

NOTICE TO APPLICANTS APPLYING FOR AND TENANTS CURRENTLY RECEIVING SECTION 214 HOUSING ASSISTANCE

The Law: Section 214 of the Housing and Community Development Act of 1980, as amended, prohibits the Secretary of the Department of Housing and Urban Development (HUD) from making financial assistance available to persons who are other than United States citizens, nationals, or certain categories of eligible noncitizens either applying to or residing in specified Section 214 covered programs. Section 214 was implemented by a final “Noncitizens Rule” entitled Restrictions on Assistance to Noncitizens, which was published in the Federal Register, on Monday, March 20, 1995 (60 FR 14816-4861).

When The Law Becomes Effective: The Noncitizens Rule became effective on June 19, 1995. Until the final rule took effect, the Housing Authority (HA) was prohibited from taking any action based on the citizenship or eligible immigration status of applicants and tenants.

What The Law Means To You: The receipt of financial housing assistance is contingent upon you and your family submitting evidence either of 1) citizenship, or 2) eligible immigration status.

Type of Programs This Law Applies To: The Noncitizens Rule applies to the following HUD-assisted housing programs:

- 1) Section 8 Rental Certificate Program
- 2) Section 8 Rental Voucher Program
- 3) Section 8 Moderate Rehabilitation Program
- 4) Public and Indian Housing Programs

What Persons Are Covered By This Law: Section 214 applies to all applicants who apply for housing assistance, applicants who are already on a waiting list for housing assistance, and tenants who are already receiving housing assistance under a covered program. Section 214 covers: 1) Citizens and 2) Noncitizens who have eligible immigration status.

What Evidence Will Be Required? Each family member, regardless of age, is required to submit the following evidence:

For Citizens or Nationals: A signed declaration of U.S. citizenship (whether by birth or naturalization.)

For Noncitizens who are 62 years of age or older and receiving housing assistance on June 19, 1995: A signed declaration of eligible immigration status and proof of age.

For All Other Noncitizens: The evidence consists of: 1) a signed declaration of eligible immigration status; 2) the Immigration and Naturalization Service (INS) documents listed below; and 3) a signed verification consent form.

For All Other Noncitizens, What Immigration Status is Eligible? Under the Noncitizens Rule, a noncitizen would have eligible immigration status under any one of the following six categories which are determined by the INS pursuant to the Immigration and Nationality Act (INA):

Immigration Status Under §101 (a)(15) or 101 (a)(20) of INA. A noncitizen lawfully admitted for permanent residence, as defined by §101 (a)(20) of the INA, as an immigrant, as defined by §101(a)(15) of the INA (8 U.S.C. 1101 (a)(20) and 1101(a)(15), respectively [immigrant status]. This category includes a noncitizen admitted under §210 or 210A of the INA (8 U.S.C. 1160 or 1161), [special agricultural worker status], who has been granted lawful temporary resident status.

Permanent Residence Under §249 of INA. A noncitizen who entered the U.S. before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the U.S. since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under §249 of the INA (8 U.S.C. 1259) [amnesty granted under INA 249].

Refugee, Asylum, or Conditional Entry Status Under §207, 208, or 203 of INA. A noncitizen who is lawfully present in the U.S. pursuant to an admission under §207 of the INA (8 U.S.C. 1157) [refugee status]; pursuant to the granting of asylum (which has not been terminated) under §208 of the INA (8 U.S.C. 1158) [asylum status]; or as a result of being granted conditional entry under §203(a)(7) of the INA (U.S.C. 1153 (a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity [conditional entry status].

Parole Status Under §212(d)(5) of INA. A noncitizen who is lawfully present in the U.S. as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under §212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) [parole status].

Threat to Life or Freedom Under §243(h) of INA. A noncitizen who is lawfully present in the U.S. as a result of the Attorney General’s withholding deportation under §243(h) of the INA (8 U.S.C. 1253(h)) [threat to life or freedom].

Amnesty Under §245A of INA. A noncitizen lawfully admitted for temporary or permanent residence under §245A of the INA (8 U.S.C. 1255a) [amnesty granted under INA 245A].

What INS Documents are Acceptable? The original of one of the following documents is acceptable evidence of immigration status, subject to verification with INS:

- 1) Form I-151, Alien Registration Receipt Card (issued to lawful permanent residents prior to 1979). Form I-151 will no longer be valid after March 20, 1996. Detailed information on how and where to apply for a new green card may be obtained by telephoning the INS toll-free number 1-800-755-0777.
- 2) Form I-551, Alien Registration Receipt Card (for permanent resident aliens);
- 3) Form I-94, Arrival-Departure Record, with one of the following annotations:
 - a) "Admitted as Refugee Pursuant to Section 207";
 - b) "Section 208" or "Asylum"
 - c) "Section 243(h)" or "Deportation stayed by Attorney General";
 - d) "Paroled Pursuant to Section 212(d)(5) of the INA";
- 4) If Form I-94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:
 - a) A final court decision granting asylum (but only if no appeal is taken);
 - b) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) or from an INS district director granting asylum (if application filed before October 1, 1990);
 - c) A court decision granting withholding or deportation; or
 - d) A letter from an asylum officer granting withholding of deportation (if application filed on or after October 1, 1990).
- 5) Form I-688, Temporary Resident Card, which must be annotated "Section 245A" or "Section 210";
- 6) Form I-688B, Employment Authorization Card, which must be annotated "Provision of Law 274a.12(11)" or Provision of Law 274a.12";
- 7) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or
- 8) If other documents are determined by the INS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the Federal Register.

Note: Family members are required to submit the original document(s) providing acceptable evidence of eligible immigration status. The HA may not retain the original document(s). HA must immediately make copies from the original document(s) and return the original documents to the family member.

When Must Evidence of Eligible Immigration Status Be Submitted? Evidence of eligible immigration status must be submitted at the times specified below, subject any extension granted in accordance with the paragraph below which discusses extensions of time to submit evidence of eligible immigration status.

Applicants. For applicants, the HA must ensure that evidence of eligible immigration status is submitted not later than the date HA anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur.

Families already receiving assistance on June 19, 1995. For a family already receiving the benefit of assistance in a covered program on June 19, 1995, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

New occupants of assisted units. For any new family member(s), the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

Changing participation in a HUD program. Whenever a family applies for admission to a Section 214 covered program, evidence of eligible immigration status is required to be submitted in accordance with the requirements of the Noncitizens Rule unless the family has submitted the evidence to the HA for a covered program.

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

What Happens if One or More Family Members Does Not Qualify? Assistance to a family may not be delayed, denied, or terminated because of the immigration status of a family member except as provided below. "Family" as used herein refers to both applicants and tenants.

Assistance to an applicant shall not be delayed or denied, and assistance to a tenant shall not be delayed, denied, or terminated, on the basis of ineligible immigration status of a family member if:

- 1) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;
- 2) The family member for whom required evidence has not been submitted has moved from the tenant's dwelling unit;
- 3) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the tenant's dwelling unit;
- 4) The INS appeals process has not been concluded;
- 5) For a tenant, the HA informal hearing process has not been concluded;
- 6) Assistance is prorated;
- 7) Assistance for a mixed family is continued; or
- 8) Deferral of termination of assistance is granted.
- 9) Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the HA informal hearing process, if an informal hearing is requested by the family.

Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures for any of the following events;

- 1) Evidence of citizenship (i.e., the Declaration) and eligible immigration status is not submitted by the date specified or by the expiration of any extension granted; or
- 2) Evidence of citizenship and eligible immigration status is submitted timely, but INS primary and secondary verification does not verify eligible immigration status of a family member; and
 - a) The family does not pursue INS appeal or HA informal hearing rights; or
 - b) INS appeal and HA informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

What Rights of Appeal Are Available? Three distinct forms of appeal process are available to both applicants and tenants:

1) Appeal to INS. The following instructions apply to right of appeal to the INS:

a) Submission of request for appeal. When the HA receives notification that INS secondary verification failed to confirm eligible immigration status, the HA shall notify the family of the results of the INS verification. The family shall have 30 days from the date of the HA's notification to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the HA with a copy of the written request for appeal and proof of the mailing. For good cause shown, the HA shall grant the family an extension of the time within which to request an appeal.

b) Documentation to be submitted as part of the appeal to INS. The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. The appeal must include a copy of the original Form G-845S received from INS annotated at the top corner in bold print: **HUD APPEAL**. The appeal must also include two stamped envelopes, one addressed to the applicant or tenant family, and one addressed to the HA.

c) Results of INS Appeal.

- (i) The INS will issue the results of the appeal to the family, with a copy to the HA, within 30 days of its receipt. If, for any reason, the INS is unable to issue a response within the 30 day time period, the INS will inform the family and the HA of the reasons for the delay.

Note: The INS response will be indicated in Section B of Form G-845S, Document Verification Request, which is returned to the family and HA. The INS response will be indicated in Section B by a mark in one of the following boxes: 1, 2, 5, 6, 8, 11, 12, 15, or 18.

(ii) When the HA receives a copy of the INS response, the HA shall notify the family of its right to request an informal hearing on the HA's ineligibility determination.

d) No delay, denial, or termination of assistance until completion of INS appeal process; direct appeal to INS. Pending the completion of INS appeal assistance may not be delayed, denied or terminated on the basis of immigration status.

2) Informal hearing with HA.

a) When request for hearing is to be made. After receiving notification of the INS decision on appeal, or in lieu of requesting an appeal to the INS, the family must request that the HA provide an informal hearing. This request must be made either within 14 days of the date the HA mails or delivers the notice of denial or termination of assistance, or within 14 days of the mailing of the INS appeal decision (established by the date of the postmark).

b) Extension of time to request hearing. The HA shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

c) Informal hearing procedures.

(i) For tenants, the procedures for the hearing before the HA are set forth in 24 CFR Part 966.

(ii) For applicants, the procedures for the informal hearing before the HA are as follows:

(A) Hearing before an impartial individual. The applicant shall be provided a hearing before any person(s) designated by the HA (including an officer or employee of the HA), other than a person who made or approved the decision under review, and other than a person who is subordinate of the person who made or approved the decision;

(B) Examination of evidence. The applicant shall be provided the opportunity to examine and copy, at the applicant's expense and at a reasonable time in advance of the hearing, any documents in the possession of the HA pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) Presentation of evidence and arguments in support of eligible immigration status. The applicant shall be provided the opportunity to present evidence and arguments in support of eligible immigration status. Evidence may be considered without regard to the admissibility under the rules of evidence applicable to judicial proceedings;

(D) Controverting evidence of the project owner. The applicant shall be provided the opportunity to controvert evidence relied upon by the HA and to confront and cross-examine all witnesses on whose testimony or information the HA relies;

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

(F) Interpretive services. The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or HA, as may be agreed upon by both parties;

(G) The applicant 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 HA); and

(H) Hearing decision. The HA 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 HA informal hearing. The decision shall state the basis for the decision.

3) Judicial relief. A decision against a family member under the INS appeal process or the HA's informal hearing does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.