under what circumstances will a former family member who has been determined to be permanently absent be permitted to return to the family?**

Things to Consider

* The model ACOP clarifies that any returning adult must meet program eligibility and screening requirements again.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

A family may request PHA approval for the household to include a live-in aide when necessary to provide supportive services for a family member who is elderly, near-elderly or a person with disabilities. This section describes the conditions under which someone can be considered a live-in aide, and the situations in which the PHA may deny or withdraw approval of a particular individual as a live-in aide.

**☑ Decision Point:** **How will the PHA process requests for live-in aides?**

Things to Consider

* The PHA must approve a live-in aide if needed as a reasonable accommodation for a person with disabilities. The Joint Statement of the Departments of HUD and Justice: Reasonable Accommodation under the Fair Housing Act, issued May 17, 2004, clarified that, while it is usually helpful to both the requester and the PHA to have requests for reasonable accommodation made in writing, the PHA must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the PHA’s preferred forms or procedures for making such requests.
* The model ACOP requires the PHA to obtain third-party verification if the disability is not obvious or otherwise known and/or if the need for the accommodation is not known or clear, as well as a certification from the family and live-in aide to document that an individual meets the definition of a live-in aide.
* The model ACOP clarifies that in certain cases live-in aides will not be approved, and their approval may be withdrawn. Elsewhere in this chapter, the policy is clear that all household members, including a live-in aide, must meet certain mandatory eligibility requirements.
* The model ACOP gives the PHA 10 business days (the standard throughout much of the ACOP) to make the determination and notify the family regarding the approval or disapproval of a live-in aide.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

A family’s request for a live-in aide may be made orally or in writing. The PHA will verify the need for a live-in aide, if necessary, with a reliable, knowledgeable professional as provided by the family, such as a doctor, social worker, or case worker, unless the disability-related need is apparent or known to the PHA. For continued approval, the family may be required to submit a new, written request—subject to PHA verification—at each annual reexamination.

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

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

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

The person commits drug-related criminal activity or violent criminal activity; or

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

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**PART II: BASIC ELIGIBILITY CRITERIA**

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

**Income Limits**

This section briefly describes HUD requirements regarding the establishment of income limits. **No policy decisions are required.**

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

This section provides the HUD definition of low-, very low-, and extremely low-income families. **No policy decisions are required.**

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

Income limits are used to determine eligibility at admission. Eligibility is established by comparing a family’s annual income with HUD’s published income limits. To be income-eligible, a family must be a *low-income* family.

However, a PHA that owns or operates fewer than 250 public housing units may lease a unit in a public housing development to a family whose annual income exceeds the low-income limit at the time of initial occupancy, in accordance with its PHA annual plan (or supporting documents), provided all conditions listed at 24 CFR 960.503 are satisfied. If the PHA meets these criteria listed in the regulations and wishes to rent to families whose income exceeds the low-income limit at initial occupancy, the PHA must amend the ACOP to reflect this decision. **No policy decisions are required.**

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

This section discusses HUD’s requirement that at least 40 percent of the families admitted to the PHA’s public housing program during a PHA fiscal year must be extremely low-income families and the possible use of housing choice voucher admissions in meeting HUD’s requirement. **No policy decisions are required.**

**3-II.B.** **OCCUPANCY BY OVER-INCOME FAMILIES [24 CFR 960.503]**

A PHA that owns or operates fewer than 250 public housing units, may lease a unit in a public housing development to an over-income family (a family whose annual income exceeds the limit for a low-income family at the time of initial occupancy), in accordance with its PHA annual plan (or supporting documents), if all the following conditions listed in the Model ACOP are satisfied.

**☑ Decision Point:** **Will the PHA admit non-income-eligible families if the PHA meets the required criteria?**

Things to Consider

* If the PHA owns or operates 250 or more public housing units, the PHA may not admit non-income-eligible families, and thus will choose Option 1.
* This provision may be particularly helpful to PHAs that own or operate less than 250 units in rural areas, where attracting sufficient applicants may be difficult.
* If the PHA owns or operates less than 250 public housing units, and the PHA wishes to admit non-income-eligible families when there are no income-eligible families on the waiting list, the PHA obtains approval to adopt this option through the PHA annual plan. Therefore, the PHA should not choose Option 2 until completion of the PHA plan process.

🞎 *Option 1: Use the model ACOP language shown below if the PHA owns or operates 250 public housing units or more, or the PHA owns or operates less than 250 units and chooses not to admit non-income-eligible families. No changes to the model ACOP are needed.*

The PHA does not admit any non-income-eligible families.

🞎 *Option 2: Use the option below if the PHA owns or operates less than 250 units and admitting non-income-eligible families has been approved through the PHA annual plan process.*

The PHA operates fewer than 250 public housing units and will admit families whose annual income exceeds the low-income limit when there are no income-eligible families on the PHA’s waiting list.

🞎 *Option 3: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

**Overview**

This section states that housing assistance is available only to individuals who are U.S. citizens, U.S. nationals, or noncitizens that have eligible immigration status, and that prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. **No policy decisions are required.**

**Declaration [24 CFR 5.508]**

This section discusses HUD’s requirement that each family member 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. **No policy decisions are required.**

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

In general, citizens and nationals are required to submit only a signed declaration that claims their status. However, HUD regulations permit the PHA to request documentation of their status.

**☑ Decision Point:** **Under what circumstances will the PHA require the family to provide additional documentation for family members who claim to be citizens or nationals?**

Things to Consider

* In order to ensure that all families are treated consistently, the PHA should adopt criteria for determining when additional documentation will be requested. The model ACOP limits this type of request to circumstances where the PHA has information suggesting that the family’s self-report may not be accurate.
* If your PHA has encountered significant problems with incorrect declarations of citizenship, you could require all applicants to provide documentation. However, this would place an additional verification burden on the PHA.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

***Eligible Noncitizens***

This section describes the additional documentation and verification processes required for eligible noncitizens. **No policy decisions are required**.

***Ineligible Noncitizens***

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a noncontending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. **No policy decisions are required**.

**Mixed Families**

This section describes the definition of *mixed families* and explains that assistance will be prorated for such families. **No policy decisions are required**.

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

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

**☑ Decision Point:** **Will the PHA provide assistance to a family before the verification of eligibility of at least one family member?**

Things to Consider

* The PHA may choose to provide assistance to a family prior to verifying the eligibility of at least one family member; however, if the PHA is ultimately unable to verify the eligibility of at least one family member, the PHA will have to terminate assistance adding an additional administrative burden to PHA staff.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**☑ Decision Point:** **When will the PHA notify an applicant family that does not include any citizens, nationals, or eligible noncitizens, that assistance has been denied?**

Things to Consider

* The model ACOP gives the PHA 10 business days (the standard throughout much of the ACOP) to notify the family regarding the denial of assistance. The content of the notice of denial and the offer for an grievance hearing are required by regulation.
* If the 10 business day time frame is changed here, it must also be changed in Section 14-II.A.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

The notice will explain the reasons for the denial of assistance and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS) or to request a grievance hearing with the PHA. The grievance hearing with the PHA 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 grievance hearing process.

Grievance hearing procedures are contained in Chapter 14.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

**☑ Decision Point:** **When will the PHA verify the citizenship status of applicants?**

Things to Consider

* The model ACOP language states that citizenship status will be verified at the time all other eligibility factors are verified. This is to simplify and streamline the eligibility process.
* PHAs may choose to verify citizenship prior to other factors because of the length of time it may take to verify eligible noncitizens.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

This section describes requirements related to providing social security numbers to the PHA and refers the reader to Chapter 7 for additional information on verification. **No policy decisions are required.**

**3-II.E. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.230 and 24 CFR 5.232]**

This section describes the family’s obligation to consent to the release of information needed to verify required information and refers the reader to Chapter 7 for more details.

While the family is obligated to release information to the PHA, under HOTMA, this does not apply if the applicant or participant, or any member of the family, revokes their consent with respect to the ability of the PHA to access financial records from financial institutions, unless the PHA establishes an admission and occupancy policy that revocation of consent to access financial records will result in denial or termination of assistance or admission [24 CFR 5.232(c)].

**☑ Decision Point: Will the PHA establish a policy that revocation of consent to access financial records will result in a denial of admission?**

🞎 *Option 1: Use the model plan language shown below. No changes to the model plan are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

**3-II.F. EIV SYSTEM SEARCHES [EIV FAQs; EIV System Training 9/30/20; and Notice PIH 2023-27]**

**Existing Tenant Search**

**☑ Decision Point: If a new admission is identified as residing in another assisted unit, how will the PHA confirm that the family has moved out of the unit?**

Things to Consider

* At no time may any family member receive duplicative assistance.

🞎 *Option 1: Use the model plan language shown below. No changes to the model plan are needed.*

The PHA 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. The PHA will only approve assistance contingent upon the move-out from the currently occupied assisted unit.

🞎 *Option 2: Use PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

**Debts Owed to PHAs and Terminations**

**☑ Decision Point: If a new admission is identified as residing in another assisted unit, how will the PHA confirm that the family has moved out of the unit?**

Things to Consider

* HUD only requires that household members sign the form HUD-52675 once. The model policy in Option 1 states that each household member will sign the form once as part of the eligibility determination. If the PHA wishes to have the form signed more often, the PHA should insert their own policy in Option 2.

🞎 *Option 1: Use the model plan language shown below. No changes to the model plan are needed.*

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

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

🞎 *Option 2: Use PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

**EIV Income Report**

The PHA is required to review income information in EIV 120 days after admission. **No policy decisions are required.**

**PART III: DENIAL OF ADMISSION**

**3-III.A. OVERVIEW**

This section provides an overview. **No policy decisions are required**.

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

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

**☑ Decision Point:** **Will the PHA make an exception and admit an otherwise-eligible family if the household member has completed a PHA-approved drug rehabilitation program or the circumstances which led to eviction no longer exist?**

Things to Consider

* If any member of the household has been evicted from federally assisted housing in the last three years for drug-related criminal activity the family must be denied assistance. However, HUD permits the PHA to make an exception and admit an otherwise-eligible family if the household member has completed a PHA-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g. person involved in criminal activity no longer lives in the household).
* The model ACOP policy is based on the premise that a PHA can be reasonably sure that the behavior that caused a family to be previously evicted, will not occur again if the offending family member has either undergone rehabilitation, or is no longer a family member.
* If a PHA believes it is too risky to admit a family that has been evicted from federally assisted housing in the last three years for drug-related criminal activity under any circumstances, the PHA may select Option 2.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Delete model ACOP language and substitute language as shown below.*

The PHA will not admit an otherwise-eligible family who was evicted from federally assisted housing within the past three years for drug-related criminal activity under any circumstances.

🞎 *Option 3: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**☑ Decision Point:** **How will the PHA define *currently engaged in*?**

Things to Consider

* According to the regulations, c*urrently engaged in the illegal use of a drug* means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member [24 CFR 960.205(b)(1)].
* To ensure consistency in the way staff handle denials of admission, this term should be further defined. You may wish to consult with your attorney to determine whether any state laws or tenant-landlord ordinances require the use of another definition.
* Option 2, provides an exception to the definition for those enrolled in and compliant with treatment.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Delete model ACOP language and substitute language as shown below.*

*Currently engag*e*d in* is defined as any use of illegal drugs during the previous three months, unless the applicant is currently enrolled in and fully compliant with treatment.

🞎 *Option 3: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**☑ Decision Point:** **How will the PHA determine “reasonable cause” when trying to ascertain whether or not a household member’s current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents?**

Things to Consider

* To allow for both consistency and flexibility, the model policy gives examples of evidence to be considered when determining “reasonable cause,” but does not limit evidence to these categories.
* The model policy clarifies that a conviction will be given more weight than an arrest due to the more serious nature of a conviction.
* The model policy language calls for the PHA to consider positive evidence along with negative evidence. This type of approach is fairer to the applicant and is also consistent with the concept of preponderance of evidence discussed later in this part.
* If your PHA has established specific indicators to determine “reasonable cause,” the model policy language should be replaced or edited to contain these indicators.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

In determining reasonable cause, the PHA 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 record or records of arrest will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying criminal activity. The PHA will also consider evidence from treatment providers or community-based organizations providing services to household members.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**☑ Decision Point:** **Should the PHA deny admission to a family if any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine in any location, rather than limiting it to activity that took place on the premises of federally assisted housing?**

Things to Consider

* The model ACOP uses the regulatory requirement rather than imposing a stricter policy.
* However, a PHA could opt to impose a stricter policy by prohibiting an applicant’s admission if any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine in any location, not just federally assisted housing (see Option 2).

🞎 *Option 1:* *If you do not want to impose a stricter requirement than the regulations require, no policy is necessary and no changes to the model ACOP are needed.*

🞎 *Option 2: If you want to impose a stricter policy regarding those who have been convicted of the production or manufacture of methamphetamine, insert the following policy.*

If any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine in any location, not just federally assisted housing, the family will be denied admission.

🞎 *Option 3: Use PHA-established policy.*

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

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

Assistance may not be provided to any family if their net assets exceed the HUD-published asset limitation amount (adjusted annually); or the family has a present ownership interest in, a legal right to reside in, and the effective legal authority to sell real property that is suitable for occupancy by the family as a residence.

For the restriction to apply, a property must be considered *suitable for occupancy*. The regulations state that one of the criteria for a property to be considered suitable for occupancy is that it must be sufficient for the size of the family, however, HUD does not define size parameters in the regulation.

**☑ Decision Point: How will the PHA define *not sufficient for the size of the family* with regard to real property that is suitable for occupancy?**

Things to Consider

* The model plan uses the PHA’s own occupancy standards outlined in Chapter 5 as the standard for units of a sufficient size for ease of administration. This is consistent with guidance provided in HUD’s HOTMA Asset Limitation webinar. The PHA may instead wish to use local building codes or another methodology.

🞎 *Option 1: Use the model plan language shown below. No changes to the model plan are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

**☑ Decision Point: How will the PHA define *a geographic hardship* with regard to real property that is suitable for occupancy?**

Things to Consider

* In HUD’s HOTMA Asset Limitation webinar, HUD stated PHA policy should indicate general parameters PHAs will use when determining whether real property ownership constitutes a geographic hardship.
* The policy may remain general. There is no requirement that the PHA set a minimum distance, which may prevent the PHA from considering circumstantial details the family faces.

🞎 *Option 1: Use the model plan language shown below. No changes to the model plan are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

**3-III.D. OTHER PERMITTED REASONS FOR DENIAL OF ADMISSION**

HUD permits, but does not require, the PHA to deny admission for the reasons discussed in this section. Whenever HUD gives the PHA discretion about denying admission, the PHA will take into consideration the factors discussed in Sections 3-III.F and 3-III.G.

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

**☑ Decision Point:** **For which criminal activities will the PHA deny admission and what time frame will be considered?**

Things to Consider

* The model ACOP language states that the PHA will deny admission for any drug-related criminal activity, violent criminal activity, criminal sexual conduct, and criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents, or the property management staff or contractors, if the behavior has occurred within the past three years.
* In determining the time frame to be considered, the PHA will want to establish that the family member has refrained from committing prohibited offenses for a long enough time to justify a belief that the individual is likely to continue to maintain the good behavior.
* PHAs differ in their assessments of what constitutes a reasonable period. The model ACOP establishes a moderate standard of three years.
* Many PHAs establish different time frames for different offenses – the more serious the offense, the longer the period for which someone will be denied admission. For example, a low-level nonviolent offender does not pose the same risk as a convicted violent offender. If a PHA chooses to adopt a graduated schedule for criminal activities, it is important for the PHA to be familiar with the definition and categorization of criminal offenses under state laws.
* For ease of administration, the model ACOP establishes a single cut-off period.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

*Drug-related criminal activity*, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100].

*Violent criminal activity*, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].

Criminal activity that may threaten the health, safety, or welfare of other tenants [24 CFR 960.203(c)(3)].

Criminal activity that may threaten the health or safety of PHA staff, contractors, subcontractors, or agents.

Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**☑ Decision Point:** **What type of evidence will the PHA consider when determining if someone has engaged in any of the prohibited criminal activities?**

Things to Consider

* To allow for both consistency and flexibility, the model ACOP gives examples of evidence, but does not limit evidence to these categories.
* If your PHA has established specific indicators to determine whether or not someone has engaged in criminal activity, the model policy language should be replaced or edited, to contain these indicators.
* The model policy language clarifies that a conviction will be given more weight than an arrest or an eviction due to the more serious nature of a conviction.
* If your PHA adopts a different time-period for considering an applicant’s criminal activity than in the default policy above (three years), that change should be reflected in this policy.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

Any record of convictions, arrests, or evictions for suspected drug-related or violent criminal activity of household members within the past three years.

A record or records of arrest will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying criminal activity.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**☑ Decision Point: Will the PHA consider mitigating circumstances when determining whether or not to deny an applicant family admission?**

Things to Consider

* In the event of the receipt of unfavorable information with respect to an applicant, consideration must be given to the time, nature, and extent of the applicant’s conduct (including the seriousness of the offense).
* To ensure consistency in the treatment of families it is important to define the factors (or circumstances) that will be considered. This section simply states that the PHA will consider the specific circumstances of each case. The actual factors are defined in Sections 3-III.F and 3-III.G.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

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

**☑ Decision Point:** **For what types of previous behavior will the PHA deny admission?**

Things to Consider

* In developing this policy, the PHA needs to think about what behaviors would most likely have an adverse affect on the financial condition of the PHA, the physical condition of the housing stock and premises, and the social environment of the development.
* In considering past behaviors, the PHA needs to determine what would indicate a strong likelihood of continued problems in the future if the family is admitted.
* The model policy states that the PHA will consider whether or not an applicant has a “pattern” of certain types of disqualifying behaviors rather than just looking at one occurrence.
* In the event of the receipt of unfavorable information with respect to an applicant, consideration must be given to the time, nature, and extent of the applicant’s conduct (including the seriousness of the offense). In accordance with the Violence against Women Act (VAWA), the PHA may also need to consider whether the cause of the unfavorable information may be that the applicant is the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking. To ensure consistency in the treatment of families it is important to define the factors (or circumstances) that will be considered. This policy simply states that the PHA will consider the specific circumstances of each case. The actual factors are defined in Sections 3-III.F and 3 III.G.
* The PHA will need more detailed procedures describing the specific requirements applicable to each of the screening criteria and how staff should document applicant compliance with the criteria. Such procedures are beyond the scope of this model policy or guide.
* The model policy language is largely based on screening criteria information found in the Public Housing Occupancy Guidebook [p. 48] and in 24 CFR 960.203(c).
  + *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

Has a pattern of unsuitable past performance in meeting financial obligations, including rent within the past three years.

Has a pattern of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences within the past three years which may adversely affect the health, safety, or welfare of other tenants.

Owes rent or other amounts to this or any other PHA or owner in connection with any assisted housing program.

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

Has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program in the last three years.

Owes rent or other amounts to any PHA in connection with Section 8, public housing, or other public housing assistance under the 1937 Act, unless the family repays the full amount of the debt prior to being selected from the waiting list.

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

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

Has engaged in or threatened violent or abusive behavior toward PHA personnel.

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

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

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

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**3-III.E. SCREENING**

**Screening for Eligibility**

This section describes the PHA’s obligation to conduct screening for eligibility related to criminal behavior, including the requirement to run criminal background checks to determine whether a family member is subject to a lifetime registration requirement in a state sex offender program.

**☑ Decision Point: Will the PHA perform criminal background checks on all adult household members or will the PHA establish another criterion for conducting criminal background checks?**

Things to Consider

* The model policy states that the PHA will conduct criminal background checks through local law enforcement for all adult household members.
* If the PHA does not conduct criminal background checks on all adult applicants, there is a much greater risk of admitting someone into public housing who is not suitable.
* If the local law enforcement check comes back inconclusive, the policy states that the PHA will request information from the NCIC.
* The PHA may not pass along to the applicant the costs of a criminal records check or require the applicant to bear the initial cost to be reimbursed by the PHA upon receipt of the information.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will perform criminal background checks through local law enforcement for all adult household members.

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**☑ Decision Point: Will the PHA use a national database covering sex offender registries in all states to screen applicants for admission in lieu of asking for a complete list of all states in which any household member has resided?**

Things to Consider

* Notice PIH 2012-28, issued June 11, 2012, states that applicants for admission into HUD-assisted housing programs must provide a complete list of all states in which any household member has resided for the purposes of screening out lifetime registered sex offenders.
* However, the notice offers as an alternative that the PHA use a national database covering sex offender registries in all states, if access exists. Whatever method the PHA chooses must be included in the ACOP.
* In the notice, HUD encourages the use of the Dru Sjodin National Sex Offender Database, an online, searchable database that combines the data from individual state sex offender registries and other national, state, or local resources. The Dru Sjodin database is available at <http://www.nsopw.gov>.
* Because using such a database streamlines the process, and comes recommended in Notice PIH 2012-28, we have included it here as the default policy in place of asking applicants to provide lists.
* Note that per the FAQs on Notice PIH 2012-28, PHAs may not implement policies that automatically deny admission to applicants for the duration of their sex offender registration requirement, regardless of circumstances, if the registration requirement is less than life.

🞎 *Option 1: Use the model plan language shown below. No changes to the model plan are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy***.**

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

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

**☑ Decision Point: Will the PHA obtain information from drug abuse treatment facilities, and if so, which policy will it follow?**

Things to Consider

* If the PHA chooses to obtain such information from drug abuse treatment facilities, it must choose either policy A or B as described below.
* Policy A states that the PHA will request the information for all families, for each household member, before they are admitted (see Option 2).
* Policy B states that the PHA will request the information only for certain household members, whose criminal record indicates prior arrests or conviction for any criminal activity that may be a basis for denial of admission or whose prior tenancy records indicate that the proposed household member engaged in destruction of property or violent activity against another person, or they interfered with the right of peaceful enjoyment of the premises of other residents (see Option 3).
* Obtaining such information is time consuming; therefore the model policy applies Policy B by stipulating that information will be obtained from drug abuse treatment centers when the PHA has determined that the family is ineligible based on a family member’s history of drug-related criminal activity, and the family claims that the culpable member has successfully completed a rehabilitation program.
* A PHA may also opt not to obtain such information (see Option 4). If the PHA chooses not to request this information, policies in 3-III.B. and 3-III.F. regarding verification of successful completion of a drug rehabilitation program may need to be revised.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Edit the model ACOP to reflect Policy A by deleting the ACOP model language and inserting the language below.*

The PHA will request, before any family is admitted, information from drug abuse treatment facilities to determine whether any applicant’s head and spouse regardless of age and all other household members who are at least 18 years of age, are currently engaging in illegal drug activity.

Such requests will require the head, spouse (regardless of age) and all other household members who are at least 18 years of age to sign one or more consent forms that request any drug abuse treatment facility to inform the PHA of such information.

🞎 *Option 3: Edit the model ACOP to reflect a broader use of Policy B by deleting the ACOP model language and inserting the language below.*

The PHA will request, before any family is admitted, information from drug abuse treatment facilities to determine whether certain household members are currently engaging in illegal drug activity.

The PHA will only request such information for household members whose criminal record indicates prior arrests or conviction for any criminal activity that may be a basis for denial of admission or whose prior tenancy records indicate that the proposed household member engaged in destruction of property or violent activity against another person, or they interfered with the right of peaceful enjoyment of the premises of other residents. Such household members will be required to sign one or more consent forms that request any drug abuse treatment facility to inform the PHA of such information.

🞎 *Option 4: Delete the model ACOP language and insert the language below.*

The PHA chooses not to obtain information from drug abuse treatment facilities to determine whether any applicant family’s household members are currently engaging in illegal drug activity.

**Screening for Suitability as a Tenant**

The PHA is responsible for the screening and selection of families to occupy public housing units.

**☑ Decision Point:** **What type of information will the PHA consider in order to properly screen families for admission?**

Things to Consider

* 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.
* PHA staff need guidance as to what information will be used to determine the suitability of families applying for admission to ensure consistency. The PHA will need more detailed procedures describing the specific requirements applicable to each of the screening criteria and how staff should document applicant compliance with the criteria. Such procedures are beyond the scope of this policy or guide.
* The model policy language ensures that the PHA will consider the family’s ability to comply with the terms of the lease. Generally, PHAs should reject applicants who have recent behavior that would warrant lease termination for a public housing resident.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will consider the family’s history with respect to the following factors:

Payment of rent and utilities

Caring for a unit and premises

Respecting the rights of other residents to the peaceful enjoyment of their housing

Criminal activity that is a threat to the health, safety, or property of others

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

Compliance with any other essential conditions of tenancy

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Resources Used to Check Applicant Suitability**

PHAs have a variety of resources available to them for determination of the suitability of applicants.

**☑ Decision Point:** **What types of information will the PHA obtain in order to properly screen families for admission and what time frame will be considered?**

Things to Consider

* HUD provides considerable flexibility in the use of resources available to PHAs for the determination of suitability. The model language attempts to be as inclusive as possible of resources a PHA would want to utilize in order to make a sound decision on the suitability of an applicant family.
* Since there are no regulatory requirements that limit the PHA’s access to such information, the PHA may wish to add or delete sources of information as needed by modifying or replacing the model language stated below.
* In determining the time period to review, the PHA will want enough information to appropriately determine the suitability of an applicant family.
* The PHA will also want to establish that the family member has refrained from unsuitable behaviors and practices for a long enough time to justify a belief that the individual is likely to continue to maintain the good behavior.
* The model ACOP states that the PHA will gather relevant information for the past 5 years.
* You may establish different time frames for different information, however, for ease of administration, the model ACOP establishes the same time period for all information.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

*Past Performance in Meeting Financial Obligations, Especially Rent*

PHA and landlord references for the past three years, gathering information about past performance meeting rental obligations such as rent payment record, late payment record, whether the PHA/landlord ever began or completed lease termination for non-payment, and whether utilities were ever disconnected in the unit. PHAs and landlords will be asked if they would rent to the applicant family again.

Utility Company references covering the monthly amount of utilities, late payment, disconnection, return of a utility deposit and whether the applicant can get utilities turned on in their name (Use of this inquiry will be reserved for applicants applying for units where there are tenant-paid utilities.)

If an applicant has no rental payment history the PHA will check court records of eviction actions and other financial judgments, and credit reports. A lack of credit history will not disqualify someone from becoming a public housing resident, but a poor credit rating may.

Applicants with no rental payment history will also be asked to provide the PHA with personal references. The references will be requested to complete a verification of the applicant’s ability to pay rent if no other documentation of ability to meet financial obligations is available. The applicant will also be required to complete a checklist documenting their ability to meet financial obligations.

If previous landlords or the utility company do not respond to requests from the PHA, the applicant may provide other documentation that demonstrates their ability to meet financial obligations (e.g. rent receipts, cancelled checks, etc.)

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

PHA and landlord references for the past three years, gathering information on whether the applicant kept a unit clean, safe and sanitary; whether they violated health or safety codes; whether any damage was done by the applicant to a current or previous unit or the development, and, if so, how much the repair of the damage cost; whether the applicant’s housekeeping caused insect or rodent infestation; and whether the neighbors complained about the applicant or whether the police were ever called because of disturbances.

Police and court records within the past three years will be used to check for any evidence of disturbance of neighbors or destruction of property that might have resulted in arrest or conviction. A record or records of arrest will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying criminal activity.

A personal reference will be requested to complete a verification of the applicant’s ability to care for the unit and avoid disturbing neighbors if no other documentation is available. In these cases, the applicant will also be required to complete a checklist documenting their ability to care for the unit and to avoid disturbing neighbors.

Home visits may be used to determine the applicant’s ability to care for the unit.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**3-III.F. CRITERIA FOR DECIDING TO DENY ADMISSION**

**Evidence**

**☑ Decision Point:** **What standard of evidence will the PHA use to support denial of admission for prohibited activities?**

Things to Consider

* There is no mention of the term “preponderance of evidence” in the public housing regulations; however, it is discussed in the housing choice voucher regulations in the context of termination of assistance and the Moderate Rehabilitation program in the context of denial or termination of assistance.
* This standard of using *preponderance of the evidence* is also consistent with the guidelines for making decisions in the voucher program’s informal hearing process [24 CFR 982.555(e)(6)].
* The model ACOP extends this philosophy to cover the denial of admission in the public housing program, and uses it as the standard for evaluating all grounds for denial of admission.
* Whatever standard of evidence is selected here should match the standard selected in Chapter 13, Terminations.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA 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 as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Consideration of Circumstances**

**☑ Decision Point:** **What circumstances will the PHA consider when deciding whether to deny admission?**

Things to Consider

* Except in the cases discussed in 3-III.B., where denial of admission is mandatory, HUD gives the PHA discretion about whether to deny admission.
* The regulations give the PHA the authority to consider all relevant circumstances. By establishing a local policy about the kinds of circumstances that will be considered, the PHA can help ensure that staff consistently take the same types of information into consideration when making their decisions. If your PHA would prefer to include different or additional criteria in the policy, you will need to edit the model ACOP accordingly.
* The model policy clarifies that the PHA will consider these factors prior to making its decision to deny admission, rather than waiting to consider the mitigating circumstances as part of the informal hearing process. This approach saves time for the family and the PHA and in many cases helps avoid holding unnecessary informal hearings that will ultimately result in the family being admitted.
* Notice PIH 2015-19 states that the fact that someone has been arrested does not itself prove that the person has engaged in criminal activity and is not an acceptable reason to deny assistance. Further, HUD does not recommend the adoption of a ‘one-strike’ policy for criminal activity. Therefore, the language in the model policy clarifies that the PHA will not rely on an arrest alone, but if evidence of an arrest is found as part of the screening process, will instead consider other factors and circumstances surrounding the arrest. While HUD has stated that it may be advisable to wait until the arrest disposition, PHAs may continue to obtain and review police reports, records of disposition of any criminal charges, and/or other evidence associated with the arrest in order to make an eligibility determination.
* If you wish to amend the model policy, bear in mind that HUD’s Office of General Counsel has stated that it is not acceptable to adopt blanket policies for denials for either arrests or convictions for criminal activity. Further, a policy that fails to consider the nature, severity, and recency of the circumstances surrounding an arrest or conviction may also be considered discriminatory under the Fair Housing Act.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will consider the following facts and circumstances prior to making its decision:

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

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

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

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

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

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

Whether criminal charges were filed

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

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

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

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

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

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

🞎 *Option 2:* *Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Removal of a Family Member’s Name from the Application**

The PHA is authorized to deny admission unless the family agrees that a family member who participated in or was culpable for an offense will not live in the unit.

**☑ Decision Point:** **Will the PHA consider admitting the family if the culpable family member is removed from the application and will not live in the unit?**

Things to Consider

* Allowing a family to continue the application and tenant selection process when a culpable family member leaves can be a sensible way to accommodate the needs of family members who were innocent of wrong-doing. The regulation does not address the problem of such an individual returning to the unit as a guest. The model ACOP includes a policy that requires the head of household to certify that the individual will not be permitted to visit or stay in the unit. The PHA could choose a policy that restricts only whether the individual stays in the unit overnight, rather than restricting all visits. However, prohibiting visits as well as staying as a guest should facilitate administration of the policy by requiring that the individual stay away from the unit entirely.
* Prior to admission, the culpable family member may continue residing with the family. Once the family is admitted, however, if the PHA believes that the former family member is continuing to stay in the unit despite the head of household’s certification, the policy in the model ACOP permits the PHA to require the family to provide information about the individual’s new address as evidence that the person has not moved to the public housing unit with the family. Having such a policy stated explicitly should facilitate the PHA’s efforts to ensure compliance with the family’s commitment to deny the offending individual access to the unit.

🞎 *Option 1:* Use *the model ACOP language shown below. No changes to the model ACOP are needed.*

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 public housing unit.

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Reasonable Accommodation**

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

**☑ Decision Point:** **Do you want to elaborate on how the PHA will handle requests for reasonable accommodations related to denial of admission?**

Things to Consider

* Some PHAs have experienced problems with offering reasonable accommodations to deal with family offenses. For example, some families request reasonable accommodations when the family member’s disability was not related to the offense. Others have requested accommodations that will not prevent a recurrence of the offense. Policies elsewhere in the ACOP (see Chapter 2) discuss the PHA’s obligation to offer reasonable accommodations to family members with disabilities. Here, the intent of the policy is to clarify that any accommodation must directly address the problem for which the denial of admission is being considered.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2:* *Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

The Violence against Women Act (VAWA) prohibits the PHA from denying admission to an applicant who otherwise qualifies for the public housing program on the basis or as a direct result of the fact that the applicant is a victim of domestic violence, dating violence, sexual assault, or stalking [24 CFR 5.2005(b)]. This section describes how the PHA will comply with this prohibition.

* 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.

**Notification**

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

**☑ Decision Point:** **What will the PHA do to ensure that a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking is not denied admission on the basis of an unfavorable history for which she or he may not be culpable?**

Things to Consider

* VAWA requires the PHA to inform an applicant of the protection against denial that VAWA provides when the PHA sends the applicant a notice of denial.
* Applicants may be denied due to factors that on the surface appear unrelated to domestic violence, dating violence, sexual assault, stalking, or human trafficking, but are in fact a direct result of the fact that the applicant was a victim. Adverse factors which would ordinarily be grounds for denial under PHA policy such as poor credit history, poor rental history, a criminal record, or failure to pay rent may be tied to the applicant’s status as a victim. While the PHA is not required to independently identify whether a denial is a direct result of domestic violence, dating violence, sexual assault, stalking, or human trafficking by informing all applicants of their rights under VAWA as part of the notice of denial, the applicant may be able to inform the PHA of their status as a victim. If so, the applicant must provide enough information for the PHA to make a determination regarding the adverse factor that is a direct result of their status as a victim. The PHA may request additional supporting documentation in accordance with PHA policies. The PHA must make an objectively reasonable determination, based on all circumstances whether the adverse factors are a direct result of the applicant’s status as a victim. If the denial is required by federal statute, such as the requirement to deny an applicant who is registered under a state lifetime sex offender registration requirement, the PHA must comply with the statute, even if the adverse factor is a direct result of domestic violence, dating violence, sexual, assault, stalking, or human trafficking.
* The model policy considers adverse factors relating to an applicant’s status as a victim and states the PHA will make an objectively reasonable determination.
* The model policy calls for an applicant claiming protection under VAWA to notify the PHA within 14 business days. If the PHA requires the applicant to provide documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the applicant would be entitled to additional time to provide the documentation (see section 16-VII.D of the model ACOP).

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

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

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Documentation**

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

**☑ Decision Point:** **Will the PHA require documentation of abuse from an otherwise qualified applicant who claims the protection against denial afforded by VAWA to victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking?**

Things to Consider

* If an applicant asserts that an unfavorable history is the result of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and that a member of the applicant’s family was a victim of the abuse, the PHA likely will want some documentation to support the assertion.
* Form HUD 5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, states that victims are not expected and cannot be asked or required to claim, document, or prove victim status or VAWA violence or abuse other than as stated in the Notice of Occupancy rights, Form HUD-5380. The PHA’s policies in 16-VII.D referenced below should reflect this practice.
* The VAWA regulations make it clear that the same statutory documentation requirements that apply to public housing tenants who claim to be victims of domestic violence, dating violence, sexual assault, or stalking also apply to program applicants [24 CFR 5.2007]. These requirements are discussed in section 16-VII.D of the model ACOP.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

***Perpetrator Documentation***

**☑ Decision Point:** **If an applicant family contains both the victim and the perpetrator of domestic violence, dating violence, sexual assault, stalking, or human trafficking, will the PHA require additional documentation either removing the perpetrator from the application or demonstrating that they have successfully undergone, or is undergoing, rehabilitation?**

Things to Consider

* In some cases, both the perpetrator and the victim of domestic violence may apply for admission to the program together. VAWA protects victims from denial, but not perpetrators. If the perpetrator is removed from an applicant household and the victim is otherwise eligible, there will be no grounds for denial and the PHA will have satisfied the law by admitting the victim. However, there will be times when the victim may not wish to remove the perpetrator from the household because the perpetrator has successfully undergone, or is successfully undergoing, treatment or rehabilitation. In such cases the interests of the victim may be better served by admitting the entire family, including the perpetrator.
* Public housing regulations require the PHA to establish and adopt written policies that preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on other residents in a project or on the project environment [24 CFR 960.202(a)(2)(iii)]. PHAs must take this obligation, as well as VAWA requirements, into account when making a decision about whether to admit a family with a history of domestic violence if the perpetrator is still in the household.
* The model ACOP policy is based on the premise that a PHA can be reasonably sure that the behavior that was the cause of concern will not occur again if the offending family member has successfully undergone rehabilitation, is currently participating in treatment, or is no longer in the household.
* There is a possibility that requiring a perpetrator to be removed from a household or to undergo treatment could precipitate more abuse. Therefore, before adopting a policy on this issue, the PHA would be well advised to consult both with legal counsel and with domestic violence advocacy groups or service providers.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

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

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**3-III.H. NOTICE OF ELIGIBILITY OR DENIAL**

This section refers to Section 4-III.E. of the ACOP for policies regarding the PHA’s final determination of an applicant family’s eligibility. Notice requirements related to denying admission to noncitizens are contained in Section 3-II.B.

It also describes special requirements related to a family’s denial based on criminal records or sex offender registration information.

**☑ Decision Point:** **If a criminal record or sex offender registration information is the basis of a denial, how long will the family be given to dispute the accuracy and relevance of the information before the PHA can move to deny the application?**

Things to Consider

* The regulations require PHAs to provide an applicant the opportunity to dispute the accuracy and relevance of a criminal record or sex offender registration information before the PHA can move to deny the application, based upon the information in such a record, if the record was obtained under 24 CFR 5, Subpart J. In addition, a copy of the record must be provided to the subject of the record [24 CFR 5.903(f) and 5.905(d)].
* The policy language clarifies that the family will have 10 business days to dispute the criminal record information after being notified by the PHA of the proposed denial. The policy also clarifies that if a family does not exercise this right prior to denial, they will still have the opportunity to dispute the record through the informal hearing process.
* PHAs may want to consider extending the number of days applicants have to dispute criminal record information. Providing a longer period of time is helpful to applicants that are homeless or not stably housed.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

If, based on a criminal record or sex offender registration information an applicant family appears to be ineligible, the PHA will notify the family in writing of the proposed denial and provide a copy of the record to the applicant and to the subject of the record. The family will be given 10 business days to dispute the accuracy and relevance of the information. If the family does not contact the PHA to dispute the information within that 10 day period, the PHA 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 hearing process.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**FINALIZING THE DOCUMENT**

Take a final look at the changes you have made in this chapter of the ACOP.  
Have you:

(1) Added or subtracted any exhibits at the end of the chapter?  Yes  No.

(2) Added, subtracted or reordered any major sections (at the A, B, or C level?)  Yes  No

If you answered yes to either of these questions, you must adjust the chapter to match your changes.

**☑ Decision Point: Are any changes required to this chapter?**

No. No changes to the model policy are needed.

Yes. Edits only. Edit and insert PHA language as appropriate.

Yes. PHA changed the organization of the chapter. Adjust the chapter to reflect your changes **and** review the rest of the document to make sure that any references to section numbers are correct.

**☑ Decision Point: Are changes required in other chapters as a result of changes to this chapter?**

Check the “Things to Consider” under each decision point to identify if changes to the model policy will require changes to policies in other chapters of the ACOP.

No. Changes to other chapters are not necessary.

Yes. Changes to the following chapters are also required: