



Subpart E. Restrictions on Assistance to Noncitizens - 24 C.F.R. § 5.500 et seq.

§ 5.500 Applicability.

(a) Covered programs/assistance. This subpart E implements Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 prohibits HUD from making financial assistance available to persons who are not in eligible status with respect to citizenship or noncitizen immigration status. This subpart E is applicable to financial assistance provided under:

- (1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);
- (2) Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program);
- (3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program); and
- (4) The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) which covers:
 - (i) HUD's Public Housing Programs;
 - (ii) The Section 8 Housing Assistance Programs; and
 - (iii) The Housing Development Grant Programs (with respect to low income units only).

(b) Covered individuals and entities—

- (1) Covered individuals/persons and families. The provisions of this subpart E apply to both applicants for assistance and persons already receiving assistance covered under this subpart E.
- (2) Covered entities. The provisions of this subpart E apply to Public Housing Agencies (PHAs), project (or housing) owners, and mortgagees under the Section 235 Program. The term “responsible entity” is used in this subpart E to refer collectively to these entities, and is further defined in § 5.504.

AUTHORITY: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub.L. 109-115, 119 Stat. 2936; Sec. 607, Pub.L. 109-162, 119 Stat. 3051 (42 U.S.C. 14043e et seq.); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.; 42 U.S.C. 1436a and 3535(d).

§ 5.502 Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that this subpart E requires the responsible entity to provide to an individual, or requires the responsible entity to obtain the signature of an individual, the responsible entity, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

AUTHORITY: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub.L. 109–115, 119 Stat. 2936; Sec. 607, Pub.L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e et seq.); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.; 42 U.S.C. 1436a and 3535(d).

§ 5.504 Definitions.

(a) The definitions 1937 Act, HUD, Public Housing Agency (PHA), and Section 8 are defined in subpart A of this part.

(b) As used in this subpart E:

Child means a member of the family other than the family head or spouse who is under 18 years of age.

Citizen means a citizen or national of the United States.

~~DHS means the Department of Homeland Security.~~

Evidence of citizenship or eligible status means the documents which must be submitted to evidence citizenship or eligible immigration status. (See § 5.508(b).)

Family has the same meaning as provided in the program regulations of the relevant Section 214 covered program.

Head of household means the adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

Housing covered programs means the following programs administered by the Assistant Secretary for Housing:

- (1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);
- (2) Section 236 of the National Housing Act (12 U.S.C. 1715z–1) (tenants paying below market rent only) (the Section 236 Program); and
- (3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program).

~~INS means the U.S. Immigration and Naturalization Service.~~

~~Mixed family means a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.~~

National means a person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen means a person who is neither a citizen nor national of the United States.

Project owner means the person or entity that owns the housing project containing the assisted dwelling unit.

Public Housing covered programs means the public housing programs administered by the Assistant Secretary for Public and Indian Housing under title I of the 1937 Act. This definition does not encompass HUD's Indian Housing programs administered under title II of the 1937 Act. Further, this term does not include those programs providing assistance under section 8 of the 1937 Act. (See definition of "Section 8 Covered Programs" in this section.)

Responsible entity means the person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status. The entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status under the various covered programs is as follows:

- (1) For the Section 235 Program, the mortgagee.
- (2) For Public Housing, the Section 8 Rental Certificate, the Section 8 Rental Voucher, and the Section 8 Moderate Rehabilitation programs, the PHA administering the program under an ACC with HUD.
- (3) For all other Section 8 programs, the Section 236 Program, and the Rent Supplement Program, the owner.

Section 8 covered programs means all HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8–assisted housing for which loans are made under section 202 of the Housing Act of 1959.

Section 214 means section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a).

Section 214 covered programs is the collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in § 5.500.

Tenant means an individual or a family renting or occupying an assisted dwelling unit. For purposes of this subpart E, the term tenant will also be used to include a homebuyer, where appropriate.

AUTHORITY: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub.L. 109–115, 119 Stat. 2936; Sec. 607, Pub.L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e et seq.); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.; 42 U.S.C. 1436a and 3535(d).

§ 5.506 General provisions.

(a) Restrictions on assistance. Financial assistance under a Section 214 covered program is restricted to:

- (1) Citizens; or
- (2) Noncitizens who have eligible immigration status under one of the categories set forth in Section 214 (see 42 U.S.C. 1436a(a)).

(b) Family eligibility for assistance.

(1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section, or unless the family meets the conditions set forth in either paragraph (b)(2) or (3) of this section.

(2) Despite the ineligibility of one or more family members, a family that was receiving assistance under a Section 214 covered program on June 19, 1995, may be eligible for continued assistance, as provided in §§ 5.515 and 5.518. If the family does not qualify for continued assistance, it may nonetheless be eligible for temporary deferral of termination of assistance as provided in §§ 5.516 and 5.518. ~~a mixed family may be eligible for one of the three types of assistance provided in §§ 5.516 and 5.518. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in §§ 5.516 and 5.518.~~

(3) A family whose head of household or spouse has eligible immigration status is eligible for prorated assistance under § 5.520, pending final determinations on the eligibility of other family members.

(c) Preferences. Citizens of the Republic of Marshall Islands, the Federated States of Micronesia, and the Republic of Palau who are eligible for assistance under paragraph (a)(2) of this section are entitled to receive local preferences for housing assistance, except that, within Guam, such citizens who have such local preference will not be entitled to housing assistance in preference to any United States citizen or national resident therein who is otherwise eligible for such assistance.

Credits

[67 FR 65273, Oct. 23, 2002]

AUTHORITY: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub.L. 109–115, 119 Stat. 2936; Sec. 607, Pub.L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e et seq.); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.; 42 U.S.C. 1436a and 3535(d).

§ 5.508 Submission of evidence of citizenship or eligible immigration status.

(a) General. Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the responsible entity of the documents described in paragraph (b), (c), and (d) of this section, as applicable, for each family member. ~~If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to contend to have eligible immigration status as provided in paragraph (c) of this section, and the provisions of §§ 5.516 and 5.518 shall apply.~~

(b) Evidence of citizenship or eligible immigration status. Each family member, regardless of age, must submit the following evidence to the responsible entity.

(1) For U.S. citizens as defined in § 5.504(b), ~~the evidence consists of appropriate documentation, such as: or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. nationality. The responsible entity may request verification of the declaration by requiring presentation of a United States passport or other appropriate documentation, as specified in HUD guidance.~~

- (i) A U.S. birth certificate;
- (ii) A naturalization certificate;
- (iii) A Consular Report of Birth Abroad (FS-240);
- (iv) A valid unexpired U.S. passport;
- (v) A certificate of citizenship; or
- (vi) Other appropriate documentation, as specified in HUD guidance.

(2) For noncitizens who are 62 years of age or older and were receiving assistance under a Section 214 covered program on September 30, 1996, or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on September 30, 1996 or applying for assistance on or after that date, the evidence consists of a proof of age document, as may be specified by HUD, and one of the following:

- (i) A Form I-551, Permanent Resident Card;
- (ii) Form I-94, Arrival/ Departure Record;
- (iii) A foreign passport with I-551 stamp;
- (iv) A notice of approval of status or action from DHS; or
- (v) Other appropriate documentation specified by HUD.
- ~~(i) A signed declaration of eligible immigration status; and~~
- ~~(ii) Proof of age document.~~

(3) For all other noncitizens, the evidence consists of:

- (i) A signed declaration of eligible immigration status (see paragraph (c) of this section);

Comment [N1]: The proposed rule eliminates the ability for any household member not to contend eligibility for the housing assistance based on immigration status.

Comment [NHL2]: The proposed rule requires all household members to provide documentation of citizenship or immigration status. Current regulations only require that (1) U.S. citizens submit a declaration signed under penalty of perjury and (2) noncitizens 62 years old or older submit a signed declaration and proof of age.

Under the proposed rule, noncitizens 62 years old or older have different documentation requirements than noncitizens younger than 62 years old.

- (ii) One of the INS documents referred to in § 5.510; and
- (iii) A signed verification consent form (see paragraph (d) of this section).

(c) Declaration.

(1) ~~For each~~ Each family member, regardless of age, who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the responsible entity a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen as defined in § 5.504(b) or a noncitizen with eligible immigration status set forth in § 5.506(a)(2).

- (i) For each adult, the declaration must be signed by the adult.
- (ii) For each child, as defined in § 5.504(b), the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) ~~For Housing covered programs:~~ The written declaration may be incorporated as part of the application for housing assistance or may constitute a separate document.

(d) Verification consent form—

(1) Who signs. Each family member, regardless of age, ~~noncitizen who declares eligible immigration status~~ (except certain noncitizens who are 62 years of age or older as described in paragraph (b)(2) of this section) must sign a verification consent form as follows:

- (i) For each adult, the form must be signed by the adult.
- (ii) For each child, the form must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) Notice of release of evidence by responsible entity. The verification consent form shall provide that evidence of eligible immigration status may be released by the responsible entity without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

- (i) HUD, as required by HUD; and
- (ii) ~~DHS to verify The INS for purposes of verification of~~ the immigration status of the individual.

(3) Notice of release of evidence by HUD. The verification consent form ~~also~~ shall also notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to ~~DHS the INS~~ for purposes of ~~verifying the individual has eligible immigration status establishing eligibility~~ for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by ~~DHS the INS~~.

~~(e) Individuals who do not contend that they have eligible status. If one or more members of a family elect not to contend that they have eligible immigration status, and other members of the family establish their citizenship or eligible immigration status, the family may be eligible~~

Comment [NHLP3]: The proposed rule requires that all household members complete a declaration. Current regulations only require that individuals who are contending eligibility to submit a declaration.

Comment [NHLP4]: Every household member, except noncitizens 62 years old or older and U.S. citizens, must complete a verification consent form and be verified through SAVE. Under current regulations, only noncitizens younger than 62 who declared eligible immigration status are required to sign a verification consent form and be verified through SAVE.

~~for assistance under §§ 5.516 and 5.518, or § 5.520, despite the fact that no declaration or documentation of eligible status is submitted for one or more members of the family. The family, however, must identify in writing to the responsible entity, the family member (or members) who will elect not to contend that he or she has eligible immigration status.~~

~~(e)(f)~~ Notification of requirements of Section 214—

(1) When notice is to be issued. Notification of the requirement to submit evidence that the individual is a U.S. citizen, as defined in § 5.504(b), or that the individual has of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible status as provided by paragraph (e) of this section, shall be given by the responsible entity as follows:

(i) Applicant's notice. The notification ~~described in paragraph (f)(1) of this section~~ shall be given to each applicant at the time of application for assistance.

~~Applicants whose applications are pending on June 19, 1995, shall be notified of the requirement to submit evidence of eligible status as soon as possible after June 19, 1995.~~

(ii) Notice to tenants. The notification ~~described in paragraph (f)(1) of this section~~ shall be given to each tenant who has not submitted evidence of eligible status as of [insert effective date of final rule] at the time of, and together with, the responsible entity's notice of regular reexamination of income, ~~but not later than one year following June 19, 1995.~~

(iii) Timing of mortgagor's notice. A mortgagor receiving Section 235 assistance must be provided the notification ~~described in paragraph (f)(1) of this section~~ and any additional requirements imposed under the Section 235 Program.

(2) Form and content of notice. The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of evidence that the individual is a U.S. citizen as defined in § 5.504(b), of citizenship or has eligible immigration status as required by paragraph (a) of this section;

(ii) Describe the type of evidence that must be submitted, and state the time period in which that evidence must be submitted (see paragraph ~~(f)(e)~~ of this section concerning when evidence must be submitted); ~~and~~

(iii) State that assistance will be ~~prorated,~~ denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals, if any, have been exhausted ~~(see § 5.514 concerning INS appeal, and informal hearing process)~~ or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements; ~~Tenants also shall be informed of how to obtain assistance under the preservation of families provisions of §§ 5.516 and 5.518.~~

Comment [N5]: The proposed rule eliminates the ability for any household member not to contend eligibility for the housing assistance based on immigration status.

(iv) State that assistance may be prorated, pursuant to § 5.520, to a family whose head of household has eligible immigration status, pending final determinations for other family members; and

(v) Inform tenant's how to obtain assistance under the preservation of families provisions of §§ 5.516 and 5.518.

~~(f)(g)~~ When evidence of eligible status is required to be submitted. The responsible entity shall require evidence of eligible status to be submitted at the times specified in paragraph ~~(f)(g)~~ of this section, subject to any extension granted in accordance with paragraph ~~(g)(h)~~ of this section.

(1) Applicants. For applicants, responsible entities must ensure that evidence of eligible status is submitted not later than the date the responsible entity anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 5.512(a)).

(2) Tenants. ~~For tenants, evidence of eligible status- A tenant who has not submitted evidence of eligible status as of [insert effective date of final rule]~~ is required to ~~be submitted-submit such evidence~~ as follows:

(i) For financial assistance under a Section 214 covered program, with the exception of Section 235 assistance payments, the required evidence shall be submitted at the first regular reexamination after ~~[insert effective date of final rule] June 19, 1995~~, in accordance with program requirements.

(ii) For financial assistance in the form of Section 235 assistance payments, the mortgagor shall submit the required evidence in accordance with requirements imposed under the Section 235 Program.

(3) New occupants of assisted units. For any new occupant of an assisted unit (e.g., a new family member comes to reside in the assisted unit), the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) Changing participation in a HUD program. Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this subpart unless the family already has submitted the evidence to the responsible entity for a Section 214 covered program.

(5) One-time evidence requirement for continuous occupancy. For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any Section 214 covered program.

~~(g)(h)~~ Extensions of time to submit evidence of eligible status—

(1) When extension must be granted. The responsible entity shall extend the time, provided in paragraph ~~(f)(e)~~ of this section, to submit evidence of eligible immigration status if the family member:

- (i) Submits the declaration ~~described in paragraph (c) of this section~~ ~~required under § 5.508(a)~~ certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and
- (ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) Thirty-day extension period. Any extension of time, if granted, shall not exceed ~~thirty~~ ~~{30}~~ days. The additional time provided should be sufficient to allow the individual the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) Grant or denial of extension to be in writing. The responsible entity's decision to grant or deny an extension ~~as provided in paragraph (h)(1) of this section~~ shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted (which shall not exceed ~~thirty~~ ~~{30}~~ days). If the extension is denied, the notice shall explain the reasons for denial of the extension.

~~(h)(f)~~ Failure to submit evidence or to establish eligible status. If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph ~~(g)(h)~~ of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the responsible entity shall proceed to deny, ~~prorate~~ or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 5.514, 5.516, and 5.518.

~~(ii) [Reserved]~~

Credits

[[61 FR 60538](#), Nov. 29, 1996; [64 FR 25731](#), May 12, 1999; [74 FR 4841](#), Jan. 27, 2009; [74 FR 13339](#), March 27, 2009; [74 FR 44286](#), Aug. 28, 2009; [75 FR 4271](#), Jan. 27, 2010]

AUTHORITY: [12 U.S.C. 1701x](#); [42 U.S.C. 1437a](#), [1437c](#), [1437d](#), [1437f](#), [1437n](#), [3535\(d\)](#); Sec. 327, [Pub.L. 109–115](#), [119 Stat. 2936](#); Sec. 607, [Pub.L. 109–162](#), [119 Stat. 3051](#) ([42 U.S.C. 14043e et seq.](#)); [E.O. 13279](#), [67 FR 77141](#), [3 CFR](#), 2002 Comp., p. 258; and [E.O. 13559](#), [75 FR 71319](#), [3 CFR](#), 2010 Comp., p. 273.; [42 U.S.C. 1436a](#) and [3535\(d\)](#).

§ 5.510 Documents of eligible immigration status.

(a) General. A responsible entity shall request and review original documents of eligible immigration status. The responsible entity shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) Acceptable evidence of eligible immigration status. Acceptable evidence of eligible immigration status shall be the original of a document designated by ~~DHS/INS~~ as acceptable evidence of immigration status in one of the six categories mentioned in § 5.506(a) for the specific immigration status claimed by the individual.

§ 5.512 Verification of eligible immigration status.

(a) General. Except as described in ~~paragraph (b) of this section and~~ § 5.514, no individual or family applying for assistance may receive such assistance prior to the verification of the eligibility of at least the head of household or spouse individual or one family member. Verification of eligibility consistent with § 5.514 occurs when the individual or family members have submitted documentation to the responsible entity in accordance with § 5.508.

~~(b) PHA election to provide assistance before verification. A PHA that is a responsible entity under this subpart may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member.~~

~~(b)(c) Initial Primary verification—~~

~~(1) Automated verification/Verification system. Primary verification/Verification of the immigration status of the person is conducted by the responsible entity through the INS automated system (INS Systematic Alien Verification for Entitlements (SAVE), a DHS-administered system for the verification of immigration status). Initial verification in SAVE confirms immigration status using biographic information (first name, last name, and date of birth) and immigration numeric identifiers. The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.~~

~~(2) Failure of primary-initial verification to confirm eligible immigration status. If the INS SAVE system does not verify is not initially able to confirm eligible immigration status, secondary-then additional verification must be performed.~~

~~(d) Secondary(c) Additional verification—~~

~~If the initial verification does not confirm eligible immigration status, or if initial verification confirms immigration status that is ineligible for assistance under a Section 214 covered program, the responsible entity must request additional verification within 10 days of receiving the results of the initial verification. Additional verification is~~

initiated when the responsible entity submits an additional request to SAVE with optional additional information and/or a copy of the original document that the noncitizen had presented as acceptable evidence of their immigration status to SAVE.

Comment [NHLP6]: Typo in original.

(1) Manual search of INS records. Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The responsible entity must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a Section 214 covered program.

(2) Secondary verification initiated by responsible entity. Secondary verification is initiated by the responsible entity forwarding photocopies of the original INS documents required for the immigration status declared (front and back), attached to the INS document verification request form G-845S (Document Verification Request), or such other form specified by the INS to a designated INS office for review. (Form G-845S is available from the local INS Office.)

(3) Failure of secondary verification to confirm eligible immigration status. If the secondary verification does not confirm eligible immigration status, the responsible entity shall issue to the family the notice described in § 5.514(d), which includes notification of the right to appeal to the INS of the INS finding on immigration status (see § 5.514(d)(4)).

(d) Failure to confirm eligible immigration status. If initial or additional verification does not confirm eligible immigration status, the responsible entity shall issue to the family the notice described in § 5.514(d), which describes the process for seeking record correction with DHS if he or she believes the verification response was due to inaccurate DHS records.

(e) Exemption from liability for ~~INS~~DHS verification. The responsible entity shall not be liable for any action, delay, or failure of ~~the INS~~DHS in conducting the ~~automated initial~~ or ~~manual additional~~ verification.

Credits

[61 FR 60539, Nov. 29, 1996; 64 FR 25731, May 12, 1999]
 AUTHORITY: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub.L. 109-115, 119 Stat. 2936; Sec. 607, Pub.L. 109-162, 119 Stat. 3051 (42 U.S.C. 14043e et seq.); E.O. 13279, 67 FR 77141, 3CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.; 42 U.S.C. 1436a and 3535(d).

§ 5.514 Delay, denial, reduction or termination of assistance.

(a) General. Assistance to a family may not be delayed, denied, reduced or terminated because of the immigration status of a family member except as provided in this section.

(b) Restrictions on delay, denial, reduction or termination of assistance—

(1) Restrictions on reduction, denial or termination of assistance for applicants and tenants. Assistance to an applicant or tenant shall not be delayed, denied, reduced, or terminated, on the basis of ineligible immigration status of a family member, if:

- (i) The ~~primary and secondary SAVE~~ verification of any immigration documents that were timely submitted has not been completed;
- (ii) The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;
- (iii) The family member who is determined not to be in an eligible immigration status following ~~INS the SAVE~~ verification has moved from the assisted dwelling unit;
- ~~(iv) The INS appeals process under § 5.514(e) has not been concluded;~~
- ~~(v) Assistance is prorated in accordance with § 5.520; or~~
- ~~(iv)(vi) Assistance for a mixed family~~ is continued in accordance with §§ 5.516 and 5.518; or
- ~~(v)(vii) Deferral of termination of assistance is granted in accordance with §§ 5.516 and 5.518.~~

(2) Restrictions on delay, denial, reduction or termination of assistance pending fair hearing for tenants. In addition to the factors listed in paragraph (b)(1) of this section, assistance to a tenant cannot be delayed, denied, reduced or terminated until the completion of the informal hearing described in paragraph (f) of this section.

(c) Events causing denial or termination of assistance—

(1) General. Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

- (i) Evidence ~~of citizenship~~ that the individual is a U.S. citizen as defined in § 5.504(b) (i.e., the declaration), ~~and or has~~ eligible immigration status, is not submitted by the date specified in § 5.508 ~~(g)(f)~~ or by the expiration of any extension granted in accordance with § 5.508 ~~(h)(g)~~; or
- (ii) Evidence ~~of citizenship and~~ that the individual is a U.S. citizen as defined in § 5.504(b), or has eligible immigration status is timely submitted, but ~~INS primary and secondary~~ the SAVE verification does not verify eligible immigration status of a family member, ~~and~~

Comment [NHLP7]: Odd that they left this in here—is inconsistent with the proposed rule's documentation requirements for U.S. citizens.

~~(A) The family does not pursue INS appeal or informal hearing rights as provided in this section; or
 (B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member; or
 (iii) The responsible entity determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the public or assisted housing unit of the family member. Such termination shall be for a period of not less than 24 months. This provision does not apply to a family if the ineligibility of the ineligible individual was considered in calculating any proration of assistance provided for the family.~~

(2) Termination of assisted occupancy. For termination of assisted occupancy, see paragraph (i) of this section.

(d) Notice of denial or termination of assistance. The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

~~(2) That the family may be eligible for proration of assistance as provided under § 5.520;~~

~~(3)(2) In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families in §§ 5.516-514 and 5.518; and
 (4)(3) That any family member may seek a record correction with DHS if they believe that SAVE was unable to verify their status due to incorrect immigration records. That the family has a right to request an appeal to the INS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;~~

~~(5) That the family has a right to request an informal hearing with the responsible entity either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;~~

~~(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the informal hearing process.~~

(e) Appeal to ~~the INS~~DHS—

(1) Submission of request for appeal. Upon receipt of notification by the responsible entity that ~~INS-DHS~~ secondary verification failed to confirm eligible immigration status, the responsible entity shall notify the family of the results of the ~~INS-DHS~~ verification, and the family shall have 30 days from the date of the responsible entity's notification,

Comment [N8]: The proposed rule removes notice requirements in the notice of denial or termination re: a family member's right to additional verification as described in 5.512(c) and their right to request an informal hearing from the housing provider as described in 5.514(f). Additionally, the rule is less explicit about the family's right to appeal to DHS when the secondary verification fails to confirm eligible immigration status for a family member.

to request an appeal of the INS/DHS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS/DHS. The family must provide the responsible entity with a copy of the written request for appeal and proof of mailing.

(2) Documentation to be submitted as part of appeal to INS/DHS. The family shall forward to the designated INS-DHS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS-DHS document verification request form G-845S (used to process the secondary verification request) or such other form specified by the INS/DHS, and a cover letter indicating that the family is requesting an appeal of the INS-DHS immigration status verification results.

(3) Decision by INS/DHS—

(i) When decision will be issued. The INS-DHS will issue to the family, with a copy to the responsible entity, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS/DHS is unable to issue a decision within the 30 day time period, the INS/DHS will inform the family and responsible entity of the reasons for the delay.

(ii) Notification of INS-DHS decision and of informal hearing procedures. When the responsible entity receives a copy of the INS-DHS decision, the responsible entity shall notify the family of its right to request an informal hearing on the responsible entity's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(4) No delay, denial, reduction, or termination of assistance until completion of INS-DHS appeal process; direct appeal to INS/DHS. Pending the completion of the INS-DHS appeal under this section, assistance may not be delayed, denied, reduced or terminated on the basis of immigration status.

(f) Informal hearing—

(1) When request for hearing is to be made. After notification of the INS-DHS decision on appeal, or in lieu of request of appeal to the INS/DHS, the family may request that the responsible entity provide a hearing. This request must be made either within 30 days of receipt of the notice described in paragraph (d) of this section, or within 30 days of receipt of the INS-DHS appeal decision issued in accordance with paragraph (e) of this section.

(2) Informal hearing procedures—

(i) Tenants assisted under a Section 8 covered program: For tenants assisted under a Section 8 covered program, the procedures for the hearing before the responsible entity are set forth in:

- (A) For Section 8 Moderate Rehabilitation assistance: 24 CFR part 882;
 - (B) For Section 8 tenant-based assistance: 24 CFR part 982; or
 - (C) For Section 8 project-based certificate program: 24 CFR part 983.
- (ii) Tenants assisted under any other Section 8 covered program or a Public Housing covered program: For tenants assisted under a Section 8 covered program not listed in paragraph (f)(3)(i) of this section or a Public Housing covered program, the procedures for the hearing before the responsible entity are set forth in 24 CFR part 966.
- (iii) Families under Housing covered programs and applicants for assistance under all covered programs. For all families under Housing covered programs (applicants as well as tenants already receiving assistance) and for applicants for assistance under all covered programs, the procedures for the informal hearing before the responsible entity are as follows:
- (A) Hearing before an impartial individual. The family shall be provided a hearing before any person(s) designated by the responsible entity (including an officer or employee of the responsible entity), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;
 - (B) Examination of evidence. The family shall be provided the opportunity to examine and copy at the individual's expense, at a reasonable time in advance of the hearing, any documents in the possession of the responsible entity pertaining to the family's eligibility status, or in the possession of the ~~INS-DHS~~ (as permitted by ~~INS-DHS~~ requirements), including any records and regulations that may be relevant to the hearing;
 - (C) Presentation of evidence and arguments in support of eligible status. The family shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;
 - (D) Controverting evidence of the responsible entity. The family shall be provided the opportunity to controvert evidence relied upon by the responsible entity and to confront and cross-examine all witnesses on whose testimony or information the responsible entity relies;

(E) Representation. The family shall be entitled to be represented by an attorney, or other designee, at the family's expense, and to have such person make statements on the family's behalf;

(F) Interpretive services. The family shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or responsible entity, as may be agreed upon by the two parties to the proceeding; and

(G) Hearing to be recorded. The family shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the responsible entity).

(3) Hearing decision. The responsible entity shall provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 days of the date of the informal hearing. The decision shall state the basis for the decision.

(g) Judicial relief. A decision against a family member, issued in accordance with paragraphs (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) Retention of documents. The responsible entity shall retain for a minimum of 5 years the following documents that may have been submitted to the responsible entity by the family, or provided to the responsible entity as part of the ~~INS-DHS~~ appeal or the informal hearing process:

- (1) The application for financial assistance;
- (2) The form completed by the family for income reexamination;
- (3) Photocopies of any original documents (front and back), including original ~~INS-DHS~~ documents;
- (4) The signed verification consent form;
- (5) The ~~INS-DHS~~ verification results;
- (6) The request for an ~~INS-DHS~~ appeal;
- (7) The final ~~INS-DHS~~ determination;
- (8) The request for an informal hearing; and
- (9) The final informal hearing decision.

Credits

[[61 FR 60539](#), Nov. 29, 1996; [64 FR 25731](#), May 12, 1999]

AUTHORITY: [12 U.S.C. 1701x](#); [42 U.S.C. 1437a](#), [1437c](#), [1437d](#), [1437f](#), [1437h](#), [3535\(d\)](#); Sec. 327, [Pub.L. 109-115](#), [119 Stat. 2936](#); Sec. 607, [Pub.L. 109-162](#), [119 Stat. 3051](#) ([42 U.S.C. 14043e](#)

[et seq.](#); [E.O. 13279](#), 67 FR 77141, 3CFR, 2002 Comp., p. 258; and [E.O. 13559](#), 75 FR 71319, 3 CFR, 2010 Comp., p. 273.; [42 U.S.C. 1436a](#) and [3535\(d\)](#).

§ 5.516 Availability of preservation assistance to mixed families and other families.

(a) Assistance available for tenant ~~mixed~~ families—

(1) General. Preservation assistance is available to tenant ~~mixed~~ families, ~~following completion of the appeals and informal hearing procedures provided in § 5.514 in accordance with this section and following the conclusion of a records correction request.~~

There are ~~two~~~~three~~ types of preservation assistance:

- (i) Continued assistance (see ~~paragraph (a) of~~ § 5.518(a)); ~~and~~
- (ii) Temporary deferral of termination of assistance (~~see paragraph (b) of~~ § 5.518(a)); ~~or~~
- ~~(iii) Prorated assistance (see § 5.520, a mixed family must be provided prorated assistance if the family so requests).~~

(2) Availability of assistance—

(i) For Housing covered programs: One of the ~~three~~~~two~~ types of assistance described ~~in paragraph (a)(1) of this section may be~~ is available to tenant ~~mixed~~ families assisted under a National Housing Act or 1965 HUD Act covered program, depending upon the family's eligibility for such assistance. Continued assistance must be provided to a ~~tenant mixed~~ family that meets the conditions for eligibility for continued assistance.

(ii) For Section 8 or Public Housing covered programs. One of the ~~three~~~~two~~ types of assistance described ~~in paragraph (a)(1) of this section~~ may be available to tenant ~~mixed~~ families assisted under a Section 8 or Public Housing covered program.

~~(b) Assistance available for applicant mixed families. Prorated assistance is also available for mixed families applying for assistance as provided in § 5.520.~~

~~(e)(b)~~ Assistance available to other families in occupancy. Temporary deferral of termination of assistance may be available to families receiving assistance under a Section 214 covered program on June 19, 1995, and who have no members with eligible immigration status, as set forth in paragraphs ~~(b)(e)~~(1) and (2) of this section.

(1) For Housing covered programs: Temporary deferral of termination of assistance is available to families assisted under a Housing covered program.

(2) For Section 8 or Public Housing covered programs: The responsible entity may make temporary deferral of termination of assistance to families assisted under a Section 8 or Public Housing covered program.

~~(d)(c)~~ Section 8 covered programs: Discretion afforded to provide certain family preservation assistance—

(1) Project owners. With respect to assistance under a Section 8 Act covered program administered by a project owner, HUD has the discretion to determine under what circumstances families are to be provided one of the two statutory forms of assistance for preservation of the family (continued assistance or temporary deferral of assistance). HUD is exercising its discretion by specifying the standards in this section under which a project owner must provide one of these two types of assistance to a family. ~~However, project owners and PHAs must offer prorated assistance to eligible mixed families.~~

(2) PHAs. The PHA, rather than HUD, has the discretion to determine the circumstances under which a family will be offered one of the two statutory forms of assistance (continued assistance or temporary deferral of termination of assistance). The PHA must establish its own policy and criteria to follow in making its decision. In establishing the criteria for granting continued assistance or temporary deferral of termination of assistance, the PHA must incorporate the statutory criteria, which are set forth ~~in paragraphs (a) and (b) of § 5.518 (a) and (b). However, the PHA must offer prorated assistance to eligible families.~~

Credits

[[61 FR 60539](#), Nov. 29, 1996; [64 FR 25732](#), May 12, 1999; [74 FR 4841](#), Jan. 27, 2009; [74 FR 13339](#), March 27, 2009; [74 FR 44286](#), Aug. 28, 2009; [75 FR 4271](#), Jan. 27, 2010]

AUTHORITY: [12 U.S.C. 1701x](#); [42 U.S.C. 1437a](#), [1437c](#), [1437d](#), [1437f](#), [1437n](#), [3535\(d\)](#); Sec. 327, [Pub.L. 109–115](#), [119 Stat. 2936](#); Sec. 607, [Pub.L. 109–162](#), [119 Stat. 3051](#) ([42 U.S.C. 14043e et seq.](#)); [E.O. 13279](#), [67 FR 77141](#), 3CFR, 2002 Comp., p. 258; and [E.O. 13559](#), [75 FR 71319](#), [3 CFR](#), 2010 Comp., p. 273.; [42 U.S.C. 1436a](#) and [3535\(d\)](#).

§ 5.518 Types of preservation assistance available to mixed families and other families.

(a) Continued assistance.—

~~(1) General.~~ A mixed-tenant family may receive continued housing assistance if all of the following conditions are met (a mixed-tenant family assisted under a Housing covered program must be provided continued assistance if the family meets the following conditions):

~~(1)~~ (1) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

~~(ii)(2)~~ The family's head of household or spouse has eligible immigration status as described in § 5.506; and

~~(ii)(3)~~ The family does not include any person ~~(who does not have eligible immigration status)~~ other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

~~(2) Proration of continued assistance. A family entitled to continued assistance before November 29, 1996 is entitled to continued assistance as described in paragraph (a) of this section. A family entitled to continued assistance after November 29, 1996 shall receive prorated assistance as described in § 5.520.~~

(b) Temporary deferral of termination of assistance—

(1) Eligibility for this type of assistance. If a ~~mixed-tenant~~ family ~~does not qualify for continued assistance, the family may be eligible for temporary deferral of termination of assistance, if necessary, to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing.~~ Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family, and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) Housing covered programs: Conditions for granting temporary deferral of termination of assistance. The responsible entity shall grant a temporary deferral of termination of assistance to a ~~mixed~~-family if the family is assisted under a Housing covered program and one of the following conditions is met:

- (i) The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful (for purposes of this section, reasonable efforts include seeking information from, and pursuing leads obtained from the State housing agency, the city government, local newspapers, rental agencies and the owner);
- (ii) The vacancy rate for affordable housing of appropriate size is below five percent in the housing market for the area in which the project is located; or

(iii) The consolidated plan, as described in 24 CFR part 91 and if applicable to the covered program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.

(3) Time limit on deferral period. If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period for deferrals ~~provided after November 29, 1996~~ shall not exceed a period of eighteen months. ~~The aggregate deferral period for deferrals granted prior to November 29, 1996 shall not exceed 3 years.~~ These time periods do not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act.

(4) Notification requirements for beginning of each deferral period. At the beginning of each deferral period, the responsible entity must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(5) Determination of availability of affordable housing at end of each deferral period.

(i) Before the end of each deferral period, the responsible entity must satisfy the applicable requirements of either paragraph (b)(5)(i)(A) or (B) of this section.

Specifically, the responsible entity must:

(A) For Housing covered programs: Make a determination that one of the two conditions specified in paragraph (b)(2) of this section continues to be met (note: affordable housing will be determined to be available if the vacancy rate is five percent or greater), the owner's knowledge and the tenant's evidence indicate that other affordable housing is available; or

(B) For Section 8 or Public Housing covered programs: Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the responsible entity's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing.

(ii) The responsible entity must also:

(A) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in

aggregate deferral periods that exceeds the maximum deferral period). This time period does not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act, and a determination was made that other affordable housing is not available; or

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed the maximum deferral period (unless the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act), or a determination has been made that other affordable housing is available.

~~(c) Option to select proration of assistance at end of deferral period. A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the responsible entity shall provide proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.~~

~~(d)(c)~~ Notification of decision on family preservation assistance. A responsible entity shall notify the family of its decision concerning the family's qualification for family preservation assistance. If the family is ineligible for family preservation assistance, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights.

Credits

[[61 FR 60539](#), Nov. 29, 1996; [64 FR 25732](#), May 12, 1999; [74 FR 4841](#), Jan. 27, 2009; [74 FR 13339](#), March 27, 2009; [74 FR 44286](#), Aug. 28, 2009; [75 FR 4271](#), Jan. 27, 2010]
 AUTHORITY: [12 U.S.C. 1701x](#); [42 U.S.C. 1437a](#), [1437c](#), [1437d](#), [1437f](#), [1437n](#), [3535\(d\)](#); Sec. 327, [Pub.L. 109-115](#), [119 Stat. 2936](#); Sec. 607, [Pub.L. 109-162](#), [119 Stat. 3051](#) ([42 U.S.C. 14043e et seq.](#)); [E.O. 13279](#), [67 FR 77141](#), [3CFR](#), 2002 Comp., p. 258; and [E.O. 13559](#), [75 FR 71319](#), [3 CFR](#), 2010 Comp., p. 273.; [42 U.S.C. 1436a](#) and [3535\(d\)](#).

§ 5.520 Proration of assistance.

~~(a) Applicability. This section applies to a family whose head of household or spouse has eligible immigration status, pending final determinations for other family members. a mixed family other than a family receiving continued assistance, or other than a family who is eligible for and requests and receives temporary deferral of termination of assistance. An eligible mixed family who requests prorated assistance must be provided prorated assistance.~~

Comment [N9]: The proposed rule eliminates mixed status families and proration of assistance for mixed status families.

Credits

[63 FR 23853, April 30, 1998; 64 FR 13056, March 16, 1999; 81 FR 12370, March 8, 2016]
 AUTHORITY: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub.L. 109–115, 119 Stat. 2936; Sec. 607, Pub.L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e et seq.); E.O. 13279, 67 FR 77141, 3CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.; 42 U.S.C. 1436a and 3535(d).

§ 5.522 Prohibition of assistance to noncitizen students.

~~(a) General. The provisions of §§ 5.516 and 5.518 permitting continued assistance or temporary deferral of termination of assistance for certain families do not apply to any person who is determined to be a noncitizen student as in paragraph (c)(2)(A) of Sectionsection 214(c)(2)(A) (42 U.S.C. 1436a(c)(2)(A)). The family of a noncitizen student may be eligible for prorated assistance, as provided in paragraph (b)(2) of this section.~~

~~(b) Family of noncitizen students.~~

~~(1) The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section extends to the noncitizen spouse of the noncitizen student and minor children accompanying the student or following to join the student.~~

~~(2) The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.~~

AUTHORITY: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub.L. 109–115, 119 Stat. 2936; Sec. 607, Pub.L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e et seq.); E.O. 13279, 67 FR 77141, 3CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.; 42 U.S.C. 1436a and 3535(d).