

Chapter 3 ELIGIBILITY

INTRODUCTION

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

In the case of disputes on eligibility/ineligibility criteria that are pending the outcome of legal proceedings (i.e., currently under appeal in a court of law), the HAPGC will determine the family to be ineligible at that time. If the legal decision is rendered that the person did meet the eligible factors, the HAPGC shall restore the application to the original date and time, and reinstate the applicant to any other preference factors that the HAPGC has adopted. If the legal decision is rendered that the person did not meet the eligibility factors, the HAPGC shall only provide the applicant with access to the grievance process in accordance with applicable requirements.

To be eligible for the HCV program the applicant family must:

- Qualify as a family as defined by HUD and the HAPGC.
- Have income at or below HUD-specified income limits.
- Qualify on the basis of citizenship or the eligible immigrant status of family members.
- Provide social security number information for family members as required.
- Consent to the HAPGC's collection and use of family information as provided for in HAPGC-provided consent forms.
- Not be ineligible due to criminal or other ineligible conduct.
- Not be ineligible for assistance in accordance with the restrictions on assistance to students enrolled in an institution of higher education status (24 CFR 5.612)*.
- The HAPGC must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the HAPGC.

***Restrictions on Assistance to Students Enrolled In Institution of Higher Education**

No assistance shall be provided under Section 8 of the 1937 Act to any individual who:

- Is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965;
- Is under 24 years of age;

Adopted by Commission:

Effective: July 1, 2018

- Is not a veteran of the United States military;
- Is unmarried;
- Is not a person with disabilities and was not receiving assistance as of November 30, 2005
- Does not have a dependent child; and
- Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance under Section 8 of the 1937 Act.

See Exhibit 3-2: Detail on Student Eligibility for further clarification

This chapter contains three parts:

Part I: Definitions of Family and Household Members. This part contains HUD and HAPGC 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, ineligible student 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 HAPGC to deny assistance.

PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

3-I.A. OVERVIEW

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

3-I.B. FAMILY AND HOUSEHOLD [24 CFR 982.201(c), HUD-50058 IB, p. 13]

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

Family

To be eligible for assistance, an applicant must qualify as a family. A family may be a single person or a group of persons. *Family* as defined by HUD includes a family with a child or children, two or more elderly or disabled persons living together, one or more elderly or disabled persons living with one or more live-in aides, or a single person. A single person family may be an elderly person, a displaced person, a disabled person, or any other single person. The HAPGC has the discretion to determine if any other group of persons qualifies as a family.

HAPGC Policy

Gender Identity means actual or perceived gender characteristics. Sexual orientation means homosexuality, heterosexuality, or bisexuality.

A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law but who either can demonstrate that they have lived together previously or certify that each individual's income and other resources will be available to meet the needs of the family.

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

Household

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

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

Family Break-up [24 CFR 982.315]

The HAPGC has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up. However, if a court determines the disposition of property between members of the assisted family in a divorce or separation decree, the HAPGC

Adopted by Commission:

Effective: July 1, 2018

is bound by the court's determination of which family members continue to receive assistance, unless contrary to federal regulations.

HAPGC Policy

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

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

In the absence of a judicial decision, or an agreement among the original family members, the HAPGC will determine which family retains their placement on the waiting list, or will continue to receive assistance taking 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) any possible risks to family members as a result of domestic violence or criminal activity, and (4) the recommendations of social service professionals.

Documentation of these factors is the responsibility of the applicant families. If either or both of the families do not provide the documentation within 10 working days of the change of family composition, both may be denied placement on the waiting list.

Remaining Member of a Tenant Family [24 CFR 5.403 and PIH 2010-50]

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

If dependents are the only “remaining members of a 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.”

For deceased single member households or a household where the remaining household member is a live-in aide, HAPGC is required to discontinue HAP to the owner no later than the first of the following month after the month in which the death occurred. HAPGC is required to immediately terminate program assistance for deceased single member households which will result in termination of the HAP contract and HAP to the owner in accordance with the aforementioned provisions. The owner is **not** entitled to HAP for any month following the month in which the death occurred. There are no exceptions to this policy.

When the HOH dies and the only remaining household member is the live-in aide, the live-in aide is not entitled or eligible for any rental assistance or continued occupancy in a subsidized unit. By definition, the live-in aide would not be living in the subsidized unit except to provide the necessary supportive services on behalf of the elderly or disabled HOH. The HAPGC may not designate the live-in aide as the new HOH or change the relation code (line item 3h on the

Adopted by Commission:

Effective: July 1, 2018

form HUD-50058) of the live-in aide to make him or her an eligible household member (eligible for assistance) nor pay HAP on behalf of the live-in aide for any month after the month in which the HOH died.

If the HOH is deceased and the remaining household members are minors, the HAPGC has an established policy for dealing with situations when the HOH dies during tenancy and the remaining household members are minors. They will use a common practice of PHAs that includes (but is not limited to) allowing a temporary adult guardian to reside in the unit until a court-appointed guardian is established.

In accordance with its screening policies, the HAPGC may add the new guardian as the new HOH and will to work with the local Department of Social Services to ensure that the best interests of the residuals are addressed.

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

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

HAPGC Policy

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

The head of household must have the legal capacity to enter into a lease under state and local law. A minor who is emancipated under state law may be designated as head of household.

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

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

Spouse means the marriage partner of the head of household.

HAPGC Policy

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

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

HAPGC Policy

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

Adopted by Commission:

Effective: July 1, 2018

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

3-I.F. DEPENDENT [24 CFR 5.603]

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

Joint Custody of Dependents

HAPGC Policy

When both parents are assisted under the Section 8 Rental Assistance Programs and both parents are trying to claim the child, the parent whose address is listed in the school records will be allowed to claim the school-age child as a dependent.

Children who are not registered in a school program, including preschool, who are subject to a joint custody agreement but live in the unit at least 51% of the time will be considered members of the household. "51% of the time" is defined as 183 days of the year, which do not have to run consecutively.

For children who are not registered in school, the custodial parent for tax purposes will be considered the custodial parent in determining which family claims the child as a dependent for purposes of household composition, subsidy standards and total tenant payment calculation.

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

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

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

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

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

Near-Elderly Persons: A *near-elderly person* is a person who is 50-61 years of age.

Elderly Family: An *elderly family* is one in which the head, spouse, cohead, or sole member is an elderly person. Identifying elderly families is important because these families qualify for special deductions from income as described in Chapter 6.

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

Persons with Disabilities

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

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

Disabled Family

A *disabled family* is one in which the head, spouse, or cohead is a person with disabilities as defined by the occupancy criteria.. Identifying disabled families is important because these families qualify for special deductions from income as described in Chapter 6.

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

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

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

HAPGC Policy

A guest can remain in the assisted unit no longer than five (5) consecutive days or a total of fourteen (14) 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.

3-I.K. FOSTER CHILDREN AND FOSTER ADULTS

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

Adopted by Commission:

Effective: July 1, 2018

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

Foster children and foster adults that are living with an applicant or assisted family are considered household members but not family members. The income of foster children/adults is not counted in family annual income and foster children/adults do not qualify for the \$480 dependent deduction [24 CFR 5.603 and HUD-50058 IB, p. 13]. Foster children and foster adults that are permitted to occupy the dwelling unit will be used to determine the voucher size for assistance.

HAPGC Policy

A foster child or foster adult may be allowed to reside in the unit if their presence would not result in a violation of HQS space standards according to 24 CFR 982.401.

With the prior written consent of the HAPGC, a foster child may be added to the Section 8 participant family. The factors considered by the HAPGC in determining whether or not consent is granted may include:

- A. Whether the addition of a new occupant may require the issuance of a new voucher, and whether such voucher subsidy is available.
- B. The Section 8 landlord's written approval of the additional persons being added to the lease.

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

3-I.L. ABSENT FAMILY MEMBERS

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

Definitions of Temporarily and Permanently Absent

HAPGC Policy

Generally an individual who is or is expected to be absent from the assisted unit for 3 consecutive months or 90 calendar days in a 12-month period 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 3 consecutive months or 90 calendar days in a 12-month period is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

Absent Students

HAPGC Policy

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

Adopted by Commission:

Effective: July 1, 2018

becomes available to the HAPGC indicating that the student has established a separate household or the family declares that the student has established a separate household.

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

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

HAPGC Policy

In instances in which the children have been removed from the home by a social service agency, the agency will be contacted to determine the approximate length of time the children are expected to be away from the home.

If a child has been placed in foster care, the HAPGC will verify with the appropriate agency whether and when the child is expected to return 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.

If the agency indicates that the children are expected to return to the home at some point, the children will remain a part of the family composition and will be counted toward the family's subsidy standard, but will not be counted as dependents until they return to the home.

If the children are not ever expected to be returned to the home, the children will be removed from the family composition and the family's subsidy standard will be reduced accordingly at the next annual review.

If the agency indicates that it is unknown whether the children will be returned to the home, the children will remain a part of the family composition. Failure, by the family, to report the absence of the children may result in termination from the program.

Absent Head, Spouse, or Co-head

HAPGC Policy

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

When a single parent is absent from the household for an extended period (30 days) as a result of imprisonment, etc. and another adult moves into the home to care for the remaining members, the rental assistance may be terminated. In extenuating cases where the HAPGC approves the temporary absence, the family composition may be modified to include the name of the temporary guardian as temporary head of household. The HAPGC shall screen the guardian under the same criteria that it screens a live-in aide. The temporary guardian's income will not be included in the family income. The single parent's name as head of household shall be temporarily removed and the file documented to explain the circumstances.

When the single parent returns to the unit, the guardian will vacate the unit, unless further documentation of need is verified. If the guardian remains after the return of the head of household and does not become a live-in aide, his/her income will be included in the

Adopted by Commission:

Effective: July 1, 2018

calculation of family income. In addition to all the above, the guardian will be responsible for obtaining the owner's/landlord's approval before occupying the unit.

HAPGC will review the reason why the head of household is no longer present and may make a determination to cancel the assistance.

If all members of the household are absent for thirty (30) cumulative days during a calendar year, but have not moved from the unit, assistance will be terminated. In order to determine if the family is absent from the unit, HAPGC may secure various forms of verification including but not limited to: notice and letters to the family at the unit, telephone the family at the unit, interview the owner/landlord and neighbors, and/or verify if utilities are in service. In cases where the family has moved from the unit, assistance will be terminated in accordance with the procedures set forth further in this plan.

When the family consists of only one member and that person vacates the unit to go into a hospital or nursing home for a period of more than two (2) months, the assistance will be terminated, if the person will not be returning within 60 days. If a medical source documents that the person is expected to return to the unit in 180 days or less, the person shall continue to receive assistance. If the person is not back in the unit within 180 days, assistance will be terminated.

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].

HAPGC Policy

The HAPGC will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent and the income of the person will be included. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member and be removed from the lease.

Return of Permanently Absent Family Members

HAPGC Policy

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

3-I.M. LIVE-IN AIDE (PIH 2010-51)

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

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

HAPGC Policy

A family's request for a live-in aide must be made in writing. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member. Although a health care provider must document the need for a live-in aide (which would result in the issuance of an additional bedroom size voucher), the live-in aide must be identified by the family and approved by the HAPGC first.

The HAPGC may only approve one additional bedroom for a live-in aide. Although a live-in aide may have HAPGC-approved family member/s live with him/her in the assisted unit, no additional bedrooms will be provided for the family members of the live-in aide. The HAPGC must ensure that housing quality standards (HQS) will not be violated and that there will be no more than two people per bedroom or living/sleeping space in the unit in accordance with 24 CFR § 982.401(d)(2)(ii). If the approval of additional family members of a live-in aide would result in the violation of HQS, the additional family members of the live-in aide may not be approved.

A live in aide may only reside in the unit with pre-approval from the HAPGC, after proper documentation of need is verified and screening has been completed.

The approval of a live-in aide shall increase the maximum permitted voucher size by 1-bedroom to accommodate the need for a live-in aide.

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 approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR 8, to make the program accessible to and usable by the family member with disabilities. However, the HAPGC will not approve a particular person as a live-in aide, and may withdraw any 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 HAPGC or to another HA in connection with Section 8 or public housing assistance under the 1937 Act.

The person has violated any family obligations under the program as published under CFR 982.551;

The person has been convicted of manufacturing or producing methamphetamine, on the premises of an assisted housing project;

The person has been evicted from any federally subsidized housing program for any reason;

The person has been identified as someone who has to register as a sex offender.

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

The person fails to provide documentation to permit the HAPGC to conduct the required screening.

The person is not qualified to provide the needed care.

Within 10 business days of receiving a request for a live-in aide, including all required documentation related to the request, the HAPGC will be required to screen the live-in aide in accordance with the federal regulations and upon final determination will notify the family of its decision in writing.

PART II: BASIC ELIGIBILITY CRITERIA

3-II.A. INCOME ELIGIBILITY AND TARGETING

Income Limits

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

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

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

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

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

HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

Using Income Limits for Eligibility [24 CFR 982.201]

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

- *A very low-income family*
- *A low-income family that has been "continuously assisted" under the 1937 Housing Act. A family is considered to be continuously assisted if the family is already receiving assistance under any 1937 Housing Act program at the time the family is admitted to the HCV program [24 CFR 982.4]*
- *A low-income family that qualifies for voucher assistance as a non-purchasing household living in HOPE 1 (public housing homeownership), HOPE 2 (multifamily housing homeownership) developments, or other HUD-assisted multifamily homeownership programs covered by 24 CFR 248.173*
- *A low-income family that is displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract on eligible low-income housing as defined in 24 CFR 248.101*
- *A low-income family that is used for determining eligibility for a student under the student rule provisions.*

Adopted by Commission:

Effective: July 1, 2018

Using Income Limits for Targeting [24 CFR 982.201]

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

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

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

Housing assistance is available only to individuals who are U.S. citizens, U.S. nationals (herein referred to as citizens and nationals), or noncitizens that have eligible immigration status. At least one family member must be a citizen, national, or noncitizen with eligible immigration status in order for the family to qualify for any level of assistance. The eligible individual on a mixed family does not need to be an adult.

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

Declaration [24 CFR 5.508]

HUD requires each family member to declare whether the individual is a citizen, a national, or an eligible noncitizen, except those members who elect not to contend that they have eligible immigration status. (HUD-214) Those who elect not to contend their status are considered to be ineligible noncitizens. For citizens, nationals and eligible noncitizens the declaration must be signed personally by the head, spouse, cohead, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible Noncitizens below). No declaration is required for live-in aides, foster children, or foster adults.

U.S. Citizens and Nationals

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

HAPGC Policy

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

Adopted by Commission:

Effective: July 1, 2018

Eligible Non-citizens

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

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

Ineligible Non-citizens

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

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

Mixed Families

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

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

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)].

The HAPGC will not provide assistance to a family before the verification of at least one family member. The eligible member does not have to be an adult in order for the HAPGC to assist the family.

Adopted by Commission:

Effective: July 1, 2018

When a HAPGC 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 pro-ration 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 HAPGC. The informal hearing with the HAPGC may be requested in lieu of the USCIS appeal, or at the conclusion of the USCIS appeal process. The notice must also inform the applicant family that assistance may not be delayed until the conclusion of the USCIS appeal process, but that it may be delayed pending the completion of the informal hearing process.

Informal hearing procedures are contained in Chapter 16.

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

For new occupants joining the assisted family citizenship status will be verified at the time they are added to the household.

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

Each family member is required to submit evidence of eligible status only one time during continuous occupancy, provided the verification on file is not one for temporary status to be in the country.

HAPGC Policy

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

3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218] and PIH 2010-3 and PIH 2011-2

Families are required to provide verification of Social Security Numbers for all family members if they have been issued a number by the Social Security Administration. This requirement also applies to persons joining the family after admission to the program.

Failure to furnish verification of social security numbers is grounds for denial of admission or termination of tenancy.

The HAPGC must request the applicant and participant (including each member of the household), who are not exempt under **SSN Disclosure**, to provide documentation of each disclosed SSN. Acceptable evidence of the SSN consists of:

- An original SSA-issued document, which contains the name and SSN of the individual; or

Adopted by Commission:

Effective: July 1, 2018

- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

SSN Disclosure

In accordance with 24 CFR 5.216, applicants and participants (including each member of the household) are required to disclose his/her assigned SSN, with the exception of the following individuals:

- Those individuals who do not contend to have eligible immigration status (individuals who may be unlawfully present in the United States). These individuals in most instances would not be eligible for a SSN.
 - A family that consists of a single household member (including a pregnant individual) who does not have eligible immigration status is **not eligible** for housing assistance and cannot be housed.
 - A family that consists of two or more household members **and at least one** household member that has eligible immigration status, is classified as a mixed family, and **is eligible** for prorated assistance in accordance with 24 CFR 5.520. The HAPGC may **not** deny assistance to mixed families due to nondisclosure of an SSN by an individual who does not contend to have eligible immigration status.
- Existing program participants as of January 31, 2010, who have previously disclosed their SSN and HUD has determined the SSN to be valid. The HAPGC may confirm HUD's validation of the participant's SSN by viewing the household's **Summary Report** or the **Identity Verification Report** in the EIV system.
- Existing program participants as of January 31, 2010, who are 62 years of age or older, and had not previously disclosed a valid SSN. This exemption continues even if the individual moves to a new assisted unit.

Disclosure of SSNs is considered information subject to the Federal Privacy Act (5 USC 552a, as amended). In accordance with 24 CFR 5.212, the collection, maintenance, use, and dissemination of SSNs, any information derived from SSNs and income information must be conducted, to the extent applicable, in compliance with that Act and all other provisions of Federal, State, and local law.

There is no provision under HUD regulations which prohibit an individual (head of household with other eligible household members) with ineligible immigration status from executing a lease or other legally binding contract. However, some state laws prohibit an individual with ineligible immigration status from executing a contract (i.e. lease or other legal binding documents). If this is the case in your state, the family must **not** be admitted into the program.

Adopted by Commission:

Effective: July 1, 2018

Penalties for Failure to Disclose and/or Provide Documentation of the SSN

In accordance with 24 CFR 5.218, the following penalties apply for noncompliance with the SSN disclosure and documentation requirements:

- a. **Applicants.** The HAPGC must deny the eligibility of an assistance applicant if s/he (including each member of the household required to disclose his/her SSN) does not disclose a SSN and/or provide documentation of such SSN. However, if the family is otherwise eligible to participate in the program, the family may maintain his/her position on the waiting list for a period of time as determined by the HAPGC. The HAPGC should prescribe in its policies, the maximum time the family may remain on the waiting list, pending disclosure of requested information. If all household members have not disclosed their SSN at the time a unit becomes available, the HAPGC must offer the available unit to the next eligible applicant family on the waiting list.

- b. **Participants.** The HAPGC must terminate the assistance of Section 8 program participants (the entire household) and terminate the tenancy of Public Housing participants (the entire household) if s/he (including each member of the household required to disclose his/her SSN) does not disclose his/her SSN and provide the required documentation.

However, if the family is otherwise eligible for continued assistance or tenancy in the program, the HAPGC, at its discretion, may defer the family's termination and provide the family an opportunity to comply with the requirement within a period **not to exceed** 90 calendar days from the date the HAPGC determined the family noncompliant with the SSN disclosure and documentation requirement, if the PHA determines:

1. The failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside the control of the family; and
2. There is a reasonable likelihood that the family will be able to disclose the SSN and provide such documentation of the SSN by the deadline.

If the family is unable to comply with the requirements by the specified deadline, the PHA must terminate the tenancy or assistance, or both of the entire family.

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

HUD requires each adult family member, and the head of household, spouse, or cohead, 18 years or older, to sign form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. Chapter 7 provides detailed information concerning the consent forms and verification requirements.

The HAPGC must deny admission to the program if any adult member of the applicant family fails to sign and submit the consent forms for obtaining information in accordance with 24 CFR 5, Subparts B and F [24 CFR 982.552(b)(3)].

PART III: DENIAL OF ASSISTANCE

3-III.A. OVERVIEW

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

In addition, HUD requires or permits the HAPGC to deny assistance based on certain types of current or past behaviors of family members.

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

Denial of assistance includes any of the following:

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

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

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

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

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

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

- Any member of the household has been evicted from federally assisted housing in the last three (3) years for drug-related criminal activity. Exceptions The PHA will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past three (3) 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

Adopted by Commission:

Effective: July 1, 2018

rehabilitation program approved by the PHA, or the person who committed the crime, is no longer living in the household.

- HAPGC determines that any household member is currently engaged in the use of illegal drugs.
- The HAPGC has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.
- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program
- If a family member has been convicted of manufacturing or producing methamphetamine (speed) on an assisted housing site, Section 8 housing, or in Public Housing.
- Denied for Life if convicted for murder, rape, and/or other sex-related crimes, kidnapping, arson, production or manufacturing of methamphetamine, or lifetime sex offenders.

HAPGC Policy

Any person who, within three(3) years of the date of application for assistance with the Authority, has previously been evicted from any assisted rental housing program because of criminal activity, or drug-related criminal activity shall not be eligible for assistance with the Authority.

The HAPGC finds that those persons who have demonstrated a history of criminal activity involving certain crimes of physical violence, certain crimes relating to personal property, certain crimes relating to illegal narcotics activity, and certain other criminal acts, present a significant danger to the current law-abiding residents of the community, as such criminal activity represents a clear and immediate threat to their health, safety and continued well-being. Accordingly, any person who has committed one or more of the following specified criminal offenses, as evidenced by arrest, formal charge, conviction or other competent evidence, and has not thereafter demonstrated complete rehabilitation by remaining conviction-free or arrest-free for a period of at least three (3) years after the date of the most recent occurrence, arrest, formal charge, conviction, release from imprisonment, or the successful termination of probation, community control or parole, whichever shall occur later, *shall be denied* consideration for tenancy with HAPGC assistance..

For the purposes of this policy, an “arrest” shall include an actual physical arrest by a law enforcement officer, a notice-to-appear issued by a law enforcement officer, an information, indictment or other charging document. A “conviction” shall include either a formal adjudication of guilt or a withholding of adjudication of guilt by a court of competent jurisdiction, whether or not such finding is predicated upon a jury verdict or plea of guilty or nolo contendere:

Adopted by Commission:

Effective: July 1, 2018

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

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

Criminal Activity [24 CFR 982.553]

If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past three (3) 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; or

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

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

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

- Conviction for drug-related or violent criminal activity within the past three (3) years.

- Circumstantial evidence, a preponderance of evidence, or any arrests for drug-related or violent criminal activity within the past three (3) years.

- Any record of eviction from federally assisted housing as a result of criminal activity within the past three (3) years.

- If on probation or parole for any conviction, assistance will be denied until discharged from probation or parole.

- Convictions of any household member for crimes of physical violence including but not limited to intentionally or recklessly causing another's death, arson, rape, sexual assault and convictions which require one to register as a sex offender.

- Such individuals are subject to a permanent prohibition against admission/assistance by the HAPGC Housing Choice Voucher Program.

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

HAPGC Policy

The HAPGC **will not** deny assistance to an otherwise eligible family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program or the Welfare to Work voucher program.

The HAPGC **will** deny assistance to an applicant family if the family was a previous participant in a Section 8 or other federally assisted housing program and violated their family obligations with timeframes as follows.

If the family's assistance was terminated for the following reasons the family will be denied assistance for three or more years:

The family failed to provide information that the HAPGC or HUD determines is necessary in the administration of the program.

The family failed to provide complete and true information to the HAPGC.

The family failed to disclose and verify social security numbers and submit and sign consent forms for obtaining information.

The family failed to allow HAPGC to inspect the unit at reasonable times and after reasonable notice.

The family failed to keep scheduled appointments with HAPGC staff.

The family failed to notify HAPGC and the owner before the family moved out of the unit or terminated the lease on notice to the owner (skip).

The family failed to promptly notify inform HAPGC of the birth, adoption, or court-awarded custody of a child.

The family failed to promptly notify HAPGC if any family member no longer resides in the unit.

The family failed to obtain HAPGC approval prior to having a foster child or live-in aide reside in the unit.

The family failed to supply any information or certification requested by HAPGC to verify that the family is living in the unit, or relating to family absence from the unit, including any HAPGC-requested information or certification of the purpose of family absences. Failure of the family to cooperate with HAPGC for this purpose. Failure to promptly notify HAPGC of absence from the unit.

If the family's assistance was terminated for the following reasons the family will be denied assistance for three (3) years:

The family failed to request PHA approval prior to adding family members to the household (other than additions by birth, adoption, or court-awarded custody).

The family failed to primarily use the assisted unit for residence by the family and the unit was not the family's only residence (except owner-approved legal profit-making activities incidental to the use of the unit).

If any family member owned or had any interest in the assisted unit (other than in a cooperative, or the owner of a manufactured home leasing a manufactured home space).

If any family member committed any serious and/or repeated violation of the lease and the lease violation(s) resulted in termination of housing assistance.

If the family subleased or let the unit or assigned the lease or transferred the unit.

If any family member received Section 8 tenant-based program assistance while receiving another housing subsidy, for the same unit or a different unit under any Federal, state or local housing assistance program.

If any family member damaged the unit or premises (other than damage from ordinary wear and tear) or permitted any guest to damage the unit or premises, and such damage resulted in termination of assistance due to family's failure to repair the damages.

Any family member has been evicted from federally assisted housing in the last three (3) years.

Any PHA has ever terminated assistance under the program for any member of the family subject to timeframes as provided in this section.

Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program in the last three (3) years.

The family owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs, 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 HAPGC or other PHA, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.

A family will be given the opportunity to pay the monies owed within thirty days of receipt of notification letter from the HAPGC. (the eligibility interview). If the family fails to meet their obligation to repay the debt, the applicant will be denied assistance and the application dropped from the waiting list.

A family member has engaged in or threatened violent or abusive behavior toward HAPGC personnel in the last three (3) years.

Abusive or violent behavior towards HAPGC 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 for all the above-noted timeframes, the HAPGC will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the HAPGC may, on a case-by-case basis, decide to reduce the period of ineligibility.

3-III.D. SCREENING

Screening for Eligibility

HAPGC is authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the HCV program. In order to obtain access to the records the HAPGC must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

HAPGC Policy

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

The HAPGC will perform a check on the National Sex Offenders web site for every adult household member.

The HAPGC may require a criminal background check through other law enforcement entities if local information is not available.

If the results of the criminal background check indicate that there may be past criminal activity, but the results are inconclusive, the HAPGC will request the applicant to be fingerprinted and will request the information from the National Crime Information center (NCIC).

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

HAPGC must destroy the results of the search in accordance with 24 CFR 5.903 (g) unless required by other provisions of the law to retain the documents used to determine eligibility. If required to retain, HAPGC must retain the results of the search, along with the application, for a period of three (3) years if the applicant is denied housing or, if the applicant is admitted to the program, for the term of tenancy plus three (3) years.

If the HAPGC proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, the HAPGC must notify the household of the proposed action and must provide the subject of the record and the applicant a copy of the record and an opportunity to dispute the accuracy and relevance of the information **prior to a denial of admission**. The family will be given 10 business days to dispute the accuracy and relevance of the information.

Adopted by Commission:

Effective: July 1, 2018

[24 CFR 5.903(f) and 5.905(d)]. The record will be provided to the applicant in person upon presentation of valid government-issued photo identification.

Screening for Suitability as a Tenant [24 CFR 982.307]

HAPGC Policy

Criminal background checks will be performed at the following points:

A. Final Eligibility Determination

Before a family has received a voucher and before the family will be housed, a criminal background screening will be completed to determine whether any violent criminal activity or drug-related criminal activity has occurred.

B. Investigation Initiated by a Tip, Referral, or Complaint

Upon receiving a tip, referral, or complaint, including information left on the HAPGC Fraud Hotline or other source, a criminal background screening may be performed if it is possible that the screening may provide information pertinent to the investigation.

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

HUD requires the HAPGC to provide prospective owners with the family's current and prior address (as shown in HAPGC records) and the name and address (if known) of the owner at the family's current and prior addresses. HUD permits the HAPGC 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.

HAPGC Policy

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

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

Evidence [24 CFR 982.553(c)]

HAPGC Policy

The HAPGC 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

Adopted by Commission:

Effective: July 1, 2018

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.

Consider all evidence. In determining whether an issue has been proved by a preponderance of the evidence, you should consider all of the evidence, regardless of who produced it.

Equally balanced. If the weight of the evidence is equally balanced, or if you are unable to determine which side of an issue has the preponderance, the party who has the burden of proof has not established such issue by a preponderance of the evidence.

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

HAPGC Policy

The HAPGC will consider the following factors prior to making its decision:

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

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

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities

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

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

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

HAPGC Policy

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

The HAPGC may terminate assistance or an owner/manager may bifurcate the lease to terminate assistance to remove a lawful occupant or tenant who engages in criminal acts

Adopted by Commission:

Effective: July 1, 2018

of violence to family members or others without terminating assistance/evicting victimized lawful occupants.

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

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

HAPGC Policy

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

3-III.F. NOTICE OF ELIGIBILITY OR DENIAL

Eligible for Assistance

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

If the HAPGC determines that a family is not eligible for the program for any reason, the family will be notified of a decision to deny assistance in writing within 10 business days of the determination. The notice must describe (1) the reasons for which assistance has been denied (2) the family's right to an informal review, and (3) the process for obtaining the informal review [24 CFR 982.554 (a)]. See Chapter 16, for informal review policies and procedures.

HAPGC Policy

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

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

Adopted by Commission:

Effective: July 1, 2018

3-III.G. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT AND STALKING. [Pub.L. 109-162]

Violence Against Women's Act (VAWA) Provisions

Sec. 606 of the Violence Against Women's Act requires HAPGC to amend the policies of the Voucher Program.

These provisions apply to new screening, admissions, eviction, and termination of assistance requirements regarding domestic violence, dating violence, sexual assault and stalking victims in all programs governed by Section 8 of the U.S. Housing Act of 1937, whether they are project-based or tenant-based.

This section also describes the certifications which the HAPGC may request of the tenant regarding his or her status as a victim and therefore eligibility for protections, and implements additional confidentiality requirements for victim records.

HAPGC has notified HCV participants of their rights and responsibilities under these provisions.

The provisions of Section 606 amends voucher program statutes to provide new protections for victims of domestic violence, dating violence, sexual assault and stalking.

The provisions govern prohibitions on termination of assistance and evictions that are reflected in Housing Assistance Payment contracts between PHAs and an owner.

The law creates a "Prohibited Basis for Termination of Assistance" which applies basically the same new prohibitions on termination of assistance directly by HAPGC in our administration of voucher assistance.

HAPGC's policies provide the following for victims of domestic violence:

- *Selection:* That an applicant or participant is or has been a victim of domestic violence, dating violence, sexual assault or stalking is not an appropriate basis for denial of program assistance or for denial of admission of an otherwise qualified applicant.
- *Lease Terms Regarding Termination:* An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence.
- *Termination of Assistance/Eviction: In HAP Contract [Sec. 8(o)(7)]:* Criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of tenancy occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence, dating violence, sexual assault or stalking.

For HAPGC: "Criminal activity directly relating to domestic violence, dating violence, sexual

Adopted by Commission:

Effective: July 1, 2018

assault or stalking shall not be considered cause for termination of assistance for any participant or immediate member of a participant's family who is a victim of the domestic violence, dating violence, sexual assault or stalking." In implementing this termination clause:

- The HAPGC may terminate assistance or an owner/manager may bifurcate the lease to terminate assistance to remove a lawful occupant or tenant who engages in criminal acts of violence to family members or others without terminating assistance/evicting victimized lawful occupants.
- HAPGC, owner or manager is authorized to honor court orders regarding rights of access or control of the property.
- HAPGC shall require the victim to verify and document the status in accordance with the HAPGC and HUD requirements through certification, and/or through other acceptable sources.

The certification must be submitted to the HAPGC within 30 business days of the request.

The Violence against Women Reauthorization Act of 2005 (VAWA) prohibits denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking. Specifically, Section 606 of VAWA adds the following provision to Section 8 the U.S. Housing Act of 1937:

That an applicant or participant is or has been a victim of domestic violence, dating violence, sexual assault or stalking is not an appropriate basis for denial or program assistance by or for denial of admission if the applicant otherwise qualifies for assistance for admission, and that nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, sexual assault or stalking.

Definitions

As used in VAWA:

- The term *domestic violence* includes felony and misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

Adopted by Commission:

Effective: July 1, 2018

- The term *stalking* means:
 - To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
 - To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
 - In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.
- The term *immediate family member* means, with respect to a person-
 - A spouse, parent, brother, or sister, or child of that person, or an individual to whom that persons stands in the position or place of a parent; or
 - Any other person living in the household of that person and related to that person by blood and marriage.
- The term *sexual assault* means, with respect to a person-
 - Any nonconsensual sexual act proscribed by Federal, Tribal, or State law, including when the victim lacks the capacity to consent.

Notification and Victim Documentation

HAPGC Policy

HAPGC acknowledges that a victim of domestic violence, dating violence, sexual assault or stalking may have an unfavorable history that would warrant denial under HAPGC's policies. The HAPGC will supply the "Notice of Occupancy Rights" and certification form under the Violence Against Women Act to each applicant and participant. These forms will be distributed during the following times:

- At the time the applicant is denied assistance or admission under a covered housing program;
- At the time the individual is provided assistance or admission under the covered housing program;
- With any notification of eviction or notification of termination of assistance.

Therefore, if HAPGC makes a determination to deny admission to an applicant family on the basis of an unfavorable history, HAPGC will include in its notice of denial a statement of the protection against denial provided by VAWA and will offer the applicant the opportunity to provide documentation affirming that the cause of the unfavorable history is that a member of the applicant family is or has been a victim of domestic violence, dating violence, sexual assault or stalking.

The applicant or tenant may submit, as documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking, any one of the following forms of documentation, where it is at the discretion of the tenant or applicant which one of the following forms of documentation to submit:

Adopted by Commission:

Effective: July 1, 2018

- I. The Certification of Domestic Violence , Dating Violence, Sexual Assault, or Stalking, and Alternative Documentation form or
- II. A document:
 - (A) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional(collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse;
 - (B) Signed by the applicant or tenant; and
 - (C) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under this subpart, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under § 5.2003; or
 - (D) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
 - (E) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency.

The applicant must submit the required documentation with his/her request for an informal hearing or must request an extension in writing at that time. If the applicant so requests, HAPGC will grant an extension of 10 business days, and will postpone scheduling the applicant’s informal hearing until after it has received the documentation or the extension period has elapsed. If after reviewing the documentation provided by the applicant, HAPGC determines the family is eligible for assistance, no informal hearing will be scheduled and HAPGC will proceed with admission of the applicant family.

Emergency VAWA Transfers

Survivors must submit the Emergency Transfer form in order to exercise their rights under the Emergency VAWA Transfer. Conditions for which a resident is eligible for Emergency VAWA Transfer:

1. A resident or an immediate family member is a victim of domestic violence, dating violence, sexual assault, or stalking, if the resident reasonably believes that harm or further violence is imminent if the resident remains in the unit.
2. If the participant is a victim of sexual assault, the participant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer. The participant must use the VAWA Emergency Transfer Request form (HUD form 5383) to request an emergency transfer.

If additional information is requested by the HAPGC, the individual may satisfy this request by providing **any** one of the following documents as described under 24 CFR 5.2007(b)(1):

Adopted by Commission:

Effective: July 1, 2018

- a. Form HUD-5382; or
- b. A document:
 - 1) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, "professional") from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse:
 - 2) Signed by the applicant or tenant; and That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under the VAWA Final Rule, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003; or
 - 3) A record of a Federal, State, tribal, territorial or local law enforcement agency (may include a police report), court, or administrative agency; or
 - 4) At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.

The time period to submit documentation is 14 business days from the date that you receive a written request from the HAPGC asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections.

The participant must notify their current Landlord of their need to move and provide them with a written request certifying that they meet the criteria for an emergency transfer under VAWA; before the transfer/move is approved.

Perpetrator Removal or Documentation of Rehabilitation

HAPGC Policy

In cases where an applicant family includes the perpetrator as well as the victim of domestic violence, dating violence, sexual assault or stalking, HAPGC will proceed as above but will require, in addition, either (a) that the perpetrator be removed from the applicant household and not reside in the public housing unit or (b) that the family provide documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment.

If the family elects the second option, the documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable

Adopted by Commission:

Effective: July 1, 2018

professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

This additional documentation must be submitted within the same time frame as the documentation required above from the victim.

HAPGC Confidentiality Requirements

All information provided to HAPGC regarding domestic violence, dating violence, sexual assault or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared database nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.

EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES

Person with Disabilities [24 CFR 5.403]

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

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

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

In the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.
- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C.6001(8)], which defines developmental disability in functional terms as:

A severe, chronic disability of a person 5 years of age or older which:

 - Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - Is manifested before the person attains age twenty-two;
 - Is likely to continue indefinitely;
 - Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and responsive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; *and*
 - Reflects the person’s need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated; except that such term, when applied to infants and young children, means individuals from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.”
- Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

Adopted by Commission:

Effective: July 1, 2018

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

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

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

Individual with Handicaps [24 CFR 8.3]

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

(1) Physical or mental impairment includes:

- (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or
- (b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

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

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

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

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

Exhibit 3-2: HCV STUDENT ELIGIBILITY CRITERIA

Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937

Summary

On December 30, 2005, HUD published a final rule (FR-5036-F-01), entitled, "Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937," implementing section 327 of the Appropriations Act of Fiscal Year (FY) 2006.

In brief, the law and final rule require that if a student is enrolled at an institution of higher education, is under the age of 24, is not a veteran, is unmarried and does not have a dependent child, is not disabled, is individually ineligible for section 8 assistance, or the student's parents are, individually or jointly, ineligible for assistance, no section 8 assistance can be provided to the student.

To assist public housing agencies (PHAs) in implementing the new law and final rule, and to ensure that section 8 assistance is provided to those truly in need of and eligible for assistance, the Department issued supplement guidance on April 10, 2006, entitled, "Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplemental Guidance."

Following are two groups of questions and answers: Group I and Group II concerning Section 327 of the Act and the implementing final rule. Group III is definitions.

Group I:

- Section 8 eligibility
- Income determinations
- Rent

Group II:

- Applicability
- Agency policies
- Reexamination of Family Income
- Reexamination of Family Income and Termination of Assistance
- Pro-ration of Assistance

Group III:

- HCV Student Rule Definitions

Group I: Section 8 Eligibility, Income Determinations, and Rent

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
1	Sections 327(a) and (b)	Section 5.612 and 5.609(b)(9)	Do the Act and final rule apply to the Public Housing program?	No. The Act and the implementing final rule (FR-5036-F-01) do not apply to the Public Housing program. The Act and final rule apply only to Section 8 programs.
2	Sections 327(a) and (b)	Section 5.612 and 5.609(b)(9)	Do the Act and final rule apply to students that currently reside with parents in a section 8 rental assisted unit or students applying for section 8 assistance with their parents?	No. The new law and final rule do not apply to these students. The law and final rule focus on students who are under the age of 24, are not veterans, are unmarried, or are without children who seek or receive section 8 assistance separate from their parents.
3	Section 327(a)(1)	Section 5.612(a)	Do the student eligibility requirements apply to full and part-time students who are enrolled at an institution of higher education?	Yes. The eligibility requirements apply to both full and part-time students enrolled at an institution of higher education, as defined under 102 of the Higher Education Act of 1965 (20 U.S.C. 1002).
4	Section 327(a)(1)-(6)	Section 5.612(a)-(f)	Do the Act and final rule provisions mean that a student enrolled at an institution of higher education who is under the age of 24, not a veteran, unmarried, and does not have any dependent children applying for Section 8 assistance in the Section 8 program is ineligible for Section 8 assistance?	Yes. The Act and final rule provisions mean that a student enrolled at an institution of higher education who is under the age of 24, not a veteran, unmarried, and does not have any children IS NOT ELIGIBLE for Section 8 programs, jointly, are income eligible for Section 8 assistance.

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
5	Section 327(a)(6)	Section 5.612(f)	Concerning the eligibility of parents, individually or jointly, do parents have to meet all HUD program eligibility requirements in order for the student to be eligible for Section 8 housing assistance?	No. Since Section 327 is focused on income eligibility of a higher education student, the Department interprets the section’s reference to the eligibility of the parents to also refer to income eligibility.

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
6	Section 327(a)(6)	Section 5.612(f)	Also concerning the eligibility of parents, individually or jointly, how does the PHA know whether to determine the eligibility of the parents “individually” or “jointly”? Are there any established criteria a PHA may use in making this determination?	<p>PHAs may adopt and implement the following criteria for determining whether to obtain the declaration and certification of income from parents, individually or jointly.</p> <ul style="list-style-type: none"> • If the student’s parents are married and living with each other, obtain the declaration and certification of income from each parent. • If the student’s parent is widowed or single, obtain the declaration and certification of income from that parent. • If the student’s parents are divorced or separated, obtain the declaration and certification of income from each parent. • If the student has been living with one of his or her parents and has not had contact with or does not know where to contact his or her other parent, obtain from the student a certification under penalty of perjury, addressing the circumstances (including a statement that the student has not received financial assistance from the parent) and obtain from the parent whom the student has been living or has contact with the declaration and certification of income.

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
7	Section 327(a)(6)	Section 5.612(f)	In determining the eligibility of the parent(s) to receive assistance, which HUD Income Limit area should the PHA use: the income limit for the area where the student intends to reside, or the income limit for the area where the parent(s) currently resides? For example, if the student is applying for Section 8 housing assistance in Johnson City, Tennessee, but the parent(s) lives in New York City, New York, which HUD Income Limit area should be used in determining the parent(s) program eligibility?	The PHA should use the Income Limit for the area where the parent(s) resides (24 CFR 982.201(b)(4)). In the example provided, the PHA should use the income limit for the area in New York where the parent(s) lives.
8	Section 327(a)(6)	Section 5.612(f)	Which income limit (i.e., extremely low income, very-low income, or low income) should a PHA use in determining the income eligibility of the parent(s)?	Both students and parents must meet the low-income limit.
9	Section 327(a)(6)	Section 5.612(f)	How should the PHA define parents? What if the student lives with a grandparent, aunt, uncle, guardian, etc., do they have to meet the qualifications also?	For purposes of the student eligibility restrictions, and consistent with longstanding HUD policy regarding eligibility for the section 8 programs, the term “parents” means the biological or adoptive parents, or guardians (e.g., stepparents, grandparents, aunt/uncle, godparents, etc.), or such other definition as may be adopted by the PHA, Owner, or Manager through appropriate amendment to its admissions policies.

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
10	Section 327(a)(6)	Section 5.612(f)	<p>In admitting college students to Section 8 rental programs, it appears that the PHA will now have to determine the eligibility of the:</p> <ol style="list-style-type: none"> 1. Student 2. Parent(s), unless the income of demonstrate to the absence of, or his or her independence from Parents 3. Student family household 	<p>Correct. The PHA will have to determine the eligibility of each student family member, parents (in cases where the student has not established independence from parents), and the student family household as a unit. For example, three college students applying for Section 8 rental housing assistance, as a family unit, would have to be income eligible for Section 8 assistance (24 CFR 982.201). Also, under 5.612(f), each student individually would have to be eligible and the parent(s) of each student would have to be the student’s parents is not relevant or the student can eligible for Section 8 rental assistance, unless the student can show the income of the student’s parents is not relevant or the student can demonstrate to the absence of, no financial support from parent(s) or his or her independence from, parents.</p>

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
11	Section 327(b)	Section 5.609(b)(9)	What exactly are the types of “financial assistance” under the Higher Education Act of 1965 that must be considered as income under Section 327?	Types of financial assistance under the Higher Education Act of 1965 would include: the Pell Grant, the Federal Supplemental Educational Opportunity Grant (FSEOG), Academic Achievement Incentive Scholarships, State assistance under the Leveraging Educational Assistance Partnership Program, the Robert C. Byrd Honors Scholarship Program, and federal Work-Study (FWS) programs. Although considered “financial assistance” under the Higher Education Act of 1965, Perkins loans, Stafford loans, and Plus loans are not considered income for purposes of determining student eligibility for Section 8 housing assistance. For complete information, see Title IV, Part A, under the Higher Education Act of 1965, as amended, located at: http://www.ed.gov/policy/highered/leg/hea98/index.html
12	Section 327(b)	Section 5.609(b)(9)	Is the income students receive from federal Work-Study (FWS) programs considered earned income for purposes of determining income eligibility?	Yes. It is considered financial assistance under the Higher Education Act of 1965. If its financial assistance under the Act, then it is counted as income under 327.

Group II: Applicability, Agency Policies, Verifications/Reexaminations, Continuation and Termination of Assistance (24 CFR 982.552(b)(5)).

	Category	Question	Answer
13	Applicability	Will the students currently participating in HUD’s Section 8 program be grandfathered into the program? Does the rule apply to existing Section 8 student participants?	No. Neither section 327 nor the final rule provides for a grandfathering clause for current Section 8 student participants. Therefore, section 327 and the final rule apply to existing Section 8 student participants. However, as previously stated, the law and final rule do not focus on students residing with their parents in a section 8 assisted unit or students who reside with their parents who are applying to receive section 8 assistance. Rather, it focuses on certain students who seek or receive Section 8 assistance separate from their parents.
14	Agency Policies	Do PHAs have to update their Administrative Policies (24 CFR 982.54) before implementing Section 327 and final rule?	Yes. PHAs must immediately update their Administrative Plans to reflect discretionary policies concerning the new income eligibility restrictions for students (24 CFR 982.54).
15	Verifications	Will PHAs now be required to obtain income information on the parents, in determining the eligibility of parents for Section 8 rental assistance?	Yes. To satisfy this requirement, PHAs may accept from a parent (s) a declaration <and> certification of income, which includes a penalty of perjury. The PHA retains the right to request and review, supporting documentation at any time the PHA determines the declaration, certification, and eligibility are in question. Supporting documentation includes, but is not limited to: IRS tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, Temporary Assistance to Needy Families (TANF) award letter, Social Security Administration (SSA) award letter, and other official and authentic documents from a federal, State, or local agency.

	Category	Question	Answer
16	Verifications	Since Section 8 assistance can no longer be provided to certain students (24 CFR 5.612), and this may include a parent’s income reexamining eligibility test, does this mean that PHAs will have to verify the parent’s income eligibility annually, during reexamination, to determine whether the student continues to be eligible for the program after admissions? Prior to the effective date of the final rule, PHAs administering Section 8 programs did not have to verify the income of eligibility (i.e., family meets income limits) of the family after admissions.	PHAs administering the Section 8 program will have to verify the income eligibility of the parent(s), at least annually, to determine whether the student remains eligible for the Section 8 program. In accordance with 24 CFR 982.552(b)(5), if after the parent’s income, the student is determined to be ineligible for Section 8 assistance, as specified in 24 CFR 5.612, the PHA must terminate assistance to that family member (i.e., student). Again, the family is entitled to an informal hearing to discuss the termination of assistance.
17	Reexamination of Family Income	The preamble of the final rule “strongly encourages PHAs, Owners, and Management Agents administering Section 8 programs to, as soon as it is practicable, recertify existing Section 8 participants that have family members that may meet the requirements of Section 327 of the Act.” What does this mean? What happens if the PHA cannot recertify Section 8 participants until the family’s next annual recertification? Will the PHA be penalized?	HUD understands that some PHAs may not have the resources or the capability to recertify participant family income until the family’s next annual recertification. However, in order to remedy the problem of ineligible college students participating in HUD’s Section 8 rental assistance programs, as quickly as possible, the Department recommends recertification sooner rather than later (i.e., as soon as it is practicable). If a PHA is unable to recertify family income until the next annual reexamination, that PHA will not be penalized. The latest time, however, that the eligibility and income requirements can be implemented is at the time of annual reexamination.
18	Reexamination of Family Income and Termination of Assistance	As it concerns 24 CFR 982.552(b)(5) of the final rule, if after reexamining a student household’s income (the student’s or parent(s) income), the PHA determines the student is no longer eligible for Section 8 rental assistance, is the student family entitled to a grievance hearing?	Yes. Applicant and participant student households are entitled to request and receive an informal hearing to discuss the reasons for the denial or termination of assistance, in accordance with established program procedures and requirements (See 24 CFR 982.554 and 24 CFR 982.555, respectively).

	Category	Question	Answer
19	Continuation and Termination of Assistance	Scenario I: Three full-time college students apply for Section 8 housing. Two are eligible under Section 327(a) of the Act and 24 CFR 5.612 of the final rule, and one student is ineligible. Does the PHA deny Section 8 rental housing assistance to the entire family—all three students—or can the student family choose to remove the ineligible student from the family application so the two eligible students can be admitted to the program?	In scenario I described, the PHA will notify the applicant student family of its decision to deny assistance to the student household because of one of the student ‘s ineligibility for Section 8 assistance. The notice will state that the student household may request an informal review of the PHA’s decision and how to obtain the review (24 CFR 982.554). During the informal review, the student family may choose to remove the ineligible student from the family application for assistance so that the two eligible students may be admitted to the program. The PHA must notify the student household of the PHA’s final decision after the informal review, including a brief statement of the reasons for the final decision.
20	Continuation and Termination of Assistance	Scenario II: Three full-time college students are residing in a Section 8 rental assistance unit. Two are eligible under Section 327(a) of the Act and 24 CFR 5.612 of the final rule, and one student is ineligible. Does the PHA terminate the Section 8 rental assistance to the entire family—all three students—or can the student family choose to remove the ineligible student from the student household so the two eligible students can continue to be assisted under the program.	In scenario II described, the PHA will notify the student household of its decision to terminate Section 8 rental assistance to the family. The notice will contain a brief reason for the PHA’s decision (i.e., ineligibility of a college student 24 CFR 5.612) and inform the student household of its right to an informal hearing. For the housing choice voucher (HCV) program, eligible students residing in households with ineligible students shall not have their assistance terminated, but shall be issued a voucher to move with continued assistance in accordance with program regulations or shall be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit. HUD will issue separate guidance for PHAs administering the Moderate Rehabilitation, Project-Based Certificate, and Project- Based Voucher programs.
21	Pro-ration of Assistance	Can the PHA prorate the student household’s assistance, based on a percentage of the total number of members of the family household that are eligible for assistance?	No. PHAs may not prorate assistance to family households composed of eligible and ineligible students.

Group III: HCV Student Rule Definitions

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
22	Section 327(a)(1)	Section 5.612(a)	What is the definition of an institution of higher education under section 102 of the Higher Education Act of 1965?	Also provided in Appendix A of the supplemental guidance, a complete definition of an institution of higher education under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002) can be found on GPO Access, United States Code Main Page at: http://www.gpoaccess.gov/uscode/index.html .
23	Section 327(a)(3)	Section 5.612(c)	What is the definition of a “veteran”?	For purposes of administering the student eligibility restrictions, PHAs may find it useful to adopt the term “veteran” as used by the Department of Veterans Affairs (38 U.S.C. 101(2)): (2) the term “veterans” means a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable. A complete definition of veteran (38 U.S.C. 101) can be found on GPO Access, United States Code Main Page at: http://www.gpoaccess.gov/uscode/index.html .

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
24	Sections 327(a) and (b)	Sections 5.612(e) and 5.609(b)(9)	As used in the Act and final rule, how are the terms “dependent child” and “dependent children” defined?	“Dependent child” and “dependent children,” as used in the Act and final rule, have the same meaning as provided at 24 CFR 5.603: Dependent: A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or a person with a disability, or is a full-time student. To be sure, the child or children must reside in the student family household.
25	Section 327(b)	Section 5.609(b)(9)	Does financial assistance include federal, State, and local grants, scholarships, and loans? Section 327(b) states: “any financial assistance (in excess of amounts received for tuition) that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except for a person over the age of 23 with dependent children.”	Student financial assistance, as used in the Act and final rule, means any assistance (in excess of amounts received for tuition) that an individual receives: <ol style="list-style-type: none"> (1) Under the Higher Education Act of 1965 (2) From private sources (3) From an institute of higher education Such financial assistance may include federal, State, and local grants and scholarships (athletic and academic), fellowships and student educational financial assistance from parents, guardians, or other persons residing outside of the student family household. HUD has interpreted the term “financial assistance,” as used in Section 327(b) to not include loan proceeds for the purpose of determining income.
26	Section 327(b)	Section 5.609(b)(9)	In the new law, how is student to be defined?	Student means all students enrolled either full-time or part-time at an institution of higher education. The new law does not exempt part-time students.

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
27	Section 327(b)	Section 5.609(b)(9)	What is included in tuition? Does it include other fees charged by the educational institution?	Tuition shall have the meaning given this term by the institution of higher education in which the student is enrolled.