

### 3-12 Restriction on Assistance to Noncitizens

#### A. Overview

By law, only U.S. citizens and eligible noncitizens may benefit from federal rental assistance. Compliance with these rules ensures that only eligible families receive subsidy. These requirements apply to families making application to the property, families on the waiting list, and tenants. This paragraph describes the procedures owners must use to determine applicant eligibility based on citizenship/immigration status.

**NOTE:** See Chapters 4, 7, and 8 for other citizenship and eligible immigration status requirements. (Denial of assistance is addressed in paragraph 4-31, changes in subsidy are addressed in paragraph 7-11, and termination of assistance is addressed in paragraph 8-7.)

#### B. Key Requirements

1. Assistance in subsidized housing is restricted to the following:
  - a. U.S. citizens or nationals; and
  - b. Noncitizens that have eligible immigration status.
2. All applicants for assistance must be given notice of the requirement to submit evidence of citizenship or eligible immigration status at the time of application. The entity responsible for receiving the documentation, where possible, must arrange to provide the notice in a language that is understood by the individual if the person is not proficient in English. (See Exhibits 3-3 and 3-4 for a sample notice and its accompanying Family Summary Sheet.)
3. All family members, regardless of age, must declare their citizenship or immigration status. (See Exhibit 3-5 for a Sample Citizenship Declaration. Noncitizens (except those age 62 and older) must sign a Verification Consent Form (see Sample Verification Consent Form in Exhibit 3-6) and submit documentation of their status or sign a declaration that they do not claim to have eligible status. Noncitizens age 62 and older must sign a declaration of eligible immigration status and provide a proof of age document. U.S. citizens must sign a declaration of citizenship. Owners may establish a policy of requiring additional proof of citizenship for those declaring to be U.S. citizens or nationals.
4. A mixed family—a family with one or more ineligible family members and one or more eligible family members—may receive prorated assistance, continued assistance, or a temporary deferral of termination of assistance. See subparagraphs O, P and Q below for the requirements that must be met for a mixed family to be eligible for assistance.
5. Applicants who hold a noncitizen student visa are ineligible for assistance, as are any noncitizen family members living with the student. For

noncitizen students with a citizen spouse or citizen children, see the rules in paragraph 3-12 R.2 below.

**C. Administration of Restriction on Assistance to Noncitizen**

Owners are responsible for administering the restriction on assistance to noncitizens in accordance with regulations. When administering the restriction, the owner must treat all applicants equally, applying the same noncitizen rule procedures without regard to race, color, national origin, sex, religion, disability, or familial status, and must comply with the nondiscrimination requirements described in Chapter 2 of this handbook.

**D. Protection from Liability for Project Owners**

HUD will not take any compliance, disallowance, penalty, or other regulatory action against an owner with respect to any error in the owner's determination of eligibility for assistance based on citizenship or immigration status when:

1. The owner established eligibility based upon verification of eligible immigration status through the verification system described in regulations and this handbook;
2. The owner provided an opportunity for the family to submit evidence in accordance with regulations and this handbook;
3. The owner waited for completion of the Department of Homeland Security's (DHS') verification of immigration status in accordance with regulations and this handbook;
4. The owner waited for completion of the DHS appeal process provided in accordance with regulations and this handbook, if applicable; and
5. The owner provided an informal meeting in accordance with regulations and this handbook, if applicable.

**E. Reviewing a Family's Citizenship/Immigration Status**

Owners generally consider citizenship/immigration status once for each family, but they must do so more frequently if immigration status or family composition is likely to change (e.g., when a family member applies for a change in immigration status). (See Sample Owner's Summary of Family in Exhibit 3-7 for tracking applicants' declarations and the owner's verification.)

1. Owners determine the applicant's citizenship or immigration status during the initial eligibility determination, prior to move-in.
2. As part of the annual or interim recertification process, owners must determine the citizenship/immigration status of tenants from whom the owner has not previously collected the proper documentation or whose documentation suggested that their status was likely to change.

3. If the status of a family member in a mixed family changes from ineligible to eligible, the family may request an interim recertification.
4. The required evidence of citizenship/immigration status for any new family member must be submitted at the first interim or regular recertification after the person moves to the unit.

**F. Applicability**

The restriction on assistance to noncitizens applies to all properties covered by this handbook except the following:

1. Section 221(d)(3) BMIR properties;
2. Section 202 PAC;
3. Section 202 PRAC; and
4. Section 811 PRAC.
5. Section 202 projects with units not receiving assistance under the Rent Supplement or Section 8 programs.

**G. Notification to Applicants**

1. Owners must give each applicant, at the time of application, notification of the requirement either to submit evidence of citizenship or eligible immigration status or to choose not to claim eligible status. A sample notice is included in Exhibit 3-3. The notification must do as follows:
  - a. State that financial assistance is contingent on submission and verification of citizenship or eligible immigration status;
  - b. Describe the type of evidence that must be submitted;
  - c. Give the time period in which evidence must be submitted; and
  - d. State that assistance may be prorated, denied, or terminated if any or all family members are determined ineligible for assistance.
2. Owners may notify families that they are eligible for assistance, or for partial assistance, as a mixed family. A sample notification of the verification results and the family's eligibility status is included in Exhibits 3-10 and 3-11.
3. Owners must notify families in writing if they are found to be ineligible based upon citizenship/immigration status in accordance with requirements described in paragraph 4-31. The sample notification of the results of verification on noncitizen status included in Exhibits 3-8 and 3-9 includes appropriate language.

## H. **Owner Preparation to Collect Documentation of Citizenship/Immigration Status**

Owners are required to verify with the DHS the validity of documents provided by applicants. To do so, owners must:

1. Provide to the Multifamily Systematic Alien Verification for Entitlements (SAVE) Administrator at HUD Headquarters the complete name, address and contact information of the owner, or management agent acting on the owner's behalf, and a list of their project numbers and/or contract numbers.
2. Upon receipt of the access code, user ID and temporary password from the Multifamily SAVE Administrator, the owner is able to access the SAVE system at <https://www.vis-dhs.com/> \*or through the EIV system\* and use the automated, web-based SAVE system to obtain primary, and in many instances, secondary verification.
3. Multiple users can use a single computer, but since the program is web-based, SAVE can be accessed from any computer that has internet access.
4. If the owner does not have internet access, it will be necessary to verify immigration status using the paper process. A completed Document Verification Request, Form G-845S, and photocopies of the immigration documentation must be mailed to the local immigration office to receive verification of validity of the documents.

## I. **Required Documentation of Citizenship/Immigration Status**

1. The owner must obtain the following documentation for each family member regardless of age:
  - a. From U.S. citizens, a signed declaration of citizenship. Owners may require verification of the declaration by requiring presentation of a U.S. birth certificate or U.S. passport.
  - b. From noncitizens 62 years and older, a signed declaration of eligible noncitizen status and proof of age;
  - c. From noncitizens under the age of 62 claiming eligible status:
    - (1) A signed declaration of eligible immigration status;
    - (2) A signed consent form; and
    - (3) One of the DHS-approved documents listed in Figure 3-4.
2. Noncitizens not claiming eligible immigration status may elect to sign a statement that they acknowledge their ineligibility for assistance. \*This

statement is in addition to their declaring their citizenship status on the Citizenship Declaration form (see Exhibit 3-5).\*

### Figure 3-4: Acceptable DHS Documents

- Form I-551, *\*Permanent Resident Card\**.
- Form I-94, *Arrival-Departure Record* annotated with one of the following:
  - ◆ Admitted as a Refugee Pursuant to Section 207 ;
  - ◆ Section 208 or Asylum ;
  - ◆ Section 243(h) or Deportation stayed by Attorney General ; or
  - ◆ Paroled Pursuant to Section 212(d)(5) of the INA.
- Form I-94, *Arrival-Departure Record* (with no annotation) accompanied by one of the following:
  - ◆ A final court decision granting asylum (but only if no appeal is taken);
  - ◆ A letter from an DHS asylum officer granting asylum (if application was filed on or after October 1, 1990) or from an DHS district director granting asylum (application filed was before October 1, 1990);
  - ◆ A court decision granting withholding of deportation; or
  - ◆ A letter from an asylum officer granting withholding of deportation (if application was filed on or after October 1, 1990).
- A receipt issued by the DHS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and that the applicant's entitlement to the document has been verified.
- Other acceptable evidence. If other documents are determined by the DHS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the *Federal Register*.

#### J. Timeframes for Submitting Evidence of Citizenship/Immigration Status to the Owner

1. Applicants must submit required documentation of citizenship/immigration status no later than the date the owner initiates verification of other eligibility factors. Because of the prohibition against delaying assistance to obtain verification of citizenship/immigration status, owners are advised to implement procedures to verify eligible immigration status in advance of other verification efforts.

2. If the applicant cannot supply the documentation within the owner's specified timeframe, the owner may grant the applicant an extension of not more than 30 days, but only if the applicant certifies that the documentation is temporarily unavailable and additional time is needed to collect and submit the required documentation. Although the extension period may not exceed 30 days, the owner may establish a shorter extension period based on the circumstances of the individual case.
3. The owner must inform the applicant in writing if an extension request is granted or denied. If the request is granted, the owner must include the new deadline for submitting the documentation. If the request is denied, the owner must state the reasons for the denial in the written response. When granting or rejecting extensions owners must treat applicants consistently.

**K. Prohibition Against Delay of Assistance**

1. Owners may not delay the family's assistance if the family submitted its immigration documentation in a timely manner but the DHS verification or appeals process has not been completed.
  - a. If a unit is available, the family has come to the top of the waiting list, and at least one member of the family has been determined to be eligible, the owner must offer the family a unit. The owner must provide assistance to the family member determined to be eligible and to those family members that submitted their immigration documents on time. If any family members did not provide the required immigration documentation, then the assistance for the family must be prorated.
  - b. Because of the prohibition against delaying assistance to family members who have provided the required immigration documentation in a timely manner, owners are advised to implement procedures to verify eligible immigration status in advance of other verification efforts.
  - c. Owners continue to provide assistance to those family members who submitted their immigration documentation in a timely manner until their immigration status has been verified.

### Example – DHS Verification Process Delayed

John and Mary Yu brought in the immigration documents for John and for their two daughters immediately upon the owner's request. Citizenship for Mary had already been determined when they first applied for assistance. John's brother, who will live with them, has not yet been able to locate his papers. The SAVE system could not provide primary verification on the Yus, and secondary verification had to be requested.

The Yus were the fourth family on the waiting list for a 3-bedroom unit, but their name has come to the top of the list more rapidly than expected. First, there were two unexpected move-outs; then, two of the families above the Yus declined the units offered.

The owner must offer the Yus the available 3-bedroom unit. The owner will provide prorated assistance based on Mary being eligible, John and the two daughters having submitted their required immigration documentation in a timely manner and John's brother not having submitted his required immigration documentation. The prorated assistance will be 4/5 of full assistance. If the immigration documentation collected later indicates that any family members are not eligible, the assistance will be prorated providing assistance only for the eligible family members. If the owner receives the secondary verification information back from DHS and learns that the two daughters are eligible non-citizens but John is not an eligible non-citizen, the owner must process an interim recertification removing assistance for John. John's brother still has not submitted any immigration documentation. The prorated assistance will now be 3/5 of full assistance. The owner must give the family the required 30-day notice of increase in their rent.

If, however, the owner receives the secondary verification information back from DHS and learns that the two daughters and John are eligible non-citizens and John's brother submits his immigration documentation and is determined to be an eligible non-citizen, the owner will process an interim recertification providing full assistance to the family.

2. Once the owner has determined the citizenship/immigration status of a family assisted prior to completion of the verification or appeal process, the owner must do as follows:
  - a. Provide full assistance to a family that has established the eligibility of all of its members;
  - b. Offer continued prorated assistance to a mixed family, or temporary deferral of termination of assistance (See subparagraph Q for eligibility requirements) if the family does not accept the offer of prorated assistance; or
  - c. Offer temporary deferral of termination of assistance to an ineligible family. At the end of the deferral period the family must either pay market rent or vacate the unit.

(Mixed families are defined in subparagraph N below, and prorated assistance is described in subparagraph P. Temporary deferral of termination of assistance is addressed in subparagraph Q.)

## L. Verifying Information on Immigration Status

Owners must verify the validity of documents provided by applicants or tenants. The personal computer method provides automated status verification when the information is contained in the Alien Status Verification Index (ASVI) database. It also automates the paper secondary verification process, which eliminates in most instances the completion of the paper Form G-845S. If the owner is unable to obtain the results using the automated primary and secondary verification method, the owner must attempt to obtain results using the secondary verification paper process.

1. Primary verification.
  - a. Owners must conduct primary verification of eligible immigration status only for persons claiming eligible immigration status.
  - b. Owners must conduct primary verification through the SAVE web-based program, DHS' automated system. After obtaining an access code, user ID and temporary password from the Multifamily SAVE Administrator at HUD Headquarters (see subparagraph H above), owners can access SAVE with a personal computer at <https://www.vis-dhs.com/> or \*through the EIV system.\*
  - c. After accessing the ASVI database, the owner enters the required data fields. The personal computer system will display one of the following messages for immigration status confirmation on the screen.
    - (1) Lawful Permanent Resident
    - (2) Temporary Resident
    - (3) Conditional Resident
    - (4) Asylee
    - (5) Refugee
    - (6) Cuban\Haitian Entrant
    - (7) Conditional Entrant
2. Secondary verification. If the message institute secondary verification is displayed on the screen, the manual verification process must be used.

- a. Within 10 days of receiving an Institute Secondary Verification response, the owner must prepare DHS Form G-845S, *Document Verification Request*. The owner must send DHS Form G-845S and photocopies of the DHS documents submitted by the applicant to the DHS office serving the property's jurisdiction. DHS Form G 845S is provided in Exhibit 4-2. Instructions for completing and mailing the DHS Form G 845S are found in Appendix 2-B of this handbook. This information is taken from DHS' current Systematic Alien Verification for Entitlements (SAVE) Program Instructions Manual and should be used until such time as the instruction manual is updated by DHS and included in its entirety in Appendix 2-A.
- b. The DHS will return to the owner a copy of DHS Form G-845S indicating the results of the automated and manual search.

#### M. **Appealing Determinations of Ineligibility**

1. The owner must notify the family in writing as soon as possible if the secondary verification process returns a negative result. A sample notice to the family is included in Exhibits 3-10 and 3-11. The sample notice describes the tenant or applicant family's options. The family has 30 days from receipt of the notice to choose which option to follow. See paragraph 4-31 for additional information on denying assistance based upon ineligible immigration status.
2. The family may appeal the owner's decision directly to the DHS. The family must send a copy of the appeal directly to the owner. The DHS should respond to the appeal within 30 days.
  - a. If the DHS decision results in a positive determination of eligibility, the owner can provide the family with housing assistance.
  - b. If the DHS decision results in a negative determination of eligibility, the family has 30 days to request a hearing with the owner.

#### N. **Mixed Families**

1. A mixed family is one whose members include citizens and eligible immigrants as well as noncitizens without eligible immigration status.
2. Mixed families that were in occupancy and received full assistance prior to the verification of citizenship/immigration status may be eligible for one of three types of assistance.
  - a. Continued assistance if the family was receiving assistance prior to June 19, 1995 (see subparagraph O below);
  - b. Prorated assistance (see subparagraph P below); or

- c. Temporary deferral of termination of assistance (see subparagraph Q below).

3. Applicant families that are mixed are eligible only for prorated assistance.

**O. Continued Assistance**

1. A mixed family who was receiving assistance on June 19, 1995, is entitled to continue receiving the same level of assistance if the following apply:
  - a. The family head, spouse, or co-head was a citizen or had eligible immigration status; and
  - b. The family did not include any members who did not have eligible immigration status, except for the head, spouse, parents of the head of household, parents of the spouse, or children of the head or spouse.
2. Eligibility for continued assistance must have been established prior to November 29, 1996.
3. If, after November 29, 1996, anyone is added to a family, including a head of household, spouse, parents of the head of household or spouse, or children of the head of household or spouse, the family is not eligible for continued assistance at the full level, but may receive prorated assistance (see subparagraph P below).

**P. Prorated Assistance**

If a family is eligible for prorated assistance and is not receiving continued assistance, and if the termination of the family's assistance is not temporarily deferred, the amount of assistance the family receives is adjusted based on the number of family members who are eligible compared with the total number of family members. The prorated assistance is calculated by multiplying a family's full assistance by a fraction.

**NOTE:** See Exhibits 3-12, 3-13, and 3-14 for more information on proration procedures regarding the restriction of assistance to noncitizens.

1. Section 8. For Section 8 assistance programs, the number of eligible people in the family divided by the total number of persons in the family determines the fraction. Then, this fraction is multiplied by the full assistance payment. The reduced assistance payment results in a revised tenant rent for the family.

**Example – Section 8 or Rent Supplement Prorated Rent**

Family A has four persons. Three are citizens, and one does not have eligible immigration status. The gross rent for the unit is \$500. The family's Total Tenant Payment (TTP) is \$100.

Gross rent	\$500
TTP	<u>-\$100</u>
Section 8 assistance	\$400
Fraction is	
<u>Number of eligible family members</u>	<u>3</u>
Total number of family members	4
Prorated assistance	$\$400 \times 3/4 = \$300$
Tenant rent increase (assistance less prorated assistance payment)	$\$400 - \$300 = \$100$
New family rent (TTP + tenant rent increase)	$\$100 + \$100 = \$200$

**Example – Section 8 Prorated Rent  
(with utility allowance)**

Family B has five persons. Three are citizens, and two do not have eligible immigration status. The contract rent for the unit is \$500. The utility allowance is \$30. The family's TTP is \$100.

Contract rent	\$500
Utility allowance	<u>+\$30</u>
Gross rent	\$530
TTP	<u>-\$100</u>
Section 8 Assistance	\$430
Fraction is	
<u>Number of eligible family members</u>	<u>3</u>
Total number of family members	5
Prorated assistance	$\$430 \times 3/5 = \$258$
Increase in TTP (assistance less prorated assistance)	$\$430 - \$258 = \$172$
New tenant rent (TTP + increase utility allowance = tenant rent)	$\$100 + \$172 - \$30 = \$242$

2. Rent Supplement. The Rent Supplement paid on the family's behalf is the amount they would otherwise be entitled to, multiplied by the fraction for which the numerator is the number of eligible people in the family and the denominator is the total number of people in the family.
3. Section 236. For Section 236 properties, the fraction is the number of ineligible persons over the total number in the family. The proration increases the rent the family is otherwise paying by an amount equal to the difference between the market rent and the rent the family would otherwise pay, multiplied by the fraction.
4. Section 236 with RAP, Rent Supplement, or Section 8 LMSA. If a property receives a combination of Section 236 with RAP, Rent Supplement, or Section 8 LMSA assistance, the owner must prorate both the Section 236 portion of the assistance and the RAP, Rent Supplement, or Section 8 assistance payment. The owner determines the new prorated rent by calculating the difference between market rent and basic rent multiplied by the fraction of ineligible family members. To determine the family's rent increase, the owner adds this total to the assistance payment multiplied by the same fraction of ineligible family.

**Example – Project-Based Subsidy (Section 236) Programs**

Family C has four persons and currently pays the 236 basic rent. Three are citizens, and one does not have eligible immigrant status.

Basic rent      \$300

Market rent    \$500

Fraction is

$$\frac{\text{Number of ineligible family members}}{\text{Total number of family members}} = \frac{1}{4}$$

Rent increase  $\$500 - \$300 = \$200 \times 1/4 = \$50$

New prorated rent       $\$300 + \$50 = \$350$

**Q. Temporary Deferral of Termination of Assistance**

1. Families that were receiving assistance on June 19, 1995 under one of the programs covered by the non-citizen rules are eligible for temporary deferral of termination of assistance. If the following applies:
  - a. Family has no eligible members; or

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- b. Mixed family qualifies for prorated assistance (and does not qualify for continued assistance) and chooses not to accept the partial assistance.
  2. The deferral allows the family time to find other suitable housing before HUD terminates assistance. During the deferral period, the family continues to receive its current level of assistance.
  3. The initial deferral period is for six months and may be extended for an additional six-month period, not to exceed 18 months.
    - a. At the beginning of each deferral period, the owner 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.

**NOTE:** If the family receiving assistance on June 19, 1995 includes a refugee under section 207 of the Immigration and Nationality Act, or an individual seeking asylum under section 208 of that Act, a deferral can be given to the family and there is no time limitation on the deferral period. The 18 month deferral limitation does not apply.

**Example – Project-Based and Individual Tenant Subsidy Programs  
Prorated Rent**

Family D has four persons. Three are eligible immigrants, and one has elected not to contest ineligible status. The family's TTP is \$200. The gross rent for the family is the Section 236 basic rent, which is \$300. The market rent is \$500.

Market rent	\$500
Basic rent	\$300
TTP	\$200
Assistance payment	\$100
Fraction is	
$\frac{\text{Number of ineligible persons}}{\text{Total number of family members}}$	$\frac{1}{4}$
Section 236 calculation	
Project-based subsidy (market rent less basic rent)	$\$500 - \$300 = \$200$
Project-based subsidy times fraction	$\$200 \times \frac{1}{4} = \$50$

**RAP, Rent Supplement, or Section 8  
Calculation**

Assistance payment times fraction	$\$100 \times \frac{1}{4} = \$25$
New tenant rent (TTP + Section 236 proration + tenant based subsidy proration)	$\$200 + \$50 + \$25 = \$275$

- b. Before the end of each deferral period, the owner must determine whether affordable housing is available to the family and whether to extend the deferral of termination of assistance.
- (1) To extend a deferral period, an owner must determine that no affordable housing is available. The owner must inform the family of the owner's determination at least 60 days before the current deferral period expires. The owner's determination should be based on the following:
- A vacancy rate of less than 5% for affordable housing of the appropriate unit size in the housing market for the area in which the housing is located;
  - The local jurisdiction's Consolidated Plan, if applicable;
  - Availability of affordable housing in the market area; and

- Evidence of the family's efforts to obtain affordable housing in the area.
- (2) To terminate assistance, the owner must determine that affordable housing is available, or that the maximum deferral period has been reached.
  - (3) If eligible for prorated assistance, the family may request and begin to receive prorated assistance at the end of the deferral period.
  - (4) Affordable housing for the purpose of temporary deferral of assistance is housing that:
    - Is not substandard;
    - Is the appropriate size for the family; and
    - Can be rented by the family for an amount less than or equal to 125% of the family's total tenant payment (TTP), including utilities.

**R. Prohibition of Assistance to Noncitizen Students**

Noncitizen students and their noncitizen families may not receive assistance. Noncitizen students are not eligible for continuation of assistance, prorated assistance, or temporary deferral of termination of assistance.

1. A noncitizen student is defined as an individual who is as follows:
  - a. A resident of another country to which the individual intends to return;
  - b. A bona fide student pursuing a course of study in the United States; and
  - c. A person admitted to the United States solely for the purpose of pursuing a course of study as indicated on an F-1 or M-1 student visa.
2. This prohibition applies to the noncitizen student's noncitizen spouse and children. However, spouses and children who are citizens may receive assistance. For example, a family that includes a noncitizen student married to a U.S. citizen is a mixed family.