

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 5**

[Docket No. FR-4754-F-01]

RIN 2577-AC35

Clarification of Eligibility of Citizens of Freely Associated States for Housing Assistance**AGENCY:** Office of Public and Indian Housing, HUD.**ACTION:** Final rule.

SUMMARY: Recently enacted law provides that citizens of the Freely Associated States (the Marshall Islands, the Federated States of Micronesia, and Palau) are eligible to receive housing assistance under Section 8, public housing, and other programs while lawfully residing in the United States, its territories and possessions. However, while residing in Guam, such aliens are not entitled to a preference over United States citizens or nationals. This rule makes conforming changes to HUD's regulations concerning restrictions on assistance to noncitizens.

DATES: *Effective Date:* November 22, 2002.

FOR FURTHER INFORMATION CONTACT:

Glenda N. Green, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, at (202) 708-0950. Persons with hearing- or speech-impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877-8339.

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

On January 14, 1986, Congress approved the Compacts of Free Association between the United States and the Federated States of Micronesia, and between the United States and the Government of the Marshall Islands (48 U.S.C. 1901 note). Section 141 of the Compacts of Free Association grants born or naturalized citizens of Micronesia and the Marshall Islands, and those entitled to citizenship by lineal descent, the right to establish legal residence in the United States and its territories and possessions, and to be employed in the United States. On November 14, 1986, Congress approved the Compact of Free Association with the Government of Palau (48 U.S.C. 1931 note)(collectively, this rule refers to these documents as the "Compacts of Free Association"). Section 141 of the Compact of Free Association with Palau contains analogous provisions, with the

exception, not relevant to the purposes of this rulemaking, of the lineal descent provision.

Section 3(b) of Public Law 106-504 (approved November 13, 2000) amended section 214(a) of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a(a)) which governs restrictions on housing assistance provided by HUD. As a result of this amendment, citizens of the Freely Associated States lawfully residing in the United States, its territories and possessions, are now among those noncitizens eligible for the housing assistance covered in that section. Such assistance includes public housing, Section 8 housing (both tenant and project-based), the development grant programs, and assistance under sections 235 and 236 of the National Housing Act and the Rent Supplement program under 12 U.S.C. 1701s. Additionally, Section 3(b) amends 42 U.S.C. 1436a(a) to provide that aliens legally residing in Guam under the provisions of section 141 of the Compacts of Free Association shall not be entitled to a preference in receiving housing assistance over any United States citizen or national residing in Guam. These provisions are codified in 42 U.S.C. 1436a(a)(7).

II. HUD Notice PIH 2001-27.

On August 3, 2001, HUD issued Notice PIH 2001-27 to provide guidance on the implementation of section 3(b) of Public Law 106-504. This guidance advised, and HUD strongly reiterates, that:

- PHAs must notify in writing all affected families that as a result of Public Law 106-504, citizens of the Marshall Islands, the Federated States of Micronesia, and Palau ("the Freely Associated States") living in the United States, its territories and possessions, are now eligible to receive housing assistance.

- If a family, prior to the approval of Public Law 106-504, was considered "mixed" and receiving prorated assistance because certain of its members were eligible under the legal and regulatory provisions in effect before the statutory change, and other members were citizens of the Freely Associated States who are now eligible, such family is no longer "mixed" but is now fully eligible.

- PHAs must conduct interim reexaminations and make any rent adjustments as soon as possible. Notice PIH 2001-27 provided the process for making retroactive rent adjustments.

In addition, HUD advises that:

- PHAs in the United States, its territories and possessions, including Guam, must (if the waiting list is open

for applications) accept an application from a citizen of the Freely Associated States. This is true notwithstanding the provision of the law regarding preferences in Guam.

- Citizens of the Freely Associated States may receive a local housing preference, established by the PHA. However, within Guam, such preference cannot allow them to receive housing assistance in preference to applicants who are United States citizens or nationals residing in Guam. Date and time of application are not a preference, so citizens of the Freely Associated States receive the benefit of prior date and time of application.

- Households consisting entirely of citizens of the Freely Associated States must be treated the same as United States citizens in the selection, admission, and occupancy of federally assisted housing in Guam, with the exception of the restriction on preferences. For example, let us assume for the sake of discussion that the Guam Housing and Urban Renewal Authority has a local preference for families paying more than 50% of their income for rent.¹ Let us also assume that family #1, all of whose members are citizens of the Freely Associated States, is eligible for the selection preference, and has applied for a unit of a particular bedroom size on May 15, 2002, at 10 a.m. Let us further assume that family #2 of eligible United States citizens, not entitled to any selection preference, applied for a unit of the same bedroom size on May 15, 2002, at 9:30 a.m., that no other applications were filed between these two times, and that there is one unit of the appropriate bedroom size available. The question is, could family #1 from the Freely Associated States be moved ahead of family #2 of United States citizens because of their preference, even though their application was later in time? The answer is no because the law prohibits such family from receiving a preference in housing assistance over any United States citizen or national residing in Guam.

However, let us change the example slightly. Let us now assume that family #2's application was filed by an eligible family of citizens of the Freely Associated States, but one that is not entitled to the selection preference, there are no other applications, and only one unit is available, as in the previous example. Family #1 from the Freely Associated States that has a preference

¹ This is a hypothetical example for discussion purposes only and is not intended to be an accurate representation of the Guam Housing and Urban Renewal Authority's tenant selection policies or preferences.

would get the benefit of the preference in that case and be given the unit ahead of family #2 without the preference, even though its application was a half-hour later in time.

Finally, if family #2's application was filed by the family from the Freely Associated States, and family #1's application was filed by the U.S. citizen family, and neither had any selection preferences, family #1's application would be selected according to the normal priority based on date and time of application.

III. This Final Rule

This rule merely conforms HUD's regulations to existing law. Therefore, public comment is unnecessary, and this rule is being issued as a final rule.

This final rule amends 24 CFR part 5, subpart E, the implementing regulation for 42 U.S.C. 1436a. Specifically, the rule adds a new paragraph 5.506(c) to conform the rule to the limitation on preferences in 42 U.S.C. 1436a(a)(7). It should be noted that current 24 CFR 5.506(a)(2) now includes citizens of the countries in the Compacts of Free Association (including those living in Guam and other territories and possessions) by virtue of cross-reference to 42 U.S.C. 1436a(a).

IV. Findings and Certifications

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is "impractical, unnecessary, or contrary to the public interest" (see 24 CFR 10.1). In this case, public comment is unnecessary, since this rule simply conforms HUD's regulations to statutory changes that are currently in effect, in order to emphasize and communicate those legal changes to HUD's regulated community.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely conforms HUD's regulations to existing law.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact to this final rule is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This interim rule does not

impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

For the foregoing reasons, HUD amends 24 CFR part 5, subpart E as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

Subpart E—Restrictions on Assistance to Noncitizens

1. The authority citation for subpart E continues to read as follows:

Authority: 42 U.S.C. 1436a and 3535d.

2. Amend 24 CFR 5.506 as follows:

a. Add a new paragraph (c) to read as follows:

§ 5.506 General provisions.

* * * * *

(c) *Preferences.* Citizens of the Republic of Marshall Islands, the Federated States of Micronesia, and the Republic of Palau who are eligible for assistance under paragraph (a)(2) of this section are entitled to receive local preferences for housing assistance, except that, within Guam, such citizens who have such local preference will not be entitled to housing assistance in preference to any United States citizen or national resident therein who is otherwise eligible for such assistance.

Dated: September 20, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

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