

CHAPTER 3. APPLICABILITY TO PERSONS

3-1. Restrictions On Assistance To Noncitizens. Housing assistance that is provided under a Section 214 covered program is restricted to the following individuals: ['812.5(a)(1); 950.310(b)(1); 912.5(a)(1)]

- a. Citizens, including nationals; or
- b. Noncitizens who have eligible immigration status in one of the following categories:
 - (1) A noncitizen who has been lawfully admitted to the U.S. for permanent residence, as defined by Section 101(a)(20) of the Immigration and Nationality Act (INA); as an immigrant, as defined by Section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 21101(a)(15), respectively (immigrants). This category includes a noncitizen who has been admitted under Section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), (special agricultural worker), and who has been granted lawful temporary resident status;
 - (2) A noncitizen who entered the U.S. before January 1, 1972, or such later date as enacted by law, and who 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 Section 249 of the INA (8 U.S.C. 1259);
 - (3) A noncitizen who is lawfully present in the U.S. pursuant to an admission under Section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under Section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under Section 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;
 - (4) 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 for reasons deemed strictly in the public interest under Section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);
 - (5) A noncitizen who is lawfully present in the U.S. as a result of the Attorney General's withholding deportation under Section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or
 - (6) A noncitizen lawfully admitted for temporary or permanent residence under Section 245A of the INA (8 U.S.C. 1255a) (amnesty granted under INA 245A).

3-2. Family Eligibility For Assistance. A family shall not be eligible for

assistance unless every member of the family residing in the unit is determined to have eligible immigration status, as described in paragraph 3-1. ['812.5(b); 950.310(c); 912..5(b)]

- a. Exception for Mixed Families. Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in Section 812.10. 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 paragraph 1-5.
- b. Exemption of certain homebuyers from restrictions of this paragraph (Indian housing only). A homebuyer who executed a Homeownership Opportunity Agreement under the Turnkey III program or who executed a Mutual Help and Occupancy Agreement under the Mutual Help Homeownership program before June 19, 1995, is not subject to this citizenship or eligible immigration status requirement for continued participation in the program. [950.310(d)]

3-3. Preference Versus Eligibility Criteria For Admission. Preferences and eligibility criteria for admission to HUD-assisted housing are two different matters. Citizenship or eligible immigration status should be considered to be an eligibility factor. Applicant families (including eligible individuals or single persons) must first meet the eligibility requirements for HUD-assisted housing, and then, local/Federal preferences are applied to eligible families. Where the waiting period for admission is likely to be lengthy, an HA should not undertake to conduct the Section 214 investigation until it undertakes the determination of eligibility for all criteria, including citizenship or eligible immigration status.

3-4. HA Tenant Selection Policies. In addition to policies and regulations including preferences and priorities established by the HA for eligibility and admission, each HA shall adopt and implement policies and procedures embodying standards and criteria providing for verification and documentation of information relevant to acceptance or rejection of an applicant, including documentation and verification of * citizenship and eligible immigration status.1/ Information relative to* the acceptance or rejection of an applicant or tenant must be documented and placed in the applicant's or tenant's file. All procedures must be applied consistently to every tenant or applicant, as applicable.

1/Under the Section 8 regulations (see 24 CFR '982.54), ONLY the policies and procedures where the HA has discretion to establish local policy are stated in the administrative plan and HUD does not approve these policies.

11/95

3-2

3-5. Persons Covered. The Section 214 requirements apply to:

- a. All applicants who request housing assistance,
- b. All applicants who are already on a waiting list for housing assistance, and
- c. All tenants who are already receiving housing assistance under a Section 214 covered program.

3-6.Prohibition Of Assistance To Noncitizen Students. [812.12;
950.310(t);912.12]

a.General. The provisions of paragraph 10-5 and Chapter 11, permitting continued assistance, prorated 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 described in paragraph 3-5b, or the family of the noncitizen student, as defined in paragraph 3-5c.

b.Noncitizen student. For purposes of this part, a noncitizen student is defined as a noncitizen who:

(1)Has a residence in a foreign country that the person has no intention of abandoning;

(2)Is a bona fide student qualified to pursue a full course of study; and

(3)Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each noncitizen student (and, if any such institution of learning or place of study fails to make such reports promptly, the approval shall be withdrawn).

c.Family of noncitizen student. The prohibition on providing assistance to a noncitizen student as described in paragraph 3-5a also extends to the noncitizen spouse of the noncitizen student and noncitizen minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such student. 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. Children born to a U.S. citizen spouse are U.S. citizens by birth. It should be noted that such children may also have dual-citizenship based on the other parent's non-U.S. citizenship.

3-3

3-7.Procedures When Fraud Is Suspected With Respect To A Declaration of Citizenship.

a."Reason To Suspect" Provision. The proposed rule issued in 1988 authorized an HA to initiate termination procedures whenever it obtained evidence of conflicting or inconsistent information regarding an individual's identity or claimed U.S. citizenship status. However, the proposed rule issued on August 25, 1994, removed this provision. As a result, any false statement or fraudulent evidence concerning eligibility on the basis of eligible citizenship or immigration status should be handled by the HA in

the same manner that the HA addresses other false statements or fraudulent evidence with respect to other aspects of eligibility. To the extent possible, eligible citizenship or immigration status should be treated the same as other factors that are taken into consideration in determining a person's eligibility for assistance or continued assistance. Except where mandated by statute (i.e., notice requirements, verification procedures, hearing requirements, special relief provisions), the 1994 proposed rule directed the HA to rely on existing procedures that are in place and applicable to other eligibility factors. [See 59 FR 43907 for complete discussion.]

b. Rectifying improper or inaccurate eligibility determinations. If an HA receives information that provides a substantial basis to believe that a tenant may have erroneously or deliberately misrepresented his or her eligibility and is receiving financial assistance for which he or she (or the family) may not be eligible, the HA should take the steps indicated below. These further the policy of HUD as set forth in the preamble of the 1994 proposed rule at 59 FR 43900, 43907 to treat eligible citizenship or eligible immigration status in the same manner as other factors involving an individual's eligibility.

It is imperative, however, that the information be concrete, rather than just the HA's suspicion. For example, a tenant declares himself or herself as a citizen, but also provides an Alien Registration Number or a third party comes forward with concrete information (not just hearsay). In this event the HA should:

(1) Present the tenant with the tenant's and any conflicting information; obtain additional information from other persons or agencies; or take other actions to verify either the tenant's information or the conflicting information.

(2) If the HA's efforts outlined in paragraph 3.8b(1) above conclude that the tenant supplied incorrect information, the owner must document his or her findings in writing. The tenant must then be notified in writing of the error, identifying what information is believed to be incorrect. In addition, the tenant must be provided an opportunity, within 10 calendar

3-4

days, to meet with the HA and discuss the allegation(s). The HA must inform the tenant that failure to do so may result in the termination of the tenant's assistance or tenancy. The meeting with the HA shall be with a designated representative of the HA who has not been involved in any manner with the review of the allegedly false information.

(3) If the tenant responds and convinces the HA that his or her submissions were correct, the HA should document the record accordingly, and close the investigation. Rental assistance payments continue to be made at the amount set at certification or recertification, and there is no adjustment to the tenant's rent.

If, however, the HA determines that there is adequate basis for further investigation, the HA should require the tenant to submit whatever documentation is necessary to resolve the issue; e.g., if the tenant declared as a citizen, he or she should submit a birth certificate or any other official document that evidences citizenship status.

If the tenant chooses to provide a new declaration as an eligible noncitizen, the HA should have the tenant complete a verification consent form (see Appendix C) and submit the required evidence. The HA can then conduct a primary verification and, if necessary, forward that information to INS for secondary verification. At the end of the verification process, if the tenant still is found ineligible, or if the tenant elects not to contend eligible status, the HA should take the appropriate action to adjust the rent, terminate the assistance or terminate the tenancy.

3-8. Liability Of Ineligible Families For Reimbursement Of Benefits -- Section 8 Programs Only. Where a family has received the benefit of HUD financial assistance to which it was not entitled because the family intentionally misrepresented eligible status, the ineligible family is responsible for reimbursing HUD for the assistance improperly paid. If the amount of the assistance is substantial, the responsible entity is encouraged to refer the case to the HUD Regional Inspector General's office for further investigation. Possible criminal prosecution may follow based on the False Statements Act (18 U.S.C. 1001 and 1010). [812.15]