

# **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

## CHAPTER 4: ELIGIBILITY INTRODUCTION

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The HACCP is responsible for ensuring that every individual and family admitted to the public housing 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 HACCP to confirm eligibility and determine the level of the family's assistance.

To be eligible for the public housing program:

- The applicant family must:
  - Qualify as a family as defined by HUD and the HACCP
  - Have income at or below HUD-specified income limits.
  - Qualify on the basis of citizenship or the eligible immigrant status of family members
  - Provide social security number information for household members as required
  - Consent to the HACCP's collection and use of family information as provided for in HACCP provided consent forms
- The HACCP must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the HACCP

This chapter contains three parts:

### **Part I: Definitions of Family and Household Members**

This part contains HUD and HACCP definitions of family and household members and explains initial and ongoing eligibility issues related to these members.

### **Part II: Basic Eligibility Criteria**

This part discusses income eligibility, and rules regarding citizenship, social security numbers, and family consent.

### **Part III: Denial of Admission**

This part covers factors related to an applicant's past or current conduct (e.g. criminal activity) that can cause the HACCP to deny admission.

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

### **Part I: Definitions of Family and Household Members**

#### **4-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 public housing unit. This part provides information that is needed to correctly identify family and household members and explains HUD's eligibility rules.

#### **4-I.B. Family and Household [24 CFR 5.105(a)(2), 24 CFR 5.403, FR Notice 02/03/12, and Notice PIH 2014-20]**

The terms family and household have different meanings in the public housing program.

##### **Family**

To be eligible for admission, an applicant must qualify as a family. Family as defined by HUD, includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, disabled person, near-elderly person, or any other single person; or a group of persons residing together. Such group includes but is not limited to a family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family), an elderly family, a near-elderly family, a disabled family, a displaced family, or the remaining member of a tenant family. The HACCP has the discretion to determine if any other group of persons qualifies as a family. Gender Identity means actual or perceived gender characteristics. Sexual orientation means homosexuality, heterosexuality, or bisexuality.

*Gender Identity* means actual or perceived gender characteristics.

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

##### **HACCP Policy**

A family also includes one 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.

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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 HACCP permission, live in a public housing unit, such as live-in aides, foster children, and foster adults.

### **4-I.C. Family Breakup and Remaining Member of Tenant Family**

#### **Family Breakup**

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

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

#### **HACCP 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 submit 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 living in public housing, only one of the new families will retain occupancy of the unit.

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

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In the absence of a judicial decision or an agreement among the original family members, the HACCP will determine which family will retain their placement on the waiting list or continue in occupancy. In making its determination, the HACCP will take into consideration the following factors:

- (1) the interest of any minor children, including custody arrangements.
- (2) the interest of any ill, elderly, or disabled family members;
- (3) the interest of any family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, including a family member who was forced to leave a public housing unit as a result of such actual or threatened abuse, and provides documentation in accordance with section 16-VII.D of this ACOP;
- (4) any possible risks to family members as a result of criminal activity, and
- (5) the recommendations of social service professionals.

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

The HUD definition of family includes the *remaining member of a tenant family*, which is a member of a resident family who remains in the unit when other members of the family have left the unit [PH Occ GB, p. 26]. 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 7, Section 7-I.B, for the policy on “Caretakers for a Child.”

### **4-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.

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### **HACCP Policy**

The family may designate any qualified family member as the head of household. The head of household or spouse/cohead, in accordance with the dwelling lease and with the approval of the HACCP, can add or remove other adult or dependent members of the family. 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.

### **4-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.

### **HACCP 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 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.

### **HACCP Policy**

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

*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 [HUD-50058 IB, p. 14].

### **4-I.F. Dependent [24 CFR 5.603]**

A *dependent* is a family member who is under 18 years of age or a person of any age who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, cohead, foster children/adults and live-in aides. Identifying each dependent in the

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family is important because each dependent qualifies the family for a deduction from annual income as described in Chapter 7.

### **Joint Custody of Dependents**

#### **HACCP Policy**

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

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

#### **4-I.G. Full-Time Student [24 CFR 5.603]**

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 determine if attendance is 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 income of such an FTS is treated differently from the income of other family members.

#### **4-I.H. Elderly and Near-Elderly Persons, and Elderly Family [24 CFR 5.100, 5.403, 945.105, and FR Notice 02/03/12]**

##### **Elderly Persons**

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

##### **Near-Elderly Persons**

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

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### **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 the elderly family allowance and the medical allowance as described in Chapter 7 and may qualify for a particular type of development as noted in Chapter 4.

### **4-I.I. Persons with Disabilities and Disabled Family [24 CFR 5.403, FR Notice 02/03/12]**

#### **Persons with Disabilities**

Under the public housing 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 handicaps and persons with disabilities are provided in Section 4-II.G. at the end of this chapter. These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability.

As discussed in Chapter 3, the HACCP must make all aspects of the public housing program accessible to persons with disabilities and consider requests for reasonable accommodations when a person's disability limits their full access to the unit, the program, or the HACCP's services.

#### **Disabled Family**

A *disabled family* is one in which the head, spouse, or cohead is a person with disabilities.

Identifying disabled families is important because these families qualify for the disabled family allowance and the medical allowance as described in Chapter 7 and may qualify for a particular type of development as noted in Chapter 4.

Even though persons with drug or alcohol dependencies are considered persons with disabilities, for the purpose of non-discrimination, this does not prevent the HACCP from denying admission or taking action under the lease for reasons

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related to alcohol and drug abuse in accordance with the policies found in Part III of this chapter and in Chapter 13.

### **4-I.J. Guests [24 CFR 5.100]**

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

The lease must provide that the tenant has the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, including reasonable accommodation of their guests [24 CFR 966.4(d)].

The head of household is responsible for the conduct of visitors and guests, inside the unit as well as anywhere on or near HACCP premises [24 CFR 966.4(f)].

### **HACCP Policy**

Visitors on HACCP property must sign in. This includes all visitors 12 years and older. A guest can remain in the unit no longer than 14 consecutive days or a total of 30 cumulative calendar days during any 12-month period.

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure expected to last 20 consecutive days). An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return.

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

Former residents whose lease has been terminated are not permitted as overnight guests. (Does not apply to senior and disabled sites).

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



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### **4-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(c)(2)].

The term *foster child* is not specifically defined by the regulations. Foster children and foster adults that are living with an applicant or resident family are considered household members but not family members. The income of foster children/adults is not counted in family annual income and foster children/adults do not qualify for a dependent deduction [24 CFR 5.603 and HUD-50058 IB, pp. 13-14].

### **HACCP Policy**

A foster child is a child that is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency. Children that are temporarily absent from the home as a result of placement in foster care are discussed in Section 3-I.L. **(Family Sites only)**

### **4-I.L. Absent Family Members**

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

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

### **HACCP Policy**

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

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### **Absent Students**

#### **HACCP Policy**

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

#### **HACCP Policy**

If a child has been placed in foster care, the HACCP will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member.

### **Absent Head, Spouse, or Cohead**

#### **HACCP Policy**

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

### **Individuals Confined for Medical Reasons**

#### **HACCP Policy**

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

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

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

#### **HACCP Policy**

The family must request HACCP approval for the return of any adult family members that the HACCP has determined to be permanently absent. The HACCP will only re-admit the absence member due to reasonable accommodations request submitted to the HACCP by the HOH. The individual is subject to the eligibility and screening requirements discussed in this chapter.

#### **4-I.M. Live-In Aide**

*Live-in aide* means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

- (1) is determined to be essential to the care and well-being of the person(s),
- (2) is not obligated for the support of the person(s), and
- (3) would not be living in the unit except to provide the necessary supportive services [24 CFR 5.403].

The HACCP must approve a live-in aide if needed as a reasonable accommodation for a person with disabilities in accordance with 24 CFR 8.

A live-in aide is considered a household member but not a family member. The income of the live-in aide is not counted in determining the annual income of the family [24 CFR 5.609(c)(5)]. 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.

#### **HACCP Policy**

A family's request for a live-in aide must be made in writing. The HACCP will verify the need for a live-in aide with a reliable, knowledgeable professional as provided by the family, such as a doctor, social worker, or case worker. For continued approval, the family must submit a new, written request—subject to HACCP verification at each annual reexamination.

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

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

The person has a history of drug-related criminal activity or violent criminal activity; or

The person currently owes rent or other amounts to the HACCP or to another HACCP in connection with Housing Choice Voucher program (HCV) or Public Housing assistance under the 1937 Act.

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

## **Part II: Basic Eligibility Criteria**

### **4-II.A. Income Eligibility and Targeting**

#### **Income Limits**

HUD is required by law to establish income limits that determine the income eligibility of applicants for HUD's assisted housing programs, including the public housing program. The income limits are published annually and are based on HUD estimates of the median incomes for families of different sizes in a particular area or county.

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### **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 the federal poverty level or 30 percent of the median income for the area, whichever number is higher.

Area median income is determined by HUD, with adjustments for smaller and larger families.

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

### **Using Income Limits for Eligibility [24 CFR 960.201]**

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 a *low-income* family.

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

At least 40 percent of the families admitted from the HACCP waiting list to the public housing program during a PHA fiscal year must be *extremely low-income* families. This is called the "basic targeting requirement."

If admissions of extremely low-income families to the HACCP's housing choice voucher program during a HACCP fiscal year exceed the 75 percent minimum targeting requirement for that program, such excess shall be credited against the HACCP's public housing basic targeting requirement for the same fiscal year.

The fiscal year credit for housing choice voucher program admissions that exceed the minimum voucher program targeting requirement must not exceed the lower of:

- Ten percent of public housing waiting list admissions during the HACCP's fiscal year

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- Ten percent of waiting list admission to the HACCP's housing choice voucher program during the PHA fiscal year
- The number of qualifying low-income families who commence occupancy during the fiscal year of public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low-income family means a low-income family other than an extremely low-income family.

For discussion of how income targeting is used in tenant selection, see Chapter 4.

### **4-II.B. Citizenship or Eligible Immigration Status [24 CFR 5, Subpart E]**

Housing assistance is available only to individuals who are U.S. citizens, U.S. nationals (herein referred to as citizens and nationals), or noncitizens that have eligible immigration status.

At least one family member must be a citizen, national, or noncitizen with eligible immigration status in order for the family to qualify for any level of assistance.

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

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

HUD requires each family member to declare whether the individual is a citizen, a national, or an eligible noncitizen, except those members who elect not to contend that they have eligible immigration status. Those who elect not to contend their status are considered to be ineligible noncitizens. For citizens, nationals and eligible noncitizens the declaration must be signed personally by the head, spouse, 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.

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

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

### **HACCP Policy**

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

### ***Eligible Noncitizens***

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with HACCP efforts to verify their immigration status as described in Chapter 8.

The documentation required for establishing eligible noncitizen status varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

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

### ***Ineligible Noncitizens***

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a non-contending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. The HACCP 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

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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 admission 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 7 for a discussion of how rents are prorated, and Chapter 14 for a discussion of grievance hearing procedures.

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

A PHA may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member [24 CFR 5.512(b)]. Otherwise, no individual or family may be assisted prior to the affirmative establishment by the PHA that the individual or at least one family member is eligible [24 CFR 5.512(a)].

### **HACCP Policy**

The HACCP will not provide assistance to a family before the verification of at least one family member as a citizen, national, or eligible noncitizen. When a HACCP determines that an applicant family does not include any citizens, nationals, or eligible noncitizens, following the verification process, the family will be sent a written notice within 10 business days of the determination.

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

Grievance hearing procedures are contained in **Ch**apter 14.

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

For new occupants joining the resident family the HACCP must verify status at the first interim or regular reexamination following the person's occupancy, whichever comes first. If an individual qualifies for a time extension for the



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submission of required documents, the HACCP 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.

### **HACCP Policy**

The HACCP will verify the status of applicants prior to admission, other eligibility factors will be determined.

#### **4-II.C. Social Security Numbers [24 CFR 5.216 and 5.218, Notice PIH 2012-10]**

The applicant and all members of the applicant's household must disclose the complete and accurate social security number (SSN) assigned to each household member, and the documentation necessary to verify each SSN. If a child under age 6 has been added to an applicant family within the 6 months prior to program admission, an otherwise eligible family may be admitted to the program and must disclose and document the child's SSN within 90 days of admission. A detailed discussion of acceptable documentation is provided in Chapter 8.

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

In addition, each participant who has not previously disclosed an SSN, has previously disclosed an SSN that HUD or the SSA determined was invalid, or has been issued a new SSN must submit their complete and accurate SSN and the documentation required to verify the SSN at the time of the next interim or annual reexamination or recertification. Participant's age 62 or older as of January 31, 2010, whose determination of eligibility was begun before January 31, 2010, are exempt from this requirement and remain exempt even if they move to a new assisted unit.

The HACCP must deny assistance to an applicant family if they do not meet the SSN disclosure and documentation requirements contained in 24 CFR 5.216.

#### **4-II.D. Family Consent to Release of Information [24 CFR 5.230]**

HUD requires each adult family member, and the head of household, spouse, or cohead, regardless of age, to sign form HUD-9886, Authorization for the Release

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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 8 provides detailed information concerning the consent forms and verification requirements.

The HACCP must deny admission to the program if any member of the applicant family fails to sign and submit consent forms which allow the HACCP to obtain information that the PHA has determined is necessary in administration of the public housing program [24 CFR 960.259(a) and (b)].

### Part III: Denial of Admission

#### **4-III.A. Overview**

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

In addition, HUD requires or permits the HACCP to deny admission based on certain types of current or past behaviors of family members as discussed in this part. The HACCP's authority in this area is limited by the Violence against Women Act of 2013 (VAWA), which expressly prohibits the denial of admission to an otherwise qualified applicant on the basis or as a direct result of the fact that the applicant is or has been the victim of domestic violence, dating violence, sexual assault, or stalking [24 CFR 5.2005(b)].

This part covers the following topics:

- Required denial of admission
- Other permitted reasons for denial of admission
- Screening
- Criteria for deciding to deny admission
- Prohibition against denial of admission to victims of domestic violence, dating violence, sexual assault, or stalking
- Notice of eligibility or denial

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### **4-III.B. Required Denial of Admission [24 CFR 960.204]**

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

Where the statute requires that the HACCP prohibit admission for a prescribed period of time after some disqualifying behavior or event, the PHA may choose to continue that prohibition for a longer period of time [24 CFR 960.203(c)(3)(ii)].

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

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

### **HACCP Policy**

The HACCP will admit an otherwise-eligible family who was evicted from federally assisted housing within the past 3 years for drug-related criminal activity, if the HACCP is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program, or the person who committed the crime is no longer living in the household.

- The HACCP determines that any household member is currently engaged in the use of illegal drugs. *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].

### **HACCP Policy**

*Currently engaged in the illegal use of a drug* means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member [24 CFR 960.205(b)(1)].

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### **HACCP Policy**

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

The HACCP 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.

### **HACCP Policy**

In determining reasonable cause, the HACCP will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. A record of arrest(s) will not be used as the basis for the denial or proof that the applicant engaged in disqualifying criminal activity. The HACCP will also consider evidence from treatment providers or community-based organizations providing services to household members.

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing.
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program.

### **HACCP Policy**

The HACCP will deny the family if any household member is subject to either lifetime registration or any registration at time of waiting list selection.

### **4-III.C. Other Permitted Reasons for Denial of Admission**

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

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

The HACCP is responsible for screening family behavior and suitability for tenancy. In doing so, the HACCP may consider an applicant's history of criminal activity

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involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety, or welfare of other tenants.

### **HACCP Policy**

If any household member is currently engaged in or has engaged in any of the following criminal activities, within the past three years, the family will be denied admission. *Drug-related criminal activity*, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100].

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

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

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

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

Evidence of such criminal activity includes, but is not limited to any record of convictions, arrests, or evictions for suspected drug-related or violent criminal activity of household members within the past 3 years. A conviction for such activity will be given more weight than an arrest or an eviction. A record of arrest(s) will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying criminal activity.

In making its decision to deny assistance, the HACCP will consider the factors discussed in Sections 4-III.E and 4-III.F. Upon consideration of such factors, the HACCP may, on a case by- case basis, decide not to deny assistance.

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

HUD authorizes the HACCP to deny admission based on relevant information pertaining to the family's previous behavior and suitability for tenancy. In the event of the receipt of unfavorable information with respect to an applicant, the HACCP must consider the time, nature, and extent of the applicant's conduct (including the seriousness of the offense).

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

As discussed in Section 4-III.F, the PHA may also need to consider whether the cause of the unfavorable information may be that the applicant is the victim of domestic violence, dating violence, sexual assault, or stalking.

### **HACCP Policy**

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

- Has a pattern of unsuitable past performance in meeting financial obligations, including rent within the past three years.
- Has a pattern of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences within the past three years which may adversely affect the health, safety, or welfare of other tenants.
- Has a pattern of eviction from housing or termination from residential programs within the past three years (considering relevant circumstances).
- Owes rent or other amounts to this or any other PHA or owner in connection with any assisted housing program.
- Misrepresented or does not provide complete information related to eligibility, including income, award of preferences for admission, expenses, family composition or rent.
- Has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- Has engaged in or threatened violent or abusive behavior toward HACCP personnel, providers and contractors hired by the HACCP. *Abusive or violent behavior towards HACCP personnel, ETC..* 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, physical or written threats or physical gestures that communicate intent to abuse or commit violence.

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

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

### **4-III.D. Screening**

#### **Screening for Eligibility**

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

The HACCP may not pass along to the applicant the costs of a criminal records check [24 CFR 960.204(d)].

#### **HACCP Policy**

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

If the results of the criminal background check indicate there may have been past criminal activity, but the results are inconclusive, the HACCP will request a fingerprint card and will request information from the National Crime Information Center (NCIC). HACCP 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 960.204(a)(4)].

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### **HACCP Policy**

The HACCP will deny the family if any household member is subject to either lifetime registration or any registration at time of waiting list selection.

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

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

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

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

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

*Drug Abuse Treatment Facility* means an entity that holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use and is either an identified unit within a general care facility, or an entity other than a general medical care facility.

*Currently engaging in illegal use of a drug* means illegal use of a drug that occurred recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member. Any consent form used for the purpose of obtaining information from a drug abuse treatment facility to determine whether a household member is currently engaging in illegal drug use must expire automatically after the HACCP has made a final decision to either approve or deny the admission of such person. Any charges incurred by the HACCP for information



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provided from a drug abuse treatment facility may not be passed on to the applicant or tenant. If the HACCP chooses to obtain such information from drug abuse treatment facilities, it must adopt and implement one of the two following policies:

**Policy A:** The HACCP must submit a request for information to a drug abuse treatment facility for all families before they are admitted. The request must be submitted for each proposed household member who is at least 18 years of age, and for each family head, spouse, or cohead regardless of age.

**Policy B:** The HACCP must submit a request for information only for certain household members, whose criminal record indicates prior arrests or conviction for any criminal activity that may be a basis for denial of admission or whose prior tenancy records indicate that the proposed household member engaged in destruction of property or violent activity against another person, or they interfered with the right of peaceful enjoyment of the premises of other residents. If the HACCP chooses to obtain such information, it must abide by the HUD requirements for records management and confidentiality as described in 24 CFR 960.205(f).

### **HACCP Policy**

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

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

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

### **HACCP Policy**

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

- Payment of rent and utilities.

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- Caring for a unit and premises, having avoided damaging the unit or premises.
- Respecting the rights of other residents to the peaceful enjoyment of their housing.
- Criminal activity that is a threat to the health, safety, or property of others.
- Behavior of all household members as related to the grounds for denial as detailed in Sections 4-III. B and C.
- Compliance with any other essential conditions of tenancy.

### **Resources Used to Check Applicant Suitability [PH Occ GB, pp. 47-56]**

HACCP's have a variety of resources available to them for determination of the suitability of applicants. Generally, HACCP should reject applicants who have recent behavior that would warrant lease termination for a public housing resident.

### **HACCP Policy**

In order to determine the suitability of applicants the HACCP will examine applicant history for the past three (3) years. Such background checks will include:

#### *Past Performance in Meeting Financial Obligations, Especially Rent*

At the HACCP's discretion, based on available court record information, the HACCP may utilize HACCP and landlord references for the past three (3) years, gathering information about past performance meeting rental obligations such as rent payment record, late payment record, whether the HACCP/landlord ever began or completed lease termination for nonpayment, and whether utilities were ever disconnected in the unit. In this case, HACCP's and landlords will be asked if they would rent to the applicant family again.

Utility company references covering the monthly amount of utilities, late payment, disconnection, return of a utility deposit and whether the applicant can get utilities turned on in his/her name. (Use of this inquiry will be reserved for applicants applying for units where there are tenant paid utilities.) The applicant must be able to have utilities turned on in his/her name.

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If an applicant has no rental payment history the HACCP will check court records of eviction actions and other financial judgments, and credit reports.

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

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

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

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

### **4-III.E. Criteria for Deciding to Deny Admission**

#### **Evidence**

#### **HACCP Policy**

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

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

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

HUD authorizes the HACCP to consider all relevant circumstances when deciding whether to deny admission based on a family's past history except in the situations for which denial of admission is mandated (see Section 4-III.B).

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

### **HACCP Policy**

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

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

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

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 4-III.F) a victim of domestic violence, dating violence, sexual assault, or stalking. The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future.

While a record of arrest(s) will not be used as the sole basis for denial, an arrest may, however, trigger an investigation to determine whether the applicant actually engaged in disqualifying criminal activity. As part of its investigation, the HACCP may obtain the police report associated with the arrest and consider the reported circumstances of the arrest.

The HACCP may also consider:

- Any statements made by witnesses or the applicant not included in the police report.
- Whether criminal charges were filed.

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- Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal
- Any other evidence relevant to determining whether or not the applicant engaged in disqualifying activity.

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

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

In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully. The HACCP 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 within the last 3 years.

### **Removal of a Family Member's Name from the Application**

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

For other criminal activity, the HACCP may permit the family to exclude the culpable family members as a condition of eligibility. [24 CFR 960.203(c)(3)(i)].

### **HACCP 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 public housing unit.

Before admission to the program, the family must present evidence of the former family member's current address. Examples of evidence include but are not limited to a post office change of address confirmation, copy of ID with different address, utility bill, etc..

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### **Reasonable Accommodation [PH Occ GB, pp. 58-60]**

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

### **HACCP Policy**

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of admission, the HACCP will determine whether the behavior is related to the disability. If so, upon the family's request, the PHA will determine whether alternative measures are appropriate as a reasonable accommodation.

The HACCP will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of admission. See Chapter 3 for a discussion of reasonable accommodation.

### **4-III.F. Prohibition Against Denial Of Assistance To Victims Of Domestic Violence, Dating Violence, Sexual Assault, Or Stalking**

The Violence against Women Act of 2013 (VAWA) and the HUD regulation at 24 CFR 5.2005(b) prohibit HAs from denying admission to an otherwise qualified applicant on the basis or as a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

Definitions of key terms used in VAWA are provided in section 16-VII of this ACOP, where general VAWA requirements and policies pertaining to notification, documentation, and confidentiality are also located.

### **Notification**

VAWA 2013 expanded notification requirements to include the obligation for PHAs to provide applicants who are denied assistance with a VAWA Notice of Occupancy Rights (form HUD-5380) and a domestic violence certification form (HUD-5382) at the time the applicant is denied.

### **HACCP Policy**

The HACCP acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history (e.g., a poor credit history, poor rental history, a record of previous damage to an apartment, a prior

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arrest record) due to adverse factors that would warrant denial under the HACCP's policies. While the HACCP is not required to identify whether adverse factors that resulted in the applicant's denial is a result of domestic violence, dating violence, sexual assault, or stalking, the applicant may inform the HACCP that their status as a victim is directly related to the grounds for the denial. The HACCP will request that the applicant provide enough information to the HACCP to allow the HACCP to make an objectively reasonable determination, based on all circumstances, whether the adverse factor is a direct result of their status as a victim.

The HACCP will include in its notice of denial information about the protection against denial provided by VAWA in accordance with section 16-VII.C of this ACOP, a notice of VAWA rights, and a copy of the form HUD-5382. The HACCP will request in writing that an applicant wishing to claim this protection notify the HACCP within 10 business days.

### **Documentation**

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

##### **HACCP Policy**

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

#### ***Perpetrator Documentation***

##### **HACCP Policy**

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

- (1) A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the public housing unit
  
- (2) Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service

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

### **4-III.G. Notice of Eligibility or Denial**

The HACCP will notify an applicant family of its final determination of eligibility in accordance with the policies in Section 4-III.E.

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

### **HACCP Policy**

If, based on a criminal record or sex offender registration information an applicant family appears to be ineligible, the HACCP will notify the family in writing of the proposed denial and provide a copy of the record to the applicant and to the subject of the record. The family will be given 10 business days to dispute the accuracy and relevance of the information. If the family does not contact the HACCP to dispute the information within 10 business days, the HACCP will proceed with issuing the notice of denial of admission. A family will be given the opportunity to dispute the decision within 10 business days as part of the informal hearing process.

Notice requirements related to denying admission to noncitizens are contained in **Section 4-II.B.**

Notice policies related to denying admission to applicants who may be victims of domestic violence, dating violence, sexual assault, or stalking are contained in **Section 4-III.F.**



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### **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.

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

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

(A) IN GENERAL – The term developmental disability means a severe, chronic disability of an individual that-

- (i) is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (ii) is manifested before the individual attains age 22;
- (iii) is likely to continue indefinitely;
- (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity:
  - (I) self-care,
  - (II) receptive and expressive language,
  - (III) learning,
  - (IV) mobility,
  - (V) self-direction,
  - (VI) capacity for independent living,

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(VII) economic self-sufficiency; and

(v) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

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

- Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.
- People with the acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for AIDS are not excluded from this definition.
- A person whose disability is based solely on any drug or alcohol dependence does not qualify as a person with disabilities for the purposes of this program.

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

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

*Individual with handicaps* means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program

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or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

As used in this definition, the phrase:

- (1) Physical or mental impairment includes:
  - a. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine
  - 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
  - c. Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment