

### Exhibit 2-3 Policy Overview

Old Policy	New Policy
Formerly in section 2.2.C of Chapter 2 and Exhibit 2-1	
Exhibit 3-2 ineligible noncitizen proration	2-3.1.D \$50 per family per month subsidy reduction for families that contain ineligible noncitizen members

#### Forms

AP104 Declaration of Eligibility Status

AP105 Noncitizen with Eligible Immigration Status

AP118 Eligible Immigration Evidence Request

G-845 Document Verification Request

V711 Proration of Assistance for Families with Ineligible Noncitizens

#### Administrative Desk Manual

U.S. Citizenship and Immigration Services SAVE Procedure

## **Exhibit 2-3**

### **Meet Citizenship Requirements**

Section 214 of the Housing and Community Development Act of 1980 prohibits HUD from making financial assistance available to persons who are not in eligible status with respect to citizenship or noncitizen immigration status (24 CFR 5.500). This restriction applies to the Public Housing Program, Housing Choice Voucher Program, and Section 8 New Multifamily Housing Program.

AHFC will not deny or delay assistance solely on the lack of third-party immigration verification.

#### **2-3.1 CITIZENSHIP CHOICES**

Each adult family member must sign and declare his or her citizenship or immigration status on the *Declaration of Eligibility Status* (form PW-AP104) prior to receiving assistance. Each individual may choose from the following:

- Eligible Immigration Status - United States citizen or Noncitizen with eligible immigration status
- Ineligible Immigration Status or Choose Not to Declare

For each child, an adult residing in the unit who is responsible for that child will sign the form. All family members with noncitizen status will be checked in the Systematic Alien Verification for Entitlements (SAVE) system. See the Administrative Desk Manual for instructions.

##### **2-3.1.A Eligible Immigration Status**

Family members who certify that they are a noncitizen with eligible immigration status must complete the *Noncitizen with Eligible Immigration Status* (form AP105).

##### **1. U.S. Citizen Status**

For family members declared as U.S. citizens or nationals, the signature of each adult on the *Declaration of Eligibility Status* (form AP104) is required. Signatures for minors are required as stated above.

If clarification or additional verification for a family member is required, staff may ask for such items as a birth certificate, U.S. passport, or military identification card or DD-214.

## 2. Eligible Noncitizen Status

For family members declaring noncitizen with eligible immigration status, the following evidence is required.

- a. The signature of each adult on the *Declaration of Eligibility Status* (form PW-AP104). Signatures for minors are required as stated above.
- b. The signature of each adult on the *Noncitizen with Eligible Immigration Status* (form AP105). Signatures for minors are required as stated above.
- c. Original immigration documentation. If an adult was 62 years of age or older as of September 30, 1996, the adult must provide proof of age. Immigration documents are not required.

The immigration documentation provided may include: Arrival/Departure Record (Form I-94), Permanent Resident Card (Form I-551, "green card"), Employment Authorization Document (Form I-766), or Foreign Passport and Visa.

## 3. Resident Alien Status for Freely Associated States

Section 3(b) of Public Law 106-504, enacted November 13, 2000, amends Section 214 (a) of the Housing and Community Development Act of 1980 (USC 1436a(a)) to provide that an alien who is a lawful resident in the United States and its territories and its 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, and Palau (collectively referred to as "the Freely Associated States" (FAS)) is eligible for assistance in the Public Housing, Housing Choice Voucher, and Section 8 New Multifamily Housing Program.

## 4. Canadian Indians

Since 1794, aboriginal peoples have been guaranteed the right to trade and travel between the United States and Canada, which was then a territory of Great Britain. This right is recognized in **Article III** of the **Jay Treaty**, also known as the **Treaty of Amity, Commerce and Navigation of 1794** and subsequent laws that stem from the Jay Treaty.

Canadian-born people with at least 50 percent aboriginal blood can enter, live in, and work in the United States without immigration restrictions. This right is guaranteed by federal statute (8 US Code 1359) and the federal court case *Akins v. Saxbe*, 380 F. Supp. 1210 (D.Me. 1974). These rights include the ability to:

- a. Cross the U.S./Canadian border freely.
- b. Live and work in the U.S.

- c. Be eligible for public benefits such as Medicaid, Supplemental Security Income (SSI), Medicare, Unemployment Benefits, and other Public Assistance provided the person meets the appropriate agency guidelines.
- d. **Federal benefits** may include federal student loans, Section 8 housing, and Veterans' benefits.
- e. **State benefits** may include Public Assistance, Women/Infants/Children ("WIC") and Temporary Assistance for Needy Families (TANF).

INS does not keep a data bank of persons affected by Jay's Treaty and does not require registration or permission. A person who crosses the border with intent to live, work, or apply for benefits in the U.S., must be prepared to prove at least 50 percent aboriginal blood ("letter of quantum"). Acceptable verification includes the **letter of quantum** from the tribal office and **one** of the following:

- a. Social Security Card
- b. Canadian or U.S. driver's license
- c. School ID card with photo
- d. U.S. military card
- e. U.S. Coast Guard Merchant Mariner card

#### 5. Other Alien Status

Under no circumstances will AHFC provide assistance to alien visitors, tourists, diplomats, or students who enter the United States temporarily with no intention of abandoning their residence in a foreign country.

#### 2-3.1.B Ineligible Immigration Status

Staff will deny eligibility for a family of noncitizens where none of the family members have eligible immigration status or proper documentation. Family members who choose to not declare their immigration status are ineligible for assistance; however, they may be part of a "mixed" family (see below).

**Do not** proceed with Department of Homeland Security verification if the family cannot provide the proper documents. Send the family the *Eligible Immigration Evidence Request* (form AP118).

#### 2-3.1.C Noncitizen Students

Under 24 CFR 5.522, housing assistance may not be provided to any alien (42 U.S. Code 1436a(c)(2)(A) who:

- has a residence in a foreign country that such alien has no intention of abandoning;
- is a bona fide student qualified to pursue a full course of study; and

- is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States (an F-1 or M-1 student visa).

Any noncitizen family members living with the noncitizen student are also ineligible for assistance. Noncitizen students are not eligible for continuation of assistance, prorated assistance, or temporary deferral of termination of assistance.

A noncitizen student with a citizen spouse or citizen child is considered a “mixed family” and may receive assistance.

### **2-3.1.D Mixed or Prorated Family**

A family comprised of both eligible and ineligible persons is referred to as a “mixed” family. A person with ineligible immigration status may continue to reside in the household; however, staff will increase the family’s rental portion \$50 per month for each family with one or more ineligible noncitizens.

#### **MTW – Ineligible Noncitizen Proration**

The Fusaichi Pegasus family includes 6 people, 4 are eligible. The family’s Total Tenant Payment is \$1,000 per month.

1. Add \$50 per month due to ineligible noncitizen members.  
 $\$1,000 + \$50 = \$1,050$
2. Continue with this rent amount until citizenship status changes or ineligible members are no longer part of the household.

### **2-3.2 ELIGIBLE IMMIGRATION EVIDENCE REQUEST (FORM AP118)**

This form is used to document requests for immigration status and to document the family’s right to appeal Department of Homeland Security and AHFC decisions.

#### **2-3.2.A First Request**

Staff has met with the family, the family does not have the appropriate documentation, and the family contends eligible immigration status. Staff will:

1. Check the first checkbox, input the meeting date, and list the names of the family members who must submit evidence of eligibility.
2. In the second paragraph, staff will allow the family 30 calendar days to submit the documentation (24 CFR 5.508(h)(2)).

### **2-3.2.B First Request Documents**

If the family submits the necessary documentation, follow the instructions to verify the family's eligibility using the SAVE system. If the documents cannot be verified by the SAVE system or if the SAVE system states the documents must be reviewed, send form G-845 with a copy of the document.

### **2-3.2.C Second Request**

If the family failed to submit the documents requested in the first letter, staff will:

1. Check the second checkbox, fill in the date of the first letter, and list the names of the family members who are missing eligibility evidence.
2. Staff will then check the checkbox that states the family did not provide the documents. The family is entitled to an Informal Review.
3. If no family member has eligible immigration status, staff will also need to send an ineligibility notice.

### **2-3.2.D Second Request Documents**

If the documents were not able to be verified by DHS, staff will:

1. Check the second checkbox, fill in the date of the first letter, and list the names of the family members who are missing eligibility evidence.
2. Staff will then check the checkbox that states DHS could not determine eligible immigration status. The family can choose to grieve the decision with DHS or can choose to grieve the decision with AHFC.

### **2-3.2.E DHS Appeal or AHFC Grievance**

The family may choose to appeal the decision with DHS. While the family is in this appeal process, staff will continue to code the family member as pending verification. If other family members have eligible immigration status, AHFC may offer housing assistance while the family is in the appeal process. AHFC will not deny or delay housing assistance waiting for an appeal decision.

The family may choose not to appeal the decision with DHS, but still grieve the decision to code a family member as ineligible for assistance. AHFC will offer the family the right to an Informal Hearing. See Chapter 9 for the family's grievance rights.

## **2-3.3 VERIFICATION**

Staff will check both sides of any proof of eligible immigration status documentation. Expiration dates are often located on back or subsequent pages. Staff will photocopy all documentation for the client file. See Chapter 3 for acceptable noncitizen status verification.