

Office of the Secretary, HUD

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(ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:

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

(B) Substantially impedes his or her ability to live independently, and

(C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or

(iii) Has a developmental disability as defined in 42 U.S.C. 6001.

(2) 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) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and

(4) Means “individual with handicaps”, as defined in § 8.3 of this title, for purposes of reasonable accommodation and program accessibility for persons with disabilities.

[61 FR 5665, Feb. 13, 1996, as amended at 63 FR 23853, Apr. 30, 1998; 65 FR 16715, Mar. 29, 2000; 77 FR 5674, Feb. 3, 2012]

EFFECTIVE DATE NOTE: At 88 FR 9655, Feb. 14, 2023, § 5.403 was amended by revising the definition of “Family”, effective Jan. 1, 2024. For the convenience of the user, the revised text is set forth as follows:

§ 5.403 Definitions.

* * * * *

Family includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

(1) A single person, who may be:

(i) An elderly person, displaced person, disabled person, near-elderly person, or any other single person;

(ii) An otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age and who has left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)), and is homeless or is at risk of becoming homeless at age 16 or older; or

(2) A group of persons residing together, and such group includes, but is not limited to:

(i) A family with or without children (a child who is temporarily away from the

home because of placement in foster care is considered a member of the family);

(ii) An elderly family;

(iii) A near-elderly family;

(iv) A disabled family;

(v) A displaced family; and

(vi) The remaining member of a tenant family.

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Subpart E—Restrictions on Assistance to Noncitizens

AUTHORITY: 42 U.S.C. 1436a and 3535(d).

§ 5.500 Applicability.

(a) *Covered programs/assistance.* This subpart E implements Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 prohibits HUD from making financial assistance available to persons who are not in eligible status with respect to citizenship or non-citizen immigration status. This subpart E is applicable to financial assistance provided under:

(1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);

(2) Section 236 of the National Housing Act (12 U.S.C. 1715z–1) (tenants paying below market rent only) (the Section 236 Program);

(3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program); and

(4) The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) which covers:

(i) HUD’s Public Housing Programs;

(ii) The Section 8 Housing Assistance Programs; and

(iii) The Housing Development Grant Programs (with respect to low income units only).

(b) *Covered individuals and entities—(1) Covered individuals/persons and families.* The provisions of this subpart E apply to both applicants for assistance and persons already receiving assistance covered under this subpart E.

(2) *Covered entities.* The provisions of this subpart E apply to Public Housing Agencies (PHAs), project (or housing)

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owners, and mortgagees under the Section 235 Program. The term “responsible entity” is used in this subpart E to refer collectively to these entities, and is further defined in § 5.504.

§ 5.502 Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that this subpart E requires the responsible entity to provide to an individual, or requires the responsible entity to obtain the signature of an individual, the responsible entity, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD’s regulations for requirements concerning communications with persons with disabilities.)

§ 5.504 Definitions.

(a) The definitions 1937 Act, HUD, Public Housing Agency (PHA), and Section 8 are defined in subpart A of this part.

(b) As used in this subpart E:

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

Citizen means a citizen or national of the United States.

Evidence of citizenship or eligible status means the documents which must be submitted to evidence citizenship or eligible immigration status. (See § 5.508(b).)

Family has the same meaning as provided in the program regulations of the relevant Section 214 covered program.

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

Housing covered programs means the following programs administered by the Assistant Secretary for Housing:

(1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);

(2) Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program); and

(3) Section 101 of the Housing and Urban Development Act of 1965 (12

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U.S.C. 1701s) (the Rent Supplement Program).

INS means the U.S. Immigration and Naturalization Service.

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

National means 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 means a person who is neither a citizen nor national of the United States.

Project owner means the person or entity that owns the housing project containing the assisted dwelling unit.

Public Housing covered programs means the public housing programs administered by the Assistant Secretary for Public and Indian Housing under title I of the 1937 Act. This definition does not encompass HUD’s Indian Housing programs administered under title II of the 1937 Act. Further, this term does not include those programs providing assistance under section 8 of the 1937 Act. (See definition of “Section 8 Covered Programs” in this section.)

Responsible entity means the person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status. The entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status under the various covered programs is as follows:

(1) For the Section 235 Program, the mortgagee.

(2) For Public Housing, the Section 8 Rental Certificate, the Section 8 Rental Voucher, and the Section 8 Moderate Rehabilitation programs, the PHA administering the program under an ACC with HUD.

(3) For all other Section 8 programs, the Section 236 Program, and the Rent Supplement Program, the owner.

Section 8 covered programs means all HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8-assisted housing for