

U.S. Department of Housing and Urban Development

Housing-Federal Housing Commissioner
Public and Indian Housing/Fair Housing &
Equal Opportunity

Special Attention of: Notice FHEO 95-6
All Housing Directors
All Directors Multifamily Housing Issued: November 30, 1995
All Directors, Public Housing
All Owners and Management Agents Expires: November 29, 1996
All Administrators of Native Cross References: Notice HUD 95-55 &
American Programs Guidebook 7465.76
All Housing Authorities
All Resident Management Corporations
All Resident Council

Subject: Fair Housing Issues in Noncitizen Rule for Field Office and Housing
Provider Guidance

Introduction.

- A. Section 214 of the Housing and Community Development Act of 1980 prohibits HUD from making financial assistance in certain HUD programs available to persons other than United States citizens, nationals, or certain categories of eligible non-citizens. The Final Rule to implement the law for all applicable programs, 24 CFR 200 et al. was published in the Federal Register on March 20, 1995, and was effective on June 19, 1995.
- B. To implement this Rule, HUD's Office of Multifamily Housing issued Notice H 95-55 on June 16, 1995 and Notice H 95-68, modifying Notice H 95-55, on August 3, 1995. HUD's Office of Public and Indian Housing issued Guidebook 7465.7 on July 13, 1995. The Notices and Guidebook were issued to field offices, owners and managers of assisted housing, and public and Indian housing authorities to assist them in administering these requirements.

Authority. The Regulation, 24 CFR 200.190, 812.13, and 912.13 provides that the project owner, responsible entity, or PHA:

"shall administer the restrictions on use of assisted housing by non-citizens with ineligible immigration status imposed by this part in conformity with the nondiscrimination requirements of, including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-5) and the implementing regulations in 24 CFR Part 1, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and

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implementing regulations in 24 CFR Part 8, the Fair Housing Act (42 U.S.C. 3601-3619) and the implementing regulations in 24 CFR Part 100, and other civil rights statutes cited in the applicable program regulations. These statutes prohibit, among other things, discriminatory practices on the basis of race, color, national origin, sex, religion, age, disability and familial status in the provision of

housing."

NOTE: Separate nondiscrimination rules are applicable to Indian Housing Authorities. For additional information, see 24 CFR 905.115 (formerly 24 CFR 905.165), applicability of civil rights requirements.

PLEASE NOTE: Section 214 and these guidelines apply only to the programs listed in the Appendix to this Notice.

A. Purpose of this Notice.

1. It is important and appropriate to take measures to assure that ineligible persons do not receive assistance. However, many characteristics often associated with non-citizens are also related to race or national origin. Discrimination on the basis of race or national origin is against the law. It is therefore equally important, in determining eligibility, to ensure that applicants or participants are not treated differently based on their country of origin, speech accent, language, or other personal characteristics.
2. The purpose of this Notice is to emphasize the procedures which may, or may not, be followed in determining eligibility for assistance under this Rule to assure that illegal discriminatory practices do not occur.

B. Operative Procedures.

1. All operative procedures must be applied uniformly, in accordance with Housing Notices H 95-55 and H 95-68 or Housing Agencies (HA) Guidebook 7465.7. This caveat includes, but is not limited to:
 - a. Neither participants nor applicants should be treated differently because of race or national origin. Differential or selective treatment may provide the participant or applicant with a cause of action under Title VI of the Civil Rights Act of 1964 and/or the Fair Housing Act.
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 - b. Housing providers must apply the declaration/ verification procedures in a uniform manner as described in the applicable Notices/Guidebook. Individuals may be selectively required to provide additional documentation to the provider only if the provider has a substantial basis to believe that an applicant or tenant may have erroneously or deliberately misrepresented eligibility during the declaration/verification process. Such a basis may not relate to any personal characteristics of the individual. Public Housing Agencies may only ask for additional information in accordance with the local provider's approved written policy. In certain cases, housing providers may have prior written documentation in a tenant file that was routinely required at application stage by that provider which provides evidence contrary to the declaration/verification.
 - c. Procedures for secondary verification must be applied uniformly and without regard to the race or national origin of the applicant or participant -- a provider cannot ask for documentation only from persons who may look or sound

"foreign" to them.

- d. A mere suspicion based on the apparent national origin of the applicant or participant does not constitute a reasonable basis to question, reject, or refer for additional verification the declaration of citizenship, or documents presented.
2. 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 Immigration and Naturalization Service (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 owner receives information that provides a substantial basis to believe that a tenant may have erroneously or deliberately misrepresented eligibility, the owner should

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take necessary steps to verify the declaration or documents as set out in Notice H 95-55 , Paragraph 8(b) and in Guidebook 7465.7, Paragraph 3-7b. It is imperative, however, that the information be concrete, rather than the owner's suspicions based upon race, ethnicity, or national origin.

3. If the process for determining eligible status is not completed because of a delay caused by HUD, the provider, INS (such as inability to access INS' automated system), or the process itself (such as appeals and hearings) the family must be provided assistance and assistance may not be denied, delayed, prorated or terminated because of the lack of this verification, as the applicable regulations provide.
4. The procedures should be applied only to applicable housing programs as specified in Notices H 95-55 and H 95-68 and Guidebook 7465.7 and listed in the Appendix to this Notice.
5. To ensure that all program participants and applicants understand the process, applicants and/or tenants shall be permitted the time to have the documents reviewed by, and be represented by, a third party for purposes of explanation and understanding. The housing provider must arrange to provide translations of the letters and forms in other languages or other formats for persons with disabilities (e.g., braille, large type, or personal explanation), if feasible.
6. The family is entitled to arrange for a foreign language interpreter to attend any hearing, at the expense of the family or housing provider, as may be agreed upon by both parties. In accordance with the Fair Housing Act, a sign language interpreter must be provided by the housing provider, if necessary, as a

reasonable accommodation. The family is also entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the housing provider)

7. Familial association with a non-eligible person is not necessarily a basis for rejection. It is therefore essential that providers, as they implement this Congressionally mandated prohibition on participation by certain non-citizens, take effective steps to

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assure that eligible persons are not denied housing assistance on the basis of their race or national origin, or their familial association with non-eligible persons. (Please Note the exception in the case of families of some noncitizens students in accordance with 24 CFR 200.189 (c), 905.310(t) (3), and 912.12(c).)

- C. Conclusion. It is entirely appropriate, indeed important, to emphasize to applicants and participants that declarations of citizenship -- and, for declarations of eligible immigration status, the presentation of documents verifying eligibility -- are made under penalty of perjury. However, it is equally important to assure that eligible persons are not inappropriately intimidated or deterred from seeking assistance and that people are denied assistance only for reasons objectively shown to relate to their eligibility.

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APPENDIX

PROGRAMS TO WHICH SECTION 214 ARE APPLICABLE

Section 214 of the Housing and Community Development Act of 1980, as amended, (the non-citizen rule) applies to those HUD programs providing financial assistance on behalf of tenants (or homebuyers) pursuant to the United States Housing Act of 1937. Generally, this encompasses Public and Indian Housing programs, the Section 8 Housing Assistance Payments programs, and the Housing Development Grant programs (with respect to low income units only.) All of these programs provide housing, either directly (such as public housing) or indirectly (such as through Section 8 Certificates), that is assisted by HUD.

The following is a listing of specific HUD programs covered by Section 214.

A. MULTIFAMILY HOUSING PROGRAMS

1. Section 236 Projects.

Section 214 applies only to those current tenants paying less than market rent. However, all applicants to Section 236 projects are subject to a 214 review.

2. Rent Supplement Program.

(Section 101 of the Housing and Urban Development Act of 1965)

3. Rental Assistance Programs.

This does not include Rental Rehabilitation programs because there is no assistance to tenants.

4. Section 8 Programs.

a. New Construction (Part 880)

b. Substantial Rehabilitation (Part 881)

c. State Housing Finance Agencies (Part 883) (-Coverage extends only to those programs where applicable HUD assistance is in place.)

d. Farmers Home Administration (Part 884) (However, those projects under Section 515 without project based Section 8 assistance are NOT covered.)

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e. Section 202 projects with Section 8 assistance

f. Loan Management Set Aside

g. Property Disposition Set Aside

h. Community Investment Demonstration Program

5. Housing Development Grants Program.

Section 214 applies only to low income units.

Generally, in the case of partially assisted programs, as in the Housing Developments Grants program or 20% Section 8 projects, only those current tenants who are paying less than fair market rent are subject to an eligibility review under Section 214. However, all applicants to these projects are subject to review notwithstanding the assisted status of the unit applied for.

B. PUBLIC AND INDIAN HOUSING PROGRAMS

1. Public and Indian Housing Programs.

Section 214 applies to those programs under Part 913 and 950, including:

a. Mutual Help Homeownership Programs

b. Turnkey III Homeownership Opportunity Program,

BUT, with respect to (a) and (b), Section 214 applies only to the extent that enforcement is consistent with the terms of the existing contracts. All contracts executed on or after June 19, 1995 are covered.

2. Section 8 Existing Programs (Part 812)

a. Certificates

b. Vouchers

3. Section 8 Moderate Rehabilitation Program

4. Section 23 Housing Assistance Payments Program.

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5. HOPE Program for Public and Indian Housing under 42 USC 1437aaa.

However, other HOPE Programs are NOT covered.

6. Section 235.

Applies only to those applicants with contracts on or after June 19, 1995, unless the mortgage is refinanced for some reason other than reducing the mortgage rate.

C. SECTION 214 DOES NOT APPLY TO:

1. Projects insured under Section 221(d) (3) or (d) (5);

2. Projects funded under HOPE for Homeownership of Multifamily Units Program (HOPE 2), unless used in conjunction with a covered program, such as Section 8.

(Note: The HOPE program for Public and Indian Housing under 42 USC 1437aaa IS covered.)

3. Projects developed to serve the homeless, with the exception of the Section 8 Moderate Rehabilitation Single Residency Occupancy (SRO) Program which IS covered;

4. Supportive housing for the elderly under 42 USC 1701q;

5. Supportive Housing for Persons with disabilities Program under 42 USC 8013; and

6. All Community Planning and Development (CPD) Programs.

HOWEVER: If a "non-covered" program is administrated in conjunction with a covered program, such as Section 8, then Section 214 will apply.

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