

Immigrant Access to Federally Assisted Housing



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MARCH 19, 2010

HOUSING JUSTICE

National Housing Law Project

www.nhlp.org

Goals



- Provide a General Overview of Immigrants' Access to Federally Assisted Housing
- Identify and discuss some of the issues specific to survivors of domestic violence, dating violence, and stalking.

Immigrant Survivors



VAWA Self-Petitioners; U Visa & T Visa Holders



- DV victims who are married to their abusers can legalize their immigration status independent of their abusers. This is referred to as a [VAWA self-petition](#).
- [U Visas](#) are available to victims of certain crimes who can provide certification from an authority that the victim has been helpful or is likely to be helpful in the investigation or prosecution of the crime
- [T Visas](#) allow certain trafficking victims to remain in the U.S. if they are willing to assist with the investigation and prosecution of trafficking cases

Steps to Identifying Who Can Access Federally Assisted Housing



1. Identify the type of housing
2. Identify the applicants' status
3. Determine if the applicant family is eligible for that particular unit, or what other restrictions apply

Restrictions



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Categories of Restrictions



1. Housing covered by Section 214 of the Housing and Community Development Act
2. Rural Development Restrictions
3. No Restrictions

Section 214 Applies to:



1. Public Housing
2. Housing Choice Voucher Program
3. Section 8 Project-Based Housing
4. Section 236 Housing
5. Section 235 Homeownership Housing
6. Housing Development Grants (HoDAG)
7. Section 23 Leased Housing Assistance Program

Restricted Rural Development Programs



- Section 514
- 516 Farm Labor Housing programs
- Section 502 home loan program
- Section 504 rehabilitation loan and grant program
- RD Voucher Program

Unrestricted Programs



- Low Income Housing Tax Credit (LIHTC)
- Section 202 Housing for the Elderly
- Section 811 Housing for the Disabled
- Section 221 (d)(3)
- Indian Housing
- CDBG
- HOME
- HOPWA
- McKinney Act
- Rental Rehabilitation
- HOPE 2
- Section 515 Rural Rental Housing Program
- Rural Housing Preservation Grants,
- Section 538 Multi-family Loan Guarantees

Who Can Live in Restricted Housing?



Section 214 Eligible Categories



- U.S. Citizens
- Lawful Permanent Residents
- Refugees and Asylees
- Parolees
- Persons granted withholding of removal/deportation
- Persons granted amnesty under the Immigration Reform and Control Act of 1986
- Qualified victims of trafficking

T Visa Holders



- While not explicitly listed among Section 214's categories of eligible immigrants, qualified victims of trafficking, including T Visa holders, are eligible for HUD-subsidized housing.
- This is because persons who have made a bona fide application for a T Visa are eligible for federal benefits (including subsidized housing) to the same extent as refugees, who are an eligible 214 category.

U Visa Holders



- U Visa holders are not among the categories of eligible immigrants listed in Section 214 of the Housing & Community Development Act.
 - However, advocates should examine whether a U Visa holder fits into any of the other categories listed in Section 214, such as victims of trafficking.

VAWA Self-Petitioners



- VAWA self-petitioners were made eligible to receive “federal public benefits” as part of the Immigration Reform & Immigrant Responsibility Act of 1996.
- However, VAWA self-petitioners are not among the categories of eligible immigrants listed in Section 214 of the Housing & Community Development Act.

VAWA Self-Petitioners (cont'd)



- In 2003, Congress directed HUD and DOJ to interpret housing statutes consistently with immigration and public benefits statutes so that self-petitioners would be eligible for federally assisted housing.
- HUD has not yet clarified self-petitioners' eligibility for housing, and its position has been that self-petitioners are not eligible for most HUD programs
- As a result, many PHAs deny self-petitioners access to public and Sec 8 housing
- What should Ms. Smith do?

The Smith Family



- Jane Smith lives with her two children and her husband. She recently left her partner, who had abused her. She had entered the United States on a spousal visa, but it has since lapsed. She has applied for approval of her VAWA self-petition. Both of her children are U.S. Citizens

Mixed Status Families



- If at least ONE member of the household has eligible status, then the family can receive **prorated** assistance.
- A minor can be the eligible household member
- The non-eligible family member certifies that they do not wish to contend eligibility

Proration Formula



- **Step 1.** Determine the amount of housing assistance the household would receive if all household members were eligible, using the income paid to all household members regardless of their immigration status.
- **Step 2.** Divide the number of household members who have established eligible immigration status by the total number of household members. The fraction looks like this:

$$\frac{\text{Eligible Household Members}}{\text{Total Number of Household Members}}$$

- **Step 3.** Multiply the amount in Step 1 by the fraction in Step 2. This amount is the "prorated housing assistance." The tenant household pays the rest of the contract rent plus utilities.

Proration Example: the Smith Family



1. For a 2 Bedroom Voucher, a PHA pays \$1300 in rental subsidy to a private landlord.
2. 2 eligible household members
3 total household members
3. Subsidy = $(2/3) \times \$1300 =$
\$867
4. If the total rent for the unit is \$1300, then the family will have to pay: $\$1300 - \$867 =$
\$433

Other Eligibility



- State and local governments may have supplemental subsidies without immigration status restrictions that a family may use to obtain housing, or to fill the gap between prorated subsidy and the actual rental costs.

Challenging Denials of HUD-Assisted Housing



- **If an applicant's claimed immigration status is not verified through the USCIS, then:**
 - Applicant must be notified of right to appeal the lack of verification.
 - Applicant can pursue an appeal through either the PHA or owner, or through USCIS.
 - Applicant has right to hearing before an impartial individual.
 - Within 14 days of hearing, applicant must be given written decision.

Documentation & Verification

Section B Housing Choice Voucher Program		Complete and return to one of the regional agencies listed on the reverse of this form	<i>For agency use only: Date/Time Stamp Control Number</i>
Pre-Application for housing assistance			

Please print neatly in ink. All fields are required. Submit this form only. Incomplete, photocopied, e-mailed or faxed applications will not be accepted. If you are already on our Section B waiting list your record will be updated using the information that you provide below. Due to the volume of applications received, we will not verify the receipt of mailed applications. We cannot be responsible for material that is illegible or missing as a result of transmitting by fax or e-mail or lost/delayed through the mail.

IMPORTANT!

One-third of all applications are dropped from the waiting list due to unreported address changes. Do not let this happen to you. Report any change of address in writing to one of the regional agencies listed on the reverse of this form.

Head of Household Information

Social Security Number		Phone (include area code)		
First Name	Middle Name	Last Name		
Address		City/Town	State	Zip code
Shelter Name	Shelter Address	City/Town	State	Zip code

HUD SSN Requirements



- SSNs have been the subject of recent HUD rules. See 24 C.F.R. part 5, Subpart B
- For most HUD programs, every member of an applicant household **MUST** disclose their SSNs to be eligible for assistance. This requirement applies to:
 - Public Housing; any program under Section 8 of the Housing Act of 1937; Supportive Housing for the Elderly; Supportive Housing for Persons with Disabilities; any program under 24 C.F.R. parts 215, 221, 236, or 290; and homeowner assistance

HUD SSN requirements, cont'd



- **To verify SSNs, an applicant must produce:**
 - An original SSN card;
 - An original SSA-issued document containing the applicant's name and SSN; or
 - An original document issued by a federal, state, or local gov't agency containing the applicant's name and SSN
- **The housing provider transmits the applicant's name, SSN, and date of birth to HUD.**
- **HUD validates the SSN against the SSA's database.**

HUD SSN Requirements, cont'd



- The SSN disclosure requirements do **NOT** apply to applicants who do not contend eligible immigration status
 - 24 C.F.R. § 5.216; HUD Notice PIH 10-3 (Jan. 20, 2010)
- A housing provider may **NOT** deny assistance to mixed families due to nondisclosure of an SSN by an individual who does not contend eligible status
 - HUD Notice PIH 10-3 (Jan. 20, 2010)

Rural Development SSN Requirements



- Rural Development (RD) does not have authority to collect SSNs from applicants to its rental housing
- However, RD regulations insist that landlords collect SSNs from their residents.
- Still, RD Form 3560-8 states that RD will NOT deny eligibility to applicants who refuse to disclose SSNs
- As a result, advocacy will likely be needed in cases where RD landlords demand SSNs from applicants

Does a Housing Provider Report Status to ICE?



- USCIS cannot use documents checked against the SAVE database to mount any enforcement investigation
- **PHAs** that “know” that someone contending eligibility for Section 8 or Public Housing programs is in the country illegally must report that information to USCIS on a quarterly basis

Defining “Know”



- **“KNOW” has a very narrow definition**
 - A finding of fact or conclusion of law made by the PHA as part of a formal determination that is subject to administrative review on the applicant’s claim, AND the finding is supported by a determination by USCIS or the Executive Office of Immigration Review (EOIR), such as a Final Order of Deportation
- **Reporting is *not triggered by*:**
 - An oral or written admission by the immigrant;
 - A worker’s suspicion, assumption, or firm conviction about the person’s immigration status;
 - A response from USCIS to a SAVE inquiry that fails to confirm an applicant’s immigration status or that shows an immigrant status that would make the applicant ineligible; or
 - A formal finding that the person is ineligible for a benefit.

Looking Forward



- **Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) – Will it be applied to HUD programs? RD Programs?**
- **When will VAWA Self-petitioners be considered eligible immigrants under Section 214?**

For Technical Assistance, Training, and Resources



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This project was supported by Grant No. 2008-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

HOUSING JUSTICE

National Housing Law Project

Newsletter January 2010

Overview: Immigration Status and Federally Assisted Housing

This article provides an overview of the immigration restrictions that apply to federally assisted housing. The article first discusses which federal housing programs have immigration restrictions. For those programs that have immigration restrictions, the article explains which categories of immigrants are considered eligible.

What Type of Housing Is at Issue?

The first step to determining which immigration restrictions apply to federally assisted housing is to find out the type or types of funding in the building. Federal programs include housing funded by the Department of Housing and Urban Development (HUD), housing in rural areas funded by Rural Development (RD), and housing funded by the Low-Income Housing Tax Credit program (LIHTC). Some buildings have more than one source of funding, and different funding may apply to different units in the same building. Not all affordable housing has immigration restrictions.

To know which rules apply, you have to know what type or types of funding are in each housing unit. NHLP can assist advocates in determining what type of funding is at issue. Once you know the type of housing, you need to determine if it is covered by any immigrant restrictions.

HUD Housing Covered by Section 214

One major set of immigrant restrictions applies to certain housing funded by HUD. They are re-

ferred to as Section 214 restrictions, because they were adopted as Section 214 of the Housing and Community Development Act of 1980, 42 U.S.C. § 1436a. Section 214 generally applies to those HUD programs that provide financial assistance to or on behalf of tenants or homebuyers pursuant to the United States Housing Act of 1937. The following HUD programs are restricted by Section 214:

- Public Housing
- Housing Choice Vouchers
- Section 8 Project-Based housing
- Section 236 Housing
- Section 235 Homeownership housing
- Housing Development Grants
- Section 23 Leased Housing Assistance Program

HUD Housing Not Covered by Section 214

HUD programs that are *not* subject to the Section 214 immigrant restrictions include, but are not limited to, Indian Housing, Community Development Block Grant, HOME, Housing Opportunities for Persons with AIDS, Section 202, Section 811, Section 221(d)(3), Section 221(d)(5), McKinney-Vento Act, Rental Rehabilitation, and HOPE 2. However, if housing funded under these programs also has Section 8 or funds from another covered program, the units assisted by these programs are covered by Section 214.

RD-Funded Housing

Some, but not all, housing funded by RD is

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Stories Sought Regarding Battered Immigrants' Access to Housing

Statistic of the Month

Update on SSN Requirements

(Continued from page 1)

covered by immigrant restrictions. Those restrictions come from two main sources: RD statutory and regulatory restrictions and application of the HUD Section 214 requirements to certain RD programs. Only the following RHS programs are restricted: Section 514 and 516 Farm Labor Housing programs, Section 502 home loan program, and Section 504 rehabilitation loan and grant program. The RD Voucher Program is also covered by the restrictions. There are no current restrictions on the Section 515 Rural Rental Housing Program, the Rural Housing Preservation Grants, or the Section 538 Multi-family Loan Guarantees.

Low-Income Housing Tax Credit Program

Under the federal Low Income Housing Tax Credit (LIHTC) program, private investors are allowed to take a credit against their federal income taxes because they have invested money in the building. None of the tax credit units have immigrant restrictions. Note, however, that LIHTC projects frequently house residents with Housing Choice Vouchers and that some LIHTC projects have project-based Section 8. LIHTC units receiving any form of Section 8 or voucher assistance are subject to the Section 214 restrictions.

Eligible Immigrants Under Section 214

Citizens and immigrants are eligible for HUD-funded housing covered by Section 214 if they are residents of the United States and fall within one of the categories set out in 42 U.S.C. § 1436a and 24 C.F.R. § 5.506. In general, the following persons are qualified for admission:

- U.S. citizens.
- Persons lawfully admitted for permanent residence.
- Persons granted refugee or asylum status because of persecution, or fear of persecution, on account of race, nationality, religion, political opinion, or membership in a particular social group.

(Continued on page 3)

Stories Sought Regarding Battered Immigrants' Access to Housing

The Women's Rights Division of Human Rights Watch (HRW) and Legal Momentum are working to identify immigrant victims of domestic violence and sexual assault who have faced barriers to accessing federal housing programs. HRW is beginning research for a report on this topic and is currently seeking information and referrals to immigrant women who may be willing to speak about their experiences (their identities would be protected in the report).

HRW aims to document the way in which women's lives have been affected by barriers to federally assisted housing created by administrative policy gaps and statutory exclusions. In particular, HRW will examine HUD's failure to issue guidance to public housing agencies (PHAs) recognizing the housing eligibility of women seeking immigration relief under VAWA. Lack of access to federally assisted housing is one of the largest obstacles standing between immigrant women and their families and a life free from violence. HRW wants to examine how immigrant women who have survived domestic violence or sexual assault are affected by inability to access housing.

HRW would appreciate referrals to women who have obtained immigration relief either under VAWA or through the U visa and who have encountered impediments to accessing federally assisted housing. This could include women who have been excluded from housing as well as those in mixed-status families who are seeking to stay in federally assisted housing and have their subsidy prorated. HRW has funding to travel for most of the interviews and can arrange for translation. HRW will protect the identity of the women interviewed by using pseudonyms and withholding details as necessary. All interviews will be conducted by researchers with training in interviewing survivors of gender-based violence.

HRW would also appreciate hearing from those who have encountered this issue while working on behalf of clients.

To assist in this project, contact Meghan Rhoad at rhoadm@hrw.org (212) 216-1224. ■

(Continued from page 2)

- Persons granted “parole status” by the U.S. Attorney General for emergent or public interest reasons. Parole is a procedure which allows a noncitizen to come into the United States without being granted official admission status.
- Persons granted withholding of deportation or removal. These persons are lawfully present because the U.S. Attorney General has withheld deportation/removal because of a threat to life or freedom in their country of origin.
- Persons granted temporary residence under the general amnesty provisions of the Immigration Reform and Control Act of 1986 based on having resided in the U.S. since before January 1, 1982.
- Persons qualifying as victims of trafficking because they have been subject to a severe form of trafficking in persons such as sex trafficking, involuntary servitude, debt bondage, peonage, or slavery.

Ineligible Immigrants Under Section 214

Section 214 prohibits housing assistance to visitors, tourists, diplomats, and students, as well as any immigrants not falling within the specified categories.

There is an argument that under some circumstances battered spouses and other victims of domestic violence may be eligible under Section 214 even if they do not fall within one of the above categories, although HUD has not yet approved this analysis. The Professional Responsibility and Work Opportunity Reconciliation Act (PRWORA) provides at 8 U.S.C. § 1641(c) that certain abused immigrants are considered “qualified” persons. Under Section 431(a) of PRWORA, persons in this category would be eligible for “public or assisted

housing.” While PRWORA does not directly modify provisions of Section 214 that do not include this category of eligibility, some advocates have argued that abused immigrants should be considered eligible for housing covered by Section 214.

In a report accompanying fiscal year 2003 federal appropriations legislation, Congress directed HUD and the Department of Justice to reconcile Section 214 with other federal laws that have expanded categories of eligible immigrants—namely, battered immigrants, Cuban immigrants and Haitian immigrants. However, HUD has not acted on the direction contained in the 2003 report.

Households with Mixed Immigration Status

To qualify for admission to HUD housing covered by Section 214, at least one household member must have eligible immigration status as defined in Section 214. The eligible member does not need to be the head of household and can be a minor child. Households with no eligible members are not permitted to move into covered housing.

A household that has at least one eligible household member, as well as other ineligible household members, is called a “mixed” household. Mixed households are permitted to live in housing covered by the Section 214 restrictions. However, the amount of assistance they receive will be prorated. The rent will be adjusted based on the number of household members, the total household income, the number of eligible members of the household and the type of rent subsidy in the covered unit.

Conclusion

In determining a client’s eligibility for a particular federally subsidized unit, it is crucial to identify the type of housing at issue and the client’s immigration status. Even if the client does not have qualifying immigration status, she may still apply for the housing if at least one member of her household is eligible. However, the household’s rental assistance will be prorated. ■

Statistic of the Month

In fiscal year 2005, 8,300 VAWA self-petitions were filed, 8,300 were approved (including previously pending files), and 2,205 were denied.

Department of Homeland Security

HUD Issues Final Rule on Disclosure of Social Security Numbers

In NHLP's December Newsletter for LAV Grantees, we reported on HUD's proposed final rule regarding the requirement that applicants and participants in federally assisted housing disclose their Social Security Numbers (SSN). On December 29, 2009, HUD issued its final rule on the matter. The rule would require each member of every applicant or participant household to produce both a valid SSN card and independent documentation containing corroborative data. The stated purpose of the rule is to reduce overpayments by requiring public and assisted housing operators to use HUD's Enterprise Income Verification (EIV) system to verify employment and income of program participants.

Importantly, household members who do not assert eligible immigration status for participation in federal housing programs will *not* be required to provide their SSN.

Final Changes to Rule

The final rule made two minor changes to the SSN disclosure requirements set forth in the October 15 proposed rule. First, the final rule slightly modifies the proposed rule's language regarding participants age 62 or older as of January 31, 2010, whose initial determination of eligibility began before that date. Such participants need not disclose a SSN even if they have not previously disclosed a valid SSN. The final rule clarifies that such participants need not produce an SSN even if they move to a different HUD-assisted property from the one in which they were initially living.

Second, the rule clarified that household members under age 6 who have been assigned SSNs must disclose them. If a household member under age 6 does not have an SSN, the household will have an additional 90 days to comply.

Mixed Immigration Status Households

Current regulations allow households com-

posed of family members with both eligible and ineligible immigration status to receive prorated housing assistance based on the proportion of eligible and ineligible members. The final rule states that the new regulations requiring SSNs from all family members are "inapplicable to individuals who do not contend eligible immigration status." Thus, mixed immigration status households can continue to receive prorated assistance. HUD issued a Federal Register notice on January 27, 2010, clarifying that the current regulations regarding mixed status households will remain in place and will not be affected by the new SSN rule.

Conclusion

With a few exceptions, all applicants for assisted housing and participants therein will soon be required to provide their SSNs to the operating entity. It is critical to note, however, that the SSN requirements do not apply to household members who do not assert eligible immigration status for participation in federal housing programs. ■

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This project was supported by Grant No. 2008-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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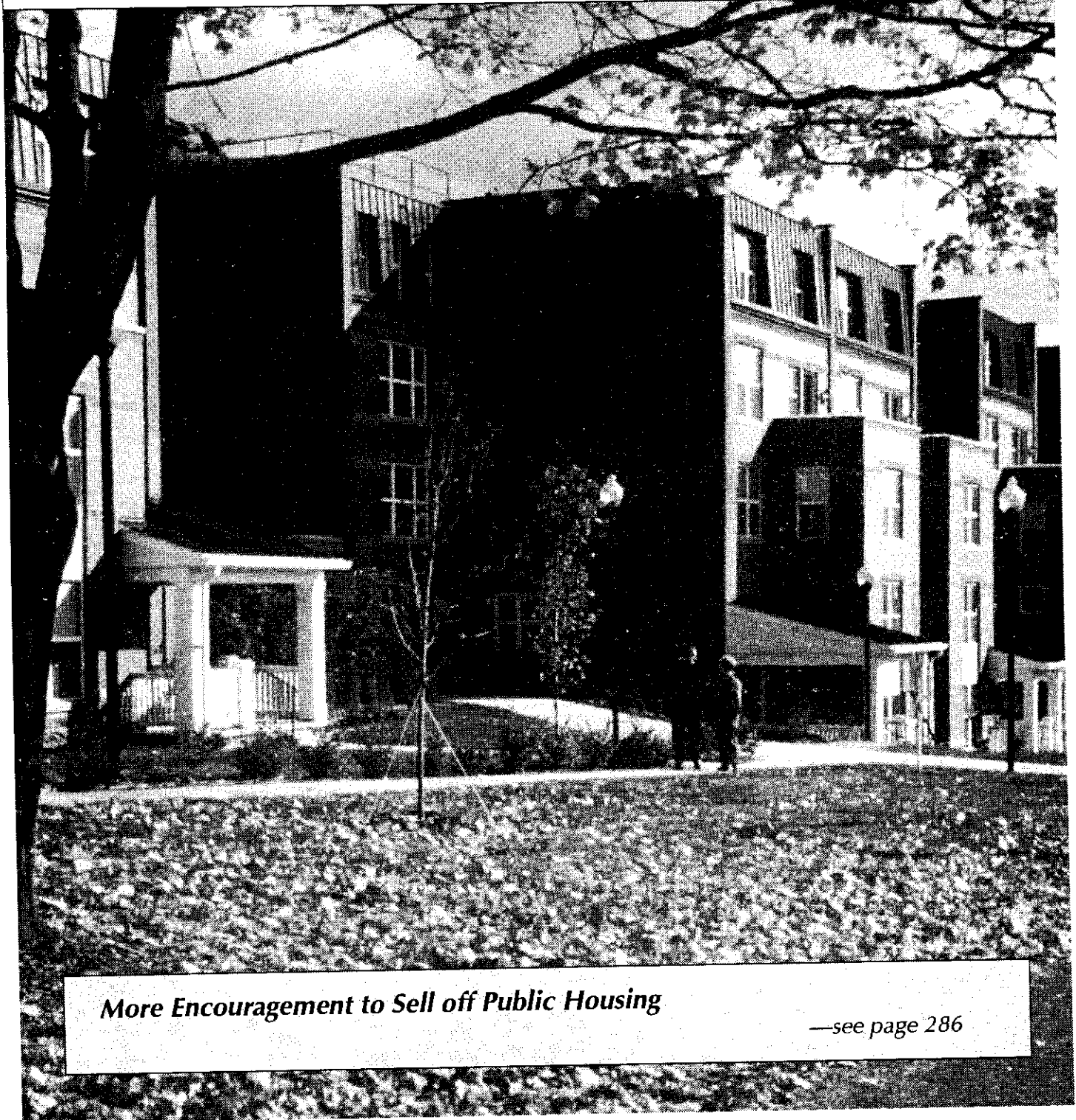


advancing housing justice

Housing Law Bulletin

Volume 33 • April/May 2003

Published by the National Housing Law Project



More Encouragement to Sell off Public Housing

—see page 286

that localities' failure to provide housing opportunities for the poor while creating opportunities for the affluent violated the state constitution's requirement that zoning powers be used to advance the general welfare.²¹ Where communities do not provide a "realistic opportunity" for development of their fair share of affordable housing, they are subject to a builder's remedy of a "density bonus"—essentially allowing the development of more homes than the affordable-rate ratio normally allows. The article points to the development of thousands of affordable units constructed in the wake of *Mount Laurel*.²² However, another author points out that most of the beneficiaries of the affordable housing built as a result of *Mount Laurel* are white families who previously lived in the suburbs.²³

The NIMBY Report's championing of the use of civil rights laws is accompanied by cautions that efforts to counter community opposition may cross paths with protected First Amendment activities.

First Amendment Concerns

Finally, the NIMBY Report's championing of the use of civil rights laws is accompanied by cautions that efforts to counter community opposition may cross paths with protected First Amendment activities.²⁴ These arguments are more fully fleshed out in *City of Cuyahoga Falls v. Buckeye Community Hope Fdn.*,²⁵ a suit by an organization attempting to develop homes for low- and moderate-income families. The development was repeatedly delayed by community opponents and city officials, who used, among other obstructionist tactics, a referendum to require public approval of zoning decisions.²⁶ Unfortunately, in the recently announced Supreme Court decision, the developers' claims for damages were rejected.²⁷ Housing advocates must plan carefully to overcome opposition to fair housing and affordable housing development that involves protected speech or the public's right to vote. ■

²¹*Id.* at 21.

²²*Id.*

²³Goetz, *supra* note 12, at 25.

²⁴Allen, *supra* note 1, at 5.

²⁵2003 WL 1477301, ___ U.S. ___ (March 25, 2003). For a summary of *Cuyahoga Falls*, see p. 301, *infra*.

²⁶Citrino et al, *supra* note 2, at 8.

²⁷2003 WL 1477301, ___ U.S. ___ (March 25, 2003).

Housing Benefits for Qualified Aliens Who are Battered Still in Question

Introduction

On February 20, 2003, the President signed into law the Fiscal Year (FY) 2003 omnibus appropriations act, which included appropriations for the Department of Housing and Urban Development (HUD).¹ Accompanying the law was a congressional report directing the Justice Department and the Department of Housing and Urban Development (HUD) to reconcile Section 214 of the *Housing and Community Development Act of 1980* ("Section 214"),² which restricts federal housing assistance to certain immigrants, with other laws expanding the groups of immigrants that are eligible for public benefits.³ Originally, language reconciling the laws was part of the appropriations bill. However, at the last minute the language was removed from the bill and report language substituted.

Section 214 lists seven categories of non-citizens who are eligible to receive federally assisted housing.⁴ Other legislation addressing immigrant restrictions in public benefit programs sets forth a definition of a *qualified alien* that includes three additional categories of eligible immigrants: battered immigrants who are spouses or children of lawful

¹Consolidated Appropriation Resolution, 2003, Pub. L. 108-7, 117 Stat. 11, (Feb 20, 2003).

²42 U.S.C.A. § 1436a (West Supp. 2002) (hereinafter Section 214).

³H.R. 108-10, 108 Cong. 1st Sess. 476, 1495 (Feb. 12, 2003).

⁴Section 214 is applicable to applicants for and residents of public housing, Section 8, Section 236 (below-market rent only), rent supplement, Section 235 and Housing Development Grant Programs. 24 C.F.R. § 5.500 (2002). Technically, it is also applicable to Rural Housing Service (RHS) programs; however, RHS has not yet adopted regulations implementing Section 214. Section 214 defines a resident alien as

(1) an alien lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(15) and (20) of Title 8, excluding, among others, alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country;

(2) an alien who entered the United States prior to June 30, 1948, or such subsequent date as is enacted by law, has continuously maintained his or her residence in the United States since then, and is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 1259 of Title 8;

(3) an alien who is lawfully present in the United States pursuant to an admission under section 1157 of Title 8 or pursuant to the granting of asylum (which has not been terminated) under section 1158 of Title 8;

(4) an alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 1182(d)(5) of Title 8;

(5) an alien who is lawfully present in the United States as a result of the Attorney General's withholding deportation pursuant to section 1231(b)(3) of Title 8;

residents, and Cuban and Haitian immigrants.⁵ Advocates had sought to get HUD to include these three categories of immigrants in its Section 214 regulations. Because they were unsuccessful, they tried to address the issue through corrective legislation. Unfortunately, the report language is all that they secured.

Background

Certain undocumented immigrants seeking legal permanent residency status may do so through a United States Citizen (USC) or a Lawful Permanent Resident (LPR), as long as the two are related or married. The USC or LPR files a visa petition on behalf of a spouse or child so that the individual may remain in, or immigrate to, the United States. The petition can only be filed by the petitioner (USC or LPR) on behalf of a beneficiary (spouse or child). This process essentially entitles new immigrants, or those seeking to come to the United States, rights through another eligible individual. Unfortunately, some citizens and LPRs have misused their control of the process by physically abusing members of their family and precluding them from reporting the violence by threatening to withhold participation in the petition process. In response, Congress passed the *Violence Against Women Act* (VAWA) in 1994, which enabled a battered spouse and/or child to self-petition for lawful permanent residency.⁶ Unfortunately, it remained unclear if applicants with pending self-petitions and visa applications, classified as *qualified aliens* under immigration legislation, were eligible for low-income housing benefits independent of their abuser.

PRWORA and IIRAIRA

The *Personal Responsibility and Work Opportunity Reconciliation Act of 1996* (PRWORA) states that certain federal "public benefits" including "public and assisted housing" are only available to "qualified" immigrants, as defined in the statute.⁷ PRWORA applies to public and Section 8 housing but it is not

clear if it applies to other HUD programs.⁸ The *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (IIRAIRA) amended PRWORA to expand the list of groups eligible for assistance to include three groups that were originally omitted: certain battered immigrants and Cuban and Haitian immigrants.⁹ According to VAWA, if an abused spouse or child meets the self-petition eligibility requirements she or he is considered a *qualified alien* for the purpose of receiving public benefits.¹⁰ To qualify, the battered immigrant must make a *prima facie* showing to support her or his eligibility for public benefits. This includes, *inter alia*, a showing of status as a spouse or child of a USC or LPR, a demonstration of being battered or subject to extreme cruelty, evidence of suspension of deportation, or cancellation of removal, and a showing of a substantial connection between the battery and the need for the benefits.¹¹

HUD's Contrary Interpretation

Notwithstanding the clear intent of these laws to include battered immigrants and Cuban and Haitian immigrants as *qualified aliens*, HUD's General Counsel's office interpreted Section 214 to exclude battered immigrants from access to public or assisted housing. The language deleted from the omnibus appropriations bill was meant to address HUD's restrictive interpretation and would have guaranteed all immigrants who are classified as *qualified aliens* under PRWORA and IIRAIRA eligibility for public and assisted housing.¹² It would have done so by amending Section 214 to state that "a *qualified alien* includes all immigrants who fit the definition as stated in PRWORA as amended by any subsequent legislation."¹³

While removing the legislative change, the conferees, in the report accompanying the appropriations, directed HUD

to work with the Department of Justice to develop any necessary technical corrections to applicable housing statutes with respect to qualified aliens who are the victims of domestic violence and Cuban and Haitian immigrants to ensure that such statutes are consistent with the Personal Responsibility and Work

(6) an alien lawfully admitted for temporary or permanent residence under section 1255a of Title 8; or

(7) an alien who is lawfully resident in the United States and its territories and possessions under section 141 of the Compacts of Free Association between the Government of the United States and the Governments of the Marshall Islands, the Federated States of Micronesia (48 U.S.C. § 1901 note) and Palau (48 U.S.C. § 1931 note) while the applicable section is in effect: *Provided*, That, within Guam any such alien shall not be entitled to a preference in receiving assistance under this Act over any United States citizen or national resident therein who is otherwise eligible for such assistance.

⁵8 U.S.C.A. § 1641 (b) and (c) (West Westlaw 03-11-03).

⁶8 C.F.R. § 204.2, et. seq. (2003). When Section 501 of IIRAIRA amended PRWORA, Congress added a new Section 431(c) to PWORA, which provides that the term "qualified alien" shall include such immigrants. Section 431(c) was subsequently amended by Section 1508 of the VAWA of 2000. See also the *Immigration and Nationality Act* on the INS Web site at www.ins.gov.

⁷8 U.S.C.A. § 1611 (West Westlaw 03-11-03).

⁸To date, HUD has not defined which of its currently unrestricted housing programs are covered by PRWORA and has directed recipients of those funds not to consider immigration status. 61 Fed. Reg. 60,535, 60,537 (Nov. 29, 1996); NOW Legal Defense and Education Fund, *Immigrant Women Program*. Legislative Update, February 14, 2003.

⁹See Section 501 of the *Illegal Immigration Reform and Personal Responsibility Act of 1996*.

¹⁰8 U.S.C. A. § 1641(c) (West Westlaw 03-11-03).

¹¹*Illegal Immigration Reform and Personal Responsibility Act of 1996*, 8 U.S.C. § 1641(c)(1) (West Westlaw 03-11-03).

¹²NOW Legal Defense and Education Fund, *Immigrant Women Program*. Legislative Update, February 14, 2003.

¹³HJ2 EAS, Department of Veterans Affairs and Housing and Urban Development, and *Independent Agencies Appropriations Act*, 2003.

What This Means for Advocates

While this report language should be helpful, the removal of the language directly amending Section 214 will likely prolong the struggle for battered immigrants and Cuban and Haitian immigrants who are seeking assisted housing. On the national level, advocates will have to work with HUD and the Department of Justice to obtain an interpretation of Section 214 that is consistent with the other laws affecting immigrants and receipt of public benefits. Advocates will hopefully convince the two departments that no further technical amendments are necessary and that there is nothing to prevent the Secretary of HUD from interpreting Section 214 consistently with the other laws affecting immigrants and eligibility for benefits. Alternatively, Congress will need to amend Section 214 in accordance with future HUD and Department of Justice findings.

Until HUD or Congress act, advocates can encourage PHAs, as part of the PHA plan process, to adopt a more expansive reading of Section 214 to include immigrants subject to domestic violence and Cuban and Haitian immigrants. Advocates can also urge PHAs not to take adverse action against individually affected immigrants and urge PHAs or project-based Section 8 owners to rely upon PRWORA. Absent intermediate corrective action, the impacts on battered immigrants' access to housing will continue to be severe.¹⁵ Haitian and Cuban entrants will also continue to be excluded.

Regardless of any corrective action, advocates should remember that under Section 214 not *all* members of the household nor the head of household or spouse need to be eligible for housing assistance in order for the household to qualify for assistance.¹⁶ A single individual, such as a child, who is an eligible immigrant can qualify the entire household for public housing, project-based Section 8, or the voucher program. A household composed of eligible and ineligible immigrants is considered a "mixed family" that is eligible for housing assistance. Such a family will, however, have to pay a prorated rent based on the proportion of eligible members to total household members.¹⁷ If, however, there are no eligible family members in the household, the family will most likely not be accepted for public or federally assisted housing and such a family may be evicted or lose its housing subsidy.¹⁸ ■

¹⁴H.R. 108-10, 108 Cong. 1st Sess 476, 1495 (Feb. 12, 2003), Making Further Continuing Appropriations for Fiscal Year 2003, and for Other Purposes.

¹⁵www.ins.usdoj.gov/graphics/howdoi/battered.htm.

¹⁶24 C.F.R. § 5.508 (2002).

¹⁷*Id.* § 5.520.

¹⁸NOW Legal Defense and Education Fund, Immigrant Women Program. Legislative Update, February 14, 2003.

Round Up of Recently Introduced Housing Legislation

As the 108th Congress enters its fifth month, several bills have been introduced that affect existing federal housing programs or propose new programs. Several of these new initiatives, including the National Housing Trust Fund, an anti-predatory lending measure, and the Department of Housing and Urban Development (HUD) Fiscal Year (FY) 2004 Budget proposal, were described in the March 2003 *Housing Law Bulletin*. This article highlights some of the remaining measures. A complete list of housing bills that have been introduced and their current status can be found at the National Low Income Housing Coalition Web site.¹

Income Verification. The process of determining family income for tenants of HUD-subsidized housing is often plagued by errors, causing tenants to be undercharged or overcharged for rent. Representative Pete Sessions (R-TX) has introduced H.R. 1030 that would require HUD to match assisted tenants' incomes against a Directory of New Hires maintained by the Department of Health and Human Services (HHS), the purpose of which is to check for wage withholding, child support and eligibility for income-tested programs.² H.R. 1030 would require matching the incomes of households assisted under most HUD programs, including public housing, Section 8 vouchers, project-based Section 8, Section 221(d)(3), Section 236 and Section 202/811, against the HHA list. The need for this bill is not apparent because HUD already requires independent wage matching against information maintained by the Department of Labor³ and it is not clear why HHS data would be more reliable or useful. H.R. 1030 also does not contain procedural protections that would enable tenants to dispute alleged discrepancies through a hearing process as is allowed under the current HUD matching program. In 2001, HUD developed an administrative proposal known as the Rental Housing Integrity Improvement Project (RHIP) to correct a wide range of errors in rent determination.⁴ H.R. 1030 does not appear to build on that administration proposal, but instead seeks to introduce an additional data source.

Repeal of Community Service Requirements. The *Quality Housing and Work Responsibility Act of 1998* requires certain tenants of public housing to perform at least eight hours per month of community service in addition to their regular rent

¹www.nlihc.org/news/legupdate.htm.

²42 U.S.C. § 653a (West, Westlaw, 2003).

³24 C.F.R. § 5.236 (2002).

⁴For more information on RHIP, see HUD Proposes Another Initiative to Improve the Income Verification and Rent Determination Process, 31 HOUS. L. BULL. 202 (Sept. 2001).



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

Special Attention of:

Public Housing and Section 8 Program Administrators,
Public Housing Hub Office Directors; Public Housing
Field Office Directors; Program Center Coordinators;
Resident Management Corporations; Resident Councils;
Applicants and Participants of Public Housing, Housing
Choice Voucher and Project-Based Voucher Programs

Notice PIH 2010- 3 (HA)

Issued: January 20, 2010

Expires: January 31, 2011

Cross References: 24 CFR 5.216,
24 CFR 5.218, and 24 CFR 5.233

SUBJECT: Guidance - Verification of Social Security Numbers (SSNs), Social Security (SS) and Supplemental Security Income (SSI) Benefits

1. **Purpose:**

This Notice explains the procedures public housing agencies (PHAs) are required to use for verifying Social Security numbers, Social Security benefits of applicants, participants and household members at the time of application for rental assistance programs and during mandatory reexamination of household income. Similar guidance with respect to verification of SS and SSI benefits was issued under Notice PIH-2008-44. This notice supersedes the aforementioned notice.

This notice also provides guidance related to the recent changes made to 24 CFR 5.216, 24 CFR 5.218, and new verification requirements at 24 CFR 5.233, in accordance with the Final Rule: *Refinement of Income and Rent Determinations in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System-Amendments*, effective January 31, 2010, as published at 74 FR 68924, on December 29, 2009. In accordance with the directions of the Office of the Federal Register, the December 29, 2009, final rule, because it is the later published rule, supersedes the January 27, 2009, final rule, which also takes effect on January 31, 2010. Accordingly, only the regulatory amendments of the December 29, 2009, final rule are effective and applicable.

2. **Applicability:**

This Notice applies to the following HUD-PIH rental assistance programs: Public Housing, Section 8 Moderate Rehabilitation, Project-Based Certificate, Project-Based Voucher, and Housing Choice Voucher Programs. This Notice also applies to all PHAs, including Moving-to-Work (MTW) PHAs who administer any of the aforementioned programs.

3. **Background:**

The Housing and Community Act of 1987 (Public Law 100-242; 101 Stat. 1864; 42 USC 3543) granted the Secretary the authority to require applicants and participants (including their household members) disclose his/her Social Security Number (SSN) as a condition of initial or continuing eligibility for participation in any HUD rental assistance program. The intent of this statutory provision was to afford the Department the opportunity to ensure that the level of benefits provided on behalf of the family was proper and to prevent fraud and abuse within rental assistance programs. This law is promulgated at 24 CFR 5.216.

HUD uses the SSN (along with the name and date of birth) of an individual to validate his/her identity, obtain employment and income information via computer matching programs, and ensure duplicate assistance is not being paid. These uses allow HUD, program administrators and auditors to determine compliance with program requirements, as well, as determine the eligibility and level of assistance a family is eligible to receive. This notice prescribes the procedures and clarifies the requirements for disclosure, documentation and verification of SSNs.

With respect to the verification of Social Security benefits, it has been the standard practice of PHAs to verify social security benefits of applicants, participants, and household members by either contacting the local office of the Social Security Administration (SSA) by phone or in writing, reviewing an original social security benefit check, or accepting tenant-provided benefit verification letters.

In an ongoing effort to eliminate time consuming manual requests for benefit verification from PHAs, SSA electronically provides HUD with benefit information on all current participants and household members who have disclosed a valid social security number. HUD makes this information available to administrators of Public Housing and Section 8 programs through the Enterprise Income Verification (EIV) system. Electronic benefit verification is the most efficient verification method available and allows PHAs to process family annual and interim reexaminations expeditiously.

SSA continues to receive requests for income verification from PHAs despite the electronic exchange of SS and SSI benefit information between SSA and HUD. PHAs should not refer applicants for or participants of HUD rental assistance programs to local SSA offices to obtain verification of the amount of their SS/SSI benefits. Furthermore, effective January 31, 2010, PHAs are required to use the EIV system as a third party source to verify tenant income information during all mandatory annual and interim reexaminations of family income and composition, in accordance with 24 CFR 5.236 and HUD administrative guidance. This Notice describes the required procedures for verifying SS and SSI benefits of applicants, participants, and household members of HUD-assisted rental units, in order to comply with the new HUD regulation at 24 CFR 5.233, which requires PHAs to use EIV.

4. **Effective Date:**

This Notice is effective as of issuance date.

5. **SSN Disclosure:**

In accordance with 24 CFR 5.216, applicants and participants (including each member of the household) are required to disclose his/her assigned SSN, with the exception of the following individuals:

- a. Those individuals who do not contend to have eligible immigration status (individuals who may be unlawfully present in the United States). These individuals in most instances would not be eligible for a SSN.
 1. A family that consists of a single household member (including a pregnant individual) who does not have eligible immigration status is **not eligible** for housing assistance and cannot be housed.
 2. A family that consists of two or more household members **and at least one** household member that has eligible immigration status, is classified as a mixed family, and **is eligible** for prorated assistance in accordance with 24 CFR 5.520. The PHA may **not** deny assistance to mixed families due to nondisclosure of an SSN by an individual who does not contend to have eligible immigration status.
- b. Existing program participants as of January 31, 2010, who have previously disclosed their SSN and HUD has determined the SSN to be valid. PHAs may confirm HUD's validation of the participant's SSN by viewing the household's *Summary Report* or the *Identity Verification Report* in the EIV system.
- c. Existing program participants as of January 31, 2010, who are 62 years of age or older, and had not previously disclosed a valid SSN. This exemption continues even if the individual moves to a new assisted unit.

Disclosure of SSNs is considered information subject to the Federal Privacy Act (5 USC 552a, as amended). In accordance with 24 CFR 5.212, the collection, maintenance, use, and dissemination of SSNs, any information derived from SSNs and income information must be conducted, to the extent applicable, in compliance with that Act and all other provisions of Federal, State, and local law.

Note: There is no provision under HUD regulations which prohibit an individual (head of household with other eligible household members) with ineligible immigration status from executing a lease or other legally binding contract. However, some state laws prohibit an individual with ineligible immigration status from executing a contract (i.e. lease or other legal binding documents). If this is the case in your state, the family must **not** be admitted into the program.

6. SSN Documentation:

The PHA must request the applicant and participant (including each member of the household), who are not exempt under Section 5 of this Notice, to provide documentation of each disclosed SSN. Acceptable evidence of the SSN consists of:

- a. An original SSN card issued by SSA;
- b. An original SSA-issued document, which contains the name and SSN of the individual; or
- c. An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

It should be noted that most (if not all) individuals who are lawfully present in the U.S. have been assigned a SSN. Many existing laws require the disclosure of the SSN for various purposes. All applicants and participants, including each member of the household (with the exception of those individuals noted in Section 5 of this Notice) are required to disclose his/her assigned SSN.

The SSA issues three types of Social Security cards depending on an individual's citizen or noncitizen status and whether or not a noncitizen is authorized by the Department of Homeland Security (DHS) to work in the United States. They include:

1. The first type of card shows the individual's name and SSN only. This is the card most people have and reflects the fact that the holder can work in the U.S. without restriction. SSA issues this card to:
 - U.S. citizens; or
 - Noncitizens lawfully admitted to the United States for permanent residence and noncitizens with DHS permission to work permanently in the United States (i.e. refugees and asylees).
2. The second type of card bears, in addition to the individual's name and SSN, the legend: "**NOT VALID FOR EMPLOYMENT**". SSA issues this card to lawful noncitizens who do not have DHS permission to work, but are required by law to provide a SSN to obtain general assistance benefits that they already have qualified for.
3. The third type of card bears, in addition to the individual's name and SSN, the legend "**VALID FOR WORK ONLY WITH DHS AUTHORIZATION**". SSA issues this card to people with DHS permission to work temporarily in the United States.

SSA verifies all noncitizens' documents with DHS before a SSN card is issued to a noncitizen.

7. **Rejection of Documentation:**

The PHA may reject documentation of the SSN provided by the applicant or participant for only the following reasons:

1. The document is not an original document; or
2. The original document has been altered, mutilated, or not legible; or
3. The document appears to be a forged document (i.e. does not appear to be authentic).

The PHA should explain to the applicant or participant, the reason(s) the document is not acceptable and request the individual to obtain acceptable documentation of the SSN and submit it to the PHA within a specified time frame.

8. **Verification of the SSN:**

The PHA shall verify each disclosed SSN by:

- a. Obtaining the documentation listed under Section 6 of this Notice from applicants and participants (including each member of the household);
- b. Making a copy of the original documentation submitted, returning it to the individual, and retaining the copy in the file folder; and
- c. Recording the SSN on line 3n of the form HUD-50058, and transmitting the form HUD-50058 to HUD within a timely manner. PHAs are encouraged to transmit the form HUD-50058 within 30 calendar days of completing the form, to enable HUD to initiate its computer matching efforts. *Note: not applicable to applicants.*

HUD, via its computer matching program with the SSA, will validate the SSN (along with the individual's name and date of birth) against the SSA's database. EIV will report the status of the identity verification process as **Verified**, **Failed**, **Not Verified**, or **Deceased** on the household *Summary Report*. Below is a summary of the action the PHA should take for each identity verification status.

- a. Verified. If the information matches the SSA database, the individual's identity verification status will be **Verified** (See Exhibit 1 below). No action is required by the PHA.
- b. Failed. If the information does not match the SSA database, the identity verification status will be **Failed** (see Exhibit 2 below). See Section 16 of this Notice for guidance on how to correct personal identifiers of individuals whose identity verification status is failed.
- c. Not Verified. If an individual's identity verification status is **Not Verified** (see Exhibit 3 below), this means that HUD has not yet sent the tenant's personal identifiers to SSA for validation. No action is required by the PHA.
- d. Deceased. If an individual's identity verification status is **Deceased** (see Exhibit 4 below), this means that SSA's records indicate the person is deceased. The PHA

should confirm the death with the family's head of household or listed emergency contact person. If the individual is deceased and the only household member (single member household), the PHA should complete an End of Participation (EOP) action on form HUD-50058, and discontinue assistance and/or tenancy. If there are remaining household members, update the family composition accordingly, complete an Interim Reexamination action on form HUD-50058, and take any other action in accordance with HUD guidance and PHA-established policies.

See the *Computer Matching Schedule* in Section 14 of this Notice to determine when your state's data will be matched. The PHA is required to retain the EIV **Summary Report** or **Income Report** in each family file as confirmation of compliance with the SSN disclosure, documentation and verification requirements.

Once the individual's verification status is classified as **verified**, the PHA should remove and destroy, by no later than the next reexam of family income or composition, the copy of the documentation referenced in Section 6 of this Notice. Paper documentation should be destroyed by either shredding or burning. Electronic documentation should be destroyed by erasing or permanently deleting the file. Additional guidance related to destruction of records is available in HUD Handbook 2400.25, Rev. 2: *HUD Information Technology Security Policy*, dated October 1, 2008. The handbook is available online at: <http://www.hud.gov/offices/adm/hudclips/handbooks/admh/2400.25/index.cfm>. The retention of the aforementioned EIV report in the tenant file is adequate. PHAs are permitted to maintain EIV reports in the tenant file for the duration of tenancy, and no longer than three years from the end of participation date. This will minimize the risk of exposing the individual's SSN. PHAs are encouraged to minimize the number of tenant records that contain documents which display the full nine-digit SSN.

Exhibit 1: Example of an individual with an EIV identity verification status of **Verified**.

Household Members						
Member SSN	Member First Name	Member Last Name	Date of Birth	Age	Relationship	Identity Verification Status
***-**-0078	David		XX/XX/1971	38	Head	Verified

Exhibit 2: Example of an individual with an EIV identity verification status of **Failed**.

Household Members						
Member SSN	Member First Name	Member Last Name	Date of Birth	Age	Relationship	Identity Verification Status
***-**-0080	SERGIA		XX/XX/1956	53	Head	Failed

Exhibit 3: Example of an individual with an EIV identity verification status of **Not Verified**.

Household Members						
Member SSN	Member First Name	Member Last Name	Date of Birth	Age	Relationship	Identity Verification Status
***-**-6768	tmls	vo	XXXXX/1968	41	Head	Not Verified
***-**-0194	mzig lzy	mlg	XXXXX/1995	14	Other youth under 18	Not Verified
***-**-4946	lzyzrt	mlg	XXXXX/2001	8	Other youth under 18	Not Verified

Exhibit 4: Example of an individual with an EIV identity verification status of **Deceased**.

Household Members						
Member SSN	Member First Name	Member Last Name	Date of Birth	Age	Relationship	Identity Verification Status
***-**-1165	CLYDE		XXXXX/1932	77	Head	Deceased

9. **Individuals without an assigned SSN:**

It is not uncommon for certain individuals to not have a SSA-assigned SSN. Below is a listing of such individuals, which is not all-inclusive:

- a. Newborn children (these individuals will be issued a SSN upon SSA confirmation of birth)
- b. Noncitizens lawfully present in the U.S. (these individuals will be issued a SSN upon SSA confirmation of the individual's DHS documentation or confirmation that the individual is required by law to provide a Social Security number to receive general assistance benefits that they already have qualified for)
- c. Noncitizens unlawfully present in the U.S. (these individuals cannot be assigned a SSN)

Citizens and lawfully present noncitizens who state that they have not been assigned a SSN by the SSA, should make such declaration in writing and under penalties of perjury to the PHA. The PHA should maintain the declaration in the tenant file.

PHAs may use the Alternate ID (ALTD ID) generator within the Public and Indian Housing information Center (PIC) to generate a unique identifier for those individuals who do not have or unable to disclose a SSN. Contact the PIC Coach in your local HUD office if you need assistance with PIC.

Once an individual discloses a SSN, the PHA should delete the ALT ID, enter the SSN on line 3n of the form HUD-50058, and transmit the form HUD-50058 to HUD within 30 calendar days of receipt of the SSN.

Note: An individual who has never been issued a SSN card or has lost their SSN card, may complete Form SS-5 – *Application for a Social Security Card* to request an original or replacement SSN card, or change information on his/her SSA record. The form is available online at www.socialsecurity.gov, or can be obtained at the local SSA office.

10. **Addition of a New Household Member:**

When a participant requests to add a new household member, who is at least six year of age or under the age of six and has an assigned SSN, to the family, the participant must disclose the assigned SSN and provide the PHA with the documentation referenced in item 6 of this notice at the time of such request, or at the time of processing the interim or annual reexamination of family income and/or composition. If the family is unable to provide the required documentation of the SSN, the PHA may not add the new household member until the family provides such documentation.

When a participant requests to add a new household member, who is under the age of six and does not have an assigned SSN, the participant must disclose the assigned SSN and provide the PHA with the documentation referenced in Section 6 of this Notice within 90 calendar days of the child being added to the household.

If the family is unable to disclose and provide evidence of the SSN within 90 calendar days, the PHA is required to grant the family an additional 90-day period to comply with the SSN disclosure and documentation requirement, if the PHA determines the family was unable to comply with the requirements due to circumstances that could not have reasonably been foreseen and were outside the control of the family. Examples include but are not limited to: delayed processing of SSN application by SSA, natural disaster, fire, death in family, etc.

The child is to be included as part of the assisted household and entitled to all the benefits of being a household member during the allotted time for the family to comply with the SSN disclosure and documentation requirements. The PHA should generate an ALT ID as referenced in Section 9 of this Notice. Upon expiration of the provided time period, if the family has not complied with the SSN disclosure and documentation requirements, the PHA must terminate the family's tenancy or assistance, or both of the entire family.

11. **Penalties for Failure to Disclose and/or Provide Documentation of the SSN:**

In accordance with 24 CFR 5.218, the following penalties apply for noncompliance with the SSN disclosure and documentation requirements:

- a. **Applicants.** The PHA must deny the eligibility of an assistance applicant if s/he (including each member of the household required to disclose his/her SSN) does not disclose a SSN and/or provide documentation of such SSN. However, if the family is otherwise eligible to participate in the program, the family may maintain his/her position on the waiting list for a period of time as determined by the PHA. The PHA should prescribe in its policies, the maximum time the family may remain on the waiting list, pending disclosure of requested information. If all household members have not disclosed their SSN at the time a unit becomes available, the PHA must offer the available unit to the next eligible applicant family on the waiting list.

Applicants to the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless Individuals, under 24 CFR 882, may be admitted to the program without providing the requested documentation (prior or at admission), however, the individual must provide the PHA with such documentation within 90 calendar days from the date of admission. (The PHA may grant the individual one 90-day extension, if in its discretion, determines that the individual's failure to comply with the SSN documentation requirement was due to unforeseen circumstances and outside the control of the family.) If upon the expiration of the provided time period, the individual fails to comply with the SSN disclosure and documentation requirements, the PHA must terminate the tenancy or assistance, or both of the individual.

- b. **Participants.** The PHA must terminate the assistance of Section 8 program participants (the entire household) and terminate the tenancy of Public Housing participants (the entire household) if s/he (including each member of the household required to disclose his/her SSN) does not disclose his/her SSN and provide the required documentation.

However, if the family is otherwise eligible for continued assistance or tenancy in the program, the PHA, at its discretion, may defer the family's termination and provide the family an opportunity to comply with the requirement within a period **not to exceed** 90 calendar days from the date the PHA determined the family noncompliant with the SSN disclosure and documentation requirement, if the PHA determines:

1. The failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside the control of the family; and
2. There is a reasonable likelihood that the family will be able to disclose the SSN and provide such documentation of the SSN by the deadline.

If the family is unable to comply with the requirements by the specified deadline, the PHA must terminate the tenancy or assistance, or both of the entire family.

12. **Third Party Verification Requirement:**

PHAs are required to comply with admission and occupancy requirements for Public Housing under 24 CFR §960.259(c)(1) and Section 8 under 24 CFR §982.516(a)(2), which requires PHAs to obtain and document in the family/tenant file third party verification of the following factors, or document in the file why third party verification was not available: (1) reported family annual income; (2) the value of assets; (3) expenses related to deductions from annual income; and (4) other factors that affect the determination of adjusted income or income-based rent.

It is the Department's position that a SSA benefit verification letter (dated within the last 60 days of the PHA request date for information or within the PHA-tenant interview date) provided by the family or an EIV ***Income Report*** which displays the current social security benefit amount is third party verification. No additional verification is required by the PHA.

PHAs should **not** submit requests to SSA to verify that a family is **not** receiving social security benefits.

13. **Third Party Verification of SS/SSI Benefits of Applicants and Household Members:**

EIV does not contain SS and SSI benefit information of applicants for HUD's rental assistance programs. PHAs should ask applicants to provide a copy of their SS and/or SSI benefit letter, dated within the last 60 calendar days, for each household member that receives SS and/or SSI benefits. Do not send applicants to SSA offices if they do not have this information. Instead:

- While meeting with the applicant, help the applicant request a benefit verification letter from SSA's website, Social Security Online, at www.socialsecurity.gov. This service is free and SSA will send the letter to the applicant within 10 business days.

To access the site for requesting benefit verification letters, go to the Social Security Online front page, select *What You Can Do Online* and follow the instructions for requesting a *Proof of Income Letter*. Assist the applicant in answering questions and explain how the applicant should provide the letter to your office; **or**

- Ask the applicant to request a *Proof of Income Letter* from SSA's toll-free number (800-772-1213).

Note: SSA encourages SS and SSI recipients to use SSA's web site rather than the toll-free number to request *Proof of Income* letters.

The PHA should obtain the original SSA benefit letter from the individual, make a photocopy of the document for the PHA file and return the original document to the individual. The PHA should use the listed gross benefit amount to calculate annual income from social security benefits.

14. **Third Party Verification of SS/SSI Benefits of Participants and Household Members:**

SS/SSI benefit information for participants and household members, who have validated personal identifiers (the individual's identity verification status in EIV is *verified*, is available from HUD's online EIV system, which can be accessed by authorized PHA staff at: https://hudapps.hud.gov/HUD_Systems.

- PHAs are required to use EIV to verify SS/SSI benefits of current participants and household members. PHAs who do not currently have access to EIV should contact their local HUD field office to register for access to the EIV system. Information regarding HUD's EIV system is available at: www.hud.gov/offices/pih/programs/ph/rhiip/uivsystem.cfm.

- PHAs are required to print the EIV Income Report and confirm with the tenant that the current listed benefit amount is correct. If the tenant agrees with the current EIV-reported amount, the PHA will use the gross benefit amount to calculate annual income from social security benefits.
- If the tenant disputes the EIV-reported benefit amount, the PHA is required to request the tenant to provide a current (dated within the last 60 calendar days) SSA benefit letter. If the tenant is unable to provide the requested document, the PHA should follow the instructions under *Third Party Verification of SS/SSI Benefits of Applicants and Household Members* (see section 13 of this Notice).
- If benefit information is not available in the EIV system, the PHA should follow the instructions under *Third Party Verification of SS/SSI Benefits of Applicants and Household Members* (section 13 of this Notice). **Note:** It is possible for EIV to not display SS/SSI benefit information although the individual has been receiving benefits for years. EIV displays only benefit information that has been received by SSA.
- Photocopies of social security checks or bank statements are not acceptable forms of verification for SS/SSI benefits because the dollar amount listed may not be the gross benefit amount.

Note: SS/SSI benefit information in the EIV system is updated every three months in accordance with the below schedule. SS/SSI benefits are increased annually to reflect the SSA-approved cost of living adjustment (COLA) for all beneficiaries by December 31st in the EIV system. However, due to the large volume of data processed by the Department, there may be a delay in updating the new SS/SSI benefit amounts. On October 15, 2009, SSA announced that there will be no COLA applied to current SS/SSI benefits. As such, PHAs will simply annualize the current benefit amount for upcoming annual/interim reexams. PHAs are reminded that despite the fact that there will be no COLA in 2010, PHAs are still required to verify current SS/SSI benefits to ensure the most current income information is used to determine annual income from SS/SSI benefits. There could be an increases or decreases to the benefit amount based on income and other household factors. PHAs should follow the guidance outlined in this notice for verifying SS/SSI benefits. These verification procedures will save you time!

HUD-SSA Computer Matching Schedule	
PHA State	Month Matched
AL, FL, GA, ID, IL, KY, MD, MI, MO, ND, NY, VA	January, April, July, October
AR, AZ, CA, CO, CT, MA, MN, MS, MT, NM, OK, OR, PA, RQ, SC, WA, WI	February, May, August, November
AK, DC, DE, GQ, HI, IA, IN, KS, LA, ME, NC, NE, NH, NJ, NV, OH, RI, SD, TN, TQ, TX, UT, VQ, VT, WV, WY	March, June, September, December

15. **Treatment of SSA Overpayment Deductions from Social Security Benefits**

SSA Overpayment Deductions. An overpayment occurs when SSA pays an individual more than s/he should have been paid. If this happens, SSA will notify the individual and his/her designated representative payee, if applicable. Recovery of an overpayment is made by withholding the monthly Social Security check until the overpayment is paid in full (individuals receiving SS benefits), unless the individual requests a lesser withholding amount and SSA approves the request. Full withholding would start 30 days after SSA notification of the overpayment. SSA begins deducting money (for overpayment recovery) from SSI payments at least 60 days after SSA notification of the overpayment. Generally, SSA will withhold 10 percent of the maximum federal SSI benefit rate each month. However, an individual may request that less be taken from their benefit, or an individual may ask to pay back the overpayment at a rate greater than 10 percent.

Regardless of the amount withheld to repay SSA the overpayment amount, or the length of the anticipated withholding period, the PHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount. The PHA should be cognizant of the SSA-determined overpayment amount and length of time the reduced payment will occur, to ensure the family's accurate rent contribution for the duration of reduced income; however circumstances may arise affecting the end date of the withholding period, causing it to go on longer than anticipated. See examples below.

Note: A Social Security overpayment can be withheld from a SSI underpayment due to the beneficiary.

Example 1: Bob's gross monthly SSI benefit is \$500 (or \$6,000 annually). On February 1, 2010, Bob brings in a letter showing that SSA has determined that he has been overpaid by \$100, and will begin deducting 10% (\$50) from his monthly check on March 1, 2010. Note that this deduction would occur for **only two months** (March and April). The PHA would calculate annual income at \$5,400 ($\$500 - \$50 = \450×12) and Bob's rent contribution should be changed for two months; however once the deduction ends (May 2010), annual income should be recalculated again, and the full SSI benefit should again be used to calculate annual income.

Example 2: Sue's gross monthly SSI benefit is \$500 (or \$6,000 annually). On February 1, 2010, Sue brings in a letter showing that SSA has determined that she has been overpaid by \$2,000, and will begin deducting 10% (\$50) from her monthly check on March 1, 2010. Note that this deduction would occur for 40 months. The PHA would calculate annual income at \$5,400 ($\$500 - \$50 = \450×12) and Sue's rent contribution should be changed and effective until the next reexamination of income, at which time a new redetermination would be made based on current information and documentation.

16. **How to Ensure Availability of Social Security Benefit Information in the EIV System:**

The availability of SS and SSI benefit information in the EIV system depends on PHA data quality and timely submission of form HUD-50058 to the PIC. PHAs must ensure that data entered in section 3 of the form HUD-50058 (i.e. household members' name, date of birth

and social security number) is complete and accurate. If a family's form HUD-50058 is not successfully submitted to PIC, income information will not be available in EIV.

In accordance with 24 CFR 5.233(a)(2)(ii), PHAs are required to use EIV to reduce administrative and subsidy payment errors. As such, PHAs are required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV. This report contains two reports (*Failed SSA Screening Report and Failed EIV Pre-screening Report*), which can help the PHA improve the availability of income information and assist the PHA in identifying tenant personal identifiers that require correction. Below is a summary of how these reports can be beneficial to the PHA.

- Failed SSA Screening Report:** informs the PHA of any tenant whose identity can not be confirmed by the SSA due to incorrect personal identifiers (date of birth, surname, and/or SSN) recorded in section 3 of the form HUD-50058. PHA staff should review this report on a monthly basis, obtain appropriate documentation from the tenant, update section 3 of the form HUD-50058, accordingly, and transmit a revised form HUD-50058 into PIC.
- Failed EIV Pre-screening Report:** informs the PHA of any tenant who has failed HUD's EIV pre-screening process due to incorrect personal identifiers (date of birth, surname, and/or SSN) or invalid form HUD-50058 transmitted (e.g. effective date of action is more than 15 months ago). Staff should review this report on a monthly basis, obtain appropriate documentation from the tenant, update section 3 of the form HUD-50058, accordingly, and transmit a revised form HUD-50058 into PIC. For invalid form HUD-50058s, staff should review the error description and take appropriate action to correct the error and transmit a revised form HUD-50058 into PIC. The PIC Coach within the PHA's designated local HUD office is available to provide assistance.

Below is a summary of EIV failed verification error descriptions, explanations, and corrective actions PHAs should take in order to ensure the availability of social security benefit information in EIV and incorrect tenant personal identifiers are promptly corrected.

Failed Verification Report Error Messages			
	Error Message Description	Explanation	Corrective Action
1	No benefits reported by SSA MM/DD/YYYY	No benefits reported by SSA. The date of birth recorded on line 3e of the form HUD-50058 is not the same DOB reflected in SSA's records.	Update line 3e of form HUD-50058 with the SSA-provided DOB.
2	SSN is verified; individual is deceased Or SSN is verified;	The tenant's SSN has been verified by SSA and the individual is deceased. If a date follows the error message, this is the date of	Contact tenant's adult family member or next of kin to confirm death. Upon confirmation of death, update family composition

Failed Verification Report Error Messages			
	Error Message Description	Explanation	Corrective Action
	individual is deceased MM/DD/YYYY	death as reflected in SSA records.	accordingly. If a single member deceased household, take appropriate action in accordance with program requirements and PHA-established policies, including termination of HAP contract (Section 8 only) and transmit an End of Participation (EOP) (action type) form HUD-50058. If applicable, recover HAP overpayment from landlord.
3	3 – Surname matched, but DOB did not match NUMIDENT	The date of birth recorded on line 3e of the form HUD-50058 is not the same DOB reflected in SSA's records.	Ask the tenant to provide documentation (birth certificate or state issued identification card) of his/her DOB. Update line 3e of form HUD-50058 with the correct DOB.
4	Verification failed - Date of birth matched, but surname did not match with SSA records or 5 - Surname does not match; DOB was checked	The surname recorded on line 3b of the form HUD-50058 is not the same surname reflected in SSA's records.	Ask the tenant to provide documentation (SSN card, birth certificate, state issued identification card, marriage license or court documents) of the other name he/she is using. Update line 3b of form HUD-50058 with the correct surname.
5	Verification failed – SS/SSI benefits cannot be disclosed due to discrepancy in date of birth MM/DD/YYYY	The tenant is receiving SS/SSI benefits; however, SSA can not disclose the benefit amount because the date of birth recorded on line 3e of the form HUD-50058 is incorrect. However, the DOB reflected in SSA records is listed at the end of the error message.	Request the tenant to provide a current SS/SSI benefit letter. Update line 3e of form HUD-50058 with the SSA-provided DOB.
6	Verification failed –	The tenant is receiving SS/SSI	Request the tenant to provide

Failed Verification Report Error Messages			
	Error Message Description	Explanation	Corrective Action
	SS/ SSI benefits cannot be disclosed due to discrepancy in name	benefits; however, SSA can not disclose the benefit amount because the surname recorded on line 3b of the form HUD-50058 is not the same surname reflected in SSA records.	<p>a current SS/SSI benefit letter.</p> <p>Ask the tenant to provide documentation (SSN card, birth certificate, state issued identification card, marriage license or court documents) of the other name he/she is using.</p> <p>Update line 3b of form HUD-50058 with the correct surname.</p>
7	<p>Verification failed - SSN not found in SSA records</p> <p>or</p> <p>1 – SSN is not in file</p> <p>or</p> <p>* The input SSN was not verified</p>	The tenant's SSN recorded on line 3n of the form HUD-50058 is not a valid number issued by SSA or listed in SSA records.	<p>Request original SSN card from tenant.</p> <p>Confirm SSN displayed on the card matches the SSN reported on line 3n of form HUD-50058.</p> <p>If the numbers do not match, make the necessary correction on line 3n of form HUD-50058.</p> <p>For continued SSN failures, notify HUD OIG or other law enforcement agency.</p>
8	<p>Verification failed - SSN not found in SSA records</p> <p>XXXXXXXXXX</p>	The tenant SSN recorded on line 3n of the form HUD-50058 is not a valid number issued by SSA. However, the SSN reflected in SSA records is listed at the end of the error message.	Update line 3n of form HUD-50058 with the SSA-provided SSN.
9	<p>Verification failed - Surname matched, but date of birth did not match with SSA records</p> <p>MM/DD/YYYY</p>	The date of birth recorded on line 3e of the form HUD-50058 is incorrect. However, the DOB reflected in SSA records is listed at the end of the error message.	Update line 3e of form HUD-50058 with the SSA-provided DOB.

Note: If the SSA's records are wrong, only the tenant can request SSA to correct his/her record, by completing and submitting form SS-5 *Application for a Social Security Card* to the local SSA office.

Failed EIV Pre-screening Report Error Messages			
	Error Message Description	Explanation	Corrective Action
1	Failed DOB check.	The date of birth is blank or null.	Enter DOB on line 3e of the form HUD-50058. Ensure only numbers are recorded.
2	Failed last name check.	The last name is blank or null.	Enter last name on line 3b of the form HUD-50058. Ensure only alpha characters are recorded.
3	Failed SSN check.	The SSN is not numeric or all 9s or LIKE {000% } or LIKE {__00% } or LIKE {%0000}.	<p>Enter valid SSN on line 3n of the form HUD-50058. Do not use repetitive numbers, as directed in the current Form HUD-50058 Instruction Booklet, if tenant has not disclosed a SSN. An alternate ID should be generated for all household members without an SSN (using the alternate ID Generator Module in PIC).</p> <p>Note: This error message will occur for any individual with a PIC generated ALT ID. If individual is a U.S. Citizen/National or eligible noncitizen, the PHA should follow up with the family to obtain documentation of the SSN. If the individual does not contend to have eligible immigration status (and coded as ineligible noncitizen on the form HUD-50058), no further action is required by the PHA.</p>
4	Failed effective date check.	The effective date of action is more than 15 months old.	Enter a current effective date on line 2b of the form HUD-50058.

17. **For inquiries about this Notice contact:** your local HUD field office or Nicole Faison of HUD Headquarters' Office of Public Housing and Voucher Programs at (202) 402-4267, or via email at PIH.RHIIP.TA@HUD.GOV.
18. **Paperwork Reduction:** The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3520) and assigned OMB control number(s) 2577-0083. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

/s/

Sandra B. Henriquez, Assistant Secretary for
Public and Indian Housing