

(3) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period for deferrals provided after November 29, 1996 shall not exceed a period of eighteen months. The aggregate deferral period for deferrals granted prior to November 29, 1996 shall not exceed 3 years. These time periods do not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act.

(4) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the responsible entity must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(5) *Determination of availability of affordable housing at end of each deferral period.* (i) Before the end of each deferral period, the responsible entity must satisfy the applicable requirements of either paragraph (b)(5)(i)(A) or (B) of this section. Specifically, the responsible entity must:

(A) *For Housing covered programs:* Make a determination that one of the two conditions specified in paragraph (b)(2) of this section continues to be met (note: affordable housing will be determined to be available if the vacancy rate is five percent or greater), the owner's knowledge and the tenant's evidence indicate that other affordable housing is available; or

(B) *For Section 8 or Public Housing covered programs:* Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the responsible entity's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing.

(ii) The responsible entity must also:

(A) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceeds the maximum deferral period). This time period does not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act, and a determination was made that other affordable housing is not available; or

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed the maximum deferral period (unless the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act), or a determination has been made that other affordable housing is available.

(c) *Option to select proration of assistance at end of deferral period.* A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the responsible entity shall provide proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(d) *Notification of decision on family preservation assistance.* A responsible entity shall notify the family of its decision concerning the family's qualification for family preservation assistance. If the family is ineligible for family preservation assistance, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights.

[61 FR 13616, Mar. 27, 1996, as amended at 61 FR 60539, Nov. 29, 1996; 64 FR 25732, May 12, 1999]

§ 5.520 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance, or

§5.520

24 CFR Subtitle A (4-1-04 Edition)

other than a family who is eligible for and requests and receives temporary deferral of termination of assistance. An eligible mixed family who requests prorated assistance must be provided prorated assistance.

(b) *Method of prorating assistance for Housing covered programs*—(1) *Proration under Rent Supplement Program*. If the household participates in the Rent Supplement Program, the rent supplement paid on the household's behalf shall be the rent supplement the household would otherwise be entitled to, multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(2) *Proration under Section 235 Program*. If the household participates in the Section 235 Program, the interest reduction payments paid on the household's behalf shall be the payments the household would otherwise be entitled to, multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(3) *Proration under Section 236 Program without the benefit of additional assistance*. If the household participates in the Section 236 Program without the benefit of any additional assistance, the household's rent shall be increased above the rent the household would otherwise pay by an amount equal to the difference between the market rate rent for the unit and the rent the household would otherwise pay multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household;

(4) *Proration under Section 236 Program with the benefit of additional assistance*. If the household participates in the Section 236 Program with the benefit of additional assistance under the rent supplement, rental assistance payment or Section 8 programs, the household's rent shall be increased above the rent the household would otherwise pay by:

(i) An amount equal to the difference between the market rate rent for the unit and the basic rent for the unit multiplied by a fraction, the denomi-

nator of which is the number of people in the household, and the numerator of which is the number of ineligible persons in the household, plus;

(ii) An amount equal to the rent supplement, housing assistance payment or rental assistance payment the household would otherwise be entitled to multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household.

(c) *Method of prorating assistance for Section 8 covered programs*—(1) *Section 8 assistance other than assistance provided for a tenancy under the Section 8 Rental Voucher Program or for an over-FMR tenancy in the Section 8 Rental Certificate Program*. For Section 8 assistance other than assistance for a tenancy under the voucher program or an over-FMR tenancy under the certificate program, the PHA must prorate the family's assistance as follows:

(i) *Step 1*. Determine gross rent for the unit. (Gross rent is contract rent plus any allowance for tenant paid utilities).

(ii) *Step 2*. Determine total tenant payment in accordance with section 5.613(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(iii) *Step 3*. Subtract amount determined in paragraph (c)(1)(ii), (Step 2), from amount determined in paragraph (c)(1)(i), (Step 1).

(iv) *Step 4*. Multiply the amount determined in paragraph (c)(1)(iii), (Step 3) by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(v) *Prorated housing assistance*. The amount determined in paragraph (c)(1)(iv), (Step 4) is the prorated housing assistance payment for a mixed family.

(vi) *No effect on contract rent*. Proration of the housing assistance payment does not affect contract rent to the owner. The family must pay as rent the portion of contract rent not covered by the prorated housing assistance payment.

(2) *Assistance for a Section 8 voucher tenancy or over-FMR tenancy.* For a tenancy under the voucher program or for an over-FMR tenancy under the certificate program, the PHA must prorate the family's assistance as follows:

(i) *Step 1.* Determine the amount of the pre-proration housing assistance payment. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(ii) *Step 2.* Multiply the amount determined in paragraph (c)(2)(i), (Step 1) by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(iii) *Prorated housing assistance.* The amount determined in paragraph (c)(2)(ii), (Step 2) is the prorated housing assistance payment for a mixed family.

(iv) *No effect on rent to owner.* Proration of the housing assistance payment does not affect rent to owner. The family must pay the portion of rent to owner not covered by the prorated housing assistance payment.

(d) *Method of prorating assistance for Public Housing covered programs.* The PHA shall prorate the family's assistance by:

(1) *Step 1.* Determining total tenant payment in accordance with 24 CFR 913.107(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(2) *Step 2.* Subtracting the total tenant payment from a HUD-supplied "public housing maximum rent" applicable to the unit or the PHA. (This "maximum rent" shall be determined by HUD using the 95th percentile rent for the PHA.) The result is the maximum subsidy for which the family could qualify if all members were eligible ("family maximum subsidy").

(3) *Step 3.* Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eli-

gible family member is the "member maximum subsidy".

(4) *Step 4.* Multiplying the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ("eligible family members").

(5) *Step 5.* The product of steps 1 through 4, as set forth in paragraph (d)(2) of this section is the amount of subsidy for which the family is eligible ("eligible subsidy"). The family's rent is the "public housing maximum rent" minus the amount of the eligible subsidy.

[61 FR 5202, Feb. 9, 1996, as amended at 63 FR 23853, Apr. 30, 1998; 64 FR 13056, Mar. 16, 1999]

§ 5.522 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§ 5.516 and 5.518 permitting continued assistance or temporary deferral of termination of assistance for certain families do not apply to any person who is determined to be a noncitizen student as in paragraph (c)(2)(A) of Section 214 (42 U.S.C. 1436a(c)(2)(A)). The family of a noncitizen student may be eligible for prorated assistance, as provided in paragraph (b)(2) of this section.

(b) *Family of noncitizen students.* (1) The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section extends to the noncitizen spouse of the noncitizen student and minor children accompanying the student or following to join the student.

(2) The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

§ 5.524 Compliance with non-discrimination requirements.

The responsible entity shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with all applicable nondiscrimination and equal opportunity requirements, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-5) and the implementing regulations in 24