

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Secretary****24 CFR Parts 5, 812, 912, 950, and 982****[Docket No. FR-3029-F-04]****RIN 2501-AB68****Definitions and Other General Requirements for Assistance Under the United States Housing Act of 1937****AGENCY:** Office of the Secretary.**ACTION:** Final rule.

SUMMARY: This rule consolidates and revises portions of 24 CFR parts 812 and 912 into a new subpart D of part 5, makes a conforming change to part 982, and revises part 950 to provide general requirements for the implementation of the United States Housing Act of 1937 that are in addition to the Act's explicit requirements.

EFFECTIVE DATE: March 14, 1996.**FOR FURTHER INFORMATION CONTACT:**

Issues related to part 812 as it relates to programs administered by the Assistant Secretary for Housing/Federal Housing Commissioner: Barbara D. Hunter, Director, Program Management Division, Office of Multifamily Asset Management and Disposition, Room 6182, 451 Seventh Street SW., Washington, DC 20410, Telephone (202) 708-4162. A telecommunications device for speech or hearing impaired persons (TDD) is available at (202) 708-4594. (These are not toll-free telephone numbers.)

Issues related to part 812 (as it relates to section 8 certificates, vouchers, and Mod Rehab), part 912 and programs administered by the Assistant Secretary for Public and Indian Housing: MaryAnn Russ, Deputy Assistant Secretary for Public and Assisted Housing Operations, Office of Public and Indian Housing, Room 4204, 451 Seventh Street SW., Washington, DC 20410, Telephone (202) 708-1380. A telecommunications device for speech or hearing impaired persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

Issues related to part 950 and Native American Housing Programs: Deborah Lalancette, Director, Housing Management Division, Office of Native American Programs, Department of Housing and Urban Development, room B-133, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-0088; (TDD) (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:**I. Statutory and Rulemaking Background**

Section 573(a) of the National Affordable Housing Act (NAHA) (approved November 28, 1990, Pub. L. 101-625) amended clause (D) of section 3(b)(3) of the United States Housing Act of 1937 (the 1937 Act), to include in the definition of "families," "any other single persons" who are not 62 years old or older, disabled, handicapped, displaced, or the remaining member of a tenant family. (Hereinafter, an individual in the category of "other single persons" will be referred to simply as a single person.) Before this NAHA amendment, the number of single persons eligible for assisted housing was restricted under the 1937 Act to a percentage of the units in the public housing agency's or Indian housing authority's jurisdiction.

However, the NAHA amendment added a new restriction on the admission of any single person to housing units assisted under the 1937 Act. "In no event", reads (in part) section 573(a)(1), "may any single person [who is not 62 years old or older, disabled, handicapped, displaced, or the remaining member of a tenant family] * * * be provided a housing unit assisted under this Act of 2 bedrooms or more."

A proposed rule was published in the Federal Register on April 10, 1992 (57 FR 12686) to add the NAHA section 573(a) requirements to the Department's regulations at 24 CFR parts 812 and 912. This rule also addressed section 5(b) of the Fair Housing Amendments Act of 1988 (FHAA) (Pub. L. 100-430, approved September 13, 1988), codified at 42 U.S.C. 3602(k), which states that, "the protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years."

Section 621 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992), also amended section 3(b)(3) of the 1937 Act, the same section amended by 573(a) of NAHA. The section 621 amendment is in the nature of a housekeeping revision that reorganizes the 1937 Act definition of "family," rather than an amendment that makes substantive changes in the definition. Section 621 redefines "elderly family" by taking out the references to disabled and handicapped persons, and combines the definitions of "disabled person" and "handicapped person" into a single definition of

"person with disabilities." The "any other single persons" amendments of NAHA section 573(a) are also a part of the HCDA 1992 section 621 revision of 3(b)(3), which slightly modifies section 573(a)'s language on the unit size limitation for single persons from "2 bedrooms or more" to read "2 or more bedrooms."

Section 301 of the Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Pub. L. 102-233, approved April 11, 1994) made a technical correction to the HCDA 1992 section 621 revision of section 3(b)(3) of the 1937 Act. Section 621 had changed the introductory language of the definition of "families" from, "The term 'families' includes * * * ." to, "The term 'families' means * * * ." Section 301 of MHPDRA amends the introductory language of 3(b)(3) of the 1937 Act back to the original "The term 'families' includes * * * ."

To resolve the issue of the basic eligibility of single persons, HUD published on July 26, 1993 (58 FR 39658) a final rule that eliminated the former statutory restrictions, which were included in parts 812 and 912, on the admission of single persons to public and assisted housing. The final rule published on July 26, 1993 also removed the restrictions at § 905.301(d), now § 950.301(d), concerning the admissibility of single persons to Indian housing. Although section 573(a) of NAHA did not apply to Indian housing, section 103(b) of HCDA 1992 expressly makes sections 573 and 574 of NAHA applicable to Indian Housing Authorities (IHAs). At the same time, HCDA 1992 section 626 expressly excludes IHAs from the coverage of the entire HCDA 1992 subtitle that includes the section 621 reorganization of the definition of family.

Two other regulatory amendments are relevant to the changes made in this final rule. On March 20, 1995 (60 FR 14855), parts 812 and 912 were amended by designating their existing provisions as subpart A, and adding a subpart B that dealt with restrictions on assistance to noncitizens. Definitions pertinent to these restrictions were also added. Finally, on April 10, 1995, at 60 FR 18186, the Indian Housing consolidated regulations were revised and moved from part 905 to part 950 of title 24.

II. Reinventing Parts 812 and 912

In keeping with the President's mandate to reinvent and reform regulations, subparts A of parts 812 and 912 are streamlined in this rule by combining them into a single, new subpart D of part 5 (subparts B and C are

reserved for other requirements). One of the methods by which the Department is streamlining and reducing its regulations is to eliminate repetitious regulatory language. The subpart A provisions of parts 812 and 912 are virtually identical, covering general requirements related to the 1937 Act, such as definitions and basic eligibility for assistance. These general requirements were originally set forth in separate CFR parts that were designated for offices that administered different forms of assistance under the 1937 Act. Such a practice, however, has resulted in the proliferation of repetitious, unnecessary regulations which the Department is now acting to curb.

Another method of reinventing regulations by the Department is to remove rule text that only repeats statutory language. Rules will only contain legally binding requirements that are in addition to those contained in a statute. Besides reducing the sheer bulk of rules, this practice will remove the problems that result when a rule that echoes the language of a statute becomes inconsistent with new statutory amendments. The period before such a rule is amended to conform to new statutory language is often one of confusion and uncertainty as to which law applies: the old provisions in the regulations or the new provisions in the statute. The new subpart D of part 5 promulgated here does not, therefore, repeat any statutory language, but only implements requirements that are in addition to those in the 1937 Act. However, for purposes of convenience and clarity, this final rule also includes definitions of the terms "family," "elderly family," "disabled family," and "near-elderly family," for which the elements must be assembled from different parts of section 3(b)(3) of the 1937 Act in order to arrive at a complete definition. For example, section 3(b)(3)(B) provides:

The term "families" includes families with children and, in the cases of elderly families, near-elderly families, and disabled families, means families whose heads (or their spouses), or whose sole members, are elderly, near-elderly, or persons with disabilities, respectively. The term includes, in the cases of elderly families, near-elderly families, and disabled families, 2 or more elderly persons, near-elderly persons, or persons with disabilities living together, and 1 or more persons determined under the regulations of the Secretary to be essential to their care or well-being.

Sufficient information is not given in section 3(b)(3)(B) to formulate a complete definition of "elderly family;" for a complete definition of this term, it is necessary to incorporate with the

3(b)(3)(B) information the definition of "elderly person" in section 3(b)(3)(D). The final rule makes this incorporation.

The April 10, 1992 proposed revisions to parts 812 and 912, which concern section 5(b) of the Fair Housing Amendments Act of 1988 (FHAA) and the treatment of single, pregnant women and individuals in the process of obtaining custody, are not included in this final rule. The statutory prohibition against housing discrimination towards such persons is sufficiently clear and enforceable. Since the percentage limit for occupancy by single persons (which could have been used to mask instances of discrimination against persons in these protected classes) has been eliminated, it is no longer necessary to distinguish persons in these FHAA-protected classes from other single persons.

The definitions that were added to parts 812 and 912 for purposes of the March 20, 1995 rule on restrictions on assistance to noncitizens are being moved to revised §§ 812.5(a) and 912.5(a). The provisions in subparts B of parts 812 and 912 will remain in effect until the publication of a single, streamlined noncitizens rule.

For purposes of uniformity, the definition of *applicant* is being added to the Indian Housing regulation at § 950.102. The provisions dealing with the preference over single persons and the housing assistance limitation for single persons are being added to § 950.301 of the Indian Housing regulation, with a conforming change made to § 950.303(b)(1)(ii).

The combined statutory and regulatory definitions and general requirements that apply with respect to public housing and Section 8 housing assistance under the 1937 Act have been placed in an appendix to this final rule. The final rule will be codified in the Code of Federal Regulations; the appendix will not be codified. However, the appendix is available to the public as a single document which provides a unified overview of these general requirements under the 1937 Act.

III. Response to Public Comments

A total of 182 comments were received on the proposed rule from 39 Public Housing Authorities, 103 elderly tenants, 30 managers, 6 interest groups, 2 legal assistant organizations, and 2 individuals. The comments and HUD's responses are addressed in the discussion below.

Concerns Over Removing Eligibility Restrictions on Single Persons

Numerous comments were received on the scope of the proposed rule, with

particular emphasis on the amendment to the definition of "family" to include "any other single person." The comments took the form of suggested changes to narrow the scope or impose limits on single persons who could be admitted, general observations about the impact of this rule, inquiries about the application of the rule to specific programs and situations, and requests for clarification.

Over two thirds of the comments received on the proposed rule were directed at the mix of elderly people with young single people that the commenters believed will result from the implementation of this rule. They expressed concern about the occupancy issues that arise when elderly and non-elderly persons live in the same housing. Concerns were also raised about the eligibility of single persons as a group for housing or assistance under the 1937 Act.

HUD Response

These comments from elderly residents, owners of elderly projects, and management companies appear to have been submitted under the belief that the proposed rule would have superseded the basic admission requirements for a particular project. It is important to note that the change in the status of single persons is the result of legislative amendments to the 1937 Act. Even so, the inclusion of single persons in the definition of "family" without a percent occupancy limitation, as was previously the case, does not automatically constitute admission into every form of assisted housing. The single person, as well as any other family, must still meet all of the eligibility requirements for the particular project and for the type of housing assistance which is sought. This has always been the case, and the rule, at § 5.403(a), now expressly states that, "An applicant must meet all of the eligibility requirements of the housing assistance for which an application is made in order to obtain the housing assistance."

One of the basic eligibility requirements under the 1937 Act is that the applicant must be a "family." However, the definition of "family" in the 1937 Act is broadly expressed as, "The term 'families' *includes* * * *" (emphasis added) and is not exclusive or exhaustive. Given this broad statutory definition, HUD has historically permitted PHAs and housing owners the flexibility to make the determination of "family," in accordance with their local laws and policies, including state and local fair housing laws, as long as such a determination does not conflict with

the 1937 Act or the Federal Fair Housing Act.

Preference for Admission

Seven commenters sought further explanation of the practical application of extending a preference for housing units to elderly, disabled, handicapped and displaced persons over single persons in §§ 812.3(a) and 912.3(a) of the proposed rule (Note: the use of the term "handicapped" is eliminated by HCDA 1992 sec. 621). The central issue presented by these commenters was whether elderly, disabled, handicapped and displaced families *always* have a priority in the admission process over single persons, regardless of the Federal preferences. One commenter asked if the proposed rule gave a "Federal preference" or simply a priority. A couple of commenters asked whether a single person with a Federal preference would get a certificate or voucher first before an elderly, handicapped, disabled or displaced person without a Federal preference, and other commenters posed that question in the converse. Still more commenters, objecting to what they considered the unanticipated consequences of the proposed rule, assumed both that proposed §§ 812.3(a) and 912.3(a) did not give a "Federal preference" and that in practice the single person would receive the certificate or voucher first, in spite of the fact that the rule is careful to indicate the elderly, disabled, and displaced have a priority.

HUD Response

The basis for treating single persons differently from elderly, disabled, or displaced persons is that the statute requires it. This requirement does not, in any way, violate applicable nondiscrimination provisions.

The final rule clarifies that a PHA or private owner must give preference to applicants who are elderly, disabled, or displaced families consisting of no more than two persons over applicants who are single persons, regardless of the applicant's Federal or local preferences. Admitting these elderly, disabled, and displaced families that do not have a Federal Preference over a single person with a Federal Preference does not draw on the local preference limit (10%/30%/50%). The 1937 Act provides for both the Federal preference and the preference over single persons, but does not prescribe the order of these statutory preferences. HUD has determined that the singles preference should govern over the Federal preference scheme.

This final rule further clarifies that elderly, disabled, and displaced one- or two-person family applicants have a

preference over single persons who are not elderly, disabled, or displaced for all types of assisted housing under the 1937 Act, including general occupancy public and Indian housing and Section 8, not just for public and Indian housing and privately owned housing for the elderly.

Unit Size Limitation

Nine commenters addressed the unit size limitation for single persons who are not elderly, disabled, displaced or the remaining member of a tenant family in §§ 812.3(b), 882.209(i)(1), 887.253(c), and 912.3(b) of the proposed rule. The consensus of these commenters was that the provision stating that "any Single Person may not be provided a unit with two or more bedrooms" was unnecessarily restrictive.

PHAs objected to the different treatment between single persons and other persons under the same programs, citing a variety of reasons, such as: How this restriction penalizes people for being single; the absence of a rational justification for this restriction when the gross rent for a larger unit is reasonable and less than the 1 bedroom fair market rent; the fact that elderly, handicapped, disabled and displaced people are not subject to the same restriction; and the hardships to management and owners from not being able to offer the next bedroom size to single persons on the list in light of the high vacancy rates in some parts of the country.

Another PHA felt that the restriction goes too far because it would extend to a single person with special health needs who requires a 2 bedroom unit for purposes of accommodating additional equipment or other needs. In the opinion of this commenter, the NAHA section 573(a) language, "In no event may any single person under clause (D) be provided a housing unit assisted under this Act of 2 bedrooms or more", is not intended to cover single persons with special health needs.

HUD response

Sections 573(a) and 621 both agree that, "In no event may any single person * * * be provided a housing unit assisted under this Act of 2 or more bedrooms." The rule implements this provision for purposes of the rental certificate and voucher programs as a limitation on family unit size, and therefore on the amount of subsidy paid on behalf of the single person. The rule does not prohibit a single person from residing in a larger unit (2 or more bedrooms) with the amount of subsidy for a zero or one-bedroom family unit size.

It is likely that an individual who needed a larger unit to accommodate medical equipment because of a health need would qualify as a "person with disabilities," not as a "single person," and so could be provided a larger unit.

Other Matters

Regulatory Planning and Review

This rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. This rule merely makes certain statutorily required changes in definitions that will not have substantial, direct effects on States, on their political subdivisions, or on their relationships with the Federal government, or on the distribution of power and responsibilities between them and other levels of government.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have a potentially significant negative impact on family formation, maintenance, and general well-being, and thus, is not subject to review under the Order. The rule only implements statutorily required changes in the definition of "family" under the United States Housing Act of 1937.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant

economic impact on a substantial number of small entities. The rule is only an implementation of statutory requirements that adjust the way the term "family" is defined.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Grant programs—housing and community development, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 812

Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 912

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 950

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 24 CFR parts 5, 812, 912, 950, and 982 are amended, as set forth below:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

1. Subparts B and C of part 5 are reserved.

2. A new subpart D to part 5 is added to read as follows:

Subpart D—Definitions and Other General Requirements for Assistance Under the United States Housing Act of 1937

Sec.

5.400 Applicability.

5.403 Definitions.

5.405 Basic eligibility; preference over single persons; and housing assistance limitation for single persons.

Authority: 42 U.S.C. 1437a and 3535(d).

§ 5.400 Applicability.

This part applies to public housing (other than Indian housing under 24 CFR part 950) and Section 8 programs.

§ 5.403 Definitions.

(a) The terms *displaced person*, *elderly person*, *near-elderly person*, and *person with disabilities* are defined at paragraph 3 of section 3(b) of the 1937 Act (42 U.S.C. 1437a(b)(3)).

(b) In addition to the terms listed in paragraph (a) of this section, the following definitions apply:

Applicant means a person or a family that has applied for housing assistance.

Disabled family means a family whose head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

Displaced family means a family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

Elderly family means a family whose head, spouse, or sole member is a person who is at least 62 years of age; or two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

Family includes but is not limited to:

(1) A family with or without children (the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size);

(2) An elderly family;

(3) A near-elderly family;

(4) A disabled family;

(5) A displaced family;

(6) The remaining member of a tenant family; and

(7) A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

Live-in aide means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

(1) Is determined to be essential to the care and well-being of the persons;

(2) Is not obligated for the support of the persons; and

(3) Would not be living in the unit except to provide the necessary supportive services.

Near-elderly family means a family whose head, spouse, or sole member is

a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

§ 5.405 Basic eligibility; preference over single persons; and housing assistance limitation for single persons.

(a) *Basic eligibility*. An applicant must meet all of the eligibility requirements of the housing assistance for which an application is made in order to obtain the housing assistance. At a minimum, the applicant must be a family, and must be income-eligible. Eligible applicants include single persons who are not elderly persons, or displaced persons, or persons with disabilities.

(b) *Preference over single persons*. An applicant that is a one- or two-person elderly, disabled or displaced family, must be given a preference over an applicant that is a single person who is not an elderly or displaced person, or a person with disabilities, regardless of the applicant's Federal or local preferences.

(c) *Housing assistance limitation for single persons*. A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family may not be provided:

(1) For public housing and other project-based assistance, a housing unit with two or more bedrooms; or

(2) For tenant-based assistance, housing assistance for which the family unit size exceeds the one-bedroom level.

(d) This section shall not apply to the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals set forth at 24 CFR part 882, subpart H.

PART 812—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

3. The authority citation for part 812 continues to read as follows:

Authority: 42 U.S.C. 1436a, 1437a, and 3535(d).

Subpart A—[Removed and Reserved]

4. Subpart A of part 812 is removed and reserved.

5. In § 812.5, paragraphs (a) and (b) are redesignated as paragraphs (b) and (c), respectively, and a new paragraph (a) is added, to read as follows:

§ 812.5 General.

(a) *Definitions*. In addition to the definitions that appear at paragraph 3 of section 3(b) of the United States

Housing Act of 1937 (the 1937 Act) (42 U.S.C. 1437a(b)(3)) and part 5 of this title, the following definitions apply to this subpart:

Child. A member of the family, other than the family head or spouse, who is under 18 years of age.

Citizen. A citizen or national of the United States.

Evidence of citizenship or eligible immigration status. The documents which must be submitted to evidence citizenship or eligible immigration status. (See § 812.6(b).)

HA. A housing authority—both a public housing agency and an Indian housing authority.

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

INS. The U.S. Immigration and Naturalization Service.

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen. A person who is neither a citizen nor national of the United States.

Responsible entity. The person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status:

(1) For the Section 8 Rental Certificate, the Section 8 Rental Housing Voucher, and the Section 8 Moderate Rehabilitation programs, the housing authority (HA) administering the program under an ACC with HUD.

(2) For all other Section 8 programs, the owner.

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214.

Section 214 covered programs. Programs to which the restrictions imposed by Section 214 apply are programs that make available financial assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437–1440), Section 235 or Section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z–1) and Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

* * * * *

PART 912—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

6. The authority citation for part 912 continues to read as follows:

Authority: 42 U.S.C. 1436a, 1437a, and 3535(d).

Subpart A—[Removed and Reserved]

7. Subpart A of part 912 is removed and reserved.

8. In § 912.5, paragraphs (a) and (b) are redesignated as paragraphs (b) and (c), respectively, and a new paragraph (a) is added, to read as follows:

§ 912.5 General.

(a) *Definitions.* In addition to the definitions that appear at paragraph 3 of section 3(b) of the United States Housing Act of 1937 (the 1937 Act) (42 U.S.C. 1437a(b)(3)) and part 5 of this title, the following definitions apply to this subpart:

Child. A member of the family, other than the family head or a spouse, who is under 18 years of age.

Citizen. A citizen or national of the United States. *Evidence of citizenship or eligible immigration status.* The documents which must be submitted to evidence citizenship or eligible immigration status (see § 912.6(b)).

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen. A person who is neither a citizen nor national of the United States.

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214.

Section 214 covered programs. Programs to which the restrictions imposed by Section 214 apply are programs that make available financial assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437–1440), Section 235 or Section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z–1) and Section 101 of the

Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

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PART 950—INDIAN HOUSING PROGRAMS

9. The authority citation for part 950 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa–1437ee, and 3535(d).

10. In § 950.102, the definition of *Applicant* is added in alphabetical order, to read as follows:

§ 950.102 Definitions.

* * * * *

Applicant means a person or a family that has applied for admission to a housing program under this part 950.

* * * * *

11. In § 950.301, paragraph (d) is revised, and a new paragraph (g) is added, to read as follows:

§ 950.301 Admission policies.

* * * * *

(d) *Preference over single persons.* An applicant that is a one or two person elderly, disabled or displaced family, must be given a preference over an applicant that is a single person who is not an elderly or displaced person, or a person with disabilities, regardless of the applicant's Federal or local preferences.

* * * * *

(g) *Housing assistance limitation for single persons.* A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family may not be provided a housing unit with two or more bedrooms.

12. In § 950.303, paragraph (b)(1)(ii) is revised to read as follows:

§ 950.303 Selection preferences.

* * * * *

(b) * * *

(1) * * *

(ii) *Singles preference.* See § 950.301(d).

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PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

13. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

14. In § 982.207, paragraph (d) is revised, to read as follows:

§ 982.207 Waiting list: Use of preferences.

* * * * *

(d) *Primary preference.* An HA must give preference to an applicant that is a one or two person elderly, disabled or displaced family over an applicant that is a single person who is not elderly, disabled, or displaced, regardless of the applicant's Federal or local preferences.

* * * * *

Dated: December 15, 1995.

Henry G. Cisneros,
Secretary.

[Note: The following appendix will not appear in the Code of Federal Regulations.]

Appendix—Definitions and Other General Requirements for Assistance Under the United States Housing Act of 1937

Section

1. Purpose.
2. Definitions
3. Eligibility; preferences; and unit size limitations.

1. Purpose.

The purpose of this guide is to present, in a single document, the statutory and regulatory definitions and other general requirements that apply to public and Indian housing and section 8 assistance under the United States Housing Act of 1937 (the 1937 Act). Although it presents the regulatory and statutory requirements in a combined format, this guide is a secondary source for these requirements. The Code of Federal Regulations (CFR), at 24 CFR, is the primary, governing source for regulatory requirements, and the 1937 Act is the primary, governing source for statutory requirements.

2. Definitions

The following definitions apply with respect to public housing and Section 8 housing assistance under the 1937 Act:

Applicant means a person or a family that has applied for housing assistance.

Disabled family means a family whose head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

Displaced family means a family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally

recognized pursuant to Federal disaster relief laws.

Displaced person means a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

Elderly family means a family whose head, spouse, or sole member is a person who is at least 62 years of age; or two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

Elderly person means a person who is at least 62 years of age.

Family includes but is not limited to:

- (a) A family with or without children (the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size);
- (b) An elderly family;
- (c) A near-elderly family;
- (d) A disabled family;
- (e) A displaced family;
- (f) The remaining member of a tenant family; and
- (g) A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

Live-in aide means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

- (a) Is determined to be essential to the care and well-being of the persons;
- (b) Is not obligated for the support of the persons; and
- (c) Would not be living in the unit except to provide the necessary supportive services.

Near-elderly family means a family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

Near-elderly person means a person who is at least 50 years of age but below the age of 62.

Person with disabilities includes the term disabled person and means a person who:

- (a) Has a disability as defined in section 223 of the Social Security Act;

(b) Has a physical, mental, or emotional impairment that:

(1) Is expected to be of long-continued and indefinite duration;

(2) Substantially impedes his or her ability to live independently; and

(3) Is of such a nature that such ability could be improved by more suitable housing conditions; or

(c) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5)).

The term "person with disabilities" does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome.

3. *Basic eligibility; preference over single persons; and housing assistance limitation for single persons.*

(a) *Basic eligibility.* An applicant must meet all of the eligibility requirements of the housing assistance for which an application is made in order to obtain the housing assistance. At a minimum, the applicant must be a family, and must be income-eligible. Eligible applicants include single persons who are not elderly persons, or displaced persons, or persons with disabilities.

(b) *Preference over single persons.* An applicant that is a one or two person elderly, disabled or displaced family, must be given a preference over an applicant that is a single person who is not an elderly or displaced person, or a person with disabilities, regardless of the applicant's Federal or local preferences.

(c) *Housing assistance limitation for single persons.* A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family may not be provided:

(1) For public housing and other project-based assistance, a housing unit with two or more bedrooms, or

(2) For tenant-based assistance, housing assistance for which the family unit size exceeds the one bedroom level.

(d) This section shall not apply to the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals set forth at 24 CFR part 882, subpart H.

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