The problem of HUD's outlays will remain with us regardless of how the budget authority problem gets resolved. The degree of its significance will depend upon the fate of the balanced budget amendment and any new budget agreements reflecting that goal. But as evidenced over the last two fiscal years, even without a formal balanced budget target enshrined in law, the annual budget resolutions and appropriations bills fashioned on Capitol Hill may seek to advance that objective and reduce HUD outlays, especially if the Administration fails to take a principled stand to maintain them.

Conclusion

The budget authority and outlay problems presented by the Section 8 programs must be addressed by Congress and the Administration over the next few years, with the budget authority problem requiring the most immediate attention during 1997's planning for FY 1998. How these issues are approached in the coming year will provide important lessons for resolving the longer term tension between a balanced budget objective and providing sufficient outlays to maintain the stock and numbers of subsidized units and families. Our advocacy challenge is to ensure that the budget and policy makers understand and address the impacts of their decisions on low-income families and communities. ■

NON-CITIZENS' RIGHTS TO HOUSING ASSISTANCE:

The 1996 Statutory Amendments and HUD's Implementing Regulations

In both the Immigration Act[1] and Welfare Act,[2] Congress made changes regarding the eligibility of non-citizens for assistance under the federal and some state and local housing programs. An earlier Bulletin article introduced the changes made by the Welfare Act.[3] This article will primarily review the changes made by the Immigration Act and the implementing regulations HUD issued on November 29, 1996.[4] HUD has solicited comments on those regulations and submitting comments should be quite helpful. The deadline for comments is January 28, 1997.[5]

The Immigration Act made amendments to Section 214 of the 1980 Housing and Community Development Act.[6] Section 214 is the provision that makes all non-citizens, except for six categories of documented immigrants, ineligible for public housing, Sections 8, 236, and 235 housing and Rent Supplement housing. That section lay dormant for nearly 15 years, but HUD issued implementing regulations in March of 1995, and those regulations became effective on June 19, 1995.[7]

To a certain extent, tenants who were already living in housing assisted under the covered programs were grandfathered in. If they were in mixed families,[8] as defined by the statute, they were allowed to remain in the programs without limit. If they were not mixed families, they could be granted deferred termination, at six-month intervals, up to a total of three years.

[1] Pub. L. No. 104-202, 110 Stat. 3009 (Sept. 30, 1996).

[2] Pub. L. No. 104-134, 110 Stat. 2105 (Aug. 22, 1996).

[3] *See New Welfare Law's Effect on Immigrants and Their Housing*, 26 HOUS. L. BULL. 125 (Sept. 1996).

[4] Amended 24 C.F.R. Part 5, 61 Fed. Reg. 60,537 (Nov. 29, 1996).

[5] 61 Fed. Reg. 64,617 (Dec. 6, 1996).

[6] 42 U.S.C.A. § 1436a (West 1994) (hereafter Section 214).

[7] 24 C.F.R. Part 200, Subpart G, Part 812, Subpart B, and Part 912, Subpart B (1995), transferred to 24 C.F.R. Part 5, Subpart E (1996). *See HUD Issues Final Regulations on Undocumented Immigrants*, 25 HOUS. L. BULL. 100 (May 1995).

HUD PROVIDES IMPROVED DATA ON SECTION 8 PROJECTS VIA THE INTERNET

HUD has now made available at its Web site the most recent data on Section 8 projects, compiled from its various information systems. This data is updated from that announced in the *Bulletin* earlier this year.[1]

The new data covers all properties with project-based Section 8 assistance, except possibly Section 8 Moderate Rehabilitation projects, regardless of the type of underlying financing. There are approximately 70 data fields per property. The projects can be sorted by characteristics or geographic location. You will need an Internet Service Provider and a database program if you don't already have them.

The address for this file is

http://www.hud.gov/fha/mfh/mfhsec8.html.

Once you get to this menu, there is an explanation of the file and you are given two choices: one to browse and one to download. The browse function allows you to search for data by state, city, or zip code. The download function allows you to download the entire file. Note that this is an extremely large file and browsing and/or downloading takes a long time. The download function allows you to download three different formats, each file ranging from two to six megabytes (compressed format). The expanded format is close to 20 MB. This file must then be imported into a database (*e.g.*, Access, DBase and Paradox) capable of handling large files (approximately 70 fields/10,000 records). Once the file is in a database, the records may can be sorted and printed as desired.

This data will be extremely useful to advocates seeking to educate tenants, communities, and federal, state and local policy makers about Section 8 budget and policy issues. ■

[1] *Basic Inventory of Section 8 Projects Now Available*, 26 HOUS. L. BULL. 20 (Feb. 1996).

People applying after June 19, 1995, had to establish the eligibility of their household members. If some of the family members did not have the required immigration status, they were allowed to move in, but assistance for the family was prorated to reflect only the number of eligible members of the household. As a result, their rents were higher than otherwise would have been the case.

The Immigration Act made several changes to Section 214 and required HUD to issue implementing regulations by November 29, 1996.[9] The major changes were that:

- Public housing agencies (PHAs) were granted the option not to comply with Section 214;
- Continued assistance granted to grandfathered mixed families was limited to prorated assistance only for eligible family members;
- Deferred termination for other grandfathered families was limited to 18 months;
- PHAs and landlords were granted the power to delay admission of applicants until the eligibility of at least one family member is verified;
- PHAs and landlords were granted the power to request verification of citizenship; and
- The amendments repeal the statutory language defining the procedural elements of the hearings tenants and applicants may secure and prohibiting termination before the hearing is completed.

These changes and HUD's implementing regulations, as well as some of the more minor amendments, are discussed below.

PHA's Power to Opt-Out

Probably the most significant change is the one that allows a PHA to elect not to comply with Section 214.[10] That provision authorizes PHAs to provide housing assistance to people without determining their citizenship and immigration status. That would include admitting them to public housing, providing them certificates or vouchers or admitting them to the Section 8 Moderate Rehabilitation program. In each case the PHA that elects to opt out would not have to ask tenants or applicants to establish their immigration status, to provide documents and have them verified, or to charge extra rent or reduce the family's subsidies, in order to reflect the presence of a person without eligible immigration status.

In implementing the statute, HUD's regulations make clear that the PHAs have this option. The regulations provide:

> Sec. 5.501 PHA election whether to comply with this subpart.
>
> (a) PHA opt-out. A PHA that is a responsible entity under this subpart may elect not to comply with ("opt-out" of) the requirements of this subpart.
>
> * * *
>
> (c) HUD not responsible due to PHA opt-out. HUD shall not bear any responsibility in connection with compliance with the requirements of Section 214 if a PHA elects not to comply with this subpart under paragraph (a) of this section.[11]

Thus, if a PHA does opt out, HUD will not determine in place of the PHA whether the tenants have eligible status in place of the PHA.

The Introductory Comments explained:

> This interim rule, in accordance with Section 214 as amended, provides that a PHA may elect not to comply with the requirements of 24 C.F.R. part 5, subpart E.
>
> * * *
>
> The change described in paragraph #7 is based on the language of new subsection 214(h)(2), which was added by Section 575 of the Immigration Reform Act. Subsection 214(h)(2) provides that "[a] Public Housing Agency . . . may elect not to comply with this section." The use of the word "section" (as opposed to "subsection") in this provision, in a strict statutory construction, refers to Section 214 in its entirety.
>
> The Immigration Reform Act restricts the provision of assistance to a family until the eligibility of at least one family member has been verified. This interim rule, however, provides that HUD shall not be responsible for verifying compliance with the requirements of Section 214 if a PHA elects to "opt out" of 24 C.F.R. Part 5, Subpart E. HUD would be able to verify the eligible immigration status only of family members applying for assistance with the aid of the PHAs. Since PHA assistance would be required, the imposition of such verification responsibility upon HUD would in effect negate the right of a PHA to opt out of Section 214.[12]

It is clear that HUD has properly interpreted this opt-out provision. The relevant provision reads as follows:

> Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. § 1436a) is amended by adding at the end the following new *subsection* [emphasis added]:
>
> (h) VERIFICATION OF ELIGIBILITY. —
>
> (1) IN GENERAL. — Except in the case of an election under paragraph (2)(A), no individual or family applying for financial assistance may receive such financial assistance prior to the affirmative establishment and verification of eligibility of at least the individual or one family member under this section by the Secretary or other appropriate entity.
>
> (2) RULES APPLICABLE TO PUBLIC HOUSING AGENCIES. — A public housing agency (as

[8] Mixed families are those in which some, but not all, household members are either citizens or have eligible immigration status.

[9] Pub. L. No. 104-208, §§ 571-577 (Sept. 30, 1996).

[10] Pub. L. No. 104-208, § 576 (Sept. 30, 1996), adding 42 U.S.C. § 1436a(h)(2)(A).

[11] 24 C.F.R. § 5.501, as added at 61 Fed. Reg. 60,538 (Nov. 28, 1996).

[12] 61 Fed. Reg. 60,537.

that term is defined in section 3 of the United States Housing Act of 1937) —

(a) may elect not to comply with this section;[13]

The words of the statute clearly state that PHAs "may elect not to comply with this section . . . ." The section being referred to is Section 214, because the language is contained in the new subsection (h) of Section 214. To "elect not to comply" means that Congress has granted PHAs discretion to administer their public housing and Section 8 programs without doing what compliance with Section 214 would otherwise require, *i.e.*, without considering the immigration status of the individuals benefitted.

The placement of this PHA election in Subsection (h) also indicates that Congress intended what it stated, *i.e.*, that PHAs could provide housing assistance to individuals even if those individuals do not have the immigration status that is required by Section 214. The language creating the election not to comply is contained in the new subsection (h)(2)(A). New subsection (h)(1) provides that no individual may receive housing assistance until their eligible immigration status has been established, "except in the case of an election under paragraph (2)(A)." Subsection (h)(1) thus makes clear that a PHA that has elected under paragraph (2)(A) not to comply with Section 214 may provide housing assistance to an individual without establishing that individual's eligible immigration status.

Where the language of a statute is clear, it must be followed as written. It would be improper for HUD or a court to deviate from the clear meaning of language chosen by the Congress.[14]

If one were nonetheless to examine the legislative history of this provision, scant though it is, the history would confirm that Congress knew what it was saying and meant what it said. The language of the new subsection 214(h) first appeared in S. 1260 as part of the manager's amendment when S. 1260 went to the floor of the Senate on January 10, 1996.[15] The same language was added to the immigration bill by another manager's amendment when the bill was brought to the floor of the Senate on April 29, 1996.[16] Section 306(2) of S. 1260 is virtually identical to the language of subsection (h) enacted in Pub. L. No. 104-208, more than nine months later.[17] Congress certainly had sufficient time during those nine months to correct any drafting errors that might have been made in the language of the new subsection (h), but it made no changes. Thus, we can rest assured that this is not a situation in which the hasty drafting of statutory language at the last minute produces an absurd result not intended by Congress.

The origin of the new subsection (h) in S. 1260 also counters any argument that Congress actually intended to refer to some other section or to a subsection of Section 214, not to the entire section. Section 306 of S. 1260, where the new subsection (h) originated, was a simple provision. It had only two amendments to Section 214, this one adding the new subsection (h) and another that is not relevant here. In that simple context, it is clear beyond question that Congress was referring to Section 214 when it used the language "this section." There was no complexity of drafting or confusion that could justify treating as a mistake the clear reference to the entire Section 214.

Now that HUD has issued the regulations implementing this opt-out provision, it is important for housing advocates and advocates for immigrants to bring that provision to the attention of their local housing authorities. The housing authorities should be asked to exercise their option to opt out and to stop using immigration status to determine people's eligibility and to thereby reduce anyone's housing assistance for the public housing and Section 8 programs that they administer. The statute and the regulations, as described above, give the PHAs that option. Avoiding the administrative burden is the reason to exercise the option to opt out.

Prorating Continued Assistance for Grandfathered Mixed Families

Under existing law, mixed families who were receiving housing assistance on June 19, 1995, when Section 214 went into effect, were entitled to receive "continued assistance."[18] Continued assistance meant a fully subsidized rent without any adjustments to reflect the presence of people in the household who did not have the required immigration status. The new statute specifies that continued assistance must be provided on a prorated basis.[19] That change raised the question whether families in residence on June 19, 1995, who have already been awarded continued assistance, must now be changed to prorated assistance.

In HUD's regulations, the answer to that question is no. They specify:

> (2) Proration of continued assistance. A family entitled to continued assistance before November 29, 1996, is entitled to continued assistance as described in paragraph (a) of this section. A family entitled to continued assistance after November 29, 1996, shall receive prorated assistance as described in Sec. 5.520.[20]

Thus, the new provisions on prorating continued assistance were not granted retroactive effect. People who already were entitled to continued assistance when the regulations became effective will continue to receive it as they have in the past. Their vested rights to that assistance will not be taken away. The change to prorated continued assistance applies only to people who first become entitled to it

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[13] Pub. L. No. 104-208, § 576, 110 Stat. 3009 (1996), adding 42 U.S.C.A. § 1436a(h) (West Supp. 1997).

[14] *See, e.g., Negonsott v. Samuels*, 113 S.Ct. 1119, 1122-23 (1993) (Rehnquist, Ch. J.); *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475-78, 112 S.Ct. 2589, 2594-96 (1992) (Kennedy, J.); *West Va. Univ. Hospitals, Inc. v. Casey*, 499 U.S. 83, 98-99, 111 S.Ct. 1138, 1146-47 (1991) (Scalia, J.).

[15] S. 1260, § 306, 142 CONG. REC. S167 (Jan. 10, 1996).

[16] S. 1664, § 226, 142 CONG. REC. S4353 (Apr. 29, 1996).

[17] The only modification of the language was the addition of terms making it clear that, once the eligibility of one family member has been established, assistance may be provided to that family.

[18] 24 C.F.R. § 5.520 (1996).

[19] 42 U.S.C.A. § 1436a(c)(1)(A) (West Supp. 1997), as added by Pub. L. No. 104-208, § 573(2).

[20] 24 C.F.R. § 5.518(a)(2), as amended at 61 Fed. Reg. 60,539.

after the regulations became effective, *i.e.*, on November 29, 1996. The regulations avoid the administrative burden of reopening the cases of people who have already been processed, a burden that Congress did not intend to place upon PHAs and landlords.

Limiting Deferred Termination to 18 Months

Under existing law, families receiving housing assistance on June 19, 1995, who did not qualify for continued assistance because they were not mixed families could still have deferred the termination of their assistance to ease their transition to the unsubsidized market.[21] The deferral could be granted for six months at a time, and the total time could not exceed three years. The new statute reduced the maximum length of the deferral period from three years to 18 months.[22] That again raised the question whether the shorter time limit applies to people who have already received deferred terminations.

The HUD regulations' answer to that question is also no. The regulations state:

> (3) Time limit on deferral period. If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period for deferrals provided after November 29, 1996, shall not exceed a period of eighteen months. The aggregate deferral period for deferrals granted prior to November 29, 1996, shall not exceed 3 years.[23]

Thus, the new 18-month limit applies only to people who first are granted deferred termination after the regulations became effective. Those would be people whom a PHA or landlord had not yet reached in the recertification process, as well as people living in housing newly added to Section 214's coverage, *i.e.*, Rural Housing Service housing. The new provisions shortening the time limit of deferred termination were not granted retroactive effect. People who already have been granted deferred termination may secure deferrals for a total of three years from the date on which they were first granted a deferral.

The amendments also exempted applicants for asylum and refugees from this limit on the length of deferral of the termination period.[24] The regulations confirm that the 18-month and three-year time limits "do not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act."[25] Of course, people who come to the country as refugees constitute one of the groups of immigrants who are qualified under Section 214 for housing assistance,[26] so the provision on deferral of termination would apply only if the refugee were in a household that contained other people without eligible immigration status. The exemption from the time limit is relevant only for that limited category of refugees and people applying for asylum. Under the regulations, the deferral of termination for these people will be for an unlimited period.[27]

Verification of Citizenship

Another provision in the amendments added language that allows HUD or the administering agency to request verification of a declaration of citizenship or status as a national.[28] The regulations were amended to explicitly allow responsible entities, *i.e.*, PHAs and HUD-assisted landlords, to require people declaring that they are citizens to present documents verifying their citizenship.[29]

One difficulty with this change is that some people, especially elderly people, may not find it easy to secure documents, especially birth certificates, establishing their citizenship. Another is that some managers may implement this verification power in a discriminatory manner, asking people with foreign accents or people of particular races or national origins to verify citizenship, but not asking the same of others. HUD's Introductory Comments do state that:

> ...Section 214 must be administered in the uniform manner prescribed without regard to race, national origin, or personal characteristics (*e.g.*, accent, language spoken, or familial association with a noncitizen).[30]

It would be more effective, however, to have that point made an explicit part of the regulations on verification of citizenship, not merely included in introductory comments that disappear, in effect, once the regulations are codified in the Code of Federal Regulations.

Delaying Applicants' Admission Until Eligibility Is Verified

Under prior law, when applicants reached the top of the waiting list, they had to be admitted if they had submitted the required declarations regarding eligible status, even if the documents establishing that status had not been submitted or the INS process for verifying the documents' validity, including any hearing at INS, had not been completed.[31] The new amendments added language preventing HUD from providing assistance to applicants before they present their documents and the documents are verified with the INS by the PHA or landlord. The amendments also repealed language barring delay of an applicant's admission while the documents are being verified and hearings are being pursued at INS.[32]

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[21] 24 C.F.R. § 5.518(b) (1996).

[22] 42 U.S.C. § 1436a(c)(1)(B), as amended by Pub. L. No. 104-208, § 573(3).

[23] 24 C.F.R. § 5.518(b)(3), as added at 61 Fed. Reg. 60,540.

[24] 42 U.S.C. § 1436a(c)(1)(B), as amended by Pub. L. No. 104-208, § 573(3).

[25] 24 C.F.R. § 5.518(b)(3), as amended at 61 Fed. Reg. 60,540.

[26] 42 U.S.C.A. § 1436a(a)(3) (West 1994).

[27] 24 C.F.R. § 5.518(b)(3), as amended at 61 Fed. Reg. 60,540.

[28] 42 U.S.C. § 1436a(d)(1)(A), as amended by Pub. L. No. 104-208, § 574(2).

[29] 24 C.F.R. § 5.508(b)(1), as amended by 61 Fed. Reg. 60,538.

[30] 61 Fed. Reg. 60,537.

[31] 24 C.F.R. § 5.514(e)(4).

HUD has implemented this change by promulgating a regulation that allows the PHA or landlord to delay an applicant's admission until the family has submitted documentation to it. However, if the family does submit the required documents, the landlord or PHA would not be barred from admitting the family even though the documents have not been verified at INS. In addition, an applicant's assistance may not be delayed while the PHA or landlord waits for the INS verification or the conclusion of the INS appeal.[33]

In the Introductory Comments, HUD explained how it had reconciled what it considered to be two apparently contradictory statutory provisions, as follows:

> HUD believes that the first provision [of the statutory amendments] places responsibility on the family to produce documentation of eligible immigration status. Accordingly, this interim rule provides that no family shall be provided assistance until the required documentation has been submitted. The second provision places responsibility on the INS and any other entity which must take certain action once the family has submitted the necessary documentation. Once the family has produced the necessary documents, it should not be penalized for delays on the part of those entities which must verify eligible immigration status.[34]

If an applicant family has established the eligibility of at least one family member when it reaches the top of the waiting list, the PHA or landlord has to offer that family admission with prorated assistance, even if the eligibility of all family members has not been established.[35] The implementing regulations express that statutory duty in the negative, *i.e.*, by stating that the PHA or landlord cannot provide any assistance until the eligibility of at least one family member has been verified.[36] However, the later bar in the regulations against delaying the admission of applicants while their status is being established will mean that the PHAs and landlords will have to offer admission with prorated assistance if one family member has established eligibility.[37]

Although the regulations do not address these questions, it would seem that an applicant household would have the option of delaying admission until the eligibility of enough family members has been established to make the prorated rent affordable by the family or until the eligibility of all family members has been established. In addition, if the family accepts prorated assistance while it tries to establish the other family members' eligibility, it will be able to continue in occupancy with prorated assistance, even if other members' eligibility is never established.[38] If the family does eventually establish the eligibility of all or some of the remaining family members, its rent must be reduced to reflect the family members found to be eligible. That rent reduction should be retroactive to the date the person moved in, because the eventual finding was that the person had eligible status.

Proration of Assistance Generally

Under the prior law, PHAs and landlords had to prorate assistance to all mixed families who moved in after June 19, 1995.[39] Although some PHA groups have objected to proration, Congress did not change the rules requiring it. In fact, Congress validated the proration requirements in several respects. First, as was mentioned above, PHAs and landlords are required to make prorated assistance available to families once the eligibility of one or more family members has been affirmatively established.[40] Second, continued assistance to grandfathered families that become entitled to continued assistance after November 29, 1996, must be provided on a prorated basis.[41] Finally, although families that permit ineligible people to reside in their homes can lose their assistance, they cannot be penalized if those people's ineligibility was considered in prorating assistance.[42]

HUD's implementing regulations retain the PHAs' and landlords' previous duties to provide prorated assistance.[43]

Fair Hearings

If the process at INS, including any INS appeal, does not establish the family's eligible status, the family still has a right to a fair hearing provided by the PHA or landlord.[44] HUD's original regulations required families to request that fair hearing within 14 days of the mailing of the final INS determination.[45] The statutory amendments expanded that time period to 30 days, and specified that the 30 days begin to run when the notice of denial or termination is received.[46] HUD's implementing regulations delete the 14-day time limit from the existing regulations and substitute a 30-day limit, running from the family's receipt of the decision.[47]

The amendments also repealed the prior statutory provisions specifying the procedural elements of the fair hearing and barring reduction or termination of assistance until completion of the hearing.[48] That statutory change raised the question whether a tenant could be evicted or assistance ter-

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[32] 42 U.S.C. §§ 1436a(d)(2), 1436a(d)(4)(A)(iii) and (B)(ii)(II), amended by Pub. L. No. 104-208, § 574.

[33] 24 C.F.R. §§ 5.514(b)(1)(i) and (iv), amended at 61 Fed. Reg. 60,539.

[34] 61 Fed. Reg. 60,536.

[35] 42 U.S.C. § 1436a(b)(2), as amended by Pub. L. No. 104-208, § 572.

[36] 24 C.F.R. § 5.512(a), as amended at 61 Fed. Reg. 60,539.

[37] 24 C.F.R. § 5.514(b), as amended at 61 Fed. Reg. 60,539.

[38] 24 C.F.R. § 5.520 (1995).

[39] 24 C.F.R. § 5.520 (1996).

[40] 42 U.S.C. § 1436a(b)(2), as amended by Pub. L. No. 104-208, § 572.

[41] 42 U.S.C. § 1436a(c)(1)(A), as amended by Pub. L. No. 104-208, § 573.

[42] 42 U.S.C. § 1436a(d)(6), as amended by Pub. L. No. 104-208, § 574(6).

[43] 24 C.F.R. § 5.520 (1995).

[44] 42 U.S.C.A. § 1436a(d)(5)(B) (West 1994).

[45] 24 C.F.R. § 5.514(f)(1) (1996).

[46] 42 U.S.C. § 1436a(d)(5)(B), as amended by Pub. L. No. 104-208, § 574.

[47] 24 C.F.R. § 5.514(f)(1), as amended at 61 Fed. Reg. 60,539.

minated or reduced while the hearing was in progress. HUD, in its implementing regulations, retained the bar against such actions.[49] In the Introductory comments, HUD explained:

> HUD believes that due process requires that assistance already being provided to a tenant may not be delayed, denied, reduced or terminated until completion of the fair hearing.[50]

HUD also retained the regulatory requirements that the fair hearing include written notice of the determination and the right to a hearing, to an impartial hearing officer, and the right to produce evidence of satisfactory immigration status and to receive timely written notice of the decision.[51]

Termination for Allowing Ineligible Persons to Reside in One's Home

The amendments added a new provision requiring PHAs and landlords to terminate assistance to any household if a member of the household has knowingly permitted an individual who is not eligible for assistance to reside in its home, unless the assistance had been prorated because of that individual.[52] That provision will raise a number of definitional questions, including:

- What does "knowingly permit" mean?
- What does "not being eligible for assistance" mean?
- What should happen if the PHA or landlord erroneously concluded that the person was eligible, or erroneously admitted the person without determining his or her eligible status?
- What does "to reside in" mean?
- During the termination period, the person continue to reside in the public or assisted housing if he or she pays the unsubsidized rent, and does he or she retain his or her place in the certificate or voucher programs?

HUD's implementing regulations[53] provide little in the way of answers to these questions. They do specify that the ineligible person must have resided in the home "on a permanent basis" in order for the family to be terminated. In all other respects, however, the regulations just parrot the statute. It would appear that this statutory penalty should not be imposed unless the family members (1) knew what the other individual's immigration status was, (2) knew that that status made the person ineligible for assistance, and (3) knew that the person was not eligible for continued assistance or deferred termination. In addition, no family should be held responsible for a landlord's mistakes. Merely allowing a person to visit as a guest would not be covered by the statute or the regulations.

Changes Affecting HUD Programs Arising Out of the Welfare Act's Other Provisions

In addition to the Immigration Act, Congress also passed the Welfare Act which made other changes regarding the eligibility of non-citizens for federal, state and local public and assisted housing programs. Those changes were described in a previous Bulletin article.[54] HUD's new regulations do not implement those other statutory changes. More importantly, they expressly direct PHAs and landlords not to implement the Welfare Act's provisions until implementing regulations are issued.[55]

As with the regulations initially issued by HUD on March 20, 1995, to implement Section 214, these new regulations and the statutory changes will have to be administered carefully to avoid injustice. It is important to secure copies of the regulations which are available in the *Federal Register*,[56] on the Internet[57] and on Handsnet,[58] and to study them. It would also be valuable to submit comments to HUD explaining how the regulations could be improved. Model comments will also be available on Handsnet. The comment deadline is January 28, 1997. Most importantly, as many PHAs as possible should be encouraged to opt out of Section 214 altogether. ■

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[48] *See* Pub. L. No. 104-208, § 574(6), striking 42 U.S.C.A. § 1436a(d)(6) (West 1994).

[49] 24 C.F.R. § 5.514(b)(2), as amended at 61 Fed. Reg. 60,539.

[50] 61 Fed. Reg. 60,537.

[51] 24 C.F.R. § 5.514(f) (1996).

[52] 42 U.S.C. § 1436a(d)(6), as amended by Pub. L. 104-208, § 574(b).

[53] 24 C.F.R. § 5.514(c)(1)(iii), as amended at 61 Fed. Reg. 60,539.

[54] *See New Welfare Law's Effect on Immigrants and Their Housing*, *supra* note 3.

[55] 61 Fed. Reg. 60,537.

[56] 61 Fed. Reg. 60,537-540 (Nov. 29, 1996).

[57] At http://www.access.gpo.gov/su_docs/aaces002.html.

[58] Handsnet folder: Legal Services/Substantive Law/Housing Forum.

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