

## Chapter 3 ELIGIBILITY

**MTW Waiver:** *The Agency is authorized to determine income qualifications for participation in the rental assistance program that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations, as long as the requirements that i) at least 75 percent of those assisted under the demonstration are “very low income” as defined in section 3(b)(2) of the 1937 Act, ii) substantially the same number of low-income persons are assisted under the demonstration as would be without the MTW authorizations contained herein, and iii) a comparable mix of families are assisted under the Agreement as would have been otherwise in Section I.C. of the MTW Agreement are met. This authorization waives certain provisions of Section 16(b) and 8(o)(4) of the 1937 Act and 24 CFR 5.603, 5.609, 5.611, 5.628, and 982.201 as necessary to implement the Agency’s Annual MTW Plan.*

### I. INTRODUCTION

HACSM 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 HACSM 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 HACSM.
  - 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 HACSM’s collection and use of family information as provided for in HACSM-provided consent forms.
- HACSM must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the HACSM.

### II. FAMILY AND HOUSEHOLD MEMBERS

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. *Family* is defined as a single person or a group of persons, a family with a child or children, two or more elderly or disabled persons living together, and one or more elderly or disabled persons, with one or more live-in aides.

## Household

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

\*See the **Definitions** chapter for the following family and household member terms:

- Head of Household
- Spouse, Co-Head, Other Adult
- Dependent
- Full-Time Student
- Elderly Persons/Family
- Persons with Disabilities/Disabled Family
- Guests
- Foster Children/Foster Adults
- Absent Family Members

### III. FAMILY BREAK-UP, REMAINING MEMBER OF TENANT FAMILY, AND JOINT CUSTODY OF DEPENDENTS

#### Family Break-Up

HACSM 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, HACSM is bound by the court's determination of which family members continue to receive assistance.

- 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. In the absence of agreement among the family members, HACSM will determine which family will retain the original application date. Other former family members may make a new application with a new application date when the waiting list is open. The application process and the selection policy of the new waiting list shall apply.
- If a family breaks up into two otherwise eligible families while receiving assistance, only one of the new families will continue to be assisted.

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

1. The interest of any minor children, including custody arrangements;
2. The interest of any ill, elderly, or disabled family members;
3. Any possible risks to family members as a result of domestic violence or criminal activity;
4. Which family member(s) remain in the subsidized unit; and

## 5. The recommendations of social service professionals.

Head of household status shall not be solely determinative in deciding who will retain the voucher assistance. In cases of domestic violence, the victim of domestic violence will receive the voucher (based on documentation received by HACSM), unless there are multiple claims of victim status from the same household (e.g. husband and wife both claim they are victims of domestic violence and both provide supporting documentation). In the event of more than one claim, HACSM will seek legal or judicial guidance in making its decision.

### **Remaining Member of a Tenant Family**

The 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 3, for the policy on “Caretakers for a Child.”

### **Joint Custody of Dependents**

Children who are subject to a joint-custody agreement but who live with one parent at least 183 days of the year (a minimum of 50% plus 1 day), whether consecutively or not, will be considered members of the household. Should both parents be applicants, and both are trying to claim the child, the parent whose address is listed in the school records will be allowed to claim the school-age child as a dependent. If school records are inconclusive, then other pertinent records, such as court records or IRS returns, will be utilized.

### **Caretakers for a Child**

If neither a parent nor a designated guardian remains in a household receiving HCV assistance, HACSM will take the following actions.

- (1) If a responsible agency has determined that another adult is to be brought into the assisted unit to care for a child for an indefinite period, the designated caretaker will not be considered a family member until a determination of custody or legal guardianship is made.
- (2) If a caretaker has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 90 days. After the 90 days has elapsed, the caretaker will be considered a family member unless information is provided that would confirm that the caretaker’s role is temporary. In such cases, HACSM will extend the caretaker’s status as an eligible visitor.
- (3) At any time that custody or guardianship legally has been awarded to a caretaker, the housing choice voucher will be transferred to the caretaker.

- (4) During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income.

#### **IV. 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, and (3) would not be living in the unit except to provide the necessary supportive services.

HACSM 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. Live-in aides are not subject to Non-Citizen Rule requirements. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. However, a relative who serves as a live-in aide is not considered a family member and would not be considered a remaining member of a tenant family.

A family's request for a live-in aide must be made in writing. A live-in aide may only reside in the unit with the approval of HACSM and the landlord. Written verification will be required from a reliable, knowledgeable professional, such as a doctor or social worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member.

For continued approval, the necessity of a live-in aide shall be subject to review by HACSM at each reexamination and may be re-verified according to the procedure stated in the above paragraph.

The family and live-in aide will be required to sign 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. In addition, a live-in aide cannot have ownership or other interest in the subsidized unit. The live-in aide is required to complete a personal declaration form provided by HACSM.

HACSM will not approve a particular person as a live-in aide, and may withdraw such approval if:

- The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The person commits drug-related criminal activity or violent criminal activity;  
or
- The person currently owes rent or other amounts to HACSM or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

- The person is currently engaged in or has engaged in other criminal activity which may threaten the health or safety of the premises by other residents or persons residing in the immediate vicinity of the unit.
- The person has an abuse or pattern of abuse of alcohol that may adversely affect the health or safety of, or right to peaceful enjoyment of the premises by, other residents and persons residing in the immediate vicinity of the premises or if HACSM believes it has reasonable cause to believe the live-in aide has a criminal record (within the past three years) that substantiates the pattern of alcohol abuse.
- The person is subject to a lifetime registration requirement under a State Sex Offender registration program.
- The person has been convicted of manufacturing or producing methamphetamine in a building or complex assisted under the Public Housing or Section 8 programs.

A relative who chooses to be a live-in aide will not be treated as a regular member of the household, but instead will be treated as a live-in aide. Once a person is approved and designated as a live-in aide, the status will not be changed to family member status. Conversely, a person designated as family member will not be changed to live-in aide status. A person who leaves the family household with one status will not be allowed to return to the family household with another status for a period of three (3) years.

The live-in aide's qualification for housing occupancy terminates when the individual needing the supportive services leaves the unit or fails to qualify for continued occupancy. The live-in aide does not qualify for continued occupancy as a remaining member of the tenant family, even if they are related by blood, marriage or operation of law.

Family members of a live-in aide may also reside in the unit provided the following conditions are met:

- The subsidy size is not increased; and
- The presence of the live-in aide's family does not overcrowd the unit.

## **V. BASIC ELIGIBILITY CRITERIA**

### **Income Limits**

HUD establishes income limit schedules for HACSM's areas of operation. 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.

Income limits are used for eligibility only at admission and are not applicable for continued occupancy. Eligibility is established by comparing a family's annual income with HUD's published income limits. To be income-eligible, a family must be a *very low-income* family – income at 50%, or less, of median.

At least 75 percent of the families admitted to HACSM's program during the HACSM fiscal year must be very low-income families.

## **Asset Limits**

Applicants will be determined ineligible for the program if they have more than \$100,000 in net assets, or have a present ownership interest in a suitable home in which they have a legal right to reside, unless the home is assisted under the US Housing Authority, or the family includes a person who is a victim of domestic violence or is making a good faith effort to sell the home.

Excluded from assets are interests in Indian trust land, equity accounts in HUD homeownership or FSS programs, certain inaccessible trust funds, retirement accounts, settlements or awards due to actions that resulted in the serious disability of a household member, tax-protected education savings accounts, and personal property not of significant value.

### **Other Factors Affecting Applicant Eligibility:**

See Chapter 12, "Denial and Termination of Assistance."

## **VI. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS**

Housing assistance is available only to individuals who are U.S. citizens, U.S. nationals (herein referred to as citizens and nationals), or non-citizens that have eligible immigration status. At least one family member must be a citizen, national, or non-citizen with eligible immigration status in order for the family to qualify for any level of assistance.

### **Declaration**

HACSM requires each family member to declare whether the individual is a citizen, a national, or an eligible non-citizen, 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 non-citizens. For citizens, nationals and eligible non-citizens the declaration must be signed personally by the head, spouse, co-head, 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 Non-citizens below). No declaration is required for live-in aides, foster children, or foster adults.

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

Citizens and nationals are required to submit a signed declaration that claims their status. HACSM will obtain verification of the signed declaration of U.S. Citizenship or U.S. nationality.

### **Eligible Non-citizens**

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

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

### **Ineligible Non-citizens**

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

Providing housing assistance to non-citizen students is prohibited. This prohibition extends to the non-citizen spouse of a non-citizen student as well as to minor children who accompany or follow to join the non-citizen student. Such prohibition does not extend to the citizen spouse of a non-citizen student or to the children of the citizen spouse and non-citizen 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 non-citizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that the amount of their subsidy may be reduced based on their status, and that they may request a hearing if they contest this determination.

### **Ineligible Families**

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

When HACSM determines that an applicant family does not include any citizens, nationals, or eligible non-citizens, following the verification process, the family will be sent a written notice of the determination.

## **VII. SOCIAL SECURITY NUMBERS**

The applicant and all members of the applicant's household must provide documentation of a valid Social Security Number (SSN), if assigned.

If a new member (including a child or children) is added to the family, the new member's SSN documentation must be submitted at the family's next interim or regular reexamination, whichever comes first. If any member of the family obtains a previously undisclosed SSN, or has been assigned a new SSN, the documentation must be submitted at the family's next regularly scheduled reexamination.

Assistance will not be provided to a family until all SSN documentation requirements are met. HACSM will deny assistance to an applicant family if they do not meet the SSN disclosure, documentation and verification, and certification requirements.

## **VIII. FAMILY CONSENT TO RELEASE OF INFORMATION**

HUD requires each adult family member, and the head of household, spouse, or co-head, 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.

HACSM will 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)].