



# RURAL RESOURCE GUIDE



**Federally Assisted Housing Opportunities for Residents  
with Substance Use Disorders and Opioid Use Disorder**

The Housing Assistance Council

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The Housing Assistance Council is a national nonprofit corporation that helps build homes and communities across Rural America. For nearly 50 years, HAC has supported local efforts to improve rural housing conditions.

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# Introduction

## Substance Misuse and Opioid Epidemic

The most recent data from the [National Survey on Drug Use and Health \(NSDUH\)](#) indicated that 52.5 million people reported using illicit drugs and 46.3 million people were diagnosed with Substance Use Disorder (SUD). According to the [Centers for Disease Control](#), over a 12-month period from May 2020 to May 2021, the United States had a 21 percent increase in reported drug overdose deaths compared to the previous one-year period, surpassing over 100,000 drug overdose deaths for the first time. The most recent data from August 2021 to August 2022, there were 101,552 reported overdose deaths over a one-year period.

There are almost [2 million incarcerated persons in the United States](#), and one in five is incarcerated for a drug-related arrest. Police record over one million drug related arrests every year, with an arrest [taking place every 25 seconds in the United States](#), with many arrests leading to convictions. Across local, state, and federal prisons, there are approximately 400,000 people incarcerated for drug related crimes at any moment. In addition to the incarcerated population, there are approximately [1.15 million formerly incarcerated](#) persons on parole or probation for drug-related charges. In 2020, [86.7 percent of drug arrests](#) were for drug possession, and 12.3% of arrests were for the sale or manufacturing of a drug.

Many communities across rural America have been impacted by substance and opioid misuse and the overdose epidemic. The rate of overdoses in rural America rose from 4.0 per 100,000 to 19.6 per 100,000 between 1999 and 2019.<sup>1</sup> Statistically, the rate of drug overdose death is higher in urban areas, but many rural residents lack access to treatment options and support for recovery. The challenges associated with successful recovery from substance use disorders overlap with challenges involving rural housing and homelessness, transportation access, availability of medical treatment, and other necessities for a stable environment that supports recovery.<sup>2</sup>

Substance misuse, drug-related arrest, and incarceration continue to affect many communities in the nation. With millions of people impacted, this issue must be central in the housing sector. The [federal government](#) is working

towards addressing the epidemic through policy and solutions focused on prevention, treatment, and recovery. A critical foundation to addressing the SUD crisis is the access to safe, healthy, and affordable housing.

## Housing as a Solution

Housing is essential to addressing the substance use disorder (SUD) and opioid use disorder (OUD) epidemic. Addiction, drug-related arrests, charges, and incarceration can drastically alter lives through the [loss of employment, income, and housing](#). The Substance Abuse and Mental Health Services Administration identified four areas necessary for individuals to successfully recover from addiction and drug misuse and lead lives. Those four areas are health, home, purpose, and community. Having a safe, healthy, stable, and affordable place to live with access to community support is essential to recovery for individuals and addressing the epidemic on a national level.

Many initiatives across the nation [provide a variety of housing support](#) including affordable housing, recovery housing, and supportive housing. There are a variety of approaches and intersections between addressing the substance use disorders and opioid use disorders epidemic and housing, but access to stable housing remains a consistent need. Formerly incarcerated persons and residents in recovery tend to have increased difficulty affording housing and are often screened out of opportunities to receive federal assistance. The increased stress of finances and housing insecurity has been shown to lead to relapse for those in recovery. Housing insecurity can significantly affect recovery from SUD and OUD, and thus, accessing to housing must be central to solutions for the epidemic in the United States.

## Overview of the Report

This resource provides an overview of the federal regulations related to federal housing applicants with a history of substance use disorders, opioid use disorders, and drug-related arrests and criminal charges. The resource outlines the regulations from the United States Department of Housing and Urban Development (HUD), the Internal Revenue Service (IRS), and the United States Department of Agriculture (USDA) directly related to

considering applications and providing housing to tenants with drug-use and drug-related criminal histories.

The first section of the guide focuses on regulations for housing programs from HUD including the housing choice voucher program, public housing, recovery housing, supportive housing, and HOME block grant. The section includes a glossary with the terms as defined by the federal government. The regulations discussed are directly related to considering applicants with a history of drug use, addiction, and/or drug related criminal charges for HUD-assisted housing.

The second section provides an overview of IRS' Low-Income Housing Tax Credit program and associated regulations. The third section discusses applicable regulations for USDA's rural housing programs, including Sections 502 and Section 515. The section includes the regulations directly related to providing federal assistance to applicants with a history of drug use, addiction, and/or drug related criminal charges.

This resource should not be relied on for legal advice. It does not and cannot include all possible relevant guidance. State and local laws, for example, may provide protections for tenants beyond those imposed by federal programs. Overarching federal programs such as the Fair Housing Act may be relevant also.

The intent of this guide is to provide a clear and specific overview of the federal laws and regulations related to housing people with substance use disorders. The aim is to be a reference for housing practitioners who seek to reference the regulations when considering applications for federally supported housing.

# U.S. Department of Housing and Urban Development

The U.S. Department of Housing and Urban Development (HUD) has many programs focused on housing and community development. The programs mentioned in this guide include the Housing Choice Voucher Program, formerly known as Section 8, the Public Housing Program, HOME Investment Partnership Program, Supportive Housing Program, and the Recovery Housing Program.

This section discusses the regulations specifically addressing applicants with a history of drug use and Substance Use Disorder (SUD) or Opioid Use Disorder (OUD). The language used in the regulations includes applicants with disabilities, applicants with drug or alcohol addiction, applicants impacted by the justice system, applicants with drug related criminal charges, and applicants with a history of drug use. Each program section includes applicable regulations regarding tenants and applicants affected by SUD and OUD.

Learn more about HUD here: [U.S. Department of Housing and Urban Development](#)

Find contact information for HUD's Regional Offices here: [HUD's Local Office Directory](#)

## Quick Facts for HUD Programs

### Housing Choice Voucher Program

Public Housing Authorities (PHAs) create an administrative plan outlining the program policies including applicant selection and denial. PHAs and landlords, referred to as owners, may screen applicants for suitability of tenancy. Owners must protect all tenants' right to "health, safety, or right to peaceful enjoyment of the premises." Applicants who are no longer engaged in drug use or drug related criminal activity or have successfully completed rehabilitation can be considered for tenancy. Applicants previously evicted for illegal use of a drug in federally subsidized housing will be placed on a three – year ban. Applicants formerly convicted for manufacturing methamphetamine on the grounds of federally subsidized housing may be denied.

### Public Housing Program

Public Housing Authorities (PHAs) have the authority to accept or deny applicants based on a holistic consideration of their established standard of admission, prior landlord interviews, and criminal records. PHAs must consider the circumstances of the existing criminal record and may not deny an applicant solely based on the presence of a criminal record. If an applicant demonstrates successful completion of an approved rehabilitation program, they may be considered for tenancy.

### Supportive Housing Program

Tenants must meet the criteria for experiencing homelessness. The program allows for housing and services for persons with disabilities, including impairments caused by alcohol or drug use.



## **HOME Investment Partnerships Program**

In the Tenant Based Rental Assistance Program, participating jurisdictions, once demonstrating an unmet need in the community in the Consolidated Plan, may develop specialized programs. Programs and housing may provide preference for households with disabilities if outlined in the jurisdiction's Consolidated Plan.

## **Section 811 Supportive Housing for Persons with Disabilities Program**

Applicants whose sole impairments are alcoholism or drug addiction are not eligible for this program. If the applicant has an addiction and another disabling condition, they may be considered for the housing and services.

## **Shelter Plus Care Program**

The program provides rental assistance and supportive services, primarily focused on persons experiencing homelessness with mental illnesses, chronic issues with alcohol and/or drugs, HIV or AIDs. Applicants must meet HUD's definition of experiencing homelessness and disability for eligibility.

## **Recovery Housing Program**

The program provides temporary housing and services for individuals recovering from substance use disorders for up to two years. Applicants must be in recovery from substance use disorder to meet the eligibility requirements for this program.

# Housing Choice Voucher Program

## Summary

HUD's Housing Choice Voucher (HCV) program, formerly known as Section 8, provides HUD funding for local public housing agencies to provide rental subsidies to eligible families. The program is administered by local public housing agencies (PHAs).<sup>3</sup> This section contains HUD regulations specifically related to housing persons with a history of substance or alcohol misuse, or drug related criminal convictions through the Housing Choice Voucher Program.

The HCV program has two stages of approval for families seeking rental assistance; approval from the PHA to receive a housing choice voucher, and approval from the landlord to provide a lease for a rental unit. Families choose rental units within the parameters of the program. If the family's choice of residence and tenancy is approved, then the PHA provides the rental subsidy to the owner (landlord) for the family.<sup>4</sup>

The PHA must create and adhere to an administrative plan which outlines the local policies for the program. The administrative plan must adhere to HUD regulations and outline the selection and admission procedure for applicants. Applicant selection or denial process must outline definitions of family and criteria for denying admission or terminating assistance due to criminal activity or alcohol abuse.<sup>5</sup> If the PHAs opts to screen applicants for suitability for tenancy, the PHA must outline the screening policies in the administrative plan.<sup>6</sup>

The PHA must deny an application for three years if a household member was evicted from federally assisted housing due to drug-related criminal activity. If the evicted household member completed an approved drug rehabilitation program or the circumstances leading to eviction no longer exist, the PHA can consider admission. The PHA must include criteria for denying admission including household members engage in illegal use of a drug, the pattern of drug use may threaten the safety and peaceful enjoyment for other residents or has been convicted of manufacturing methamphetamine on the grounds of federally assisted housing.<sup>7</sup>

Landlords, usually referred to as “owners” in the regulations, are given the authority to use their discretion when screening applications to protect the “health, safety or right to peaceful enjoyment” for all tenants. All regulations and considerations apply to all members of the household, not just the applicant.<sup>8</sup>

When screening applicants with a history of drug use or drug related criminal convictions, the landlord must consider if the applicant is currently engaging in drug use or drug related criminal activity. If the applicant is not currently engaged in drug use or drug related criminal activity, the landlord must determine if the applicant has completed or is currently engaged in a supervised rehabilitation program or has successfully been rehabilitated.

If a resident is found to be engaging in drug use or drug related criminal activity on the premises and is evicted from assisted housing, they are placed on a three-year ban beginning the date from eviction. The ban can be reduced with documented completion of a rehabilitation program approved by the public housing authority.

Learn more about this program here:

[HUD Housing Choice Voucher Program](#)

## Federal Regulations

### ***Applicable Terms and Definitions***

The federal regulations include the use of terms with specific federal definitions. The following definitions from the federal regulations are applicable to housing residents with substance use disorders.

**Applicant** ([24 CFR § 982.4](#)): A person or a family that has applied for admission to housing.

**Covered Person** ([24 CFR § 5.100](#)): For the purposes of screening and terminating tenancy for criminal activity, a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.

**Controlled Substance** ([21 U.S.C § 802](#)): "The term 'controlled substance' means a drug or other substance, or immediate precursor, included in [schedule I, II, III, IV, or V](#) of part B of this subchapter. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986."

**Drug** ([24 CFR § 5.100](#)): "A controlled substance as defined in the Controlled Substances Act."

**Drug-related Criminal Activity** ([24 CFR § 5.100](#)): "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."

**Owner** ([24 CFR § 982.4](#)): "Any person or entity with the legal right to lease or sublease a unit to a participant."

## ***Federal Regulations***

### **PHA disapproval of owner** (excerpted from [24 CFR § 982.306](#))

“In its administrative discretion, the PHA may deny approval of an assisted tenancy for any of the following reasons:

- (5) The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: ([24 CFR 982.306 \(c\)\(5\)](#))
  - (i) Threatens the right to peaceful enjoyment of the premises by other residents;
  - (ii) Threatens the health or safety of other residents, of employees of the PHA, or of owner employees or other persons engaged in management of the housing;
  - (iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or
  - (iv) Is drug-related criminal activity or violent criminal activity.

**Tenant Screening** (summary of [24 CFR § 982.307](#))

- The PHA must provide tenant information to landlords (owners), which may include information related to drug-history by tenant or any family members.
- The landlord (owner) must screen families' backgrounds and tenancy history including drug-related criminal activity that may be considered a threat to the "health, safety, or property of others."
- PHA and owners are [authorized to obtain access](#) to applicants' criminal histories.

**Denial of Admission and Termination of Assistance for Criminals and Alcohol Abusers** (excerpted from [24 CFR § 982.553](#))**(a) Denial of Admission****(1) Prohibiting admission of drug criminals**

- (i) "The PHA must prohibit admission to the program of an applicant for three years from the date of eviction if a household member has been evicted from federally assisted housing for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:
  - a. That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or
  - b. That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned"

## **Denial of Admission and Termination of Assistance for Criminals and Alcohol Abusers** (excerpted from [24 CFR § 982.553](#))

### **(a) Denial of Admission**

#### **(1) Prohibiting admission of drug criminals**

- (ii) The PHA must establish standards that prohibit admission if:
  - a. The PHA determines that any household member is currently engaging in illegal use of a drug;
  - b. The PHA determines that it has reasonable cause to believe that a household member's illegal drug use or pattern of illegal drug use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; or
  - c. Any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing."

#### **(2) Prohibiting Admission of Other Criminals**

- (ii) *"Permissive Prohibition.*
  - (A) The PHA may prohibit admission of a household to the program if the PHA determines that any household member is currently engaged in, or has engaged in during a reasonable time before the admission;
    - (1) Drug-related criminal activity;
    - (2) Violent criminal activity
    - (3) Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or
    - (4) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor, or agent)

**Denial of Admission and Termination of Assistance for Criminals and Alcohol Abusers** (continued) (excerpted from [24 CFR § 982.553](#))

**(2) Prohibiting Admission of Other Criminals**

(ii) *Permissive Prohibition.*

(B) “The PHA may establish a period before the admission decision during which an applicant must not have engaged in the activities specified.

(C) If the PHA previously denied admission to an applicant because a member of the household engaged in criminal activity, the PHA may reconsider the applicant if the PHA has sufficient evidence that the members of the household are not currently engaged in, and have not engaged in, such criminal activity during a reasonable period, as determined by the PHA, before the admission decision.

(1) The PHA would have “sufficient evidence” if the household member submitted a certification that she or he is not currently engaged in and has not engaged in such criminal activity during the specified period and provided supporting information from such sources as a probation officer, a landlord, neighbors, social service agency workers and criminal records, which the PHA verified.

(2) For purposes of this section, a household member is “currently engage in” criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current.

(3) *Prohibiting admission of alcohol abusers.* The PHA must establish standards that prohibit admission to the program if the PHA determines that it has reasonable cause to believe that a household member’s abuse or pattern of abuse may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.”



**Denial of Admission and Termination of Assistance for Criminals and Alcohol Abusers** (excerpted from [24 CFR § 982.553](#))

**(B) Terminating Assistance**

(1) *“Terminating assistance for drug criminals.*

(i) The PHA must establish standards that allow the PHA to terminate assistance for a family under the program if the PHA determines that:

(A) Any household member is currently engaged in any illegal use of a drug; or

(B) A pattern of illegal use of a drug by any household member interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) The PHA must immediately terminate assistance of a family under the program if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine of the premises of federally assisted housing.

(iii) The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any family member has violated the family's obligation to not engage in any drug-related criminal activity.

(3) *Terminating assistance for alcohol abusers.* The PHA must establish standards that allow termination of assistance for a family if the PHA determines that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.”

**Owner termination of tenancy** (summarized and excerpted from [24 CFR § 982.310](#))

- Any household members or their guests engaged in drug crime on or near the premises may have their tenancy terminated.
- Tenants can be evicted if the owner determines any member of the household is illegally using drugs or that a pattern of drug use interferes with “health, safety or right to peaceful enjoyment” for other tenants.
- “Consideration of rehabilitation. In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully. For this purpose, the owner may require the tenant 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.”

# Public Housing Program

## Summary

This section contains HUD regulations specifically related to screening applications and housing persons with a history of drug and alcohol misuse or drug related criminal convictions for Public Housing.<sup>9</sup> Public Housing Authorities (PHAs) have the authority to screen applications, access applicants' records, including criminal records, and interview applicants' prior landlords and other persons, to determine if the applicant meets the standard of admission.

Public Housing Authorities are required to deny admission to applicants who are engaged in illegal drug use or have been evicted from federally assisted housing due to misuse of drugs or alcohol or drug related criminal activity while in public housing within the last three years. Applications and tenancy may be considered if the applicant demonstrates successful completion of an approved rehabilitation program. Tenancy may also be considered after an evaluation of the circumstances around the conviction including time passed since conviction or evidence the applicant is no longer engaged in drug use or related criminal activity. PHAs are required to impose a permanent admission ban on households with an individual convicted on manufacturing methamphetamines on federally assisted property.

The authority to accept or deny applicants lies with the PHA. The regulations focus primarily on the PHA's responsibility to the "health, safety, or right to peaceful enjoyment of the premises," specifically as it relates to accepting or denying applicants with a history of drug or alcohol misuse or drug related criminal activity. The PHA is required by HUD to deny applicants under specific conditions of current drug use or drug related criminal activity. However, for applicants with a history of drug use, alcohol misuse, or drug related criminal activity, the public housing authority may set their own standards of admissions and lease agreement to determine if an applicant is suitable for housing. The standards of admission may include an investigation of the applicant's rent payment history, history of criminal activity, and living habits at the former place of residence.

Learn more about this program here: [HUD Public Housing Program](#)

## Federal Regulations

### ***Applicable Terms and Definitions***

The Public Housing Program primarily uses HUD's general definitions for all programs as it relates to providing housing for tenants with a history of drug and alcohol use or substance use disorders.

### ***Federal Regulations***

#### **Definitions** (excerpted from [24 CFR § 960.102](#))

"Definitions found elsewhere:

- (1) **General definitions.** The following terms are defined in [24 CFR part 5, subpart A](#): 1937 Act, drug, drug-related criminal activity, elderly person, federally assisted housing, guest, household, HUD, MSA, premises, public housing, public housing agency (PHA), Section 8, violent criminal activity.
- (2) **Definitions under the 1937 Act.** The following terms are defined in [24 CFR part 5, subpart D](#): annual contributions contract (ACC), applicant, elderly family, family, person with disabilities.
- (3) **Definitions and explanations concerning income and rent.** The following terms are defined or explained in [24 CFR part 5, subpart F \(§ 5.603\)](#): Annual income, economic self-sufficiency program, extremely low-income family, low-income family, tenant rent, total tenant payment, utility allowance."

**Applicant Eligibility** (summary of [24 CFR § 960.201](#))

The basic requirements for tenancy in Public Housing include being defined as a [family](#), per HUD's definition, and meeting the low-income eligibility requirement.

**Standards for PHA Tenant Selection Criteria** (excerpted from [24 CFR § 960.203](#))

“(b) 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. (See [24 CFR 902.43\(a\)\(5\)](#).) This policy takes into account the importance of screening to public housing communities and program integrity, and the demand for assisted housing by families who will adhere to lease responsibilities.”

**Standards for PHA Tenant Selection Criteria** (excerpted from [24 CFR § 960.203](#))

“(c) In selection of families for admission to its public housing program, or to occupy a public housing development or unit, the PHA is responsible for screening family behavior and suitability for tenancy. The PHA may consider all relevant information, which may include, but is not limited to:

- (1) An applicant's past performance in meeting financial obligations, especially rent;
- (2) A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences which may adversely affect the health, safety or welfare of other tenants; and
- (3) A history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants. (See [§ 960.204](#).)

With respect to criminal activity described in [§ 960.204](#):

- (i) The PHA may require an applicant to exclude a household member in order to be admitted to the housing program where that household member has participated in or been culpable for actions described in [§ 960.204](#) that warrants denial.
- (ii) The PHA may, where a statute requires that the PHA prohibit admission for a prescribed period of time after some disqualifying behavior or event, choose to continue that prohibition for a longer period of time.”

**Standards for PHA Tenant Selection Criteria** (excerpted from [24 CFR § 960.203](#))

“(d) In the event of the receipt of unfavorable information with respect to an applicant, consideration shall be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense).

(1) In a manner consistent with the PHA's policies, procedures and practices referenced in [paragraph \(b\)](#) of this section, consideration may be given to factors which might indicate a reasonable probability of favorable future conduct. For example:

(i) Evidence of rehabilitation; and

(ii) Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs and the availability of such programs;

(2) Consideration of rehabilitation.

(i) In determining whether to deny admission for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully ([42 U.S.C. 13661](#)). For this purpose, the PHA may 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.

(ii) If rehabilitation is not an element of the eligibility determination (see [§ 960.204\(a\)\(1\)](#)), the PHA may choose not to consider whether the

## **Denial of Admission for Criminal Activity or Drug Abuse by Household Members** (excerpted from [24 CFR § 960.204](#))

### **“Required denial of admission -**

(1) **Persons evicted for drug-related criminal activity.** The PHA standards must prohibit admission of an applicant to the PHA's public housing program for three years from the date of the eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

- (i) The evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or
- (ii) The circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(2) **Persons engaging in illegal use of a drug.** The PHA must establish standards that prohibit admission of a household to the PHA's public housing program if:

- (i) The PHA determines that any household member is currently engaging in illegal use of a drug (For purposes of this section, a household member is “currently engaged in” the criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current); or
- (ii) The PHA determines that it has reasonable cause to believe that a household member's illegal use or pattern of illegal use of a drug may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.”



**Denial of Admission for Criminal Activity or Drug Abuse by Household Members** (continued) (excerpted from [24 CFR § 960.204](#))

**“Required denial of admission -**

(3) **Persons convicted of methamphetamine production.** The PHA must establish standards that permanently prohibit admission to the PHA's public housing program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(b) **Persons that abuse or show a pattern of abuse of alcohol.** The PHA must establish standards that prohibit admission to the PHA's public housing program if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(c) **Use of criminal records.** Before a PHA denies admission to the PHA's public housing program on the basis of a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record. (See [part 5, subpart J of this title](#) for provisions concerning access to criminal records.)

(d) **Cost of obtaining criminal record.** The PHA may not pass along to the applicant the costs of a criminal records check.”

**Drug Use by Applicants: Obtaining Information from Drug Treatment Facility** (excerpted from [24 CFR § 960.205](#))

**“Purpose.** This section addresses a PHA's authority to request and obtain information from drug abuse treatment facilities concerning applicants. This section does not apply to information requested or obtained from drug abuse treatment facilities other than under the authority of section 6(t).

(b) **Additional terms** used in this section are as follows:

(1) **Currently engaging in illegal use of a drug.** Illegal use of a drug occurred recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member.

(2) **Drug abuse treatment facility.** An entity:

(i) That holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use; and

(ii) That is either an identified unit within a general care facility; or an entity other than a general medical care facility.”

**Drug Use by Applicants: Obtaining Information from Drug Treatment Facility** (continued) (excerpted from [24 CFR § 960.205](#))

**“(c) Authorization by household member for PHA to receive information from a drug abuse treatment facility.**

(1) The PHA may require each applicant to submit for all household members who are at least 18 years of age, and for each family head or spouse regardless of age, one or more consent forms signed by such household member that:

(i) Requests any drug abuse treatment facility to inform the PHA only whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use;

(ii) Complies with the form of written consent required by [42 CFR 2.31](#); and

(iii) Authorizes the PHA to receive such information from the drug abuse treatment facility, and to utilize such information in determining whether to prohibit admission of the household member to the PHA's public housing program in accordance with [§ 960.203](#).

(See the Public Health Service Act, [42 U.S.C. 290dd-2](#), and implementing regulations at [42 CFR part 2](#), with respect to responsibilities of the drug abuse treatment facility.)

(2) The consent form submitted for a proposed household member must expire automatically after the PHA has made a final decision to either approve or deny the admission of such person.”

**Drug Use by Applicants: Obtaining Information from Drug Treatment Facility** (excerpted from [24 CFR § 960.205](#))

**“(d) PHA request for information from drug use treatment facility.**

- (1) The PHA may request that a drug abuse treatment facility disclose whether the drug abuse treatment facility has reasonable cause to believe that the proposed household member is currently engaging in the illegal use of a drug (as defined in [§ 5.100 of this title](#)).
- (2) The PHA's request to the drug abuse treatment facility must include a copy of the consent form signed by the proposed household member.
- (3) A drug abuse treatment facility is not liable for damages based on any information required to be disclosed under this section if such disclosure is consistent with section 543 of the Public Health Service Act ([42 U.S.C. 290dd-2](#)).
- (4) The PHA is not obligated to request information from a drug treatment facility under this section, and is not liable for damages for failing to request or receive such information.
- (5) A drug abuse treatment facility may charge the PHA a reasonable fee for information provided under this section. The PHA may not pass along to the applicant or tenant the costs of obtaining this information.”

**Drug Use by Applicants: Obtaining Information from Drug Treatment Facility** (excerpted from [24 CFR § 960.205](#))

**“(e) Prohibition of discriminatory treatment of applicants.**

(1) A PHA may request information from a drug abuse treatment facility under [paragraph \(d\)](#) of this section only if the PHA has adopted and has consistently implemented either of the following policies, obtaining a signed consent form from the proposed household members:

(i) **Policy A - Request for all families.** Under Policy A, the PHA must submit a request for information to a drug abuse treatment facility in accordance with [paragraph \(d\)](#) of this section before admitting any family to the PHA's public housing program. For each such family, the request must be submitted for each proposed household member described in [paragraph \(c\)\(1\)](#) of this section.

(ii) **Policy B - Request for certain household members.** Under Policy B, the PHA must submit a request to a drug abuse treatment facility only with respect to each proposed household member:

(A) Whose criminal record indicates prior arrest or conviction for any criminal activity that may be a basis for denial of admission under [§ 960.205](#); or

(B) Whose prior tenancy records indicate that the proposed household member:

- (1) Engaged in the destruction of property;
  - (2) Engaged in violent activity against another person; or
  - (3) Interfered with the right of peaceful enjoyment of the premises of other residents.
- (4) The policy adopted by the PHA must be included in the PHA administrative plan and the PHA plan.”

**Drug Use by Applicants: Obtaining Information from Drug Treatment Facility** (excerpted from [24 CFR § 960.205](#))

“(f) **Records management and confidentiality.** Each PHA that receives information from a drug abuse treatment facility under this section must establish and implement a system of records management that ensures that any information which the PHA receives from the drug abuse treatment facility about a person:

(1) Is maintained confidentially in accordance with section 543 of the Public Health Service Act ([12 U.S.C. 290dd-2](#));

(2) Is not misused or improperly disseminated; and

(3) Is destroyed, as applicable:

(i) Not later than 5 business days after the PHA makes a final decision to admit the person as a household member under the PHA's public housing program; or

(ii) If the PHA denies the admission of such person as a household member, in a timely manner after the date on which the statute of limitations for the commencement of a civil action based upon that denial of admissions has expired without the filing of a civil action or until final disposition of any such litigation.”

# HOME Tenant-Based Rental Assistance Program

## Summary

The HOME Investment Partnerships Program (HOME) provides grant funding for rental assistance, and construction, purchase, and rehabilitation of affordable housing. The funding is distributed annually to state and local governments, called participating jurisdictions (PJs), which often work in partnership with local nonprofits and public housing authorities (PHAs).<sup>10</sup> This section discusses the Tenant Based Rental Assistance (TBRA) program.

The HOME program allows flexibility to participating jurisdictions (PJs) to meet the needs of their communities. The HOME TBRA allows PJs to provide assistance to individual households for rental assistance. PJs may also aid with security deposits, and utility deposits, when in combination with HOME rental assistance. The PJs, once demonstrating an unmet need in the community, may develop specialized programs, eligibility, and processes in the Consolidated Plan. PJs that partner with public housing authorities to administer HOME TBRA programs may administer the program similar to the Housing Choice Voucher Program. However, PJs have the flexibility to design and administer the program to address unmet needs in the community within the income range for very low-income and low-income households.<sup>11</sup>

TBRA provides flexibility both for the PJs and the individual households. HOME TBRA may be designed to allow households to select their location of residence and type of housing and allow for opportunities for relocation. PJs have the flexibility to design a program to address the needs of their community in alignment with the HOME tenant eligibility and the PJ's annual Consolidated Plan. Preferences for a portion of the population, including individuals with disabilities, may be implemented for tenant selection.

## Tenant Selection

PJs must have written tenant selection policies that outline the criteria and selection process for households participating in HOME TBRA programs. The two major components of the tenant selection process are income eligibility and preferences. The PJs must also have written standards for termination or non-renewal of a lease and the conditions must be included in a lease or contract between the tenant and the landlord.<sup>12</sup>

### Income Eligibility:

- Tenants must be low-income or very low-income per HUD income limits.
- 90 percent of households assisted through HOME TBRA, both rental assistance and living in HOME TBRA rental developments, must be at or below 60 percent AMI.
- Thus, only 10 percent of households assisted can be between 60 percent and 80 percent AMI.

### Types of Preferential Programs

- General community-wide program: The program addresses the general needs for affordable housing by selecting households from the Public Housing Voucher program or using the PHA's tenant eligibility criteria, or creates its own preferences and waiting list.
- Community-wide programs with preferences: PJs can create local preferences based on residency, disabilities, and required self-sufficiency programs.
- Targeted population programs:
  - PJs may create a specific program to serve persons with disabilities or special needs. The PJ program must address an unmet need identified in the Consolidated Plan and must meet gaps in services available to the targeted population. This includes persons with disabilities and other special needs. Regardless of the target population, all persons with protected status, within the income limits, must be given access to the program and services.
  - PJs are not permitted to provide overnight or temporary shelter to unhoused individuals using the HOME TBRA funds.
  - PJs cannot use HOME TBRA to duplicate rental assistance from other programs that reduce household rental costs to 30 percent of income.

Learn more about this program here: [HOME Tenant-Based Rental Assistance Program](#), [HUD HOME Facts](#), [HOME IDIS Training Manual for PJs](#)



## Federal Regulations

### ***Applicable Terms and Definitions***

**Person with disabilities** (excerpted from [24 CFR § 92.2](#))

“Person with disabilities means a household composed of one or more persons, at least one of whom is an adult, who has a disability.

(1) A person is considered to have a disability if the person has a physical, mental, or emotional impairment that:

- (i) Is expected to be of long-continued and indefinite duration;
- (ii) Substantially impedes his or her ability to live independently; and
- (iii) Is of such a nature that such ability could be improved by more suitable housing conditions.”

**Person with disabilities** (continued) (excerpted from [24 CFR § 92.2](#))

“(2) A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that:

- (i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (ii) Is manifested before the person attains age 22;
- (iii) Is likely to continue indefinitely;
- (iv) Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and
- (v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated. Notwithstanding the preceding provisions of this definition, the term “person with disabilities” includes two or more persons with disabilities living together, one or more such persons living with another person who is determined to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this definition who were living, in a unit assisted with HOME funds, with the deceased member of the household at the time of his or her death.”

## Federal Regulations

### **Tenant-Based Rental Assistance: Eligible Costs and Requirements**

(summary of [24 CFR § 92.209](#))

Participating jurisdictions (PJs) must adhere to these policies when selecting tenants.

Families must:

1. Economically qualify as low-income or very-low income per annual determination.
2. If a PJ offers preferential tenancy for families with individuals with special needs:
  - a. This may include non-mandatory services that may be appropriate for tenants with special needs or a specific disability;
  - b. The PJ may provide preferences and services to a specific population with an unmet need, as demonstrated in the Consolidated Plan;
  - c. Individuals who receive preferential services and tenancy under this program cannot be prohibited from applying to other programs.
3. Current HOME-assisted projects may use this program to provide location-based preferences for residents of units slated for rehabilitation or acquisition.

### **Tenant Selection for TBRA** (summary of [24 CFR § 92.253\(d\)](#))

Owners of HOME-funded rental housing must comply with affirmative marketing requirements, and must adopt the following written tenant selection policies:

- Provide housing only for low- and very low-income families.
- Include criteria regarding the “applicants’ ability to perform the obligations of the lease,” including “not to interfere with the rights and quiet enjoyment of other tenants.”
- “Limit eligibility or give a preference to a particular segment of the population if permitted in its written agreement with the participating jurisdiction.” The preference must be described in the Consolidated Plan.
  - Limitations cannot violate [federal nondiscrimination requirements](#). If the housing receives additional funding from another federal program that limits eligibility, then the preference tailored to the specified households is permissible.
  - If the housing does not have another source of federal funding that includes limitations for residents, the housing and programs can operate with a preference for tenants with disabilities if:
    - The preference is limited to households with disabilities that “significantly interfere with their ability to obtain and maintain housing”;
    - The households cannot maintain housing without supportive services;
    - Services are not provided in a segregated setting. Households cannot be required to accept the service for tenancy.

**Tenant Selection for TBRA** (summary of [24 CFR § 92.253\(d\)](#))

Owners of HOME-funded rental housing must comply with affirmative marketing requirements, and must adopt the following written tenant selection policies:

- Applicants with Housing Choice Vouchers cannot be excluded.
- Selection of tenants must occur from a written chronological waiting list.
- Written notice must be promptly provided to any rejected applications explaining the reasons for rejections.
- Compliance with the Violence Against Women Act (VAWA) is required.

# Supportive Housing Program

## Summary

The Supportive Housing Program, a program under the [McKinney-Vento Homeless Assistance Act](#), provides housing and services to households experiencing or transitioning out of homelessness.<sup>13</sup> The program aims to provide the support needed for unhoused persons to live independently. The regulations use the term “homeless” to identify individuals or families without stable housing.<sup>14</sup> This guide uses the term “unhoused” or “person experiencing homelessness,” unless quoting directly from the federal regulation.

Tenants or recipients of services through the Supportive Housing Program must meet the definition of experiencing homelessness. The program can include services for persons with disabilities, including impairments caused by alcohol or drug use. Disability and experiences with homelessness must be verified with specific forms of documentation. The Supportive Housing Program can support a variety of housing and services:

1. Transitional housing to permanent housing;
2. Permanent long-term housing for persons with disabilities experiencing homelessness;
3. Innovative and alternative projects to address the needs of unhoused individuals and families;
4. Supportive services not provided jointly with supportive housing.

## Federal Regulations

### ***Applicable Terms and Definitions***

#### **Homeless** (excerpted from [24 CFR § 582.5](#))

- "1. An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
- i. An individual or family with a primary nighttime residence that is a public or private place not designated for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
  - ii. An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or
  - iii. An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;
2. An individual or family who will imminently lose their primary nighttime residence, provided that:
- i. The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
  - ii. No subsequent residence has been identified; and
  - iii. "The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;"

**Homeless** (continued) (excerpted from [24 CFR § 582.5](#))

“3. Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

- i. Are defined as homeless under section 387 of the Runaway and Homeless Youth Act ([42 U.S.C. 5732a](#)), section 637 of the Head Start Act ([42 U.S.C. 9832](#)), section 41403 of the Violence Against Women Act of 1994 ([42 U.S.C. 14043e-2](#)), section 330(h) of the Public Health Service Act ([42 U.S.C. 254b\(h\)](#)), section 3 of the Food and Nutrition Act of 2008 ([7 U.S.C. 2012](#)), section 17(b) of the Child Nutrition Act of 1966 ([42 U.S.C. 1786\(b\)](#)), or section 725 of the McKinney-Vento Homeless Assistance Act ([42 U.S.C. 11434a](#));
- ii. Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
- iii. Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and
- iv. Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or”



**Homeless** (continued): (excerpted from [24 CFR § 582.5](#))

4. “Any individual or family who:
  - i. Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;
  - ii. Has no other residence; and
  - iii. Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.”

**Developmental Disability** (excerpted from [24 CFR § 583.5](#))

- “1. A condition that
  - i. Is expected to be long-continuing or of indefinite duration;
  - ii. Substantially impedes the individual's ability to live independently;
  - iii. Could be improved by the provision of more suitable housing conditions; and
  - iv. Is a physical, mental, or emotional impairment, including an impairment caused by alcohol or drug abuse, post-traumatic stress disorder, or brain injury;
2. A developmental disability, as defined in this section; or
3. The disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome, including infection with the human immunodeficiency virus (HIV).”

## ***Federal Regulations***

### **Tenant Eligibility** (summary of [24 CFR § 583.301](#))

- Homeless Status ([24 CFR § 583.301\(b\)](#))
  - Documentation is required during the intake process to verify homeless status in compliance with HUD's definition of homelessness.
- Verification of Disability ([24 CFR § 583.301\(c\)](#))
  - Recipients of assistance for persons with disabilities must provide required documentation as evidence of disability during intake. Verification of evidence must also include verification of status of homelessness. Acceptable documentation of disability includes:
    1. "Written verification of the disability from a professional licensed by the state to diagnose and treat the disability and his or her certification that the disability is expected to be long-continuing or of indefinite duration and substantially impedes the individual's ability to live independently;
    2. Written verification from the Social Security Administration;
    3. The receipt of a disability check;"
    4. Other HUD approved documentation;
    5. Intake staff-recorded observation of disability is accepted only when accompanied by another form of accepted evidence within 45 days of the submission of the application for assistance.

# Section 811 Supportive Housing for Persons with Disabilities

## Summary

HUD provides housing and services for very low- and low-income persons with disabilities through Section 811. Subsidized rental housing is provided with access to supportive services. Persons with a history of drug addiction or alcoholism may qualify for provisions if they also have HIV, and meet the definition of “[person with disabilities](#).”<sup>15</sup>

Learn more about this program here: HUD Section 811 [Supportive Housing for Persons with Disabilities](#)

## Federal Regulations

### ***Applicable Terms and Definitions***

#### **Disabled Household** (excerpted from [24 CFR § 891.305](#))

“A household composed of:

- (1) One or more persons at least one of whom is an adult (18 years or older) who has a disability;
- (2) Two or more persons with disabilities living together, or one or more such persons living with another person who is determined by HUD, based upon a certification from an appropriate professional (e.g., a rehabilitation counselor, social worker, or licensed physician) to be important to their care or well being; or
- (3) The surviving member or members of any household described in paragraph (1) of this definition who were living in a unit assisted under this part, with the deceased member of the household at the time of his or her death.”

**Person with disabilities** (excerpted from [24 CFR § 891.305](#))

“Person with disabilities shall have the meaning provided in Section 811 ([42 U.S.C. 8013\(k\)\(2\)](#)). The term “*person with disabilities*” shall also include the following:

(1) A person who has a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act ([42 U.S.C. 6001\(5\)](#)), i.e., if he or she has a severe chronic disability which:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age twenty-two;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitation in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.”

**Person with disabilities** (continued) (excerpted from [24 CFR § 891.305](#))

“Person with disabilities shall have the meaning provided in Section 811 ([42 U.S.C. 8013\(k\)\(2\)](#)). The term “*person with disabilities*” shall also include the following:

(2) A person with a chronic mental illness, i.e., a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and which impairment could be improved by more suitable housing conditions.

(3) A person infected with the human acquired immunodeficiency virus (HIV) and a person who suffers from alcoholism or drug addiction, provided they meet the definition of “*person with disabilities*” in Section 811 ([42 U.S.C. 8013\(k\)\(2\)](#)). A person whose sole impairment is a diagnosis of HIV positive or alcoholism or drug addiction (i.e., does not meet the qualifying criteria in section 811 ([42 U.S.C. 8013\(k\)\(2\)](#)) will not be eligible for occupancy in a section 811 project.”

**Owner** (excerpted from [24 CFR § 891.305](#))

“A single-asset private nonprofit organization established by the [Sponsor](#) that will receive a capital advance and project rental assistance payments to develop and operate, as its legal owner, supportive housing for persons with disabilities under this part. The purposes of the Owner must include the promotion of the welfare of persons with disabilities. The Owner may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom.”

## **Federal Regulations**

### **Selection and Admission of Tenants** ([24 CFR 891.410](#))

#### **Determination of eligibility and selection of tenants** (excerpted from [24 CFR 891.410\(c\)](#))

“(1) The Owner is responsible for determining whether applicants are eligible for admission and for the selection of households. To be eligible for admission, an applicant must be an elderly person or a person with disabilities, as applicable (as defined in [§§ 891.205](#) and [891.305](#), respectively); must meet the disclosure and verification requirements for Social Security Numbers, as provided by [24 CFR part 5, subpart B](#); must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by [24 CFR part 5, subpart B](#); and must be a very low-income family, as defined in [§ 891.105](#).

(2) Under the Section 811 Program:

(i) In order to be eligible for admission, the applicant must also meet any project occupancy requirements approved by HUD.

(ii) Owners shall make selections in a nondiscriminatory manner without regard to considerations such as race, religion, color, sex, national origin, familial status, or disability. An Owner may, with the approval of the Secretary, limit occupancy within housing developed under this part 891 to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment. However, the Owner must permit occupancy by any qualified person with a disability who could benefit from the housing and/or services provided regardless of the person's disability.”

# Shelter Plus Care Program

## Summary

The Shelter Plus Care program provides rental assistance and supportive services to persons with disabilities experiencing homelessness. Persons experiencing homelessness with mental illness, chronic issues with alcohol and/or drugs, and HIV or AIDS are the primary focus of this program.<sup>16</sup>

The program permits tenant-based rental assistance ([TRA](#)), project-based rental assistance ([PRA](#)), sponsor-based rental assistance ([SRA](#)), and moderate rehabilitation for single room occupancy dwellings ([SRO](#)).

Learn more about this program here: [Shelter Plus Care Resource Manual, Shelter Plus Care Program](#)



## Federal Regulations

### ***Applicable Terms and Definitions***

#### **Eligible Person** (excerpted from [24 CFR § 582.5](#))

“a [homeless](#) person with [disabilities](#) (primarily persons who are seriously mentally ill; have chronic problems with alcohol, drugs, or both; or have AIDS and related diseases) and, if also homeless, the family of such a person. To be eligible for assistance, persons must be very low income, except that low-income individuals may be assisted under the SRO component in accordance with [24 CFR 813.105\(b\)](#).”

#### **Supportive Services** (excerpted from [24 CFR § 582.5](#))

“Assistance that -

- (1) Addresses the special needs of eligible persons; and
- (2) Provides appropriate services or assists such persons in obtaining appropriate services, including health care, mental health treatment, alcohol and other substance abuse services, child care services, case management services, counseling, supervision, education, job training, and other services essential for achieving and maintaining independent living. (Inpatient acute hospital care does not qualify as a supportive service.)”

## ***Federal Regulations***

### **Recordkeeping** (summarized from [24 CFR § 582.301](#))

Evidence and verification of “[homeless status](#)” and “disability” must be documented and maintained. Homeless status may be evidenced by written observation of an outreach worker, residence in an emergency shelter, documentation of imminent loss of housing, and other forms of documentation. Disability may be evidenced by written verification from a licensed professional, documentation from the Social Security Administration, the receipt of a disability check, and other forms of documentation.

# Recovery Housing Program

## Summary

The Recovery Housing Program provides stable housing for individuals recovering from substance use disorders for up to two years. Grantees are provided flexibility to develop a recovery housing program (RHP) action plan with a citizen participation plan (CPP) and define terms for eligibility.

Learn more about this program here: [HUD Recovery Housing Program, Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act \(SUPPORT\)](#)

## Federal Regulations

### *Applicable Terms and Definitions*

#### **II. Applicable Rules, Waivers, and Alternative Requirements**

##### **H. Overview of Grant Process and RHP Action Plan Requirements**

###### **vi. Definitions** (excerpted from the [Federal Register, Volume 85, No. 288 \(November 25, 2020\)](#))

“Grantees may adopt definitions for the following terms used by other publicly funded programs that provide support for recovery from substance use disorders. A grantee’s definition cannot exclude individuals with certain types of substance issues or co-occurring disabilities, or exclusively target a specific type of substance use disorder.

1. Individual in Recovery.
2. Substance Use Disorder.”

## ***Federal Regulations***

### **H. Overview of Grant Process and RHP Action Plan Requirements**

(excerpted from the [Federal Register, Volume 85, No. 288 \(November 25, 2020\)](#))

**“8. xii. Certifications:** Each grantee must make the following certifications with its RHP Action Plan: ...

7) The grantee certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for allowable activities to provide individuals in recovery from a substance use disorder stable, temporary housing for a period of not more than 2 years or until the individual secures permanent housing, whichever is earlier;

(2) with respect to activities expected to be assisted with RHP funds, the RHP Action Plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income individuals and families;

(3) the aggregate use of RHP funds shall principally benefit low- and-moderate income families in a manner that ensures the grant amount is expended for activities that benefit such persons; and

4) the grantee will not attempt to recover any capital costs of public improvements assisted with RHP grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (a) RHP grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than RHP; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient RHP funds (in any form, including program income) to comply with the requirements of clause (a).”

**L. Eligible Activities** (summarized from the [Federal Register, Volume 85, No. 288 \(November 25, 2020\)](#))

The following are eligible activities solely for the “purpose of providing stable, temporary housing for individuals in recovery from a substance use disorder” for up to two years per individual.

- i. Public facilities and improvements
- ii. Acquisition of real property
- iii. Lease, rent, and utilities
- iv. Rehabilitation and reconstruction of single-unit residential
- v. Rehabilitation and reconstruction of multi-unit residential
- vi. Rehabilitation and reconstruction of public housing
- vii. Disposition of real property
- viii. Clearance and demolition
- ix. Relocation
- x. New construction
- xi. Grant administration
- xii. Technical assistance

## Additional HUD Regulations

### Summary

This section discusses additional general federal requirements for HUD programs. The following regulations are directly applicable to screening applicants and considerations for termination of tenancy for residents with a history of drug use, substance use disorders, or drug related criminal charges. These regulations discuss owners' authority regarding applicants and residents in most federally assisted rental housing. These provisions do not apply to public housing, the Housing Choice Voucher program (Section 8), or USDA's Section 515 rental or Section 514/516 farmworker housing programs.<sup>17</sup>

## Federal Regulations

**“What authority do I [owner] have to screen applicants and to evict tenants?”** (summarized from [24 CFR § 5.851](#))

- Screening applicants: An owner is authorized to screen applicants and follow directives that require or permit denial of applications. An owner is also allowed to screen out applicants who the owner determines are unsuitable for their standard of admission.
- Terminating Tenancy: An owner is authorized to terminate tenancy in accordance with the lease agreement, provisions of local landlord-tenant law, and provisions of federal laws and regulations.



**‘What discretion do I [owner] have in screening and eviction actions?**

(summarized and excerpted from [24 CFR § 5.852](#))

A. Owners are permitted, but not always required, to take action. An owner may take action in accordance with tenancy and eviction standards.

Circumstances which may be considered when deciding admission or eviction include:

- “(1) The seriousness of the offending action;
- (2) The effect on the community of denial or termination or the failure of the responsible entity to take such action;
- (3) The extent of participation by the leaseholder in the offending action;
- (4) The effect of denial of admission or termination of tenancy on household members not involved in the offending action;
- (5) The demand for assisted housing by families who will adhere to lease responsibilities;
- (6) The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action; and
- (7) The effect of the responsible entity's action on the integrity of the program.”

B. Exclusion of a culpable household member ([24 CFR § 5.852\(b\)](#))

An owner may require an applicant to exclude a household member as a condition of admission to the housing program if the household member has participated in an action that warrants denial.

## Denying Admission

**“When must I [owner] prohibit admission of individuals who have engaged in drug-related criminal activity?”** (summary of [24 CFR § 5.854](#))

- An owner is required to deny admission for three years from the date of eviction from federally assisted housing for drug-related criminal activity.
- Admission is permissible if:
  - The evicted household member has successfully completed an approved rehabilitation program;
  - The circumstances that led to the household’s eviction no longer exist (“for example, the criminal household member has died or is imprisoned”).
- Required standard of prohibiting admission to federally assisted housing: [Please turn phrases into complete sentences, to be consistent with the rest of the guide.]
  - Denial of admission if any household member is currently illegally using drugs;
  - Denial of admission if any household member’s pattern of illegal use of drugs may affect the “health, safety, or right to peaceful enjoyment” of other residents.

**“When am I [owner] specifically authorized to prohibit admission of individuals who have engaged in criminal activity?”** (summary of [24 CFR § 5.855\(a\)](#))

- Prohibition of admission is permissible if owner determines that any household members is currently engaged in, or “has engaged in during a reasonable time before the admissions decision,”:
  - Drug-related criminal activity
  - Violent criminal activity
  - “Other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.”
- “Other criminal activity that would threaten the health or safety of the PHA or owner or any employee, contractor, subcontractor, or agent of the PHA or owner who is involved in the housing operations.”
- The owner must establish the time frame prior to the admissions decision which is considered “reasonable time.”

**“ What discretion do I [owner] have in screening and eviction actions?”**

(continued) (excerpted from [24 CFR § 5.852](#))

C. Consideration of rehabilitation ([24 CFR 5.852\(c\)](#))

“(1) In determining whether to deny admission or terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, you may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully ([42 U.S.C. 13661](#)). For this purpose, you may require the applicant or tenant 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.”

“(2) If rehabilitation is not an element of the eligibility determination (see [§ 5.854\(a\)\(1\)](#) [below] for the case where it must be considered), you may choose not to consider whether the person has been rehabilitated.”

D. “Length of period of mandatory prohibition on admission. If a statute requires that you prohibit admission of persons for a prescribed period of time after some disqualifying behavior or event, you may apply that prohibition for a longer period of time.”

E. “Nondiscrimination limitation. Your admission and eviction actions must be consistent with fair housing and equal opportunity provisions of [§ 5.105](#).”

**“When am I [owner] specifically authorized to prohibit admission of individuals who have engaged in criminal activity?” (continued)**

(summary of [24 CFR § 5.855\(a\)](#))

- The owner is permitted to reconsider a previously denied applicant if there is sufficient evidence that the applicant is not currently engaged in criminal activity and has not engaged in the criminal activity during the established reasonable period prior to the admissions decision.
  - Sufficient evidence may include a certification or supporting information from sources such as probation officer, landlord, neighbors, social service agency workers, and criminal records that the applicant is not currently engaged in criminal activity and has not engaged in the criminal activity during the established reasonable period prior to the admissions decision.
    - The owner is permitted to [check criminal records of applicants](#).
  - If a household member has engaged in the activity recently enough to warrant justifiable belief that the behavior is current, the owner may consider the household member to be currently engaged in the activity.

**“When must I [owner] prohibit admission of alcohol abusers?”**

(excerpted from [24 CFR § 5.858](#))

Owner must set standard which prohibit household members with alcohol abuse or patterns of alcohol abuse if the owner determines there is reasonable cause the household member will affect the “health, safety, or right to peaceful enjoyment” of other residents

## **Terminating Tenancy**

**“What authority do I [owner] have to evict drug criminals?”** (summary of [24 CFR § 5.858](#))

The lease must provide that drug-related criminal activity on or near the premises by the tenant, a household member, or a guest, will result in termination of tenancy and include permission of the owner to evict a family if household member drug use affects “the health, safety, or right to peaceful enjoyment” of other residents.

**“What evidence of criminal activity must I [owner] have to evict?”** (summary of [5 CFR § 5.861](#))

The owner does not need documentation of an arrest or criminal conviction to terminate tenancy and evict a tenant if the owner “determines” that the tenant, a household member, or a guest has engaged in criminal activity.

**“When am I [owner] specifically authorized to evict alcohol abusers?”** (summary of [24 CFR § 5.860](#))

The lease must provide for termination of tenancy if the owner determines that a household member’s pattern or current use of alcohol will affect the “health, safety, or right to peaceful enjoyment” by other residents.

# Internal Revenue Service

## Low-Income Housing Tax Credit Program

### Summary

The Low-Income Housing Tax Credit program provides opportunities to preserve, rehabilitate, and construct affordable housing. Administered by the Internal Revenue Service (IRS), each state receives a Housing Credit allocation. Through the tax credit, private developers construct property at a lower cost, resulting in lower rental prices for low-income households. Additional federally subsidized affordable housing programs usually supplement these tax credits.<sup>18</sup>

Each [state manages the administration](#) of the LIHTC through housing finance agencies, housing credit agencies, housing authorities, and other LIHTC allocating agencies. State LIHTC allocating agencies are required to prepare a Qualified Allocation Plan (QAP) which outlines the selection criteria to determine which projects will be awarded tax credits. States' QAPs may have specific requirements or regulations for the program in addition to the regulations outlined in the Internal Revenue Code ([26 U.S.C. § 42](#)).

The Qualified Action Plan must adhere to the general requirements, including low-income occupancy rules and maximum rent levels for affordable units. The QAP is permitted to include selection criteria for projects focused on populations with special housing needs. LIHTC regulations allow provisions of required supportive services, which are “designed to enable residents of a residential property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped.”<sup>19</sup>

If additional federal affordable housing programs subsidize a LIHTC project, the regulations from the additional federal program must be adhered to in addition to the LIHTC regulations. This section discusses select general regulations related to the provision of housing and supportive services through the Low-Income Housing Tax Credit program.

Learn more here: [IRS Low-Income Housing Credit](#), [Low-Income Housing Tax Credit](#), [LIHTC Database](#), [An Advocate's Guide to Tenants' Rights in the Low-Income Housing Tax Credit Program](#)

## Federal Regulations

### **For Use by the General Public** (excepted from [26 CFR § 1.42-9](#))

“(a) **General rule.** If a residential rental unit in a building is not for use by the general public, the unit is not eligible for a section 42 credit. A residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing non-discrimination, as evidenced by rules or regulations of the Department of Housing and Urban Development (HUD) ([24 CFR subtitle A](#) and chapters I through XX). See HUD Handbook 4350.3 (or its successor). A copy of HUD Handbook 4350.3 may be requested by writing to: HUD, Directives Distribution Section, room B-100, 451 7th Street, SW., Washington, DC 20410.

(b) **Limitations.** Notwithstanding [paragraph \(a\)](#) of this section, if a residential rental unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for credit under section 42. In addition, any residential rental unit that is part of a hospital, nursing home, sanitarium, lifecare facility, trailer park, or intermediate care facility for the mentally and physically handicapped is not for use by the general public and is not eligible for credit under section 42.

(c) **Treatment of units not for use by the general public.** The costs attributable to a residential rental unit that is not for use by the general public are not excludable from eligible basis by reason of the unit's ineligibility for the credit under this section. However, in calculating the applicable fraction, the unit is treated as a residential rental unit that is not a low-income unit.”



**Provision of Services** (excepted from [26 CFR § 1.42-11](#))

“(a) **General rule.** The furnishing to tenants of services other than housing (whether or not the services are significant) does not prevent the units occupied by the tenants from qualifying as residential rental property eligible for credit under section 42. However, any charges to low-income tenants for services that are not optional generally must be included in gross rent for purposes of section 42(g).

(b) **Services that are optional -**

(1) **General rule.** A service is optional if payment for the service is not required as a condition of occupancy. For example, for a qualified low-income building with a common dining facility, the cost of meals is not included in gross rent for purposes of section 42(g)(2)(A) if payment for the meals in the facility is not required as a condition of occupancy and a practical alternative exists for tenants to obtain meals other than from the dining facility.

(2) **Continual or frequent services.** If continual or frequent nursing, medical, or psychiatric services are provided, it is presumed that the services are not optional and the building is ineligible for the credit, as is the case with a hospital, nursing home, sanitarium, lifecare facility, or intermediate care facility for the mentally and physically handicapped. See also [§1.42-9\(b\)](#).”

**Provision of Services** (continued) (excepted from [26 CFR § 1.42-11](#))

**“(3) Required services -**

(i) **General rule.** The cost of services that are required as a condition of occupancy must be included in gross rent even if federal or state law requires that the services be offered to tenants by building owners.

**(ii) Exceptions -**

(A) **Supportive services.** Section 42(g)(2)(B)(iii) provides an exception for certain fees paid for supportive services. For purposes of section 42(g)(2)(B)(iii), a supportive service is any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. For a building described in section 42(i)(3)(B)(iii) (relating to transitional housing for the homeless) or section 42(i)(3)(B)(iv) (relating to single-room occupancy), a supportive service includes any service provided to assist tenants in locating and retaining permanent housing.

(B) **Specific project exception.** Gross rent does not include the cost of mandatory meals in any federally-assisted project for the elderly and handicapped (in existence on or before January 9, 1989) that is authorized by [24 CFR 278](#) to provide a mandatory meals program.”

**Low-Income Housing Credit** (excepted from [26 U.S.C. § 42\(g\)\(2\)\(A\)](#))

**“g) Qualified low-income housing project**

For purposes of this section-

**(l) In general**

The term "qualified low-income housing project" means any project for residential rental property if the project meets the requirements of subparagraph (A), (B), or (C) whichever is elected by the taxpayer:

**(A) 20–50 test**

The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

**(B) 40–60 test**

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

**(C) Average income test**

**(i) In general**

The project meets the minimum requirements of this subparagraph if 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) of the residential units in such project are both rent-restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit.”

**Low-Income Housing Credit** (excepted from [26 U.S.C. § 42\(g\)\(2\)\(B\)](#))

**“(g) Qualified low-income housing project**

Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.”

**“(2) Rent-restricted units**

**(B) Gross rent**

For purposes of subparagraph (A), gross rent-

- (i) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof),
- (ii) includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937,
- (iii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and
- (iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949.

For purposes of clause (iii), the term "supportive service" means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (i)(3)(B)(iii), such term includes any service provided to assist tenants in locating and retaining permanent housing.”

**Low-Income Housing Credit** (excepted from [26 U.S.C. § 42\(g\)\(9\)](#))

**“(g) Qualified low-income housing project**

**(9) Clarification of general public use requirement**

A project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants-

(A) with special needs,

(B) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group, or

(C) who are involved in artistic or literary activities.”

## U.S. Department of Agriculture (USDA)

The United States Department of Agriculture provides homeownership and home renovation and repair programs for rural communities.<sup>20</sup> These programs include single-family housing and multifamily housing units. This guide discusses the Direct Single Family Housing Loans and Grants, Section 502 and Section 504, and Section 515 Mortgage Programs for multifamily housing, congregate housing, and group homes. This section includes the regulations pertaining to providing funding to individuals with substance use disorders or a history of drug use.

### ***Single Family Housing Loan Program: Section 502 and 504***

The regulations do not include specific exclusions for applicants with SUD or a history of drug use. However, there are specific financial requirements which permit ineligibility based on significant financial delinquency within the past 36 months. Depending on the applicants' date and stage of recovery, it may be difficult to meet the financial requirements.

### ***Section 515 Mortgage Program***

Residents with very low-, low-, and moderate-income families may be eligible for residence in Section 515-financed housing. Persons with disabilities are eligible for services in congregate housing and group homes. The definition of disability includes individuals with physical or mental impairments due to drug addiction. Applicants with addiction caused by current and illegal use of a controlled substance are not eligible for services.

Learn more about USDA Rural Development (RD) housing programs here: [USDA Rural Development](#)

# Single Family Housing Loans and Grants

## Summary

Rural Housing Service (RHS) Single Family Housing Loan Programs aim to provide very low- and low-income rural households with access to safe housing and facilities. There are various RHS Single Family Housing Loan Programs including Section 502 and Section 504.<sup>21</sup>

### ***Section 502 Direct Loan Program***

This program “offers persons who do not currently own adequate housing, and who cannot obtain other credit, the opportunity to acquire, build, rehabilitate, improve or relocate dwellings in rural areas.” Applicants with up to 80% AMI may be eligible for loans provided by [Rural Housing Service](#) .

### ***Section 502 Guarantee Loan Program***

This program provides loans for rural residents with “steady, low or modest income” who experience difficulties accessing conventional financing options. Applicants with up to 115% AMI are eligible for guaranteed loans through commercial lenders.

### ***Section 504***

This program “offers loans to very low-income homeowners who cannot obtain other credit to repair or rehabilitate their properties.” This “program also offers grants to homeowners aged 62 or older who cannot obtain a loan to correct health and safety hazards or to make the unit accessible to household members with disabilities.”

### **Related to residents with SUD/OD:**

These programs require specific financial and credit requirements. Residents with a history of SUD/OD may not be able to meet the credit or income eligibility based on their circumstances.

Section 502 Direct and 504 deem any applicant with “significant delinquency” including foreclosure or declaring bankruptcy in the past 36 months is determined to be a high level of risk and subject their applications to further review. Further review does not indicate the applicant’s ineligibility for the loan. Loan Approval Officers must determine the reason for the delinquency, how the applicant corrected and addressed the delinquency, and if the applicant’s credit is in better standing now.<sup>22</sup>

Section 502 Guarantee program evaluates applicants’ income to debt ratio and credit to determine whether the applicants’ credit history and income are dependable enough to support the loan.<sup>23</sup>

Learn more about Section 502 Direct and Section 504 here: [Code of Federal Regulations. 2022. 7 CFR 3550, Direct Single Family Housing Loans and Grants, Homeownership Direct Loans, USDA Handbooks](#)

Learn more about Section 502 Guaranteed here: [SFH Guaranteed Loan Program Technical Handbook Ch 8 Applicant characteristics, Guaranteed Rural Housing Loans, USDA Handbooks](#)



## Federal Regulations

### **Section 502 Direct and Section 504 Loan Eligibility requirements**

(summary of [7 CFR § 3550.53\(a\)](#))

- Income eligibility- The applicant's household adjusted income must not exceed low-income limits.
- Citizenship status- The applicant must be a United States citizen or eligible noncitizen.
- Principal residence- The applicant must intend to occupy the home as a principal residence.
- Eligibility of current homeowners- Current homeowners are not eligible for loans with a [few exceptions](#).
- Legal Capacity- Applicants must have demonstrated legal capacity to incur a loan obligation or have a court appointed conservator or guardian.
- Suspension or debarment- the applicant "must not be suspended or debarred from participation in federal programs"
  - Per 2 CFR [parts 180](#) and [417](#)
- Repayment Ability- The applicant must demonstrate dependable income. The monthly loan repayment must not exceed 33% of the total income.
- Credit Qualifications- The applicant must be ineligible for financing options from other sources. Applicants' credit history will be assessed for [indicators of unacceptable credit](#). Applicants with an outstanding judgment obtained by the United States in a federal court, other than the United States Tax Court, are not eligible for a loan or grants.
- Homeownership education- Applicants must complete certified homeowner education.

**Section 502 Guarantee Loan Eligibility requirements** (summary of [7 CFR § 3555.151](#))

- Income eligibility- The applicant's household adjusted income must not exceed moderate-income limits.
- Citizenship status- The applicant must be a United States citizen or eligible noncitizen.
- Principal residence- The applicant must intend to occupy the home as a principal residence.
- Adequate dwelling- The home must be "modest, decent, safe, and sanitary".
- Eligibility of current homeowners- Current homeowners may be eligible under [specific conditions](#).
- Legal Capacity- Applicants must have demonstrated legal capacity to incur a loan obligation or have a court appointed conservator or guardian.
- Suspension or debarment- The applicant "must not be suspended or debarred from participation in federal programs"
  - Per 2 CFR [parts 180](#) and [417](#)
- Repayment Ability- The applicant must demonstrate dependable income. The monthly loan repayment does not exceed 29% of the total income.
- Credit Qualifications- The applicant must have verifiable credit history and a credit score which demonstrates willingness and ability to meet debt obligations.
- Obtaining Credit- The applicant must be unable to meet the criteria for traditional mortgage credit.

## USDA Multifamily Housing Programs

USDA's Section 515 program is for multifamily housing projects which include family housing projects, elderly housing projects, and congregate housing for persons with special needs.<sup>24</sup> This section discusses the regulations regarding Section 515 multifamily housing options. Housing agencies may use Section 538 funding to preserve existing Section 515 housing or to construct new multifamily rental housing options. Section 538 does not include specific regulations for housing persons with a history of substance use disorders, alcohol additions, or drug-related criminal convictions.

Learn more about Section 515 here: [Rural Rental Housing Loans \(Section 515\)](#)

Learn more about Section 538 housing here: [USDA Section 538](#)

## Federal Regulations

### ***Applicable Terms and Definitions***

#### **Disability** (summary of [7 CFR § 3560.11](#))

A resident is considered to have a disability or handicap in either of the following situations:

Defined in Section 501(b) of the Housing Act of 1949 (the statute that governs USDA's rural housing programs), the impairment must

- Be of long-continued and indefinite duration
- "Substantially impedes [their] ability to live independently"
- "Is of such a nature that such ability could be improved by more suitable housing conditions..."

USDA also uses the definitions of "the Fair Housing Act; the Americans with Disabilities Act; and section 504 of the Rehabilitation Act of 1973," Under those laws, people with disabilities include those with mental or physical impairments that substantially impede major life activities. "The term does not include current, illegal use of or addiction to a controlled substance." "The term physical or mental impairments includes "drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism."

**Congregate Housing** (excerpted from [7 CFR § 3560.11](#))

“A housing program authorized by section 515 of the Housing Act of 1949 which provides housing for elderly persons, individuals with disabilities, and families who require some supervision and central services but are otherwise able to care for themselves. Such housing does not include any licensed healthcare facility.”

**Group Home** (excerpted from [7 CFR § 3560.11](#))

“Housing that is occupied by elderly persons or individuals with disabilities who share living space within a rental unit and in which a resident assistant may be required.”

**Household** (excerpted from [7 CFR § 3560.11](#))

“The tenant or co-tenant and the persons or dependents living with a tenant or co-tenant, but not including a resident assistant.”

## ***Federal Regulations***

### **Multi-Family Housing Occupancy** (summary of [7 CFR § 3560.151](#))

The regulations in the section relate to the multiple programs including congregate housing or group homes for persons with special needs.

Tenant Eligibility ([7 CFR 3560.152](#))

#### General Requirements

- The applicant must be a U.S. Citizen or qualified alien.
- The applicant's household income must qualify as very low, low, or moderate income.
- The applicant must demonstrate eligible for housing benefits through other entities, including HUD Housing Choice Voucher or Low Income Housing Tax Credit (LIHTC).

**Requirements for elderly housing, congregate housing, and group homes.** (excerpted from [7 CFR § 3560.152\(c\)](#))

In addition to the general requirements, the following occupancy requirements must be applied for group homes.

“For group homes, the following provisions apply:

- (i) Occupancy may be limited to a specific group of tenants, such as elderly persons or persons with developmental disabilities, or mental impairments, if such an occupancy limitation is contained in the borrower's [landlord's] management plan.
- (ii) Tenants must be able to demonstrate a need for the special services provided by the group home.
- (iii) Tenants cannot be required to participate in an ongoing training or rehabilitation program.
- (iv) Tenants must be selected from the market area prior to considering applicants from other areas.”

## Notes

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<sup>1</sup> Stacy Mosel. 2022. Substance Use in Rural Communities and Small Towns <https://americanaddictioncenters.org/rehab-guide/rural-small-town>

<sup>2</sup> USDA. Rural Community Action Guide: Building Stronger, Healthy, Drug-Free Rural Communities. Increasing Housing Options for Person in Recovery in Rural Communities <https://www.usda.gov/sites/default/files/documents/rural-community-action-guide.pdf>

<sup>3</sup> Code of Federal Regulations. 1995. 24 CFR § 982.1(a)(1). Section 8 Tenant-Based Assistance: Housing Choice Voucher Program. Programs: Purpose and Structure, General Description. [https://www.ecfr.gov/current/title-24/subtitle-B/chapter-IX/part-982#p-982.1\(a\)\(1\)](https://www.ecfr.gov/current/title-24/subtitle-B/chapter-IX/part-982#p-982.1(a)(1))

<sup>4</sup> Code of Federal Regulations. 2022. 24 CFR 982.1(a)(2). Section 8 Tenant-Based Assistance: Housing Choice Voucher Program. Programs: Purpose and Structure, General Description. [https://www.ecfr.gov/current/title-24/subtitle-B/chapter-IX/part-982#p-982.1\(a\)\(2\)](https://www.ecfr.gov/current/title-24/subtitle-B/chapter-IX/part-982#p-982.1(a)(2))

<sup>5</sup> Code of Federal Regulations. 1999. 24 CFR § 982.54. Section 8 Tenant-Based Assistance: Housing Choice Voucher Program, Administrative Plan. <https://www.ecfr.gov/current/title-24/subtitle-B/chapter-IX/part-982/subpart-B/section-982.54>

<sup>6</sup> Code of Federal Regulations. 2022. 24 CFR § 982.307 Section 8 Tenant-Based Assistance: Housing Choice Voucher Program, Denial of Admission and Termination of Assistance for Criminals and Alcohol Abusers. [https://www.ecfr.gov/current/title-24/subtitle-B/chapter-IX/part-982#p-982.307\(a\)\(1\)](https://www.ecfr.gov/current/title-24/subtitle-B/chapter-IX/part-982#p-982.307(a)(1))

<sup>7</sup> Code of Federal Regulations. 2022. 24 CFR § 982.553 Section 8 Tenant-Based Assistance: Housing Choice Voucher Program, Tenant Screening. <https://www.ecfr.gov/current/title-24/subtitle-B/chapter-IX/part-982/subpart-L/section-982.553>

<sup>8</sup> Code of Federal Regulations. 2022. 24 CFR § 982. Section 8 Tenant-Based Assistance: Housing Choice Voucher Program. <https://www.ecfr.gov/current/title-24/subtitle-B/chapter-IX/part-982>



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<sup>9</sup> Code of Federal Regulations. 2022. 24 CFR § 960 Admission to, and Occupancy of, Public Housing [eCFR :: 24 CFR Part 960 -- Admission to, and Occupancy of, Public Housing](#)

<sup>10</sup> U.S. Department of Housing and Urban Development. 2021. HOME Investment Partnership Program [https://www.hud.gov/program\\_offices/comm\\_planning/home](https://www.hud.gov/program_offices/comm_planning/home)

<sup>11</sup> U.S. Department of Housing and Urban Development. 2008. Building HOME Chapter 7 Tenant-Based Rental Assistance. [https://www.hud.gov/program\\_offices/comm\\_planning/home](https://www.hud.gov/program_offices/comm_planning/home)

<sup>12</sup> U.S. Department of Housing and Urban Development, Office of the Secretary. Tenant Based Rental Assistance: Eligible Costs and Requirements. <https://www.govinfo.gov/content/pkg/CFR-2004-title24-vol1/pdf/CFR-2004-title24-vol1-sec92-209.pdf>

<sup>13</sup> U.S. Department of Housing and Urban Development. 2009. The McKinney-Vento Homeless Assistance Act. [https://www.hud.gov/sites/documents/HAAA\\_HEARTH.PDF](https://www.hud.gov/sites/documents/HAAA_HEARTH.PDF)

<sup>14</sup> Code of Federal Regulations, 2022. 24 CFR § 583. Supportive Housing Program. [eCFR :: 24 CFR Part 583 -- Supportive Housing Program](#)

<sup>15</sup> U.S. Department of Housing and Urban Development. Section 811 Supportive Housing for Persons with Disabilities Program. [https://www.hud.gov/program\\_offices/housing/mfh/grants/section811ptl](https://www.hud.gov/program_offices/housing/mfh/grants/section811ptl)

<sup>16</sup> Code of Federal Regulations. 2022. 24 CFR § 582.1(a), Shelter Plus Care, Purpose and Scope. [https://www.ecfr.gov/current/title-24/subtitle-B/chapter-V/subchapter-C/part-582#p-582.1\(a\)](https://www.ecfr.gov/current/title-24/subtitle-B/chapter-V/subchapter-C/part-582#p-582.1(a))

<sup>17</sup> Code of Federal Regulations. 2022. 24 CFR § 5. General HUD Program Requirements; Waivers. [eCFR :: 24 CFR Part 5 -- General HUD Program Requirements; Waivers](#)

<sup>18</sup> The Treasury Inspector General for Tax Administration. 2022. Oversight of the Low-Income Housing Tax Credit Program Can be Improved. <https://www.treasury.gov/tigta/auditreports/2022reports/202230012fr.pdf>

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<sup>19</sup> Code of Federal Regulations. 2022. 26 CFR § 1.42 11 (b)(3)(ii)(A) Provision of Services. [26 CFR 1.42 11\(b\)\(3\)\(ii\)\(A\)](#)

<sup>20</sup> U.S. Department of Agriculture. Housing Assistance. <https://www.usda.gov/topics/rural/housing-assistance>

<sup>21</sup> Code of Federal Regulations. 2022. 7 CFR § 3550, Direct Single Family Housing Loans and Grants. [eCFR :: 7 CFR Part 3550 -- Direct Single Family Housing Loans and Grants](#)

<sup>22</sup> US Department of Agriculture. 2018. Section 502 Direct Loan Program's Credit Requirements. <https://www.rd.usda.gov/files/RD-SFH-CreditRequirements.pdf>

<sup>23</sup> Federal Deposit Insurance Corporation. USDA Single Family Housing Guarantee Loan Program. <https://www.fdic.gov/resources/bankers/affordable-mortgage-lending-center/guide/part-1-docs/single-family-housing-guaranteed-loan-program.pdf>

<sup>24</sup> Code of Federal Regulations. 2022. 7 CFR § 3560 Multi-Family Housing Occupancy. [eCFR :: 7 CFR Part 3560 Subpart D -- Multi-Family Housing Occupancy](#)

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The **Housing Assistance Council** is  
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Photo: Shawn Poynter. *There is More Work to Be Done*