

## Chapter 3

### ELIGIBILITY

#### INTRODUCTION

BHA 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 BHA to confirm eligibility and determine the level of the family's assistance.

To be eligible for the HCV program:

- The applicant family must:
  - Qualify as a family as defined by HUD and BHA.
  - 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 BHA's collection and use of family information as provided for in BHA-provided consent forms.
- BHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or BHA.

This chapter contains three parts:

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

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

Part III: Denial of Assistance. This part covers factors related to an applicant's past or current conduct (e.g. criminal activity) that can cause BHA 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, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status: 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. BHA has the discretion to determine if any other group of persons qualifies as a family.

#### BHA Policy

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

Each family must identify the individuals to be included in the family at the time of application, and must update this information if the family's composition changes. Proposed changes to the household, before and after Voucher issuance, admission or recertification that are not explicitly granted by program rules, will be subject to review and approval by BHA

#### **Household**

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

To ensure equal access to HUD programs without regard to a person's actual or perceived sexual orientation, gender identity, or marital status, a married or unmarried couple may be same or different genders.

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

#### **Family Break-up [24 CFR 982.315]**

BHA 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, BHA is bound by the

court's determination of which family members continue to receive assistance. If the family break-up results from an occurrence of domestic violence, dating violence, sexual assault, or stalking as provided in CFR part 5, subpart L, the PHA must ensure that the victim retains assistance. This is not applicable for project based units which may have additional qualifying requirements (i.e. HOPWA designated units).

### BHA 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.

If the family members are forced to leave the unit because of actual or threatened domestic violence, dating violence, sexual assault, or stalking by a spouse or other members of the household, the PHA may terminate the HAP contract for the original assisted unit and transfer the assistance to the family members forced to leave.

In the absence of a judicial decision, or an agreement among the original family members, BHA will determine which family retains their placement on the waiting list, or will continue to receive assistance taking into consideration the following factors:

- (1) VAWA victim custodian of minor children;
- (2) VAWA victim elderly or disabled;
- (3) interest of any minor children, including custody arrangements,
- (4) the interest of any ill, elderly, or disabled family members,
- (5) any possible risks to family members as a result of domestic violence or criminal activity, and
- (6) 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 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.”

### **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.

BHA 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 married or unmarried partner of the head of household.

Where a household consists of two unrelated adults 18 years or older, BHA shall assume there is a committed relationship unless the family advises otherwise.

BHA Policy

A registered domestic partner, or 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.

BHA 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.

**3-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 family is important because each dependent qualifies the family for a deduction from annual income as described in Chapter 6.

BHA Policy

In determining if a minor is a member of the household or applicant household, BHA's consideration will include:

- a. The residency of the biological or adoptive or foster parents including their identification if possible
- b. Formal court-awarded custody documentation
- c. Current lease
- d. Where the child attends school, and the guardian on record
- e. Who provides/receives financial assistance for the child
- f. Who is authorized to seek medical care on behalf of the child

- g. Who, if anyone, receives government assistance for the child
- h. Who, if anyone, claims the child for income tax purposes

### **Joint Custody of Dependents**

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 183 or more days per year, not necessarily consecutively (51%).

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

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

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

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

BHA will require verification of full-time enrollment for the current term, and evidence of satisfactory performance in the prior school term, in which earned income was disregarded, at the annual recertification.

### **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, domestic partner or cohead is a person with disabilities. The technical definitions of individual with handicaps and persons with disabilities are provided in Exhibit 3-1 at the end

of this chapter. These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability.

As discussed in Chapter 2, the PHA 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, domestic partner or cohead is a person with disabilities. Identifying disabled families is important because these families qualify for special deductions from income as described in Chapter 6.

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent BHA 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.

#### BHA Policy

A guest can remain in the assisted unit no longer than 30 consecutive days or a total of 90 cumulative calendar days during any 12-month period. In calculating the 90-days, each overnight stay by an individual shall count as one day (for example, 3 people visiting for 3 days shall constitute 9 of the allowable 90 days).

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 183 or more days per year, not necessarily consecutively, 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].

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

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

### BHA 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.

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.

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**

##### BHA Policy

BHA will act in a manner to avoid making rental subsidy payments to landlords that are not housing eligible households. When an individual is not residing in the unit, BHA may:

- a) Terminate the Section 8 voucher;
- b) Suspend the Section 8 Voucher; or
- c) Terminate the rental subsidy [Housing Assistance Payment Contract], but preserve the Section 8 Voucher for the family.

Generally an individual who is or is expected to be absent from the assisted unit for 30 consecutive days or less is considered temporarily absent and continues to be considered a family member.

Except as set forth below, BHA will terminate the housing assistance of a family that is, or a voucher holder who is, absent from the assisted unit for 30 or more days per year without good cause, as determined by BHA in its sole discretion. The family shall have the right to an informal hearing.

BHA may continue housing assistance payments of a family, or voucher holder, that is absent from the assisted unit for a verifiable good cause (for example: long-term hospitalization) as determined by BHA.

In rare circumstances where BHA terminates the housing assistance of a family that can provide a reasonable target date for its return, BHA may allow the family to remain in the program even if its housing assistance payment has ceased (for example: a person participating in a residential drug or alcohol recovery program). The family will be issued a new voucher, provided that evidence is provided of such good cause reason. The request for reinstatement must be made within 2 years of the last rental subsidy payment.

In cases where some members of the family will be absent for more than 30 days per consecutive 12-month period while others remain in the unit, BHA may, at its sole discretion, recertify the remaining members. This may result in a smaller unit bedroom count for the remaining members. Or, the remaining family members may continue to reside in the larger unit, and increase their rent portion.

In cases where the adult member(s) of a household are absent, while minors remain in the unit, BHA will follow the dictates of State and local law and discuss the status with any remaining adults in the household, who are identified on emergency contact information portion of the BHA forms, or who are related to the family and contact BHA for information.

In cases of absences resulting directly from disaster or pandemic-related emergencies, the 30 day threshold will be waived to protect the health and safety of BHA's program participants and broader community.

Disabled program participants have the right to request a reasonable accommodation to exceed the 30 day threshold.

Other exceptions to this general policy are discussed below;

### **Absent Students**

#### BHA 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 (and will be required to provide documentation to complete the household's recertification). The family must provide: (a) verification of enrollment at the beginning of every quarter/semester, (b) an annual declaration from the student that he/she has not established a separate household, and (c) evidence that the student is claimed on the income tax return of the assisted parent or has filed an independent return.

### **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.

#### BHA Policy

If a child has been placed in foster care, BHA 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 for a maximum of three years, provided the family is working towards satisfying a reunification plan. However, if the child is receiving other federal rent subsidy, the child will be removed from the BHA-assisted household until s/he is no longer receiving the other federal rental assistance.

### **Absences Due to Actual Threatened Domestic Violence, Date Violence or Stalking**

#### BHA Policy

Prior to determining that a family member or a family has abandoned the unit, the PHA shall take into account the role domestic violence, dating violence, sexual assault, or stalking played in the absence.

## **Absent Head, Spouse, Domestic Partner, Cohead or Any Adult Family Member**

### BHA Policy

An employed head, spouse, domestic partner, cohead or any adult family member absent from the unit more than 30 consecutive days due to employment will continue to be considered a family member and any income or benefits received will be included in the calculation of household income provided the individual does not have another permanent residence.

## **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].

### BHA Policy

BHA will request verification from a responsible medical professional regarding the anticipated term the person will be confined, and will use this in making a determination. The family may present evidence that the family member is confined temporarily, is expected to return home within 6 months, and should continue being considered a family member. If the responsible medical professional cannot provide a determination that the duration of the confinement is not likely to exceed 6 consecutive months, the person will be considered permanently absent, removed from the household, via an interim reexamination; if the permanently or indefinitely confined family member is the only person in the household, assistance will be terminated. BHA may reinstate the Voucher, if the member is determined eligible to resume residency in a unit alone, or with the assistance of a live-in aide, within two years of the effective date of the family entered the long-term care facility.

BHA will require the household to provide written notice of the need for a family member to travel outside of California for medical treatment, if the duration of care will be 31 or more consecutive days.

## **Returning Members**

### BHA Policy

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

## **Absence due to lack of habitability**

### BHA Policy

When a family is not able to occupy the assisted unit due to habitability, BHA may continue the rental for a maximum of two months to allow time for owner repairs, provided the family is provided (a) alternate housing and relocation/displacement benefits as required by City of Berkeley Relocation Ordinance, and (b) the family has not relocated to housing with the Section 8 Voucher.

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

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

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

A live-in aide is a member of the household, not the family, and the income of the aide is not considered in income calculations [24 CFR 5.609(b)]. Relatives, excluding a spouse, domestic partner, or significant other, 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.

A family's request for a live-in aide must be made in writing in accordance with BHA's Request for Reasonable Accommodation policies. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social worker, or case worker, that the live-in aide residing in the unit and providing over-night care is essential for the care and well-being of the elderly, near-elderly, or disabled family member. BHA may not require annual recertification of approval of a Live-In Aide, but will continue to require the family certify that the Live-In Aide is residing in the assisted unit.

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. BHA will run criminal background checks on potential Live-In Aides.

BHA will not authorize a larger unit to accommodate "aides" that work on shifts, but do not reside in the assisted unit on a full time basis. BHA will acknowledge the presence of such part-time aids, recognizing use of the living room as a possible sleeping room.

BHA will not approve a particular person as a live-in aide, and may withdraw such approval if [24 CFR 982.316(b)]:

- The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The person is receiving federal rental assistance for another unit;
- The person fails to provide a driver's license or identification card from CA DMV showing the assisted address as his/her fixed and permanent domicile;
- The person commits drug-related criminal activity or violent criminal activity;
- The person currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act;
- The person fails to respond to/comply with BHA's reasonable request for information/documentation; or

- The relationship between the aide and the disabled person changes from employer-employee, to “spouse or partner.”

BHA will not allow the reclassification of the LIA to status as a household member except as noted above.

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

### PART TIME AIDE

BHA recognizes that there are senior and/or disabled clients who require assistance with daily living activities, on a less-than- full time basis. If the disabled or elderly person only requires assistance on a part-time or “as-needed” basis or utilizes more than one person working shifts to cover a 24-hour period to perform the daily living activities, it is “not generally reasonable” to increase the subsidy on a full-time basis, and BHA will recommend other cost effective measures that can be taken to accommodate the needs of the part-time caregivers, including using the living room as a living/sleeping room for the short-term stays or sleeping arrangement for the workers.

## **PART II: BASIC ELIGIBILITY CRITERIA**

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

#### **Income Limits**

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

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

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

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

*Extremely low-income family.* A family whose annual income does not exceed the higher of either 30 percent of the median income for the area, or federal poverty, 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]

BHA Policy

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

- A low-income family that qualifies for voucher assistance as a non-purchasing household living in HOPE 1 (public housing homeownership), HOPE 2 (multifamily housing homeownership) developments, or other HUD-assisted multifamily homeownership programs covered by 24 CFR 248.173
- A low-income or moderate-income family that is displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract on eligible low-income housing as defined in 24 CFR 248.101

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

BHA Policy

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

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

At least 75 percent of the families admitted to a PHA’s program during a PHA fiscal year must be extremely low-income families. HUD may approve exceptions to this requirement if the PHA 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), noncitizens that have eligible immigration status, or VAWA self-petitioners. At least one family member (adult or minor) must be a citizen, national, noncitizen with eligible immigration status, or a VAWA self-petitioner 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 BHA’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, an eligible noncitizen, or a VAWA self-petitioner, 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, and VAWA self-petitioners, the declaration must be signed personally by the head, spouse (except for VAWA self-petitioners), 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 require the PHA to obtain verification of the declaration by requiring documentation of their status, as set forth in chapter 7, for example, a passport.

#### **BHA Policy**

Family members who declare citizenship or national status will be required to provide documentation of their status as set forth in Chapter 7.

For family members who claim to be eligible immigrants, BHA must verify immigration status with the United States Citizenship and Immigration Services (USCIS) via the SAVE system (Systematic Alien Verification for Entitlements).

BHA will follow all USCIS protocols for verification of eligible immigration status.

### ***Eligible Noncitizens and VAWA Self-Petitioners***

In addition to providing a signed declaration, those declaring status as an eligible noncitizen or VAWA self-petitioner, must sign a verification consent form and cooperate with BHA's efforts to verify their immigration status as described in Chapter 7. The documentation required for establishing eligible noncitizen status or VAWA self-petitioner 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 PHA 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)]**

BHA 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 BHA that the individual or at least one family member is eligible. Verification of eligibility for this purpose occurs when the individual or family members have submitted documentation to BHA in accordance with program requirements [24 CFR 5.512(a)].

#### BHA Policy

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

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

The notice will explain the reasons for the denial of assistance, that the family may be eligible for proration of assistance, and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS), or to request an informal hearing with the PHA. The informal hearing with BHA 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, BHA must verify status at the first interim or regular reexamination following the person's occupancy, whichever comes first.

If an individual qualifies for a time extension for the submission of required documents, BHA 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.

#### BHA Policy

BHA 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]**

The applicant and all members of the applicant's household must provide documentation of a valid Social Security Number (SSN) issued except noncitizens who do not contend eligible immigration status. If a household member who is required to execute a certification is less than 18 years old, the certification must be executed by the individual's parent or guardian [24 CFR 5.216(j)]. Assistance cannot be provided to a family until all SSN documentation requirements are met.

If any member of the household obtains a previously undisclosed SSN, has previously disclosed an SSN that HUD or the SSA determined was invalid, or has been assigned a new SSN, the documentation must be submitted at the family's next interim or regularly scheduled reexamination.

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

BHA will accept the following documents as evidence if the SSN is provided on the document:

- Identification card issued by a federal, state, or local agency, a medical insurance company or provider, or employer or trade union
- Payroll stubs
- Benefit award letters from government agencies; retirement benefit letters; life insurance policies
- Court records (real estate, tax notices, marriage and divorce, judgment or bankruptcy records)

### **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, domestic partner or cohead, regardless of age, to sign form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. Chapter 7 provides detailed information concerning the consent forms and verification requirements.

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

### **3-11.E BHA RELEASE**

BHA has a supplemental release form that is required of each applicant and/or participant. This form allows BHA to confirm with additional agencies, factors related to a household's income, assets, expenses, full time student status, and place of residency, all factors used in determining an appropriate level of assistance. The release will also allow BHA to contact the "emergency contact" identified by the family, and/or an agency on behalf of the family if there is an actual or perceived health risk to the family or neighbors, or if continuation of rental assistance is at risk.

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

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

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be examined along with the income eligibility of the student's parents. In these cases, both the student and the student's parents must be income eligible for the student to receive HCV assistance. If, however, a student in these circumstances is determined independent from his/her parents in accordance with BHA policy, the income of the student's parents will not be considered in determining the student's eligibility.

The new law does not apply to students who reside with parents who are applying to receive HCV assistance. It is limited to students who are seeking assistance on their own, separately from their parents.

#### **Definitions**

In determining whether and how the new eligibility restrictions apply to a student, BHA will rely on the following definitions [FR 4/10/06, p. 18148].

#### ***Dependent Child***

In the context of the student eligibility restrictions, *dependent child* means a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of *dependent* in 24 CFR 5.603, which states that the dependent must be a member of the assisted family, other than the head of household or spouse or domestic partner, who is under 18 years of age, or is a person with a disability, or is a full-time student. Foster children and foster adults are not considered dependents.

#### ***Independent Student***

##### BHA Policy

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

The individual is of legal contract age under state law.

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

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

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

Be an orphan or a ward of the court through the age of 18

Be a veteran of the U.S. Armed Forces

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

Be a graduate or professional student

Be married

The individual was not claimed as a dependent by his/her parents pursuant to IRS regulations, as demonstrated on the parents' most recent tax forms.

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

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

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

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

### ***Parents***

#### BHA Policy

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

### ***Person with Disabilities***

BHA will use the statutory definition under section 3(b)(3)(E) of the 1937 Act to determine whether a student is a *person with disabilities* (see Exhibit 3-1).

### ***Veteran***

#### BHA Policy

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

### **Determining Student Eligibility**

If a student is applying for assistance on his/her own, apart from his/her parents, BHA must determine whether the student is subject to the eligibility restrictions contained in 24 CFR 5.612. If the student is subject to those restrictions, BHA must ensure that: (1) the student is individually eligible for the program, (2) either the student is independent from his/her parents or the student's parents are income eligible for the program, and (3) the "family" with which the student is applying is collectively eligible for the program.

#### BHA Policy

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

Follow its usual policies in determining whether the student individually and the student's "family" collectively are eligible for the program

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

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

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

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

#### **BHA Policy**

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

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

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

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

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

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

## **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 BHA to deny assistance based on certain types of current or past behaviors of family members.

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

Denial of assistance includes any of the following:

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

### **Prohibited Reasons for Denial of Program Assistance [24 CFR 982.202(b), Pub. L. 109-162]**

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

- Age, disability, race, color, religion, sex, or national origin. (See Chapter 2 for additional information about fair housing and equal opportunity requirements.)
- Where a family lives prior to admission to the program
- Where the family will live with assistance under the program. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside the PHA'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 program
- Whether or not a qualified applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking

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

HUD requires BHA 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).

#### BHA Policy

BHA will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity, if BHA is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by BHA, or the person who committed the crime, is no longer living in the household and will not join the household for a minimum of three years.

- BHA determines that any household member is currently engaged in the use of illegal drugs.

### BHA Policy

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

- BHA 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.

### BHA Policy

In determining reasonable cause, BHA will consider all credible evidence, including but not limited to, any record of convictions, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. BHA will also consider evidence from treatment providers or community-based organizations providing services to household members.

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

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

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

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

HUD permits, but does not require, BHA to deny assistance if BHA determines that any household member is currently engaged in, or has engaged in during a reasonable time before the family would receive assistance, certain types of criminal activity.

### BHA 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 may be denied assistance, and in making its decision to deny assistance, BHA will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, BHA may, on a case-by-case basis, decide not to deny assistance. The family will have the opportunity to provide evidence of participation in a rehabilitation program, or letters of support from advocacy organizations familiar with the individual, law enforcement including judges, parole officers, and/or advocates, members of the civic community, or clergy.

*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 and management staff, and persons performing contract administration functions or other responsibilities on behalf of BHA (including a BHA employee or a BHA contractor, subcontractor, or agent).

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

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

Any conviction for drug-related or violent criminal activity within the past 3 years.

Any record of eviction from public or privately-owned housing as a result of criminal activity within the past 3 years.

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

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

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

#### BHA Policy

BHA **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.

BHA **will** deny assistance to an applicant family if:

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

The family does not provide complete and true information to BHA.

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

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

The family owes rent or other amounts to any PHA in connection with the HCV, Project-based Section 8, 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 failed to properly terminate rental assistance received by another Housing Authority before the effective date of assistance utilizing a BHA issued Voucher.

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

A family member has engaged in or threatened violent or abusive behavior or repeated harassing behavior toward PHA personnel.

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

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

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

### **3-III.D. SCREENING**

#### **Screening for Eligibility**

PHAs are authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the HCV program. This authority assists BHA in complying with HUD requirements and BHA 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 BHA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

#### BHA Policy

BHA will perform a criminal background check for every adult household member, 18 years or older at the effective date of admission. BHA may perform a subsequent criminal background check at annual or interim re-certifications if there is evidence, such as family notification of a new conviction/incarceration of a family member.

PHAs are 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)]. In addition, PHAs must terminate an erroneously admitted lifetime sex offender. PHA's are also required to perform criminal background checks necessary to determine whether any household member has been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing, and must terminate if so (24 CFR 980.553 (b) (ii)).

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

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

BHA has no liability or responsibility to the owner for the family's behavior or suitability for tenancy. The PHA may opt to conduct additional screening to determine whether an applicant is likely to be a suitable tenant.

#### BHA Policy

BHA will not conduct additional screening to determine an applicant family's suitability for tenancy.

The owner is responsible for screening and selection of the family to occupy the owner's unit. BHA 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, and compliance with other essential conditions of tenancy. The owner must comply with City of Berkeley's Fair Chance Housing Ordinance.

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

#### BHA Policy

BHA will inform owners of their responsibility to screen prospective tenants including compliance with the City of Berkeley's Fair Chance Housing ordinance which requires that property owners not inquire about criminal history until a determination that the applicant is qualified to rent under all other criteria, and has a conditional lease agreement, and that the applicant is informed in advance that a criminal background check will be run with written consent of the applicant, or the applicant may object and withdraw the rental application.

Upon submission of a Request for Tenancy Approval, and upon request, BHA will provide the prospective landlord with contact information of the landlord of any prior assisted tenancy and copies of prior inspection reports. With the consent of the prospective tenant, BHA will share information about any prior eviction and/or failure to pay utility expense reflected in the participant file.

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

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

#### BHA Policy

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

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

Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

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

HUD authorizes BHA to consider all relevant circumstances when deciding whether to deny assistance based on a family's past history except in the situations for which denial of assistance is mandated (see Section 3-III.B).

#### BHA Policy

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

The seriousness of the case, especially with respect to how it affected other residents, and the potential to affect other residents

The extent to which there is a history of similar problems with the household while residing at another location

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

The evidence that there is a responsible family member, friend, or case manager to help the family manage/avoid a repeat of the problem behavior

A conviction of an individual family member, including whether the convicted family member is a minor or a person with disabilities, or, as discussed further in section 3-III.G) a victim of domestic violence, dating violence, sexual assault, or stalking

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

As evidence of the likelihood of favorable conduct in the future, BHA will consider all of the following: evidence of employment, education, participation in a work training program, participating in a counseling program, involvement in a community group, a certificate of rehabilitation from the state, and letters of support from parole or probation, case workers, clergy, or community leaders.

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

BHA 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)]**

HUD permits BHA to impose as a condition of admission, a requirement that family members who were convicted of criminal activity for which BHA may deny admission, to not reside in the unit.

#### BHA Policy

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

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

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

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

#### BHA Policy

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

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

If BHA determines that a family is not eligible for the program for any reason, the family must be notified promptly. The notice must describe: (1) the reasons for which assistance has been denied, (2) the family's right to an informal review, and (3) the process for obtaining the informal review [24 CFR 982.554 (a)]. See Chapter 16, for informal review policies and procedures.

#### BHA Policy

The family will be notified of a decision to deny assistance in writing within 10 business days of the determination. The notice will include contact information for legal advocacy organizations serving low-income residents in the City of Berkeley.

If BHA 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 BHA 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)]. BHA must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirements [24 CFR 982.553(d)].

### BHA Policy

If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible BHA 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 BHA to dispute the information within that 10-day period, BHA will proceed with issuing the notice of denial of admission. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal review process.

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

Notice policies related to denying admission to applicants who may be victims of domestic violence, dating violence, sexual assault, or stalking are contained in Section 3-III.G.

### **3-III.G. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING [24 CFR Part 5, Subpart L]**

The Violence against Women Reauthorization Act of 2013 (VAWA 2013) 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; and prohibits a landlord from evicting or terminating assistance on the basis or as a direct result of having been a survivor. Specifically, Section 606(4)(A) of VAWA adds the following provision to Section 8 of the U.S. Housing Act of 1937, which lists contract provisions and requirements for the housing choice voucher program:

- That an applicant or participant is or has been a victim of domestic violence, dating violence, sexual assault or stalking is not an appropriate reason for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission [24 CFR 5.2005], or for eviction/termination of assistance on the basis or as a direct result of having been a survivor.
- A survivor with an unreported member residing in the household whom the survivor is afraid to ask to leave because of domestic violence, may be covered by VAWA's anti-discrimination provisions and eligible for remedies provided under VAWA.
- Once admitted to BHA's programs, in instances of domestic violence, a landlord may bifurcate the lease to evict the abuser while allowing the survivor to stay in the unit. If the abuser who is evicted was the family member who qualified the rest of the family to live in

the unit or receive assistance, the housing provider must provide the remaining tenant(s) at least 90 calendar days or until lease expiration (with a possible 60-day extension) to establish eligibility for the existing program, for another covered housing program, or find alternative housing.

### **Definitions [24 CFR 5.2003]**

As used in VAWA:

- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.
- The term *domestic violence* includes felony or 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, or an "affiliated individual" of the victim (spouse, parent, brother, sister, or child of that victim; or an individual to whom that victim stands in loco parentis; or an individual, tenant or lawful occupant living in the victim's household) and is living in, or seeking admission to, any of the covered housing programs.
- 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
- The term *stalking* means:
  - engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
    - 1) Fear for his or her safety or others; or
    - 2) Suffer substantial emotional distress.
- The term *affiliated individual* is defined as:
  - A spouse, parent, brother or sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or
  - Any individual, tenant, or lawful occupant living in the household of that person and related to that person by blood and marriage.

### **Notification**

#### BHA Policy

BHA acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history (e.g., a poor credit history, a

record of previous damage to an apartment, a prior arrest record) that would warrant denial under BHA's policies, or possibly be a factor in a proposed eviction/termination of Section 8 assistance. Therefore, if BHA makes a determination to deny admission to an applicant family, or proposes termination of Section 8 assistance, BHA will include in its notice of denial:

A statement of the protection against denial provided by VAWA (VAWA Notice) and HUD VAWA self-certification form

A description of BHA confidentiality requirements

A request that an applicant wishing to claim this protection submit to BHA documentation meeting the specifications below with her or his request for an informal review (see section 16-III.D)

An offer to communicate with the applicant via another address, where mail can be received without the knowledge of the perpetrator.

## **Documentation**

### ***Victim Documentation***

#### BHA Policy

An applicant claiming that the cause of an 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 must provide documentation (1) demonstrating the connection between the abuse and the unfavorable history and (2) naming the perpetrator of the abuse. The documentation may consist of any of the following:

*Any of the items listed below are sufficient to confirm VAWA status, and may be chosen by the survivor except when there is conflicting evidence.*

- A police or court record (i.e. restraining order) documenting the domestic violence, dating violence, sexual assault, or stalking
- A report from a hospital or medical care facility, attesting to the domestic violence
- Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of such abuse. This person may be an employee, advocate, agent, or volunteer of a victim service provider or social service agency; an attorney; clergy; or a medical or other knowledgeable professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.
- An option for use to document VAWA status is HUD Form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault or

Stalking” which is available at BHA’s office and available in 14 languages.

- Administrative record.
- Statement of other evidence, at the discretion of the housing authority (e.g. emails, texts, social media posts).

An individual’s failure to timely provide documentation of domestic violence, dating violence, sexual assault, or stalking does not result in a waiver of the individual’s right to challenge the denial of assistance or termination, nor does it preclude the individual’s ability to raise an incident of domestic violence, dating violence, sexual assault, or stalking at eviction or termination proceedings.

### ***Perpetrator Documentation***

#### BHA 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 assisted unit for three years; or
- 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 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 and that (s)he is not signing the document under duress. The victim and perpetrator must also sign or attest to the documentation.

### ***Time Frame for Submitting Documentation***

#### BHA Policy

The applicant must submit the required documentation with her or his request for an informal review (see section 16-III.D) or must request an extension in writing at that time. If the applicant so requests, BHA will grant an extension of 10 business days, and will postpone scheduling the applicant’s informal review until after it has received the documentation or the extension period has elapsed. If after reviewing the documentation provided by the applicant BHA determines that the family is eligible for assistance, no informal review will be scheduled and BHA will proceed with admission of the applicant family.

### **PHA Confidentiality Requirements [24 CFR 5.2007(a)(1)(v)]**

All information provided to BHA 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 strict 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 in a time limited release, (b) is required for use in an eviction proceeding, or hearing regarding termination of assistance from the covered program, or (c) is otherwise required by applicable law.

BHA shall not allow employees to have access to information regarding documentation of domestic violence, dating violence, sexual assault, or stalking unless explicitly authorized by the PHA for reasons that specifically call for the employees to have access to this information [24 CFR 5.2007 (a) (4) (iii)].

#### BHA Policy

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, BHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

The following VAWA documents are found on BHA's website ([www.cityofberkeley.info/bha](http://www.cityofberkeley.info/bha)) or BHA's office, 1936 University Ave, Suite 150, Berkeley: Violence Against Women Act-VAWA 2013 Notices to Landlords and to Program Participants; Notice of Occupancy Rights under the Violence Against Women Act; Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking; VAWA Emergency Transfer Plan.

## 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 of 2000 [42 U.S.C.15002(8)], which defines developmental disability in functional terms as follows:

#### **(A) In General**

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

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

#### **(B) Infants and Young Children**

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

- Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently, and is of

such a nature that the ability to live independently could be improved by more suitable housing conditions.

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

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

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

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

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

(1) Physical or mental impairment includes:

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

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

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

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

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

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

**Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance; Notice [Federal Register, April 10, 2006]**

*Institution of Higher Education* shall have the meaning given this term in the Higher Education Act of 1965 in 20 U.S.C. 1001 and 1002.

*Definition of “Institution of Higher Education” From 20 U.S.C. 1001*

- (a) Institution of higher education. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term “institution of higher education” means an educational institution in any State that
- (1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
  - (2) Is legally authorized within such State to provide a program of education beyond secondary education;
  - (3) Provides an educational program for which the institution awards a bachelor’s degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;
  - (4) Is a public or other nonprofit institution; and
  - (5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.
- (b) Additional institutions included. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term “institution of higher education” also includes—
- (1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and
  - (2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.
- (c) List of accrediting agencies. For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

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

- (a) Definition of institution of higher education for purposes of student assistance programs

- (1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term “institution of higher education” for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—
- (A) A proprietary institution of higher education (as defined in subsection (b) of this section);
  - (B) A postsecondary vocational institution (as defined in subsection (c) of this section); and
  - (C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.

(2) Institutions outside the United States

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

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

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

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

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

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

(B) Advisory panel

- (i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—
    - (I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and
    - (II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.
  - (ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.
- (C) Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.
- (D) Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.
- (3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—
- (A) Offers more than 50 percent of such institution’s courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;
  - (B) Enrolls 50 percent or more of the institution’s students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;
  - (C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor’s degree, or an associate’s degree or a postsecondary diploma, respectively; or
  - (D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor’s degree or an associate’s degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the

satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.

- (4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—
  - (A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution’s management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or
  - (B) The institution, the institution’s owner, or the institution’s chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.
- (5) Certification. The Secretary shall certify an institution’s qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.
- (6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

- (1) Principal criteria. For the purpose of this section, the term “proprietary institution of higher education” means a school that—
  - (A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;
  - (B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;
  - (C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;
  - (D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;
  - (E) Has been in existence for at least 2 years; and
  - (F) Has at least 10 percent of the school’s revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of

chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.

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

(c) Postsecondary vocational institution.

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

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

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

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

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