**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 Assistance. This part covers factors related to an applicant’s past or current conduct (e.g., criminal activity) that can cause the PHA to deny assistance as well as the asset limitation for HCV.

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

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

**3-I.A. OVERVIEW**

Some eligibility criteria and program rules vary depending upon the composition of the family requesting assistance. This part provides information that is needed to correctly identify family and household members and to determine whether each household member and the family as a whole are eligible for admission to the program. The PHA must verify all eligibility-related information as discussed in Chapter 7 (Verifications). **No policy decisions are required.**

**3-I.B. FAMILY AND HOUSEHOLD [24 CFR 5.403; FR Notice 02/03/12; Notice PIH 2014‑20; and FR Notice 2/14/23]**

This section of the plan 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.

🞎 *Option 1: Use the model plan language shown below. No changes to the model plan 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: Use PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

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

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

The PHA has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up. However, 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, with special considerations for HUD–VASH vouchers. Also, 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 plan language shown below. No changes to the model plan 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 make a new application with a new application date if the waiting list is open.

🞎 *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 handle breakups of participant families?**

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

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

🞎 *Option 2: Use PHA-established policy. Edit the model plan 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 retain assistance?**

Things to Consider

* The voucher is a valuable resource and decisions about who gets assistance 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 plan identifies some appropriate considerations. The PHA may not consider any factors that would discriminate against a protected class.

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

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 to receive assistance. In making its determination, the PHA will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is 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 an assisted unit as a result of such actual or threatened abuse; (4) any possible risks to family members as a result of criminal activity; and (5) the recommendations of social service professionals.

🞎 *Option 2: Use PHA-established policy. Edit the model plan 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 plan assigns the family the responsibility of designating a head of household.
* The model plan 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 plan accordingly.

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

The family may designate any qualified family member as the head of the 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 plan 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 plan 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 plan accordingly.

🞎 *Option 1: Use the model plan language shown below. No changes to the model plan 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, roommates, or significant others who are not marriage partners. A minor who is emancipated under state law may be designated as a spouse.

🞎 *Option 2: Use PHA-established policy. Edit the model plan 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 plan language shown below. No changes to the model plan are needed.*

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

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

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

**Joint Custody of Dependents**

**☑ Decision Point: How will the PHA determine whether or not dependents subject to joint custody arrangements will be considered part of the assisted 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 plan 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 assisted 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 plan language shown below. No changes to the model plan 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 participant family 50 percent or more of the time.

🞎 *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 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, 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.*
* 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 plan language shown below. No changes to the model plan are needed.*

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

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

**3-I.G. FULL-TIME STUDENT [24 CFR 5.603, HCV GB p. 5-29]**

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 plan. 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 assisted 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 an assisted family as a guest before this person must be considered a family member?**

Things to Consider

* The PHA's major concern is to avoid instances of program abuse in which an individual receives the benefit of HCV assistance on a continuing basis, but the family does not report the individual's income. Although any rule will be hard to enforce and program abuse will be difficult to document, the PHA's plan should specify the policy that will guide the PHA’s actions.
* The consecutive and cumulative days included in the model plan are not regulatory and may be changed, but the guest policy should not infringe on a family's ability to have legitimate guests.
* In the model plan, 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.
* If you change the policy here (the number of days a guest can remain in the unit), you will also need to change the policy in Section 11-II.B.

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

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

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

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

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

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

**☑ 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 according to the PHA’s subsidy standards as outlined in Chapter 5. The PHA may instead wish to use local building codes or another methodology.
* Section 11.II.B., New Family and HouseholdMembers Requiring Approval, includes a similar policy on the approval of foster children and adults. If changes are made to the policy here, changes will also need to be made to the policy in Section 11.II.B.

🞎 *Option 1: Use the model plan 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 result in a violation of space standards as described in Section 8-I.F. of this policy.

🞎 *Option 2: Delete the model plan language and use the language below:*

A foster child or foster adult may be allowed to reside in the unit if their presence would not result in a violation of local building codes.

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

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

This section of the plan 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.

**Definition 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 the family. The model plan uses 180 days as the dividing line between temporary and permanent absences. This is not regulatory. However, the concept is consistent with the HUD regulation that addresses absence of the entire family.
* The definition of “temporarily” absent 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 Chapter 6.

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

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

🞎 *Option 2: Use PHA-established policy. Edit the model plan 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 may benefit by continuing to count the student as a family member. In that case, the family would retain the dependent deduction. The student’s presence in the family may or may not make a difference in voucher size.
* The policy in the model plan 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.
* 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 plan language shown below. No changes to the model plan 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 plan language or delete it and insert the PHA’s policy.*

**Absences Due to Placement in Foster Care [24 CFR 5.403]**

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

**☑ 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 plan 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.
* 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 plan language shown below. No changes to the model plan 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 plan 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 plan 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 the regular income that the absent person sends to the family.
* 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 plan language shown below. No changes to the model plan 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 plan language or delete it and insert the PHA’s policy.*

🞎 *Option 3: Delete the model plan 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.*

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

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

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

Things to Consider

* 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 plan includes this 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 for the HCV program. Although a HUD reviewer could question the decision, using Option 2 should not result in a monitoring finding.
* 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 plan language shown below. No changes to the model plan are needed.*

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

The PHA will request verification of the family member’s permanent absence from a responsible medical professional. If the responsible medical professional cannot provide a determination, the person will be considered temporarily absent. If the family certifies that the family member is confined on a permanent basis, they may present, and the PHA will consider, any additional documentation or evidence.

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

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.

**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 plan clarifies that any returning adult must meet program eligibility and screening requirements again.

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

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

🞎 *Option 2: Use PHA-established policy. Edit the model plan 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 model plan requires the PHA to obtain third-party verification, as well as a certification from the family and live-in aide, to document that an individual qualifies as a live-in aide.
* The model plan clarifies that in certain situations, live-in aides will not be approved, or their approval may be withdrawn. Elsewhere in this chapter, the policy is clear that all household members, including a live-in aide, must meet the mandatory eligibility requirements.
* The model plan gives the PHA 10 business days (the standard throughout much of the plan) to make the determination and notify the family regarding the approval or disapproval of a live-in aide.

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

A family’s request for a live-in aide may be made either orally or in writing. The PHA will verify the need for a live-in aide with a reliable, knowledgeable professional, 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 will not approve a particular person as a live-in aide, and may withdraw such approval if [24 CFR 982.316(b)]:

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

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

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

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

🞎 *Option 2: Use PHA-established policy. Edit the model plan 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**

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 982.201 and Notice PIH 2023-27]**

Income limits are used for eligibility only at admission. Eligibility is established by comparing a family's annual income with HUD’s published income limits.

**☑ Decision Point: How will the PHA define “continuously assisted?”**

Things to Consider

* A *low-income* family that has been "continuously assisted" under the 1937 Housing Act is eligible for HCV assistance.
* The intent of the regulation is to protect families that may be moving from another form of 1937 Act assistance such as public housing, moderate rehabilitation, or project-based vouchers. It also is intended to cover unavoidable gaps in assistance (e.g., when a family must move out of one unit before they are approved for tenancy in another).
* It would be possible for the PHA to implement a policy that stipulates the length of the gap that may take place between leaving one type of assistance and actually beginning to receive HCV assistance. This approach deals more directly with the actual receipt of assistance. However, delays in processing a family’s assistance could produce too long a gap, resulting in a family that loses assistance due to processing errors. The policy provided in the model plan avoids this type of difficulty.

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

The PHA will consider a family to be continuously assisted if the family was leasing a unit under any 1937 Housing Act program at the time they were selected from the PHA’s waiting list.

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

**☑ Decision Point: Will the PHA establish any additional categories of low-income persons who may be determined eligible?**

Things to Consider

* The regulations allow the PHA to admit low-income families that meet additional eligibility criteria specified by the PHA in the administrative plan, provided such criteria is consistent with the PHA plan and with the consolidated plans for local governments in the PHA jurisdiction.
* The *Eligibility Determination and Denial of Assistance* chapter of the *New HCV Guidebook* provides the following definition of *additional eligibility criteria*: a criterion set by the PHA to address essential local housing needs. If the PHA wishes to set such criteria, no model language has been provided since this would be specific to the PHA’s jurisdiction. Examples of such criteria include:
  + For example, if the PHA has established a preference for persons displaced by local government action or the local government is undertaking revitalization activities that may displace low-income households, the PHA should consider designating these families as exceptions and allowing the use of the low-income limit in eligibility determinations for such families.
  + Or a PHA may administer its HCV program in a jurisdiction that offers locally funded assisted housing to low-income families. The PHA may include a policy in its administrative plan stating the low-income limit will be applied when determining income eligibility for families transitioning from locally funded assisted housing.
* Further, the PHA may establish the low-income limit as the income limit for all families. This may result in some higher-income families being eligible to the program, which will in turn result in the PHA paying less on behalf of these families. However, the income targeting requirements stated below will still apply. If the PHA wishes to use the low-income limit for all families, Option 2 should be selected.
* The model plan assumes that the PHA has not established any additional categories.

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

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

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

The PHA will utilize the low-income limit for all applicants.

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

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

This section discusses HUD’s requirement that at least 75 percent of the families admitted to the PHA's program during a PHA fiscal year must be extremely low-income families. **No policy decisions are required.**

**3-II.B.** **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 plan 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 plan language shown below. No changes to the model plan 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: Delete model plan language and substitute language as shown below.*

Family members who declare citizenship or national status will be required to provide documentation for verification purposes.

🞎 *Option 3: Use PHA-established policy. Edit the model plan 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. Verification of eligibility for this purpose occurs when the individual or family members have submitted documentation to the PHA in accordance with program requirements [24 CFR 5.512(a) and (b)].

**☑ 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 plan language shown below. No changes to the model plan are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model plan 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 plan gives the PHA 10 business days (the standard throughout much of the plan) to notify the family regarding the denial of assistance. The content of the notice of denial and the offer for an informal hearing are required by regulation.
* If the 10 business day time frame is changed here, it must also be changed in Section 16-III.D, USCIS Appeal Process.

🞎 *Option 1: Use the model plan language shown below. No changes to the model plan 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, that the family may be eligible for proration of assistance, and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS) or to request an informal hearing with the PHA. The informal 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 informal hearing process.

Informal hearing procedures are contained in Chapter 16.

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

### **Timeframe 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 plan 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 plan language shown below. No changes to the model plan are needed.*

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

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

**3-II.C. 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.D. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.230, 24 CFR 5.232, and** **HCV GB, p. 5-13]**

This section describes the family’s obligation to consent to the release of information needed to verify required information.

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 of admission or termination of assistance [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.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION [24 CFR 5.612 and FR Notice 4/10/06, FR Notice 9/21/16]**

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

**Definitions**

This section provides definitions that are needed to determine which students are affected by the eligibility restrictions.

***Dependent Child***

This definition is provided by HUD in an April 10, 2006, *Federal Register* notice*;* therefore, **no policy decisions are required.**

***Independent Student***

**☑ Decision Point: What criteria will the PHA use to determine if a student is “independent” from their parents, making an examination of the student’s parents’ income unnecessary?**

Things to Consider

* The April 10, 2006, *Federal Register* notice “Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance” provides suggested criteria for determining a student’s independence from their parents.
* The model plan language adopts the criteria in the notice. When describing the criteria, the notice states, “These practices and criteria include but are not limited to consideration of all of the following…” This language provides flexibility for a PHA to develop additional criteria if desired.
* One of the criteria used in the model plan relies on the definition of *independent student* from the Department of Education. Therefore, the definition is included in the policy language.
* On September 21, 2016, HUD issued the *Federal Register* notice “Eligibility of Students for Assisted Housing under Section 8 of the U.S. Housing Act of 1937; Additional Supplementary Guidance,” updating previous guidance on what constitutes an *independent student.* The noticerevises the definition of *independent student* to reflect amendments made in 2007 to the Department of Education’s definition from the Higher Education Act of 1965 (HEA). The notice also provides that should a PHA determine that an individual is a *vulnerable youth,* such a determination is all that is necessary to determine a student is “independent” for eligibility purposes. The policy language below encompasses these changes.
* The model plan language refers to verification requirements in Section 7-II.E. If criteria are added in this section, the verification requirements in Section 7-II.E will need to be revised accordingly.

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

The PHA will consider a student “independent” from their parents and the parents’ income will not be considered when determining the student’s eligibility if the following four criteria are all met:

The individual is of legal contract age under state law.

The individual has established a household separate from their parents for at least one year prior to application for occupancy or the individual meets the U.S. Department of Education’s definition of independent student.

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

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

The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older

The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual’s state of legal residence

The individual is a veteran of the U.S. Armed Forces or is currently serving on active duty in the Armed Forces for other than training purposes

The individual is a graduate or professional student

The individual is married

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

The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:

A local educational agency homeless liaison

The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director

A financial aid administrator

The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances

The individual was not claimed as a dependent by their parents pursuant to IRS regulations, as demonstrated on the parents’ most recent tax forms.

The individual provides a certification of the amount of financial assistance that will be provided by their parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

If the PHA determines that an individual meets the definition of a *vulnerable youth,* such a determination is all that is necessary to determine that the person is an *independent student* for the purposes of using only the student’s income for determining eligibility for assistance.

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

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

***Institution of Higher Education***

The definition of *institution of higher education* is contained in section 102 of the Higher Education Act of 1965. **No policy decisions are required.**

***Parents***

**☑ Decision Point: How will the PHA define *parents* for purposes of the student eligibility restrictions?**

Things to Consider

* The PHA must define the term p*arents* in order to properly implement the restrictions on student eligibility.
* The definition of *parents* is needed to determine which students are subject to the eligibility restrictions. Students who reside with parents who are seeking or receiving section 8 assistance are not subject to the law. It only applies to students who are seeking assistance on their own, separately from their parents.
* PHAs must also use the definition of *parents* to determine if a student is independent from their parents, and to determine whose income will be considered when the income eligibility of the parents is required in order for the student to be eligible for assistance.
* The model plan uses the same definition of *parents* in all of the above circumstances.
* The model plan language adopts the definition recommended by HUD and contained in the April 10, 2006, *Federal Register,* with one exception. The model plan language includes stepparents in the definition of parents as long as they are currently married to the biological or adoptive parent. This inclusion is consistent with Department of Education requirements for reporting income on a Free Application for Federal Student Aid (FAFSA).

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

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

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

***Person with Disabilities***

The definition of *person with disabilities* is contained in section 3(b)(3)(E) of the 1937 Act. **No policy decisions are required.**

***Veteran***

**☑ Decision Point: How will the PHA define *veteran* for purposes of the student eligibility restrictions?**

Things to Consider

* In the April 10, 2006, *Federal Register*, HUD recommends adopting the definition used by the Department of Veterans Affairs, since use of this definition is widespread in other federal programs.
* The model language follows this recommendation and adopts the definition of *veteran* from 38 U.S.C. 101(2).

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

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

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

***Vulnerable Youth***

**☑ Decision Point: How will the PHA define *vulnerable youth* for purposes of the student eligibility restrictions?**

Things to Consider

* In the September 21, 2016, *Federal Register* notice, HUD provides that an individual who meets the Department of Education’s *independent student* definition in paragraphs (b), (c), or (h) as adopted in Section II of the notice is considered a *vulnerable youth*. The notice also uses as examples of “vulnerable youth,” unaccompanied homeless youth, at risk of being homeless youth, and youth who have aged out of the foster system.
* The model language uses language specific to these paragraphs of the notice to define *vulnerable youth*. HUD’s examples of “vulnerable youth” are covered within these definitions.

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

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

The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older

The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual’s state of legal residence

The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:

A local educational agency homeless liaison

The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director

A financial aid administrator

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

**Determining Student Eligibility**

**☑ Decision Point: What actions will the PHA take to determine if a student that is subject to the eligibility restrictions in 24 CFR 5.612 is eligible?**

Things to Consider

* When implementing the student rule, the PHA must first determine who is subject to the eligibility restrictions and then determine whose income must be reviewed in order to determine eligibility.
* The model plan language identifies the steps the PHA must take to determine eligibility and the actions the PHA will take based on the outcomes of those determinations.

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

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

Follow its usual policies in determining whether the student individually and the student’s “family” collectively are eligible for the program

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

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

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

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

***Determining Parental Income Eligibility***

**☑ Decision Point: What actions will the PHA take to determine if a student’s parents are income eligible?**

Things to Consider

* If the PHA determines that a student is not independent from his parents, the PHA must determine the income eligibility of the student’s parents.
* The model plan language explains how the PHA will determine whether or not to consider the parents’ income individually or jointly.
* If the student’s parents are married or if the student’s parent is single or widowed, the decision of whose income to consider is straightforward. However, if parents are divorced or separated, there may be extenuating circumstances to consider. The model language provides a framework for the PHA to make a decision about whose income to consider. This framework is based on Q&As issued by HUD subsequent to the 4/10/06, *Federal Register* notice, and is therefore considered safe harbor.
* The model plan language clarifies that the PHA will use the income limits for the jurisdiction in which the parents reside when determining the income eligibility of the parents.

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

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

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

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

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

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

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

🞎 *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 ASSISTANCE**

**3-III.A. OVERVIEW**

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

This subsection identifies actions that a PHA can take that are considered denial of assistance. **No policy decisions are required.**

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

This subsection lists the factors that the regulation precludes the PHA from taking into consideration when making its determination of eligibility. **No policy decisions are required.**

**3-III.B. MANDATORY DENIAL OF ASSISTANCE [24 CFR 982.553(a)** and 24 CFR 982.552(b)(6)**]**

**☑ Decision Point: Will the PHA 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 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 plan 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 plan language shown below. No changes to the model plan 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 plan 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 plan language or delete it and insert the PHA’s policy.*

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

Things to Consider

* To ensure consistency in the way staff handle denials of assistance, this term should be 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. This same definition is contained in Chapter 12. If you choose to change the definition here, it may need to be changed in Section 12-I.E.
* Option 2 provides an exception to the definition for those enrolled in and compliant with treatment.

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

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

🞎 *Option 2: Delete model plan 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 plan 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 plan gives examples of evidence that will be considered when determining “reasonable cause,” but does not limit evidence to these categories.
* The model plan clarifies that a conviction will be given more weight than an arrest due to the more serious nature of a conviction.
* The model plan language calls for the PHA to consider positive evidence along with negative evidence. This type of approach is more fair 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 plan language should be replaced or edited, to contain these indicators.

🞎 *Option 1: Use the model plan language shown below. No changes to the model plan 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. 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 plan language or delete it and insert the PHA’s policy.*

**☑ Decision Point: Should the PHA deny assistance 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 plan uses the regulatory requirement rather than imposing a stricter policy. However, if you wish to impose the stricter policy, you may select 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 plan 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 assistance.

🞎 *Option 3: Use PHA-established policy. Edit the model plan language or delete it and insert the PHA’s 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 space standards outlined in Chapter 8 of this policy 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 space standards in Chapter 8 of this policy.

🞎 *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 geographic 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 ASSISTANCE**

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

**Criminal Activity [24 CFR 982.553]**

**☑ Decision Point: For which criminal activities will the PHA deny assistance and how will the PHA define *reasonable time*?**

Things to Consider

* The model plan language states that the PHA will deny assistance for any drug-related or violent criminal activity, or criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents, persons residing in the immediate vicinity, or the property management staff or contractors, if the behavior has occurred within the past five years.
* In defining what constitutes a reasonable period, 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 plan establishes a moderate standard by using three years.
* Many PHAs establish different timeframes for different offenses – the more serious the offense, the longer the period for which someone will be denied assistance. For example, a low-level non-violent 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 plan establishes a single cut-off period.
* The PHA will also need to consider how it will define *immediate vicinity.*

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

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

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

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

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

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

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

🞎 *Option 2: Use PHA-established policy. Edit the model plan 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 plan 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 plan language should be replaced or edited, to contain these indicators.
* If your PHA adopts a different time period for considering an applicant’s criminal activity than in the default policy above, that change should be reflected in this policy.

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

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

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

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

🞎 *Option 2: Use PHA-established policy. Edit the model plan 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 assistance?**

Things to Consider

* The regulations allow PHAs to consider the specific circumstances of an applicant family when deciding whether or not to deny assistance. To ensure consistency in the treatment of families, these factors (or circumstances) must be defined. This section simply states that the PHA will consider the specific circumstances of each case. The plan defines these factors in Section 3-III.F.
* HUD regulations also allow PHAs to consider the preponderance of evidence when making a determination of eligibility. This information is also contained in Section 3‑III.F and 3-III.G.

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

In making its decision to deny assistance, the PHA will consider the factors discussed in Section 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 plan language or delete it and insert the PHA’s policy.*

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

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

**☑ Decision Point: For which types of behavior will the PHA deny assistance?**

Things to Consider

* The regulations allow PHAs to deny assistance based on violations of family obligations under a previous assisted tenancy. The model plan denies assistance for some, but not all, family obligations. In this plan, we have chosen to deny assistance only for the more serious violations.
* A PHA may want to review the family obligations under 24 CFR 982.551, to see if there are any additional obligations they would like to add to the list.
* With the exception of family obligation violations, the model plan states that the PHA will deny assistance for all the reasons listed under 24 CFR 982.552(c). In the case of a family previously engaging in criminal activity, this issue is addressed under the heading of Criminal Activity, rather than in this section. If a PHA does not want to deny assistance based on each of these criteria, the plan will have to be edited accordingly.
* While the law at one time provided for discretionary denial of HCV program assistance if an HCV FSS family failed to comply with the requirements under the Contract of Participation, please note that this is no longer permitted [24 CFR 984.101(d).
* The model language includes a definition of abusive or violent behavior toward PHA personnel. This language matches language used in Chapter 12, Terminations. If you choose to edit this definition here, it should also be edited in Section 12-I.E.
* Similar to the previous policy, this policy also allows the PHA to consider specific circumstance when determining whether or not to deny an applicant family assistance.

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

The PHA **will** deny assistance to an applicant family if:

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

The family does not provide complete and true information to the PHA.

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

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

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

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

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

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

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

A family member has engaged in or threatened violent or abusive behavior toward 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 assistance, the PHA will consider the factors discussed in Section 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 plan language or delete it and insert the PHA’s policy.*

**3-III.E. SCREENING**

**Screening for Eligibility**

**☑ 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 plan states that the PHA will conduct criminal background checks through local law enforcement for all adult household members.
* 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 the cost of a criminal records check to the applicant or require the applicant to bear the initial cost to be reimbursed by the PHA upon receipt of the information. Therefore, PHAs may want to consider the expense involved in adopting this policy.

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

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

If the results of the criminal background check indicate that there may be past criminal activity, but the results are inconclusive, 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 plan 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 administrative plan.
* 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***.**

**Screening for Suitability as a Tenant [24 CFR 982.307]**

The PHA is permitted to conduct additional screening to determine whether an applicant is likely to be a suitable tenant and to deny assistance to families that do not meet the PHA’s screening criteria.

**☑ Decision Point: Will the PHA conduct additional screening?**

Things to Consider

* Screening is the owner’s responsibility under the program. However, the PHA may be able to encourage more owners to participate in the program by providing additional screening services. The PHA would be taking on additional workload by having to verify information collected for screening, as well as potential liability if the PHA obtains faulty information and passes it on to the owner. For these reasons, the model plan states that the PHA will not do any additional screening.

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

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

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

**☑ Decision Point: When will the PHA provide required information to the landlord, and will the PHA provide owners with information about a prospective tenant’s past history beyond that required by HUD regulations?**

Things to Consider

* HUD requires the PHA to provide prospective owners with the family’s current and prior address (as shown in PHA records) and the name and address (if known) of the landlord at the family’s current and prior addresses. HUD permits the PHA to provide owners with additional information as long as families are notified that the information will be provided and the same type of information is provided to all owners. The PHA should be mindful, however, that it may not disclose to an owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking except at the written request or with the written consent of the individual providing the documentation [see 24 CFR 5.2007(a)(4)].
* The model plan states that the PHA will inform owners of their responsibility to screen prospective tenants and provide owners with required address information at the time of the initial inspection or before. This language builds in flexibility, by allowing the PHA to provide the information at any time, up until the initial inspection.
* Although the PHA may possess additional information about the family’s history, such information should not be passed on to an owner unless it has been verified. As above, by deciding to provide such information to the owner, the PHA would be taking on both additional workload by having to verify information collected for screening and potential liability if the PHA obtains faulty or confidential information and passes it on to the owner. For these reasons, the model plan states that the PHA will not pass on any additional information to the owner.
* If you decide to pass on information to the owner, be sure to get legal counsel to ascertain whether the kinds of information that can be passed on are limited by state or local law.

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

The PHA will inform owners of their responsibility to screen prospective tenants and will provide owners with the required address information, at the time of the initial inspection or before. The PHA will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

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

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

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

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

Things to Consider

* For violent and drug-related criminal activity, HUD permits the PHA to **terminate** assistance if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 CFR 982.533(c)].
* In addition, in the moderate rehabilitation program, this standard of *preponderance of the evidence* may be used in a decision to **deny** or **terminate** assistance [24 CFR 882.514(g)(1)].
* Although the HCV regulations do not specifically address *preponderance of the evidence* as it relates to denial of assistance, the model plan extends this philosophy to cover the denial of assistance, and uses it as the standard for evaluating all grounds for denial of assistance, not just those related to violent criminal or drug-related criminal activity.
* This standard of using *preponderance of the evidence* is also consistent with the guidelines for making decisions in the informal hearing process [24 CFR 982.555(e)(6)].
* Whatever standard of evidence is selected here should match the standard selected in Section 12-II.C.
* The definition of *preponderance of the evidence* is the same as is used in Chapters 12, 14, and 16. Therefore, any changes made to the definition here must also be made in those chapters.

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

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

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

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

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

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

Things to Consider

* Except in the cases discussed in 3-III.B., where denial of assistance is mandatory, HUD gives the PHA discretion about whether to deny assistance. HUD authorizes the PHA to consider all relevant circumstances and to impose the requirement that family members who participated in or were culpable for an offense not live in the unit.
* 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 plan accordingly.
* The model plan clarifies that the PHA will consider these factors prior to making its decision to deny assistance, rather than waiting to consider the mitigating circumstances as part of the informal review process. This approach saves time for the family and the PHA and, in many cases, helps avoid holding unnecessary informal reviews that will ultimately result in the family being admitted.
* HUD does not recommend the adoption of a ‘one-strike’ policy for criminal activity.
* 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, or other evidence associated with the arrest in order to make an eligibility determination.

🞎 *Option 1:* *Use the model plan language shown below. No changes to the model plan 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 assistance may have on other members of the family who were not involved in the action or failure to act

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 3-III.H) 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

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

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

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 plan language or delete it and insert the PHA’s policy.*

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

The PHA is authorized to deny assistance 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 assisting 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 to receive assistance when a culpable family member leaves can be a sensible way to accommodate the needs of family members who were innocent of wrongdoing. The regulation does not address the problem of such an individual returning to the unit as a guest. The model plan 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 plan 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 assisted 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 plan language shown below. No changes to the model plan 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, stay as a guest, or reside in the assisted unit.

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

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

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

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

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

Things to Consider

* Some PHAs have experienced problems with offering reasonable accommodation to deal with family offenses. For example, some families request reasonable accommodation when the family member’s disability is not related to the offense. Others have requested accommodation that will not prevent a recurrence of the offense. Policies elsewhere in the plan (see Chapter 2) discuss the PHA’s obligation to offer reasonable accommodation 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 assistance is being considered.

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

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of assistance, the PHA will determine whether the behavior is related to the stated disability. If so, upon the family’s request, the PHA will determine whether admitting the family as a reasonable accommodation is appropriate. The PHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of assistance. See Chapter 2 for a discussion of reasonable accommodation.

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

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

This section presents HUD’s policies concerning notice to families. The PHA needs to define how quickly it will provide notice of denial to a family when the regulations specify that it must be provided promptly.

**☑ Decision Point: How long will the PHA have to notify the family of its decision to deny assistance?**

Things to Consider

* HUD regulations stipulate what must be contained in a notice of denial. Therefore, these items are listed in the plan, but not under PHA policy.
* PHAs can provide additional information in the notice of denial such as the name and contact information for free or low-cost legal services. This type of information is helpful for applicants and can also contribute to a good working relationship with legal aid offices within your jurisdiction.
* HUD does not stipulate what constitutes “promptly.” For administrative convenience, the model plan uses the same 10 business day timeframe used for other notification periods.
* Notice requirements related to denying assistance to noncitizens are contained in Section 3-II.B.

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

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

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

**☑ 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 HCV regulations state that the PHA must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirements [24 CFR 982.553(d)].
* There appears to be somewhat of an inconsistency between the requirements in Part 5, which states that the family must be given the opportunity to dispute the record prior to any action being taken, and Part 982, which states that the family must be provided the opportunity to dispute the record in the informal review process. The model plan language adopts the more restrictive requirement and states that the PHA will provide the family with an opportunity to dispute the relevance and accuracy of a criminal record or sex offender registration information prior to the official denial of admission.
* The model plan 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. It 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 review 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 plan language shown below. No changes to the model plan 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 review process.

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

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

The Violence against Women Act (VAWA) prohibits the PHA from denying admission to an applicant who otherwise qualifies for the HCV 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)].

* 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, 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. This is the same amount of time that the model administrative plan allows for requesting an informal review (see section 16-III.B). 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-IX.D of the model plan).

🞎 *Option 1: Use the model plan language shown below. No changes to the model plan 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 the VAWA information described in section 16-IX.C of this plan as well as including a copy of the form HUD-5382. The PHA will request in writing that an applicant wishing to claim protection under VAWA notify the PHA within 14 business days.

🞎 *Option 2: Use PHA-established policy. Edit the model plan 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, or stalking?**

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-IX.D referenced below should reflect this practice.
* The VAWA regulations make it clear that the same statutory documentation requirements that apply to program participants who claim to be victims also apply to program applicants [24 CFR 5.2007]. These requirements are discussed in section 16-IX.D of the plan.

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

If an applicant claims the protection against denial of assistance 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-IX.D of this plan.

🞎 *Option 2: Use PHA-established policy. Edit the model plan 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 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.
* The model plan 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. Before adopting a policy on this issue, the PHA may want to consult with legal counsel and/or domestic violence advocacy groups or service providers.

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

Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to 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 plan 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 administrative plan.  
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 plan 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 plan policy will require changes to policies in other chapters of the plan.

No. Changes to other chapters are not necessary.

Yes. Changes to the following chapters are also required: