

eligibility and level of assistance. Chapter 7 provides detailed information concerning the consent forms and verification requirements.

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

PART III: DENIAL OF ADMISSION

3-III.A. OVERVIEW

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

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

This part covers the following topics:

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

HACA's developments will not be used as housing of last resort. All applicants for public housing will be screened according to the basic policies and standards set forth in the Authority's Admission and Continued Occupancy Policy (ACOP).

GENERAL PRINCIPLES OF SCREENING

The screening criteria in the Admissions and Continued Occupancy Policy are based on those set forth in the HUD Regulations [24 CFR Part 960.205] and in the applicable sections of the Quality Housing and Work Responsibility Act of 1998 (QHWRA). The regulations require an assessment of the behavior of each applicant with respect to the essential obligations of tenancy as expressed in the PHA's lease. The essential obligations of tenancy may be summarized as follows:

- To pay rent and other charges under the lease in the manner set forth by the PHA in the lease.
- To care for and avoid damaging the unit and common areas, to use facilities and equipment in a reasonable way; not to create or maintain health, safety or sanitary hazards and to promptly report maintenance needs.
- Not to interfere with the rights and enjoyment of others and not to damage the property of others.

- Not to engage in criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents or staff and not to engage in drug-related criminal activity on or off the premises.
- To comply with necessary and reasonable rules and program requirements of HUD and the PHA.
- To comply with health and safety codes.

3-III.B. REQUIRED DENIAL OF ADMISSION [24 CFR 960.204]

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

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

HUD requires the PHA 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).

HACA Policy

HACA will apply its screening criteria on all applicant families, including families evicted from federally-assisted housing within the past 5 years for drug-related criminal activity. The PHA determines that any household member is currently engaged in the use of illegal drugs. *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]. *Currently engaged in the illegal use of a drug* means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member [24 CFR 960.205(b)(1)].

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

- The PHA 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.

HACA Policy

In determining reasonable cause, HACA will consider all credible evidence, including but not limited to, any record of convictions, arrests or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. HACA may, at its discretion, also consider evidence from

treatment providers or community-based organizations providing services to household members.

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing.

HACA Policy

If any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine in any location, not just federally assisted housing, the family will be denied admission. For the purposes of this document, federally assisted housing is defined as any housing in which a resident's housing is subsidized or the housing provider receives subsidy, either directly or indirectly, from a federal agency or federal housing program (including, but not limited to Public Housing, the Housing Choice Voucher program, Project Based Rental Assistance, and others).

- Any household member is subject to a lifetime registration requirement under a state sex offender registration program.

HACA Policy

If any household member is currently registered as a sex offender under any State registration requirement, regardless of whether it is for lifetime or not, the family will be denied admission.

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

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

HACA Policy

Preliminary Eligibility Criteria

All applications will be screened for preliminary eligibility before they are added to the HACA public housing waiting list. If an applicant is found to be preliminarily ineligible, their application will not be added to the program's waiting list. The following criteria shall be used to determine preliminary ineligibility:

- HACA shall prohibit admission to the public housing program of an applicant for five years from the date of eviction or termination if a household or family member has been evicted or terminated from federally assisted housing for drug-related criminal activity.
- If the household or family vacated in lieu of eviction from a HACA property due to a household or family member engaging in drug-related criminal activity within 5 years from the date of application, HACA will prohibit the admission to the public housing program if the following criteria have been met:
 - HACA has documentation confirming the household or family member engaged in the drug-related criminal activity (e.g. criminal records, including but not limited to, probable cause affidavits, court records, police reports, criminal background report, and / or other official documents); and

- HACA has documentation confirming that it started the eviction process with the family (e.g. issuance of a 30 day notice or termination lease letter, issuance of a 3 day notice to vacate letter, notice of intent to vacate in lieu of eviction signed by tenant, filing a forcible detainer lawsuit against the family and / or other records); and
 - The offender that is identified in the documentation is still listed as a member of the household or family on the new application.
- An applicant is deemed preliminarily ineligible and shall be rejected and not placed on the HACA waiting list if they were the head of household, spouse or cohead at the time of past residency at HACA and owes a move-out balance or debt to HACA which is not barred by a statute of limitations. There is a four-year statute of limitation, which ends the latter of:
 - Four years from the date the debt became delinquent, or
 - Four years from the date the final payment would have been due if a repayment agreement was signed by the former tenant.
- An applicant is deemed preliminarily ineligible and shall be rejected and not placed on the HACA waiting list if they were terminated or evicted for any reason other than drug-related activity from either program within a two-year period from date of new application. Abandonment of unit in the housing choice voucher program is considered a termination; abandonment of unit in the conventional public housing program is considered an eviction. This restriction applies only to the former head of household and/or spouse or co-head.
- If the family vacated in lieu of eviction from any HACA property for any reason other than drug-related criminal activity within the two years from the date of application, HACA will prohibit admission to the public housing program if the following criteria have been met:
 - HACA has documentation supporting the grounds for termination that would have led to the eviction of the household or family (e.g. criminal records including, but not limited to, probable cause affidavits, court records, police reports, criminal background reports, etc.; other records, including but not limited to Elite notes, photographs, resident ledgers, complaint records, HACA incident reports, prior tenant file documentation, etc; and / or other official documents); and
 - HACA has documentation confirming that it started the eviction process with the family (e.g. issuance of a 30 day notice of termination letter, issuance of a 3 day notice to vacate letter, notice of intent to vacate in lieu of eviction signed by tenant, filing a forcible detainer lawsuit against the family, and / or other records); and
 - The family member or members identified in that documentation are still listed as members of the family on the new application.
- An applicant is deemed preliminarily ineligible and shall be rejected if applying for the housing choice voucher program if they have been issued a voucher within one year from the date of application, whether or not the voucher was utilized. Expiration of an unused voucher is not cause for preliminary ineligibility for the public housing program.

- An applicant is deemed preliminarily ineligible and shall be rejected and not placed on the HACA waiting list if currently housed in this same program and listed as the head of household or co-head of household.
- For the purpose of providing a housing opportunity to as many applicants as possible, 12 months should elapse before an applicant is preliminarily eligible to reapply for the same program they have just moved out of. This shall include voluntary move outs from the conventional public housing program.
- An applicant is deemed preliminarily ineligible and shall be rejected if applying for the same program for which they have already been denied admissions due to criminal history or derogatory rental history, unreported income or fraud within a 12-month period. The applicant will not be eligible to request an informal review of this rejection due to the fact that the applicant was offered an informal review when they were initially denied admissions for criminal history and/or derogatory rental history. Twelve months should elapse from the date of denial or date of the hearing decision whichever is later.
- An applicant is deemed preliminarily ineligible and shall be rejected if applying for the conventional public housing program and has rejected a public housing unit offer from HACA within the last 12 months from the date of the last housing offer.
- A family is deemed evicted if a lease termination/violation letter had been sent to the family alleging a breach of the lease based upon drug-related criminal activity, criminal activity, non-payment of rent or other breach and the family has voluntarily vacated, or if a judgment for eviction is rendered, or if the family vacated due to the oral threatened termination of the lease.
- HACA complies with all Fair Housing laws. Applicants have the right to request a Reasonable Accommodation. HACA will consider all Reasonable Accommodation requests under the Fair Housing Act and Section 504 of the American Disabilities Act. Information related to the Fair Housing Act, Section 504 and Requests for Reasonable Accommodation will be included in the denial letters.
- If the basis for the denial relates to family violence, the applicant may qualify for an exception under the VAWA Amendments. Information related to VAWA will be included in the denial letters.

Criminal Activity [24 CFR 960.203 (c)]

Under the Public Housing Assessment System (PHAS), PHAs that have adopted policies, implemented procedures and can document that they successfully screen out and deny admission to certain applicants with unfavorable criminal histories receive points.

The PHA is responsible for screening family behavior and suitability for tenancy. In doing so, the PHA may consider an applicant's history of criminal activity involving crimes of physical violence to persons or property and other criminal acts that would adversely affect the health, safety or welfare of other tenants.

HACA Policy

If any household member has engaged in or attempted any of the following criminal activities regardless of the date committed the family will be denied admission:

- capital murder
- murder/~~manslaughter~~
- kidnapping
- ~~child molestation~~
- rape or crimes of a sexual nature
- ~~incest~~
- ~~gross lewdness~~
- ~~arson~~
- ~~child molestation / indecency with a child~~
- ~~first degree felony injury to a child, elderly individual, or disabled individual- committed intentionally or knowingly~~
- ~~crimes involving terrorism~~
- ~~crimes involving explosives~~

If any household member is currently engaged in, or has engaged in any of the following criminal activities, ~~within the past four years~~during the designated review period, the family will be denied admission:

- Within the past five years:
 - Manslaughter
 - Criminally Negligent Homicide
- Within the past 4 years:
 - Public lewdness
 - Drug-related criminal activity, defined by HUD as the illegal manufacture, sale, distribution or use of a drug or the possession of a drug with intent to manufacture, sell distribute or use the drug [24 CFR 5.100].
 - Violent criminal activity, defined by HUD as any criminal activity that has as one of its elements the use, attempted use or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].
 - Criminal activity that may threaten the health, safety or welfare of other tenants [24 CFR 960.203(c)(3)].
 - Illegal possession/discharge/display/carrying of firearm or illegal weapon/ deadly weapon.
 - Assault, aggravated assault, assault by threat, stalking.
 - Physical violence to persons or property, or criminal activity that has as one of its elements the use, attempted use or threatened use of physical force against the person or property of another.
 - Criminal activity that may threaten the health or safety of HACA staff, contractors, subcontractors or agents.

- Three or more incidences or convictions of alcohol-related criminal activity, including Driving under the Influence and Public Intoxication.
- Burglary of a Habitation.
- Unlawful Restraint (misdemeanor)

If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past three years, the family will be denied admission:

~~(1) A pattern of abuse of alcohol, including, but not limited to, public intoxication and driving while intoxicated.~~

~~(2)(1) A pattern of fraud committed against a governmental entity. A pattern of misdemeanor possession of marijuana (two ounces or less).~~

~~(3)(2) A pattern of theft or fraud.~~

~~(4)(3) A pattern of organized criminal activity.~~

~~(4) A pattern of prostitution.~~

~~(5) A pattern of misdemeanor harassment.~~

(6) A pattern (for the purposes listed above) consists of three or more incidences, with a minimum of ~~one~~ two incident-incidences occurring within the past three years.

If an applicant has one offense of a Class C misdemeanor within the past four years, HACA will not deny the applicant. More than one Class C misdemeanor will be considered a pattern (for the purpose of determining eligibility) and the applicant may be subject to denial based on the nature of the offenses.

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

Evidence of such criminal activity includes, but is not limited to, any record of convictions, arrests or evictions for suspected drug-related or violent criminal activity of household members. A conviction for such activity will be given more weight than an arrest or an eviction.

HACA will not deny an application solely on the basis of an arrest. If HACA receives arrest information which may be for a disqualifying activity, HACA may request additional information. Additional information that may be considered, if available, include the following:

- The police report associated with the arrest which provides the reported circumstances of the arrest.
- Any statements made by witnesses or the applicant not included in the police report
- Whether criminal charges were filed
- Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal
- Any other evidence relevant to determining whether or not the applicant engaged in the disqualifying activity

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

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

HUD authorizes the PHA to deny admission based on relevant information pertaining to the family's previous behavior and suitability for tenancy.

In the event of the receipt of unfavorable information with respect to an applicant, the PHA must consider the time, nature and extent of the applicant's conduct (including the seriousness of the offense). As discussed in Section 3-III.F, the PHA may also need to consider whether the cause of the unfavorable information may be that the applicant is the victim of domestic violence, dating violence, sexual assault, or stalking.

HACA Policy

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

- 1) Has been evicted for non-payment of rent at a federally subsidized housing program within the past two years.
- 2) Has a pattern of disturbance of neighbors, destruction of property or living or housekeeping habits at prior residences within the past two years which may adversely affect the health, safety or welfare of other tenants.
- 3) Has a pattern of eviction from housing or termination from residential programs within the past five years (considering relevant circumstances). Abandonment of a unit in public housing is considered an eviction. This restriction only applies to the head of household and/or the cohead of household. If the head or cohead owes rent or other amounts to any other PHA or owner in connection with any federally subsidized housing program. Any amounts owed to HACA or other federally subsidized property will have to be repaid by the applicant before Admissions approval. HACA will not deny admissions if the head or cohead is moving from the HACA Public Housing program to the HACA Section 8 program (or vice versa) and is in compliance with their HACA repayment agreement. There is a four-year statute of limitations that ends the latter of:
 - a) Four years from the date the debt became delinquent, or
 - b) Four years from the date the final payment would have been due if a repayment agreement was signed by the former tenant.
- 4) Misrepresented or does not provide complete information related to eligibility, including income, award of preferences for admission, expenses, family composition or rent.
- 5) Has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program. This includes intentional misrepresentation of citizenship or immigration status [within the last four years](#).
- 6) Refuses to sign and submit consent forms for obtaining information necessary to determine eligibility and continued eligibility for housing assistance.
- 7) Has engaged in or threatened violent or abusive behavior toward HACA personnel [within the last four years](#).

Abusive or violent behavior towards HACA 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 admission, HACA will consider the factors discussed in Sections 3-III.E and 3-III.F. Upon consideration of such factors, HACA may, on a case-by-case basis, decide not to deny admission.

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

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

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

HACA Policy

HACA requires criminal background checks for all applicant household and family members 17 years of age or older. HACA will use a third party vendor or other government agency to provide the criminal history reports. The report will be requested after the family member signs a consent form. This report encompasses a national criminal history search.

If the applicant and/or household member 17 years of age or older or the live-in aide applicant has not resided in the state of Texas for the most recent 2 years from the date of application, HACA will require a FBI criminal history report that includes information from the National Crime Information Center (NCIC)..

An online National Sex Offender check covering sex offender registries in all states is performed for all adult applicants. HACA may conduct a criminal history review at a national level (at no cost to the resident).

The PHA is required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 960.204(a)(4)].

If the PHA proposes to deny admission based on a criminal record or on lifetime sex offender registration information, the PHA 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)].

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Chapter 13

SMOKE-FREE HOUSING POLICY

INTRODUCTION

This policy applies to any and all persons entering the Housing Authority of the City of Austin (“HACA”) residential public housing properties including HACA residents, their guests and visitors, HACA partners, contractors, and HACA employees. HACA’s Smoke-Free Housing Policy is focused on the act of smoking, not the smoker. The purpose of the policy is to create a healthier, safer, and cleaner living environment for all of its residents. The U.S. Surgeon General has warned that breathing second hand smoke for even a short time is dangerous. Smoke migrates between units in multi-family housing.

HUD has strongly encouraged public housing authorities to adopt a smoke free policy since 2009. [On December 5, 2016, HUD finalized the PIH Smoke-Free Public Housing rule. This rule went into effect on February 3, 2017 and granted public housing authorities 18 months to implement this rule. HACA’s Smoke-Free Housing policy meets the standards of HUD’s final rule.](#)

13-I POLICY:

- ~~Smoking is prohibited in residential units and common areas. This includes outdoor patios, hallways, stairwells and parking lots. Smoking is not allowed in the following areas:~~
 - ~~a. All public housing living units; and~~
 - ~~b. Interior common areas which include, but are not limited to:~~
 - ~~i. Hallways;~~
 - ~~ii. Rental and administrative offices;~~
 - ~~iii. Community Centers / Community Rooms;~~
 - ~~iv. Day Care Centers;~~
 - ~~v. Laundry Rooms; and~~
 - ~~c. Outdoor areas within 25 feet from public housing and administrative office buildings.~~
- ~~Collectively, these areas are the restricted areas where smoking is not allowed.~~
- Smoking is only allowed in outdoor areas designated with a sign. Designated smoking area(s) [must be outside the restricted area and](#) will have a proper receptacle to dispose of butts and used matches.
- Definition of smoking: SMOKING means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, e-cigarette, pipe, [water pipe \(also known as hookahs\)](#), weed, plant, or other combustible substance in any manner or in any form.
- HACA staff shall inform current residents, applicants on waiting lists, HACA employees, partners, and HACA contractors of this policy.
- Residents shall inform household members, guests, and visitors of the smoke-free housing policy and will be responsible for any violations of this policy by the resident’s household members, guests, and visitors.
- HACA staff shall post proper signs at entrances and exits and common areas, and enforce compliance with this policy.

- Failure to comply with the terms of this policy/addendum may be cause for lease enforcement action, up to and including eviction/lease termination.

13-II ENFORCEMENT:

- **1st violation** – written warning and referral to cessation services
- **2nd violation** – written letter of lease violation and referral to cessation services
- **3rd violation** – Probation and referral to cessation services
- **4th violation** – 30-day notice of lease-termination.
 - HACA may suspend lease termination process if the family agrees to attend a HACA approved smoking cessation class and present HACA with a certificate of completion and a signed commitment to comply with HACA’s Smoke-free Housing Policy.

Enforcement progression is based on violations per household, not per tenant.