

APPENDIX B. QUESTIONS AND ANSWERS

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Appendix B provides supplemental information on the implementation and administration of Housing Agencies (HAs) Guidebook 7465.7, Restrictions on Assistance to Noncitizens, issued on July 13, 1995. Caveat: These Questions and Answers are applicable only to those covered Section 214 programs which operate directly under the Office of the Assistant Secretary for Public and Indian Housing (PIH).

DEFINITIONS.

- Q1. We note that in discussing preservation of mixed families HUD discusses a family which "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, and parents of the head of household, any parents of the spouse, or any children of the head of household or spouse." Is this HUD's new definition of an eligible family?
- A1. No. There is no change in HUD's basic requirements for eligible families, and housing agencies (HAs) continue having the discretion to define a family within the parameters of HUD's guidelines. The characteristics of a family above, describe the group of families which are eligible for continued assistance. The description does not encompass all eligible families.
- Q2. This regulation makes a number of references to "spouse." May we treat significant others as spouses too?
- A2. No. Spouse has a very specific meaning here. A spouse is a marriage partner, either a wife or husband, who is someone who needs to get a divorce in order to dissolve the relationship. It does include the partner in a common law marriage. It does not include boyfriends, girlfriends, or co-heads.
- Q3. Does the term child in the definition for mixed families eligible for continued assistance, include a stepchild, adopted child, child under guardianship, foster child?
- A3. The term includes any child for whom the head of household or spouse is the legal parent. That would include an adopted child; a stepchild; or a child under legal guardianship. It does not include a foster child or any other children who may be in the household.

APPLICABILITY TO PERSONS.

- Q4. As a minimum does at least either the head of household or the spouse have to have eligible status?

- A4. This is true only for continuation of assistance. For proration at least one member must be eligible, not necessarily the head or spouse. For deferral of termination, it is not required that there be any eligible family members.
- Q5. For mixed families, does a head of household who does not have eligible status under this rule sign documents such as the lease, Section 8 Certificate, etc?
- A5. Yes. They are household members in every sense, except generally their portion of the rent is not subsidized.
- Q6. Must the family member signing the Non-Contending Listing form be a citizen or eligible immigrant?
- A6. No, there is no regulatory requirement to that effect. You should strike the last sentence in the instructions box on the model form (Appendix E of the Guidebook).
- Q7. Are we supposed to report the eligibility status of family members and the prorated rent on the 50058?
- A7. Eventually, yes. However, until the form and the MTCS (Multifamily Tenant Characteristics System) are modified, neither has the capacity to accept this information. Until advised otherwise, continue to report the full rent, not the prorated rent, on the 50058. HUD is currently working on making necessary modifications to the form and MTCS.
- Q8. In completing the lease and the 50058 do we include the names of all family members or just eligible members?
- A8. On any forms which list family members include the names of all family members.
- Q9. Will ineligible family members be subject to complying with the family obligations and the lease?
- A9. Every family member must comply with the requirements of the program. Whether or not they are eligible under this rule, the signers of documents (such as the Certificate of Participation, lease, etc..) are responsible for ensuring their family's program responsibilities are met. They are responsible for providing income and asset information as required by the HA, for instance. They are also responsible for their family and their guests under the lease. In other words, this rule should not have any bearing on a family's responsibilities under our programs.
- Q10. For the Section 8 Rental Certificate program, at 882.212, it states that "...at each regular reexamination, the HA shall follow the requirements

of 24 CFR 812 concerning verification of the immigration status of any new family member (except a child born in the United States.) [emphasis supplied]." This language does not appear in the Rental Voucher,

Moderate Rehabilitation, Indian housing, or public housing regulations.
How do we treat these children?

- A10. This provision was inadvertently included, and will be deleted in a forthcoming technical corrections rule. In the meantime, treat these children the same way you treat all others.
- Q11. In order for a mixed family to get continued assistance, did they have to be receiving assistance on 6/19/95, even if our HA did not begin implementing the regulation until, say, 7/19/95?
- A11. Yes. In order for a mixed family to get continued assistance, they would have had to have been assisted on 6/19/95. Families admitted between the rule's effective date and the HA's actual implementation date receive none of the protections of those who were assisted as of 6/19/95. "Assisted" refers to the effective date of their lease or contract.
- Q12. If a resident family would have been ineligible under this rule as of 6/19/95, but had a change in family members and became eligible as a mixed family prior to their initial recertification after 6/19/95, do they get all of the protections of families assisted as of 6/19/95?
- A12. Yes. We are interested only in the citizenship/immigration status on the date we document it. The date that status became effective is not a consideration.
- Q13. If a single participant would have been ineligible under the rule on 6/19/95, but marries a citizen prior to the initial recertification after 6/19/95, would the family be eligible for continued assistance (since the citizen was not in occupancy on 6/19/95)?
- A13. The family would be eligible for continued assistance if when the recertification is accomplished the family met the composition requirements and either the head of household or the spouse had eligible status.
- Q14. If we have evidence contradicting an applicant's or participant's declared status, what action, if any, should we take?
- A14. If you have reasonable cause to suspect fraud, you should follow up as you would any time you suspect fraud. If you determine that fraud has occurred, you could deny or terminate assistance based on fraud. See the Guidebook discussion, paragraph 3-7.
- Q15. Does the prohibition against providing continued assistance, prorated assistance or temporary deferral of termination which applies to noncitizen students extend to the families of noncitizen students too?

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- A15. Only if the spouse and/or minor children are also noncitizens, and then only if they are accompanying or following to join the student.
- Q16. So if a noncitizen student is being assisted or seeking assistance with a citizen spouse, what should we do?

A16. Since the student is not eligible, but the spouse is, the only way you can provide assistance to the eligible family member is to prorate the assistance.

DOCUMENTATION.

Q17. What documentation must be presented by applicant and participant family members?

A17. Stated briefly, these are the rules:

a) Each applicant or participant who is a citizen:

Must provide a signed declaration of citizenship.

b) Each applicant or participant noncitizen:

Must provide a signed declaration of eligible immigration status, an original INS document, and a signed verification consent form; or a statement not contending eligible status.

c) The only exception to the above is:

Eligible immigrants age 62 or older who are participants on 6/19/95, provide a signed declaration and proof of age.

Q18. If an applicant is an immigrant and is 62 or older, does the applicant just have to sign the declaration and show proof of age?

A18. No. Proof of age is applicable only to those immigrants 62 and older who were assisted on 6/19/95. Applicants must declare citizenship, show their INS document and sign the verification consent, or be listed by their family as a member who is not contending.

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Q19. For each child under 18, an adult residing in the assisted unit who is responsible for the child must sign the declaration. Later, when the child turns 18, should we get a new declaration signed by the 18 year old?

A19. No. The family is required to submit evidence only one time for each member.

NOTIFICATION.

Q20. The rule says we must give notice of the rule to applicants on the waiting list as soon as possible. For large HAs that is a tremendous burden. Can we wait until the families name comes to the top of the list?

A20. With respect to notification, "as soon as possible" means just that, although it does not imply that the HA must take heroic actions. You may send the notices out over a reasonable period of time to avoid an administrative hardship. Waiting until the family's name comes to the top of the waiting list, however, does not meet the intent of the rule.

VERIFICATION OF ELIGIBLE IMMIGRATION STATUS.

Q21. Since we have not had a chance to complete the paperwork to get hooked up to INS SAVE system, when should we start requiring families to provide their citizenship/immigration status documentation?

A21. The rule was effective June 19, 1995. Beginning on that date HAs should have started requiring this information. Even though you may not yet be accessing SAVE, you must collect the information, process the families' applications, leases, recertifications, etc., just as before. When you begin accessing the system, process the copies of immigration documents you have been collecting. Start the procedure now, but do not delay, deny, or terminate assistance because of any delays by HUD, the HA, or INS.

Q22. Are you saying that if the verification of eligibility (eligible immigration status) has not been completed, we should house the family anyway?

A22. That is correct. This is the only instance in which you could (and must) house a family whose entire eligibility has not yet been established. Remember: if the delay is caused by HUD, the HA, or INS, the family's assistance is not denied, delayed, or terminated.

Q23. What do we do if we were unable to complete the INS verification before housing the family, and now that the verification has been completed we learn it is a mixed family?

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A23. Begin by giving the family their notification of the results and of their appeal and hearing rights. After the appeal and hearing process, give them notice in accordance with your procedures for a rent increase and prorate their rent.

Q24. When do we document the citizenship status of a new family member who is moving in with a current resident family?

A24. The rule says at the first interim or regular recertification AFTER the new member moves in.

Q25. If a family's eligible immigration status has been verified by the initial HA, and the family opts to use portability to move to another jurisdiction, does the receiving HA have to reverify their status?

A25. No. The requirement will be satisfied by the initial HA forwarding the documentation along with the other portability forms. If for any reason, the initial HA is unable to forward the documentation, the receiving HA would have to require documentation from the family.

LIMITATIONS ON ASSISTANCE

Q26. What do we do if a resident family tells us they are illegal?

A26. If none of the family members can submit the documentation, the head of

household or spouse should sign a statement for all family members stating they do not contend that they are citizens or eligible immigrants. Then the HA should provide the right to a hearing, after which, if applicable, they should begin the process for termination (or temporary deferral of termination if the family was in occupancy 6/19/95). If at least one family member can supply documentation, the family has other options. If there are no family members claiming to have eligible immigration status, applicants and participants should be advised that information collected through the declaration/verification process will be used only for the purpose of determining eligibility for housing assistance.

- a) The only information provided to INS should be that which is necessary to establish that a person claiming eligible immigration status is eligible for financial assistance. Providers should not contact INS about persons who do not claim eligible immigration status.
- b) If an HA receives information that provides a substantial basis to believe that a tenant may have erroneously or deliberately misrepresented eligibility, the HA should take necessary steps to verify the declaration or documents as set out in Guidebook 7465.7. It is imperative, however, that the information be concrete,

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rather than the HA's suspicions based upon race, ethnicity, or national origin.

Q27. In a mixed family, if the only member who made the family eligible as a mixed family leaves, do the remaining members then lose their mixed family status?

A27. Yes. Whenever we look at the family's eligibility, we look at their current status. This family should be offered the opportunity again to demonstrate eligibility. Failing this, they would be given the right to a hearing. If the hearing decision is not in their favor, the HA would follow procedures to terminate assistance (or would offer deferred termination of assistance if the family was in occupancy 6/19/95).

INS APPEALS/HA Hearings.

Q28. Does the HA offer proration or deferred termination before or after the family is given their appeal/hearing rights?

A28. No action is taken to alter a family's housing benefits until such time as the hearing process has been completed and a decision has been made by the hearing officer. The one exception to this rule is that assistance to an applicant may be delayed after the INS appeal until the conclusion of the HA's hearing.

Q29. In the Section 8 regulation it requires us to use the 24 CFR 966 hearing procedures. This is a public housing regulation. Should we follow the public housing hearing procedure as it states, or should we use the Section 8 procedures?

A29. Section 8 procedures should be used for Section 8 matters. This citation will be corrected in a forthcoming technical corrections rule.

DELAY, DEFERRAL OR TERMINATION OF ASSISTANCE

Q30. If you had one bit of advice for HAs regarding implementation of the non-citizen rule, what would it be?

A30. Do not delay, deny, prorate, or terminate the assistance to any family or family member until the complete verification process and both appeal and hearing processes, if requested, have been completed (except as noted in Q26 above). But if the family fails to submit required evidence within the applicable time period or time extension which the HA provides, the HA does need to take action.

Q31. If a mixed family receives deferral of termination, is their rent prorated during the deferral period?

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A31. No. During the deferral period, the family continues to pay rent according to the regular formula.

Q32. If a Section 8 family is being assisted under temporary deferral of assistance, can the HA deny the family's request to move or to use portability?

A32. As long as there is at least 12 months left in the maximum deferral period, the HA has no basis for denying a family's request to move - based on this rule. The 12 months is necessary since any new contract must be entered into for a minimum of at least 12 months.

Q33. A family has been given deferral of termination. Now two years have passed, and the family provides a new declaration; is again found to be ineligible; is given the right to an appeal and a hearing. They are still determined to be ineligible. Does a new 3 year deferral period begin?

A33. No. The aggregate deferral period cannot exceed three years.

PRORATION OF ASSISTANCE

Q34. How long is prorated assistance good for?

A34. Prorated assistance is available to any mixed family, in or entering into our programs. It continues for as long as the family remains an assisted mixed family.

Q35. Does proration of assistance apply only to applicants admitted while INS verification/appeal was pending and participants who were assisted on 6/19/95?

A35. Proration of assistance is available to all mixed families (with the exception of some families of noncitizen students).

Q36. In calculating annual income do we include; the income of non eligible

family members?

A36. Yes. The income, exclusions, and deductions for all family members continue to be counted in the same way as has been done in the past.

Q37. What is the HA's obligation to a mixed family which cannot afford to pay a prorated rent?

A37. The HA's obligation to this family is no different than to any other assisted family.

Q38. Does the HA prorate the utility allowance too?

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A38. No. The utility allowance is based upon the characteristics of the unit, not the characteristics of the family.

Q39. If a mixed family is eligible for proration and qualifies for a 4BR unit (or Rental Certificate or Rental Voucher), but has eligible members only enough for a 2-BR, which do we use?

A39. The composition of the entire family is still the key factor, so the family in the example would get a 4BR unit (or Rental Certificate or Rental Voucher). Remember, we do not want to create overcrowding or penalize the family; they continue to get housing and the appropriate bedroom size. The difference is that the space for the non-eligible members is not subsidized.

Q40. How do we get the HUD supplied maximum rent referred to in the proration section for public and Indian housing residents?

A40. The methodology for the maximum rent is being supplied by HUD, rather than the maximum rent itself. HAs should calculate their maximum rents by listing their TTPs (Total Tenant Payments -- this value is also shown on Line #14 on form HUD-50058) from high to low. Next determine how many TTPs five percent of the TTPs would be. Finally count down that number from the highest TTP in the range, and that would be the 95th percentile. For any given housing authority it may make most sense to do this by project and/or by bedroom size. The HA must determine the maximum rent(s) on a regular, predetermined basis, but at least annually.

CONTINUED ASSISTANCE.

Q41. Who is eligible for continued assistance?

A41. A family is eligible for continued assistance if they were in occupancy on 6/19/95; and the head or spouse is eligible under the rule; and the family does not include any person (who does not have citizenship or eligible immigration status) other than the head or spouse, their children, or their parents. Continued occupancy means the family can continue assistance without proration regardless of the eligibility status of the other household members.

Q42. In order for a mixed family who was assisted on 6/19/95 to get continued

assistance, must either the head of household or spouse be a citizen or eligible immigrant.

A42. Yes. In order for a mixed family to get continued assistance, either the head of household or spouse must be a citizen or eligible immigrant.

Q43. If a mixed family is eligible for "continued assistance," is their rent prorated.

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A43. No. Continued assistance means that financial assistance is continued without adjustment even though there may be one or more ineligible members of the household.

Q44. Does a grandmother who has custody of her grandchildren meet the definition of nuclear family for continuation of assistance?

A44. That depends. If she has adopted them or has obtained legal guardianship, the family would meet the definition for continuation of assistance. If she has not adopted them or obtained legal guardianship, the family would not meet the definition.

Q45. Do you have a chart that shows which applicant and participant families are eligible for continuation of assistance, temporary deferral of assistance and proration of assistance?

A45. See EXHIBIT B-1, below.

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EXHIBIT B-1

NONCITIZEN RULE ELIGIBILITY CHART1/	Continued Assistance	Temporary Deferral	Prorated Assistance
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1. PARTICIPANT in occupancy on 6/19/95 AND:

a. Head or spouse is eligible and family includes no non-eligible members other than head or spouse, or parents or children of head or spouse	YES	NA	NA
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b. Mixed family, other than in 1.a above	NO	YES	YES
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c. No eligible members	NO	YES	NO
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2. PARTICIPANT in occupancy after 6/19/95 AND:

a. Mixed family	NO	NO	YES
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b. No eligible members	NO	NO	NO
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3. APPLICANT mixed family	NA	NA	YES
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4. NONCITIZEN STUDENT APPLICANT or
PARTICIPANT AND:

a.	Living alone	NO	NO	NO
b.	Living with accompanying immigrant spouse and/or children	NO	NO	NO
c.	Living with citizen spouse or children	NO	NO	YES
d.	Living with nonaccompanying eligible immigrant spouse or children	NO	NO	YES

1/ This chart does not include applicant or participant families in which all members have citizenship or eligible immigration status. These families will be eligible for full assistance and Section 214 options are not applicable.