



**CALIFORNIA HANDBOOK
ON ELIGIBILITY OF IMMIGRANTS
FOR AFFORDABLE HOUSING**

April 2026

**National Housing Law Project and
Western Center on Law and Poverty**

Dedication

This handbook is dedicated to David B. Bryson, whose vision and life-long dedication to affordable housing made it possible, and who created the framework for the handbook before his premature death in 1999.

Acknowledgment

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The views expressed herein, and errors, if any, are those of National Housing Law Project (NHLP) and Western Center on Law and Poverty (WCLP) and not of the foundations who made it possible, or those who assisted with its preparation.

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CHAPTER 1

INTRODUCTION

Many affordable housing programs for lower income people are only open to citizens and certain eligible immigrants. There are many different housing programs and many different rules about immigrants. This handbook focuses on those federal and state housing programs that are generally available to lower income households in California. It describes the rules that apply to immigrants in those programs. A summary list of the programs is in Appendix A.

The handbook is for housing and immigration advocates, lawyers for lower income people,¹ and for people and organizations that provide affordable housing. It will help advocates understand whether their clients are eligible for specific programs. It will help landlords understand who is eligible to live in the housing they own or manage.

The specific statutes and regulations setting out the rules are listed in the endnotes. A list of the relevant statutes and regulations is in Appendix B.

The handbook takes a practical approach to determining which rules apply to a certain tenant or to a particular rental unit or housing program. This approach takes several steps:

- i. Identify the type of housing or program.
- ii. Determine which rules apply to the specific housing unit.
- iii. Identify the person's citizenship status and determine whether the person is restricted under the applicable program.
- iv. Determine how the rules are applied in each specific circumstance.
- v. Determine whether consideration needs to be given to other issues (such as possible discrimination or the use of housing related programs).

The handbook takes you step by step through this process. First, Chapters 2 and 3 describe how to figure out which rules apply to a particular housing program or housing development. The four main sets of rules are:

¹ Lawyers in programs funded by the Legal Services Corporation have some restrictions on their ability to represent immigrants, but can represent certain categories of documented immigrants and battered immigrant women. 45 C.F.R. Part 1626 (2025). *See id.* §§ 1626.1 *et. seq.* (2025); CHRISTOPHER BUERGER, ALAN W. HOUSEMAN & LINDA E. PERLE, WHAT CAN AND CANNOT BE DONE: REPRESENTATION OF CLIENTS BY LSC-FUNDED PROGRAMS (2018), available at <https://www.nlada.org/sites/default/files/What%20Can%20and%20Cannot%20Be%20Done%20Updated%20July%202018.pdf> (list of relevant Legal Services Corporation authorities, Appendix B, Section II(F)).

- i. Section 214 of the Housing & Community Development Act of 1980, as amended,² and the accompanying regulations and other materials³ published by the United States Department of Housing and Urban Development (HUD). These apply primarily to federally subsidized urban housing programs;
- ii. Rural Development (RD) statutes⁴ and regulations⁵ published by the United States Department of Agriculture (USDA). These apply to federally subsidized rural housing programs;
- iii. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which established immigrant restrictions in certain government benefit programs.⁶ PRWORA has not been implemented in most housing programs, but has been implemented in some housing *related* programs such as weatherization services; and

² Restriction on Use of Assisted Housing by Non-Resident Aliens, Pub. L. No. 96-399, § 214, 94 Stat. 1637 (1980) (codified as amended at 42 U.S.C.A. § 1436a (West, Westlaw through Pub. L. No. 119-18)). In 1996, Congress amended Section 214 to revise provisions on verification of eligibility and proration of assistance. Use of Assisted Housing by Aliens Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009, 3009-684 (1996). Further revisions were made by the Quality Housing and Work Responsibility Act (QHWRA), Pub. L. No. 105-276, Title V, 112 Stat. 2461, 2518 (1998). Due to litigation, implementation was delayed for many years after initial adoption of Section 214. Implementation began again in 1995, with the adoption of 24 C.F.R. §5.500 (2025).

³ 24 C.F.R. §§ 5.500 *et seq.* (2025). These regulations were first adopted on March 20, 1995, effective June 19, 1995. 60 Fed. Reg. 14816 (1995), *amended by* 61 Fed. Reg. 13614 (1996). Subsequent amendments are at 61 Fed. Reg. 60535, 60538, (1996); 63 Fed. Reg. 23826, 23853 (1998); 64 Fed. Reg. 13056 (1999); 64 Fed. Reg. 25726, 25731 (1999) and 67 Fed. Reg. 65272, 65273 (2002).

HUD has also adopted additional guidance to providers implementing the law. None of these materials have been officially withdrawn, but some may have expired on their own terms. *See, e.g.*, HUD, OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, 4350.3 REV-1, CHG-4, §§ 3-5.F. and 3-12.F. (Aug. 2013) [hereinafter HUD HANDBOOK 4350.3], *available at* <https://www.hud.gov/sites/documents/43503hsg.pdf>; RESTRICTIONS ON ASSISTANCE TO NONCITIZENS, 7465.7G (Nov. 6, 1995); Procedures for Implementing Section 214 of the Housing and Community Development Act of 1980, H 95-55 (June 16, 1995); Revisions to Notice H 95-55, H 95-68 (Aug. 3, 1995); and Fair Housing Issues in Noncitizen Rule for Field Office and Housing Provider Guidance, FHEO 95-6 (Nov. 30, 1995). For a more complete list, see Appendix B, *infra*.

Note that HUD Handbook 4350.3 covers the following HUD multifamily housing programs: Section 221(d)(3) Below-Market Interest Rate (Section 221(d)(3) BMIR), Section 236 Rental Assistance Payment (RAP), Rent Supplement, Section 8 Project-Based Assistance (with the notable exception of Section 8 Moderate Rehabilitation), Section 202 with 162 Assistance – Project Assistance Contracts (Section 202 PACs), Section 202 with Project Rental Assistance Contracts (Section 202 PRACs), Section 202 without Assistance (Income Limits Only) and Section 811 with Project Rental Assistance Contracts (Section 811 PRACs). HUD HANDBOOK 4350.3 at fig. 1-1 (2013). However, not all of these programs are subject to restrictions on assistance to non-U.S. citizens. HUD HANDBOOK 4350.3, § 3-12.F (2013).

⁴ 42 U.S.C.A. §§ 1471(h), 1472, 1474, 1484 (f)(3)(A), 1486(g)(4), and 1490a (West, Westlaw through Pub. L. No. 119-18).

⁵ 7 C.F.R. pt. 3550 (2025) (Section 502 and Section 504 Program Regulations); 7 C.F.R. pt. 3560 (2025) (Section 514, 515 and 516 Program Regulations).

⁶ Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, “Welfare Act”), Pub. L. No. 104-193, 110 Stat. 2105 (1996), *amended by* Pub. L. 104-208, § 504, 110 Stat. 3009, 3009-672 (1996) and Pub. L. 105-33, §§ 5564, 5572, 111 Stat. 251, 639, 641 (1997) (codified at 8 U.S.C. §§ 1601 *et seq.*).

- iv. California Housing Finance Agency (CalHFA) restrictions on some state housing programs.⁷

The handbook also identifies which housing programs are not currently restricted, and which housing programs may be restricted in the future.

Next, Chapters 4 through 6 describe how each of those regulations works. Each chapter describes a different set of regulations. Once you know which housing regulations apply to a particular housing unit, you can look at the specific chapter for those regulations. Chapter 4 covers HUD Section 214, Chapter 5 covers RD programs, and Chapter 6 covers state CalHFA programs. Each of these chapters covers who is eligible, eligibility determinations, eligibility appeals, reporting to Department of Homeland Security United States Citizenship and Immigration Services (USCIS) (formerly Immigration and Naturalization Service (INS)), and other related information.

Chapter 7 describes some housing related programs that may be restricted under PRWORA or other rules. Chapters 8 and 9 briefly describe some other related housing issues that may arise for immigrants, such as confidentiality, reporting to USCIS (formerly INS), discrimination, and language and disability access. Chapter 10 wraps up the handbook with a brief conclusion. It is followed by several appendices that list the most relevant statutes and regulations, housing and immigration resources, and other useful information.

We hope that you find the handbook a practical tool for assisting immigrants and operating affordable housing programs. Both the immigration laws and the housing laws can be quite technical. In cases of uncertainty, be sure to check the actual language of the statute or regulations, or consult with an appropriate immigration and housing expert. Also, please note that these laws change frequently, and it is important to check for recent revisions in them. They are current as of February 2026.

⁷ CAL. CODE REGS. Tit. 25, §§ 12001-12108 (West, Westlaw through July 4, 2025, Register 2025, No. 27).

CHAPTER 2

IS THE HOUSING COVERED BY ANY IMMIGRANT RESTRICTIONS?

To determine how immigration status affects a person or household, you need to ask:

- i. What type of housing is it?
- ii. What immigrant rules apply?

I. What Type of Housing Is It?

The first step is to find out the type or types of funding in the building. There are many different kinds of affordable housing. Federal programs include housing in urban and rural areas funded by the Department of Housing and Urban Development (HUD), housing in rural areas funded by Rural Development (RD)⁸, and housing in various communities funded by federal tax credits under the Low-Income Housing Tax Credit program (LIHTC). State funding sources include the Department of Housing and Community Development (HCD) and the California Housing Finance Agency (CalHFA). Some buildings have more than one source of funding in them, and different funding may apply to different units in the same building. Different rules apply to different funding sources. Not all affordable housing has immigration restrictions. In order to know which rules apply, you have to know what type or types of funding are in each housing unit.

You can find out the type of housing subsidy in many ways. If you are looking generally for affordable housing, HUD and local Public Housing Authorities (PHAs) can tell you the location and nature of affordable housing that is funded by HUD and where in your community to find federally funded housing. RD can tell you the location and nature of federally funded RD housing in rural areas. It also has a website that will show you RD-financed housing in the community.⁹

The California Department of Housing and Community Development (HCD) and the California Housing Finance Agency can tell you the location and types of state funded affordable housing. The California Tax Credit Allocation Committee (TCAC), part of the California Treasurer's Office, can identify housing funded with tax credits. Your local city or county housing department or your local redevelopment agency may maintain lists of affordable housing, particularly that funded with local funds. See Appendix D for more information on these resources.

If you are dealing with a specific housing unit, the same agencies can tell you which types of funding apply to the unit. Or a tenant may have a lease or proposed lease that identifies the funding sources. In many cases, the landlord will know what kind of funding is in a unit. In addition, most affordable housing has a "regulatory agreement." This is a document on file at the county recorder's office that sets out the type of funding that supported the development.

⁸ Rural Development is a division of the United States Department of Agriculture, it administers the programs of the Rural Housing Service (RHS) and, prior to that, the Farmers Home Administration (FmHA).

⁹ https://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp.

If you are an advocate for immigrants who live in or are applying for affordable housing, it is important for you to learn the funding sources for each housing development or housing program located in the area you serve and the rules that apply to each.

If you are a *housing provider*, it is crucial that someone in your organization determines what the funding source was for each housing unit in the program or building, and then which regulations, if any, are applicable to each housing unit. Once those determinations have been made, all of the staff members who handle applications and eligibility recertifications of current tenants must be informed which rules they must follow for their buildings or programs. This handbook can be used by people familiar with the immigrant restrictions to train all staff on the rules and procedures.

Once you know the type of housing, you need to determine if it is covered by any immigrant restrictions. Some, but not all, federally funded housing is restricted. Some state funded housing may have restrictions. Which restrictions cover which housing are detailed below.

II. HUD-Funded Housing: Is the Housing Unit Covered by HUD's Section 214 Regulations or the PRWORA Restrictions?

A. HUD-Funded Housing Covered by Section 214

One major set of immigrant restrictions applies to certain housing funded by HUD. They are referred to as Section 214 restrictions, because they were adopted as Section 214 of the Housing and Community Development Act of 1980, as amended.¹⁰ 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 and certain other specified programs.¹¹ Chapter 4 describes the Section 214 immigrant restrictions. Only the following HUD programs are restricted by Section 214:¹²

- i. Public Housing;
- ii. Housing Choice Vouchers (formerly Section 8 Vouchers and Certificates);
- iii. Section 8 Project-Based housing;
- iv. Section 236 Housing, with or without Rent Supplements (low-income units only);
- v. Section 235 Homeownership housing;
- vi. Housing Development Grants (HoDAG) (low-income units only); and
- vii. Section 23 Leased Housing Assistance Program.

¹⁰ 42 U.S.C.A. § 1436a (West, Westlaw through Pub. L. No. 119-18); 24 C.F.R. pt. 5.500 (2025); *see also supra* notes 2-3; *see also infra* list of HUD authorities in Appendix B, Section II(B) (regulatory history).

¹¹ 42 U.S.C.A. § 1436a(b)(1) (West, Westlaw through Pub. L. No. 119-18).

¹² 42 U.S.C.A. § 1436a(b)(1) (West, Westlaw through Pub. L. No. 119-18); 24 C.F.R. § 5.500(a) (2025); *see also supra* note 3, HUD HANDBOOK 4350.3 at §§ 3-5.F. and 3-12.F (2013). Note that Section 214 also applies to certain housing programs outside HUD, such as rental assistance in Rural Development housing programs under 12 U.S.C. § 1715z-1.

Each of these HUD programs is briefly described below to assist with identification.

1. Public Housing

Public housing is owned by a local public housing authority (PHA) and rented to low-income households. Tenants rent directly from the PHA, and their rent is generally equal to 30% of their income.¹³

Covered public housing programs also include the Mutual Help Homeownership Programs, and the Turnkey III Homeownership Opportunity Program, but only contracts executed on or after June 19, 1995 are covered.¹⁴ These programs allow low-income households to purchase affordable homes.

Covered public housing programs also include the HOPE 1 Program for Public Housing, which allows eligible families to acquire ownership interests in, or shares in, public housing.¹⁵ (Other HOPE programs, which allow tenants to develop ownership interests in buildings owned or insured by HUD and other agencies, are not covered.¹⁶)

In Public Housing, the local PHA determines eligibility for the housing, including making any immigrant eligibility determinations in accordance with the Section 214 requirements.¹⁷ The procedures for implementing the Section 214 requirements must be adopted in writing.¹⁸

2. Section 8 Housing

There are different types of Section 8 housing, and the rules are slightly different for each type.

¹³ 42 U.S.C.A. 1436a(b)(1) (West, Westlaw through Pub. L. No. 119-18); 24 C.F.R. § 5.500(a) (2025); The United States Housing Act of 1937, Pub. L. No. 75-412, 50 Stat. 888 (1937), *codified as amended at* 42 U.S.C.A. § 1437a (West, Westlaw through Pub. L. No. 2003); 24 C.F.R. pt. 960 (2025) (public housing generally).

¹⁴ 42 U.S.C.A. §1437z-4 (West, Westlaw through Pub. L. No. 119-18); 42 U.S.C.A. §§ 1437-1437ee (West, Westlaw through Pub. L. No. 119-18) (Section 1437ee was repealed by Pub. L. No. 104-330, Title V, § 501(a), 110 Stat. 4041 (1996). However, there are still existing units subsidized under § 1437ee; 24 C.F.R. §§ 5.500(a), 904.104(b)(1) and 904.104(g)(2)(iii) (2025). The Turnkey III homeownership program was authorized by 42 U.S.C.A. §§ 1437c(h) (West, Westlaw through Pub. L. No. 119-18), *repealed by* Pub. L. 105-276, § 518(a)(1)(A), 112 Stat. 2461, 2551 (1998), *and* 42 U.S.C.A. § 1437d(c)(4)(D) (West, Westlaw through Pub. L. No. 119-18); *see also* 24 C.F.R. pt. 904 (2025).

¹⁵ The Hope I Program was created by Title IV of the Cranston-Gonzalez National Affordable Housing Act of 1990, Pub. L. No. 101-625, Title V, §§ 301-309, 104 Stat. 4079, 4148-4159 (1990) (codified at 42 U.S.C. § 1437aaa) (adding Title III to the U.S. Housing Act of 1937); *see also* 24 C.F.R. § 5.500(a) (2025); Fair Housing Issues in Noncitizen Rule for Field Office and Housing Provider Guidance, Appendix, FHEO 95-6 (Nov. 30, 1995).

¹⁶ 24 C.F.R. § 5.500(a)(4)(1) (2025); Fair Housing Issues in Noncitizen Rule for Field Office and Housing Provider Guidance, Appendix, FHEO 95-6 (Nov. 30, 1995).

¹⁷ 24 C.F.R. §§ 5.504(b) (2025) (definition of responsible entity), 960.259(a)(1) (2025) (family information and verification includes any required evidence of immigration status).

¹⁸ 24 C.F.R. §§ 960.202(a), (c) (2025); *See also supra* note 3 HUD HANDBOOK 4350.3 at § 4-4.C.1.b (2013).

a. *Housing Choice Vouchers*

Section 8 Housing Choice vouchers are issued by a local PHA to low income households so they can rent apartments or homes from private landlords.¹⁹ Some PHAs also allow low-income households to purchase homes using the proceeds of a voucher.²⁰ Under these programs, the PHA determines whether the tenant is eligible for the voucher, including immigrant eligibility.²¹ The tenant household then takes the voucher and looks for a place to rent or purchase in the private market. The landlord who actually rents to the tenant, or the agency that finances the purchase of a home, should not make any immigrant eligibility determination unless there are other federal financing programs involved which require the landlord or owner to make an immigrant eligibility determination.

b. *Project-Based Section 8*

Section 8 is used also by developers who rely on long-term Section 8 rent subsidy contracts to build or rehabilitate apartment buildings and then rent the units to lower-income households. These developments are called "project-based Section 8 housing." These owners have a contract directly with HUD to subsidize the rents on some or all of the apartments in their buildings.

Some transitional housing for homeless people, including single room occupancy buildings, can also be subsidized under Section 8. Project-Based Section 8 includes Section 8 New Construction,²² Section 8 Moderate Rehabilitation,²³ Section 8 Substantial Rehabilitation,²⁴ State Housing Finance Agency Section 8,²⁵ Section 202 and Section 811 Projects with Section 8 Assistance,²⁶ Section 8 Loan Management Set-Aside,²⁷ Section 8 Property Disposition Set-Aside,²⁸ Section 8 Community Investment Demonstration Program,²⁹ and Section 8 Moderate

¹⁹ 42 U.S.C.A. § 1437f (West, Westlaw through Pub. L. No. 119-18).

²⁰ See 42 U.S.C.A. § 1437f (y) (West, Westlaw through Pub. L. No. 119-18).

²¹ 24 C.F.R. § 5.504(b) (2025) (definition of responsible entity); 24 C.F.R. §§ 982.153 (PHA responsibilities), 982.201(a) (Eligibility), 982.551 (b)(1) (Verification requirements), 982.552(e) (PHA denial or termination of assistance), 982.554(d) and 982.555(g) (Informal review process) (2025); 24 C.F.R. §§ 882.514(f) (Hearings for denial or termination based on immigrant status); 882.515(a) - (c) (recertification), 882.808(i)(1), (i)(2) and (l) (Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals) (2025).

²² 24 C.F.R. § 5.500(a) (2025) and pt. 880 (2025) (Section 8 New Construction Program); see also *supra* note 3, HUD HANDBOOK 4350.3 at fig. 1-1 (2013) and § 3-5.F (2013).

²³ 24 C.F.R. § 5.500(a) (2025) and pt. 882 (2025) (Section 8 Moderate Rehabilitation Program).

²⁴ 24 C.F.R. § 5.500(a) (2025) and pt. 881 (2025) (Section 8 Substantial Rehabilitation Program); see also *supra* note 3, HUD HANDBOOK 4350.3 at fig. 1-1 (2013) and § 3-5.F (2013).

²⁵ 24 C.F.R. § 5.500(a) (2025) and pt. 883 (2025) (State Housing Finance Agency Section 8 Program); see also *supra* note 3, HUD HANDBOOK 4350.3 at fig. 1-1 (2013) and § 3-5.F (2013).

²⁶ 24 C.F.R. §§ 5.500(a) (2025), 891.200 *et seq.* (2025) (Section 202 Projects with Section 8 Assistance) and 891.300 *et seq.* (2025) (Section 811 Projects with Section 8 Assistance); see also *supra* note 3 HUD HANDBOOK 4350.3 at fig. 1-1 (2013) and § 3-5.F (2013).

²⁷ 24 C.F.R. §§ 5.500(a) (2025) and pt. 886, subpt. A (2025) (Section 8 Loan Management Set Aside Program); see also *supra* note 3 HUD Handbook 4350.3 at fig. 1-1 (2013) and § 3-5.F (2013).

²⁸ 24 C.F.R. §§ 5.500(a) (2025) and pt. 886, subpt. C (2025) (Section 8 Property Disposition Set-Aside Program); see also *supra* note 3 HUD HANDBOOK 4350.3 at fig. 1-1 (2013) and § 3-5.F (2013).

²⁹ 24 C.F.R. § 5.500(a) (2025); Section 8 Community Investment Demonstration Program, Pub. L. No. 103-120, 107 Stat. 1144 (1993). See Notice of Funding Availability, 60 Fed. Reg. 5806 (Jan. 30, 1995); see also

Rehabilitation Single Residency Occupancy (SRO).³⁰ Both for-profit and nonprofit owners must comply with the federal restrictions in these buildings.

In the Section 8 Moderate Rehabilitation Program, the PHA screens the tenants for immigrant eligibility as part of eligibility screening for the housing. In all of the other Project-Based Section 8 programs, the landlord screens for both immigrant eligibility and general eligibility for the Section 8 units in their buildings with no involvement by the PHA.³¹

3. Section 236 and Rent Supplement Housing³²

Section 236³³ and Rent Supplement³⁴ are older housing programs from the 1960s under which developers built apartment buildings for low- to moderate-income tenants with HUD insured mortgages and subsidies. Some tenants in these buildings pay market rent, while others pay below-market rents. Only the tenants paying below-market rent are covered by the immigrant restrictions.³⁵

In addition, to provide greater rent reductions to low- and very low-income tenants, some Section 236 units (and in some cases whole buildings) have additional HUD subsidies under the rental assistance payment (RAP) program.³⁶ Most of the RAP subsidies have been converted to Section 8 Project-Based subsidies. Tenants paying below-market rent in Section 236 buildings, and any units with either RAP or Section 8 Project-Based subsidies, are covered by Section 214.

Implementation of Section 6 of the HUD Demonstration Act of 1993, H 95-2, HUD (Jan. 30, 1995).

³⁰ 24 C.F.R. § 5.500(a) (2025) and pt. 882, subpt. H (2025) (Section 8 Moderate Rehabilitation Single Residency Occupancy (SRO) Program).

³¹ 24 C.F.R. § 5.504(b) (2025) (definition of responsible entity); *see also supra* note 3 HUD HANDBOOK 4350.3, § 3-12.C (2013).

³² Note that this section does not discuss Section 235. Authority to make new Section 235 loans expired in 1989 and the remaining regulations for Section 235 were withdrawn in 2015. *See* Federal Housing Administration (FHA): Removal of Section 235 Home Ownership Program Regulations, 64 Fed. Reg. 18095 (April 30, 2015).

³³ Section 236 of the National Housing Act, codified at 12 U.S.C.A. § 1715z-1, was created in the Housing and Urban Development Act of 1968, Pub. L. No. 90-448, § 201(a), 82 Stat. 476, 498 (1968). It essentially replaced the Section 221(d)(3) BMIR program. While no longer actively funded, a large inventory of Section 236 rental housing units remains in operation.

³⁴ Section 101 of the Housing and Urban Development Act of 1965, codified at 12 U.S.C.A. § 1701s, Pub. L. 89-117, title I, § 101, Aug. 10, 1965, 79 Stat. 451; Pub. L. 90-19, § 22(a), (c), May 25, 1967, 81 Stat. 26; Pub. L. 90-448, title II, §§ 201(e), 202, title XI, § 1106(b), Aug. 1, 1968, 82 Stat. 502, 503, 567; Pub. L. 91-152, title I, § 112, Dec. 24, 1969, 83 Stat. 383; Pub. L. 91-609, title I, §§ 103, 114[115](c), 118(b), 120(a), (b), Dec. 31, 1970, 84 Stat. 1771, 1774, 1775; Pub. L. 96-153, title II, § 203(a), Dec. 21, 1979, 93 Stat. 1106; Pub. L. 96-399, Oct. 8, 1980, title II, § 205, 94 Stat. 1630; Pub. L. 97-35, title III, §§ 322(g), 327, Aug. 13, 1981, 95 Stat. 403, 407; Pub. L. 98-181, title I [title II, §§ 203(b)(3), 219], Nov. 30, 1983, 97 Stat. 1178, 1187; Pub. L. 98-479, title I, § 102(d), title II, § 204(e), Oct. 17, 1984, 98 Stat. 2222, 2233; Pub. L. 100-242, title I, §§ 167(a)(2), 168, 170(h), title IV, § 430(b), Feb. 5, 1988, 101 Stat. 1864, 1867, 1920; Pub. L. 104-99, title IV, § 402(d)(5), Jan. 26, 1996, 110 Stat. 42; Pub. L. 105-276, title V, § 514(d), Oct. 21, 1998, 112 Stat. 2548.

³⁵ 24 C.F.R. §§ 5.500(a)(2), 236.710 and 236.715 (2025); *see also supra* note 3 HUD HANDBOOK 4350.3 at § 3-12.P.3. and ex. 3-13 (2013).

³⁶ 12 U.S.C.A. § 1715z-1(f)(2) (West, Westlaw through Pub. L. No. 119-18); 24 C.F.R. § 236.710 (2025).

HUD also funds a program called the Rent Supplement Program, which provides rent assistance to some or all of the low-income tenants in Section 236 buildings.³⁷ Tenants receiving Rent Supplements pay reduced rents of approximately 30% of their income or 30% of the market rent, whichever is higher. Rent Supplements are provided to a unit or group of units, not necessarily the entire building.

In addition to Section 236 buildings, Rent Supplement assistance may also be provided in units in buildings funded under other HUD programs such as the Section 221(d)(3) (Multi-family rental housing) and Section 202 (Elderly Housing) Programs. The Rent Supplement Program is covered by Section 214 regardless of the type of building. Therefore, although Section 221(d)(3) and 202 buildings are not normally covered by Section 214, tenants receiving Rent Supplements in those buildings *are* covered by the Section 214 regulations. In the 1980s and 1990s most Rent Supplement contracts were converted to Section 8 Project-Based subsidies, and thus, few still exist.

The landlords in Section 236 and Rent Supplement housing screen for immigrant eligibility as part of admission screening for that housing.³⁸ Restrictions apply to both for-profit and nonprofit owners.

4. Housing Development Grant Program (HoDAG).

HoDAG provided funds for new construction and substantial rehabilitation of affordable rental housing between 1983 and 1990.³⁹ Low-income units financed with funds from the HoDAG program, but not market rate units, are covered by the Section 214 immigrant restrictions.⁴⁰ Restrictions apply to both for-profit and nonprofit owners in the program.

5. Section 23 Leased Housing Assistance Program

Section 23 was a program created in 1965 to lease private housing to PHAs for subleasing to low-income tenants. The Section 23 program was used both for existing housing and for new construction.⁴¹ The program was replaced by the Project-based Section 8 program, and most units

³⁷ 12 U.S.C.A. § 1701s (West, Westlaw through Pub. L. No. 119-18). The Rent Supplement Regulations at 24 C.F.R. Part 215 were removed in 1996 because there were no new authorizations for the program due to its replacement by Section 8. Any previous rent supplement contracts remain covered by the former Part 215. Streamlining of the FHA Single Family Housing, and Multifamily Housing and Health Care Facility Mortgage Insurance Programs Regulations, 61 Fed. Reg. 14396, 14404 (Apr. 1, 1996); 24 C.F.R. § 200.1301 (2025).

³⁸ 24 C.F.R. § 5.504(b) (2025) (definition of responsible entity); *see also supra* note 3 HUD HANDBOOK 4350.3 at § 3-12.C (2013).

³⁹ HoDAG was enacted by the Housing and Urban Recovery Act of 1983, Pub. L. No. 98-181, 97 Stat. 1159, 1196 (1983) (codified at 42 U.S.C. § 1437o), *repealed by* the Cranston-Gonzalez National Affordable Housing Act of 1990, Pub. L. No. 101-625, Title II, § 289(b)(1), 104 Stat. 4079, 4128 (Nov. 28, 1990). Provisions of 42 U.S.C. § 1437o are still applicable to any HoDAG contracts entered into prior to October 1, 1991.

⁴⁰ 24 C.F.R. § 5.500(a)(4)(iii) (2025).

⁴¹ Housing and Urban Dev. Act of 1965, Pub. L. No. 89-117, § 103(a), 79 Stat. 451, 455 (1965) (formerly codified at 12 U.S.C. § 1421b); *see also* 24 C.F.R. § 882.123 (2025); *see* Section 8 Certificate and Voucher Programs Conforming Rule, 60 Fed. Reg. 34660, 34697 (July 3, 1995); Fair Housing Issues in Noncitizen Rule for Field Office

developed under the Section 23 program have been converted to Section 8, but some units are still being rented under Section 23.

Under Section 23, the PHA screens for immigrant eligibility as part of screening for eligibility to live in the housing.

B. HUD-Funded Housing Not Covered by Section 214

Not all housing funded by HUD is subject to the Section 214 immigrant restrictions. None of the housing funded under the Community Planning and Development (CPD) Programs is restricted.

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, but not the rest of the units. See Chapter 3 for more detail on housing with mixed funding.

The unrestricted programs include, but are not limited to, Indian Housing, CDBG, HOME, HOPWA, Section 202, Section 811, Section 221(d)(3), Section 221(d)(5), McKinney Act, Rental Rehabilitation, and HOPE 2. Each of these programs is briefly described below to assist with identification.

The above listed programs are not subject to Section 214. However, as of January 31, 2010, some of these programs are subject to regulations that require residents receiving assistance to provide landlords with their Social Security numbers.⁴² Persons who choose not to claim an eligible status are not required to provide Social Security numbers. This should not affect households with undocumented immigrants as they are not precluded from living in these developments because of their immigration status. For more information about the Social Security number requirement, *see* Chapter 4, Section III, *infra*.

1. Indian Housing

Native American communities can own and operate Indian Housing, similar to Public Housing, on reservations and elsewhere. Indian Housing has special rules regarding admissibility of non-Indian persons, but those rules do not address immigration status.⁴³

and Housing Provider Guidance, Appendix, FHEO 95-6 (Nov. 30, 1995).

⁴² Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of Enterprise Income Verification, (proposed rule) (in effect Jan. 31, 2010), 74 Fed. Reg. 52931 (Dec. 29, 2009).

⁴³ 24 C.F.R. § 5.504(b) (2025) (The Public Housing definition excludes Indian Housing from the Section 214 restrictions.). *See also* Native American Housing Assistance and Self-Determination Act of 1996, Pub. L. No. 104-330, 110 Stat. 4016 (1996) (revises HUD's Indian Housing programs, but does not amend § 950.310 noncitizen requirements for Indian Housing Authorities (IHAs)). Indian Housing is generally limited to Native Americans, except for limited circumstances. 24 C.F.R. §§ 1000.120 and 1000.104(c) (2025). *See also* Consolidation and Streamlining of the Restrictions on Assistance to Noncitizens, 61 Fed. Reg. 13614 (Mar. 27, 1996) (rule does not consolidate the noncitizens requirements for HUD's Indian Housing programs).

1. Community Development Block Grant Funds (CDBG).

Under the Community Development Block Grant Funds (CDBG) program, HUD provides block grants to cities and counties and to states, for non-metropolitan areas, which can be used for many community development purposes, including housing rehabilitation and development.⁴⁴ The funds are often passed through to developers for specific buildings. Buildings funded with CDBG monies are not covered, but some units may be covered if they also have Project-Based Section 8 or Rent Supplement or assistance from another covered program.

2. HOME

Under the HOME program, HUD provides block grants to participating jurisdictions that can be used for development, rehabilitation, and acquisition of housing and for tenant-based assistance.⁴⁵ Again, the funds are often passed through to developers for specific buildings. Buildings funded with HOME monies are not covered, but some units may be covered if they also have Project-Based Section 8, Rent Supplement or assistance from another covered program.

3. Neighborhood Stabilization Program Grants

In 2008, Congress authorized the Neighborhood Stabilization Program (NSP) that makes funds available to state and local governments to acquire and redevelop foreclosed properties that might otherwise become sources of abandonment and blight within their communities. The NSP provides grants to every state and certain local communities to purchase foreclosed or abandoned homes and to rehabilitate, resell, or redevelop these homes in order to stabilize neighborhoods and stem the decline of house values of neighboring homes.⁴⁶ The program is run like the HUD CDBG program and the Section 214 immigration restrictions do not apply to the funds.⁴⁷

4. Housing Opportunity for Persons with AIDS (HOPWA).

Housing Opportunity for Persons with AIDS (HOPWA) provides block grants to participating jurisdictions that can be used for development and rehabilitation of housing for persons living with AIDS or HIV.⁴⁸ Developers can obtain these funds for specific buildings. Buildings funded by HOPWA are not covered, but some units may be covered if they have Project-Based Section 8, Rent Supplement or assistance from another covered program.

⁴⁴ 42 U.S.C.A. §§ 5301-5320 (West, Westlaw through Pub. L. No. 119-18).

⁴⁵ 42 U.S.C.A. §§ 12722-12725 (West, Westlaw through Pub. L. No. 119-18).

⁴⁶ Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, Tit. III, 122 Stat. 2654, 2850 (July 30, 2008).

⁴⁷ See Notice of Allocations Under the Housing and Economic Recovery Act, 73 Fed. Reg. 58830 (Oct. 6, 2008).

⁴⁸ 42 U.S.C.A. §§ 12901-12912 (West, Westlaw through Pub. L. No. 119-18).

5. Section 202 Supportive Housing for the Elderly

HUD provides direct loans and grants to developers for housing for the elderly. Some of these buildings or units may also be rented to people with disabilities.⁴⁹ These buildings are not covered, but some units may be covered if they have Project-Based Section 8 or Rent Supplement or assistance from another covered program. Note that projects that have Project Assistance Contracts are now subject to the new Social Security number requirements.

6. Section 811 Supportive Housing for People with Disabilities

HUD provides direct loans and grants to developers for housing for people with disabilities.⁵⁰ These buildings are not covered, but some units may be covered if they have Project-Based Section 8 or Rent Supplement or assistance from another covered program. They are now covered by the Social Security number requirement if they have a Project Rental Assistance Contract.⁵¹

7. Section 221(d)(3) or Section 221(d)(5)

HUD insures private loans made to developers to build multifamily housing with restricted rents.⁵² These buildings are not covered, but some units may be covered if they have Project-Based Section 8 or Rent Supplement or assistance from another covered program. If the development has a below market rate interest rate (BMIR) it is now covered by the Social Security number requirement.⁵³

8. McKinney Act Shelter and Transitional Housing Programs (except for the Section 8 Moderate Rehabilitation Single Residency Occupancy (SRO) Program)

HUD provides block grants to local governments and direct grants to developers to fund homeless shelters and transitional housing programs.⁵⁴ Buildings built with these funds are not covered,⁵⁵ but some units may be covered if they have Project-Based Section 8 or Rent Supplement or assistance from another covered program.

9. Rental Rehabilitation Programs

⁴⁹ 12 U.S.C.A. § 1701q (West, Westlaw through Pub. L. No. 119-18); *see also supra* note 3, HUD Handbook 4350.3 at fig. 1-1 and § 3-12.F.

⁵⁰ 42 U.S.C.A. § 8013 (West, Westlaw through Pub. L. No. 119-18); *see also supra* note 3, HUD Handbook 4350.3 at fig. 1-1 and § 3-12.F.

⁵¹ 74 Fed. Reg. 68924 (Dec. 29, 2009). *See* Chapter 4, § III, *infra*.

⁵² 12 U.S.C.A. § 1715l(d)(3) (Section 221(d)(3) Housing Financing Program); 12 U.S.C.A. § 1715l(d)(5) (Section 221(d)(5) Housing Finance Program); *see also supra* note 3, HUD Handbook 4350.3 at fig. 1-1 and § 3-12.F.

⁵³ 74 Fed. Reg. 68924 (Dec. 29, 2009). *See* Chapter 4, § III, *infra*.

⁵⁴ 42 U.S.C.A. §§ 11361-11408a (West, Westlaw through Pub. L. No. 119-18).

⁵⁵ *See* 66 Fed. Reg. 3613, 3615 (Jan. 16, 2001).

HUD provides funds to local governments to fund local loans and grants to rehabilitate private housing, in exchange for rent restrictions.⁵⁶

10. HOPE for Homeownership of Multifamily Units Program (HOPE 2)

The HOPE 2 program allows eligible families to acquire an ownership interest in properties that are owned, held, insured, or financed by HUD and other public agencies.⁵⁷

C. HUD-Funded Housing and the PRWORA Restrictions

In 1996, the federal government adopted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).⁵⁸ Under this statute certain federal “public benefits,” including “public and assisted housing,” and certain state and local “public benefits” are only available to “qualified” immigrants, as defined in PRWORA.⁵⁹ The PRWORA restrictions and the Section 214 restrictions are not identical.

After PRWORA’s passage, HUD issued subregulatory guidance that HOME, ESG and CoC programs are public benefits subject to PRWORA.⁶⁰ On November 26, 2025, HUD designated several of its programs as “federal public benefits” and therefore subject to PRWORA’s immigration restrictions.⁶¹ HUD’s notice interprets PRWORA as applying immigrant eligibility restrictions to:

- i. all HUD funding related to public or assisted housing other than federal housing programs covered by Section 214 of the Housing and Community Development Act of 1980; and
- ii. all Community Planning and Development (CPD) grants and programs, including CoC, ESG, HOME, CDBG, CDBG-DR, and more.

⁵⁶ 42 U.S.C.A. § 1437o, *repealed by* Cranston-Gonzalez National Affordable Housing Act of 1990, Pub. L. No. 101-625, Title II, § 289(b)(1), 104 Stat. 4079, 4128 (Nov. 28, 1990) (grant program provided to local and state governments to rehabilitate rental housing). The urban part of the program, usually referred to as Section 17, was repealed, but provisions are still applicable to any Rental Rehabilitation contracts entered into prior to October 1, 1991. The rural program, called the Housing Preservation Grant Program, still exists and has not been repealed. *See infra* Chapter 5.

⁵⁷ 42 U.S.C.A. §§ 12871-12880 (West, Westlaw through Pub. L. No. 119-18).

⁵⁸ 104 Pub. L. No. 193, 110 Stat. 2105 (Aug. 21, 1996), codified at 8 U.S.C.A. §§ 1601-1646 (West, Westlaw through Pub. L. No. 119-18).

⁵⁹ 8 U.S.C.A. § 1611 (West, Westlaw through Pub. L. No. 119-18).

⁶⁰ NCSHA/COSCA HOMEStrengths Conference, HOME Questions and Answers (Jan. 14, 2004), https://web.archive.org/web/20240405023650/https://www.hud.gov/sites/documents/19669_HOMEQA.PDF; HUD Office of Special Needs Assessment Programs, The Personal Responsibility and Work Opportunity Act of 1996 and HUD’s Homeless Assistance Programs (Aug. 16, 2016), <https://files.hudexchange.info/resources/documents/PRWORA-Fact-Sheet.pdf>.

⁶¹ HUD Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit”, 90 Fed. Reg. 54,363 (Nov. 26, 2025).

However, HUD has yet to provide guidance or issue regulations on how entities administering the benefits should conduct verification for eligibility. Until HUD provides proper implementation guidance, states and local agencies that administer the programs are not obligated to verify the immigration status of people who apply for them.⁶²

While PRWORA applies to public housing and Section 8, as of the date of this handbook, HUD has not modified the Section 214 regulations to incorporate any PRWORA changes. It has instructed PHAs not to make those changes until HUD issues further guidance.⁶³

There are some exemptions in PRWORA.⁶⁴ One exemption applies to nonprofit organizations. “In providing any” of the benefits covered by PRWORA, nonprofit organizations are not required to determine or verify or otherwise require proof of eligibility.⁶⁵ Government agencies and for-profit owners would still have to comply. In buildings owned or managed by nonprofit housing organizations, nonprofit housing providers would not have to check their tenants' immigration status.⁶⁶ However, if there is any funding in the unit that is covered under the *Section 214* regulations (as opposed to PRWORA restrictions), the restrictions apply. Both for-profit and nonprofit landlords must comply with Section 214 for units to which Section 214 applies.

Another exemption applies to persons who were living in federally funded housing as of the date of PRWORA. Any PRWORA immigrant restrictions would not apply to persons in certain HUD housing programs if they were receiving the benefits as of August 22, 1996.⁶⁷

III. RD-Funded Housing: Is the Housing Unit Covered by Rural Development (RD) Restrictions, Section 214 Restrictions or PRWORA?

⁶² See 8 U.S.C.A. §1642(a)(1), (2).; *see also* Letter from Richard Friedman, Chief Counsel/Deputy Director, HCD, to Robert Mills, Attorney Advisor, Office of Counsel, Pacific/Hawaii Office, HUD (Aug. 24, 1998). At the time of publication of this manual, the enforcement and application of the 2025 HUD Notice was stayed for the Plaintiff jurisdictions in *New York v. U.S. Dep't of Just.*, which includes the District of Columbia and 21 states. Stipulation, at 2, *New York v. U.S. Dep't of Just.*, Case No. 1:25-cv-00345 (D.R.I. Dec. 8, 2025).

⁶³ Revised Restrictions on Assistance to Noncitizens, 61 Fed. Reg. 60535, 60537 (Nov. 29, 1996); Letter from Richard Friedman, Chief Counsel/Deputy Director, HCD, to Robert Mills, Attorney Advisor, Office of Counsel, Pacific/Hawaii Office, HUD (Aug. 24, 1998) (confirming that it remains HUD's position that “(r)esponsible entities should not implement the Welfare Reform Act provisions until the issuance of [HUD] implementing regulations”).

⁶⁴ *E.g.*, 8 U.S.C.A. § 1611(b); 8 U.S.C.A. § 1642(d); NHLP, Immigration Requirements: Assistance Programs for Housing and Homelessness, Energy, Disaster, and Water (ESG, CoC, CDBG, HOME, FEMA, RUSH, LIHEAP) (Dec. 12, 2025), at 7-11, available at https://www.nhlp.org/wp-content/uploads/Immigration-Restrictions_Other-Programs.pdf.

⁶⁵ 8 U.S.C.A. § 1642(d) (West, Westlaw through Pub. L. No. 119-18); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Tit. V, § 508, 110 Stat. 3009, 3009-673 (Sept. 30, 1996) (amending Section 432 of PRWORA to include the nonprofit exemption).

⁶⁶ However, if a government agency checked eligibility for applicants to a program that was done in conjunction with the housing, the nonprofit would have to abide by the government determination.

⁶⁷ 8 U.S.C.A. § 1611(b)(1)(E) (West, Westlaw through Pub. L. No. 119-18).

A. RD-Funded Housing with Immigration Restrictions

As of July 2025, all housing programs administered by the USDA’s Rural Housing Service (RHS),⁶⁸ an agency within USDA’s Rural Development (RD) mission area, are subject to immigrant restrictions. Those restrictions come from the restrictions in the respective programs’ authorizing statute or implementing regulations, Section 214, or PRWORA.⁶⁹ As of the date of this writing, the following RD programs are subject to immigration restrictions pursuant to Section 214:

- i. Section 521 Rental Assistance program;
- ii. Section 542 Rural Development Voucher program;
- iii. Section 502 Single-Family Direct Home Loan program; and
- iv. Section 504 Direct Rehabilitation Loan and Grant program.⁷⁰

RD has also imposed Section 214’s immigration restrictions on the Section 538 Multifamily Housing Loan Guarantee program through regulations, even though there is no statutory authority for doing so.⁷¹ As such, advocates have a strong legal basis for challenging the application of Section 214’s eligibility requirements to Section 538 applicants or tenants.

Section 514 and 516 Farm Labor Housing programs impose their own immigration restrictions.⁷² The specific restrictions and their source are described in more detail in Chapter 5. The Section 515 program’s authorizing statute has no immigration restrictions, and the program is not covered by Section 214. However, USDA has determined that it is a “federal public benefit” for PRWORA purposes.⁷³ RD did issue interim final regulations imposing immigration restrictions for Section 515 occupancy, but the effective date of those regulations has been indefinitely postponed.⁷⁴

Each of these RD programs is briefly described below to help advocates identify the program they are dealing with and determine what immigration restrictions apply, if any.

⁶⁸ RHS was formerly known as the Farmers’ Home Administration (FmHA).

⁶⁹ In 2004, RD revised its multifamily housing regulations, addressing the Sections 514, 515, 516 and 521 Programs. Reinvention of the Sections 514, 515, 516, and 521 Multi-Family Housing Programs, 69 Fed. Reg. 69032 (Nov. 26, 2004). With respect to immigrants’ eligibility for Section 515 housing, these rules were so inconsistent with the law that RD postponed implementation of the immigrant restrictions two days before they were to go into effect. Reinvention of the Sections 514, 515, 516 and 521 Multi-Family Housing Programs, Interim Final Rule, Delay of Effective Date, 70 Fed. Reg. 8503 (Feb. 22, 2005). As of the date of this writing, no new regulations governing immigrant restrictions have been issued.

⁷⁰ 42 U.S.C.A. § 1436a(b)(1); *see also* Maggie McCarty & Abigail F. Kolker (updated January 23, 2023), Noncitizen Eligibility for Federal Housing Program, CRS Report No. 46462, Table 2 at pp. 17-18, available at <https://www.congress.gov/crs-product/R46462#:~:text=In%20the%20case%20of%20most,and%20unauthorized%20immigrants%20are%20ineligible>.

⁷¹ *Id.*; 7 C.F.R. § 3565.202(b).

⁷² 42 U.S.C.A. § 1484(f)(3); 7 C.F.R. § 3560.11.

⁷³ Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,” 90 Fed. Reg. 130 (July 10, 2025).

⁷⁴ 7 C.F.R. § 3560.152(a) (2025) (referencing Reinvention of the Sections 514, 515, 516 and 521 Multi-Family Housing Programs, 70 Fed. Reg. 8503 (Feb. 22, 2005)).

1. Section 514 and 516 Farm Labor Housing Loans and Grants

Section 514 provides low-interest mortgage loans to private developers, public agencies, and nonprofit developers to assist in the construction of rental housing for farmworkers.⁷⁵ Section 516 also finances farmworker housing but in the form of grants, not loans, to nonprofits and public agencies for the development of rental housing.⁷⁶ Some Section 514 and Section 516 units receive a direct rental subsidy through RD's Section 521 Rental Assistance program or HUD Section 8 vouchers in order to deeply subsidize rents.⁷⁷ (See the Rental Assistance description under the Section 515 program below.)

2. Section 515 Multifamily Housing Direct Loan Program

Under Section 515 of the Housing Act of 1949, RD is authorized to make direct loans to housing providers for the development of multifamily affordable housing in rural areas throughout the United States.⁷⁸ Most, but not all, Section 515 properties receive what is known as the Interest Credit Subsidy, which reduces the effective interest rate of the Section 515 loan to 1%.⁷⁹ This should reduce the cost of servicing project debt, which should result in below-market rents for Section 515 tenants, but not necessarily so. Therefore, to deeply subsidize tenant rents, most Section 515 units receive Section 521 Rental Assistance, which limits total household shelter costs to 30% of household income.⁸⁰ Other Section 515 projects use HUD Section 8 project-based vouchers to deeply subsidize tenant rents, while some individual Section 515 tenants use their tenant-based Section 8 Housing Choice Voucher to deeply subsidize their Section 515 unit.

3. Section 502 New Construction and Major Rehabilitation Rural Homeownership Loan Program

Under Section 502, RD makes loans for single-family homes directly to low- and moderate-income persons.⁸¹ There are also Section 502 loan guarantees wherein RD insures single-family loans issued by commercial lenders to qualifying persons.⁸² Loans can be used for construction, major rehabilitation and purchase of single family units, including self-help build/purchase programs.

⁷⁵ 42 U.S.C.A. § 1484 (West, Westlaw through Pub. L. No. 119-18). The Section 514 Program was added to the Housing Act of 1949 by the Housing Act of 1961, Pub. L. No. 87-709, Tit. VIII, § 804(a), 75 Stat. 149, 186 (1961). See 7 C.F.R. §§ 3560, subpt. M (§§ 3560.601 - 3560.650) (On-Farm Labor Housing) (2025).

⁷⁶ 42 U.S.C.A. § 1486 (West, Westlaw through Pub. L. No. 119-18). The Section 516 Program was added to the Housing Act of 1949 by the Housing Act of 1964, Pub. L. No. 88-560, Tit. V, § 503(a), 78 Stat. 769, 796 (1964). See 7 C.F.R. §§ 3560, subpt. L (§§ 3560.551 - 3560.579) (Off-Farm Labor Housing) (2025).

⁷⁷ 42 U.S.C.A. § 1490a (West, Westlaw through Pub. L. No. 119-18); see also 7 C.F.R. 3560 subpt. F (2025). Rental assistance can be used in a project with funding under the Section 515 program or in a project with a combination of funding under Section 514/516. It cannot be used with Section 514 alone.

⁷⁸ 42 U.S.C.A. § 1485 (West, Westlaw through Pub. L. No. 119-18).

⁷⁹ *McFalls v. Purdue*, No. 3:16-cv-2116, 2018 WL 785866 (D. Or. February 8, 2018).

⁸⁰ 42 U.S.C.A. § 1490a(a)(2)(A) (West, Westlaw through Pub. L. No. 119-18).

⁸¹ 42 U.S.C.A. § 1472 (West, Westlaw through Pub. L. No. 119-18); 7 C.F.R. §§ 3550.1-3550.50 (2025).

⁸² 42 U.S.C.A. § 1472(h) (West, Westlaw through Pub. L. No. 119-18).

4. Section 504 Minor Rehabilitation Program for Single Family Homes

Under Section 504, RD provides loans to assist lower income homeowners with necessary home repairs.⁸³ For persons over 62 years of age, the program may provide loans and grants.

5. Section 542 Demonstration Voucher Program.

Section 542 authorizes RD to operate a rural housing voucher program similar to HUD's Housing Choice Voucher program.⁸⁴ The program is intended to protect residents of Section 515 housing from the financial hardship likely to result when a project owner pays off their Section 515 mortgage at mortgage maturity or prepayment, or when a Section 515 property falls into foreclosure.⁸⁵

RD has not published regulations for its voucher program. Instead, it has implemented the program through Federal Register Notices, the latest of which was published in May of 2017, and its Rural Development Voucher Program Guide.⁸⁶ Under the process outlined in this notice, RD contracts with a private consulting firm for voucher administration, i.e., to issue vouchers, review leases and enter into Housing Assistance Payment contracts.⁸⁷ The latest RD Federal Register notice requires that an adult member of the voucher holder's household be a citizen or a non-citizen with eligible immigration status. A very strong argument can be made that restricting eligibility to the head of household instead of a household member is illegal. *See* Chapter 5 for further discussion.

6. Section 538 Loan Guarantees for Multi-family Housing

This program provides loan guarantees to lenders that make loans to developers of rental housing in rural areas.⁸⁸

B. RD-Funded Housing, Section 214, and PRWORA: Future Restrictions

The Secretary of Agriculture has only partially implemented the Section 214 changes: Section 502 and Section 504 regulations have been revised to incorporate additional categories of eligible immigrants as required by Section 214. (*See* Chapter 4, Section 1(a).) However, the Secretary of Agriculture has not yet adopted any of the other provisions of Section 214 in these programs.⁸⁹

⁸³ 42 U.S.C.A. § 1474 (West, Westlaw through Pub. L. No. 119-18); 7 C.F.R. §§ 3550.1-3550.50 (2025).

⁸⁴ 42 U.S.C.A. § 1490r (West, Westlaw through Pub. L. No. 119-18).

⁸⁵ Rural Development Voucher Program Guide, United States Department of Agriculture (September 2010) at p. 1 § 1.1, available at <https://www.rd.usda.gov/media/file/download/mfh-rd-voucher-program-guidebook.pdf>.

⁸⁶ *Id.*; Rural Development Voucher Program, 82 Fed. Reg. 21972 (May 11, 2017).

⁸⁷ *Id.*

⁸⁸ 42 U.S.C.A. § 1490p-2 (West, Westlaw through Pub. L. No. 119-18); 7 C.F.R. §§ 3565.1-3565.50 (2025).

⁸⁹ Reengineering and Reinvention of the Direct Section 502 and 504 Single Family Housing Programs, 61 Fed.

On July 10, 2025, the USDA published a notice in the federal register setting forth its interpretation of what constitutes a “federal public benefit” under PRWORA.⁹⁰ The notice defines the following housing programs as federal public benefits: public or assisted housing, grants, contracts, loans, and loan guarantees, including those for single and multifamily housing construction as well as those covered by 7 C.F.R. § 3560.⁹¹ Thus, the notice applies to all of RD’s housing programs. However, it is important to note that the notice does not address program eligibility verification requirements in any of RD’s housing programs. It also does not address how this interpretation interacts with other statutory authority regarding citizenship and immigration eligibility, such as Section 214.

All of this is to say that restrictions on access to housing programs for immigrants are subject to change via administrative action. Advocates should track potential administrative action, whether through formal rulemaking or administrative guidance, to ensure advocate and immigrant tenant voices are considered in the process so that proposed rules are as fair and protective as possible.

IV. Other Federal Programs: Is the Low-Income Housing Tax Credit Program Restricted?

The Low-Income Housing Tax Credit program is administered by the U.S. Treasury Department through the Internal Revenue Service (IRS), not HUD or RD. The LIHTC program does not involve rental assistance, loans, grants, or any other direct government expenditure. Instead, tax credits are allocated by the IRS to state housing finance agencies (HFAs) that then award the credits to housing providers through a competitive application process.⁹² Credits awarded are then sold to investors who in turn use the credits to reduce their federal tax liability. The proceeds from the credit sale are used to finance a portion of a project’s construction or rehabilitation costs.⁹³ Typically, LIHTC housing projects are owned as a partnership or a limited liability company consisting of the housing provider selling the credits (usually the general partner) and the investors (usually the limited partner).⁹⁴

LIHTC housing currently has no immigration restrictions and that is unlikely to change in the future. Section 214 does not apply to the LIHTC program, meaning it can only apply to LIHTC housing if amended, something not likely to happen in the near term. Further, by its terms, PRWORA only applies to benefits, grants, contracts, loans, licenses, or payments provided by a

Reg. 59762, 59764 (Nov. 22, 1996) (revising 7 C.F.R. Parts 1806, 1910, 1922, 1944, 1951, 1955, 1956, 1965, and 3550); corrected at 61 Fed. Reg. 63928 (Dec. 2, 1996); corrected at 61 Fed. Reg. 65266 (Dec. 11, 1996); *see, i.e.*, 7 C.F.R. §§ 3550.10 (Definitions), 3550.53 (Section 502 Immigrant Eligibility), and 3550.103 (Section 504 Immigrant Eligibility) (2025).

⁹⁰ Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,” 90 Fed. Reg. 130 (July 10, 2025).

⁹¹ *Id.*

⁹² *See* 26 U.S.C.A. § 42(h)(3)(A)-(C) (outlining IRS credit allocation to states); 26 U.S.C.A. § 42(m)(1)(B) (establishing baseline criteria for credit awards).

⁹³ *Homeowner’s Rehab, Inc. v. Related Corporation V SLP, L.P.*, 479 Mass. 741, 744 (2018).

⁹⁴ *Id.*

federal agency, payments made from federally appropriated funds, and state and local public benefits.⁹⁵ Since the LIHTC program does not involve any direct government expenditure, LIHTCs do not neatly fit PRWORA's definition of a federal public benefit, making it unlikely that Treasury will make such a determination in the future.

Note, however, that LIHTC projects frequently house residents with Housing Choice Vouchers and that some LIHTC projects have Project-based Section 8. This includes former public housing projects rehabilitated or redeveloped with LIHTC funds through the Rental Assistance Demonstration (RAD) program. Similarly, Section 515 projects commonly use LIHTCs to finance project construction and rehabilitation costs and many of these projects also use Section 521 Rental Assistance to deeply subsidize tenant rents. Thus, all LIHTC units receiving any form of Section 8 or RD voucher assistance would become subject to the Section 214 restrictions.

V. State and Local Funding: Is the Housing Unit Funded by Any California or Local Government Programs that Include Restrictions?

California law prohibits denying a person access to publicly funded housing on the basis of immigration status, except where such a restriction is explicitly required by federal housing program regulations.⁹⁶ Although two sets of restrictions have been adopted by State regulations, one has been enjoined by the court and the other is only being enforced in the homeowner programs.

A. California Department of Housing and Community Development Regulations

In 1998, in response to PRWORA and an Executive Order issued by then Governor Wilson, the California Department of Housing and Community Development (HCD) adopted regulations implementing immigrant restrictions on 12 of the programs it funds.⁹⁷ HCD has been enjoined from implementing those regulations by the San Francisco Superior Court.⁹⁸ The programs covered by the regulations and the court order are:

- i. Farmworker Housing Grant Program;
- ii. Deferred Payment Rehabilitation Loan Program;
- iii. Special User Housing Rehabilitation Program;
- iv. Office of Migrant Services;
- v. California Housing Rehabilitation Program;

⁹⁵ 8 U.S.C.A. § 1611(c)(1) (West, Westlaw through Pub. L. No. 119-18).

⁹⁶ CAL. CIV. CODE §§ 1940.3(c)(1), 1942.5(k) (2025); 24 CFR § 5.506(a) (2025).

⁹⁷ CAL. CODE REGS. tit. 25, §§ 6935 *et seq.* (West, Westlaw through July 4, 2024, Register 2025, No. 27) (currently enjoined by court order, *see* note 85, *infra*).

⁹⁸ *Mercy Charities Housing California v. Dept. of Housing and Community Development*, Case No. 305541 (Cal. Sup. Ct., San Francisco, Filed May 5, 2000) (Order Granting Peremptory Writ of Mandate). *See also* NHLP, *California's Attempt to Deny Housing Benefits to Unqualified Immigrants Halted*, 30 HOUS. L. BULL. 61, 70 (2000).

- vi. Rental Housing Construction Program;
- vii. Homeownership Assistance Program;
- viii. Emergency Housing and Assistance Program (Rental Assistance Only);
- ix. Mobile Home Park Assistance Program;
- x. California Housing Rehabilitation Program for Owner-Occupied Housing;
- xi. Rental Housing Construction Program – Proposition 84 Bond; and
- xii. Family Housing Demonstration Program.

None of these programs are restricted, unless a housing unit also has restricted federal funding.

B. California Housing Finance Agency Regulations

In 1988, also in response to PRWORA and an Executive Order issued by then Governor Wilson, the California Housing Finance Agency (CalHFA) adopted regulations implementing immigrant restrictions.⁹⁹ There are potential legal problems with the CalHFA regulations, which might lead a court to invalidate them if they were being enforced. However, the rental restrictions are still listed as active regulations, and CalHFA is requiring that borrowers in the homeowner programs qualify under these rules. See Chapter 6 for a more detailed discussion of programs funded by CalHFA. The CalHFA regulations apply to the following CalHFA housing programs.

1. Multifamily Housing that Has Received a Loan or Grant from CalHFA (But Not Benefits Through the California Housing Loan Insurance Fund)

Not all units in a multifamily building are restricted. If the rental unit is required by law or a regulatory agreement to be occupied by a low- or very low-income household under a CalHFA program, it is restricted.¹⁰⁰

2. Exceptions

Buildings that are owned by nonprofit organizations are exempt and do not have to verify immigrant eligibility. (There are some exceptions to the exception. *See* Chapter 6.) The organizations must be nonprofit charitable organizations, such as organizations that are exempt from federal taxes under Internal Revenue Code Section 501(c)(3).¹⁰¹ Buildings or units with any restricted federal funding are covered by the rules of the federal funding, not the CalHFA funding. (*See* Chapter 3.)

⁹⁹ CAL. CODE REGS. tit. 25, §§ 12001-12108 (West, Westlaw through July 4, 2025, Register 2025, No. 27).

¹⁰⁰ *Id.* § 12002(d)(1) and (p).

¹⁰¹ *Id.* §§ 12002(u) and 12103(c); Pub. L. No. 104-208, Tit. V, § 508, 110 Stat. 309, 3009-673 (1996) (codified at 8 U.S.C. § 1642(d)) (amending Sec. 432 of PRWORA to create an exemption from the verification requirements for nonprofit charitable organizations that provide state or local public benefits). *See also* Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344 (Nov. 17, 1997).

3. Loans to Homeowners, Including Any Mortgage Loan Originated or Purchased by CalHFA for Construction, Acquisition and/or Rehabilitation of an Owner-Occupied Structure

Homebuyer assistance provided by CalHFA under Health & Safety Code §51451(a) is also covered.¹⁰²

C. Other California State Programs

No immigrant restrictions have been adopted for the State Tax Credit Program. The authors are unaware of any other current or proposed immigrant restrictions on state housing programs. There are some restrictions on some programs that are related to housing, which are discussed in Chapter 7. Please contact the authors of this handbook if you become aware of any attempt to enforce either the CalHFA or HCD regulations.

D. Redevelopment and Other Local Funds

Local redevelopment funds and other local funds are often used in affordable housing. As of the date of this handbook, the authors are unaware of any ordinances, resolutions, or other restrictions imposed by any local government or local redevelopment agency to restrict immigrant access to housing funded by such sources.

Attempts to adopt such restrictions, which may be misguidedly based on PRWORA, are not likely to survive a court challenge for many reasons. Among other things, such local funding is usually mixed with state or federal funding, which would control the restrictions. Further, local housing programs are not generally “public or assisted housing” within the meaning of the federal restrictions in PRWORA. Please contact the authors of this handbook if you become aware of any local immigration restrictions on housing.

¹⁰² CAL. CODE REGS. tit. 25, §§ 12002(d)(2) and 12002(aa) (West, Westlaw through July 4, 2025, Register 2025, No. 27).

CHAPTER 3

WHAT HAPPENS IF THERE IS MORE THAN ONE FUNDING SOURCE?

Housing developers often use many funding sources to make a building affordable. In those “mixed funding” buildings, an advocate has to figure out if any of the funding sources make a particular building or housing unit restricted. The rules may be different for different units in the same building. Here are some rules of thumb:

I. Section 214 Overrides Other Unrestricted Federal Funding

If a building receives funding under the Section 8, Section 235, Section 236, Rent Supplement, HoDAG, or public housing programs, the Section 214 regulations apply to all units funded by those sources regardless of what other funding is in the building.¹⁰³ For example, a building may have been built with Community Development Block Grants (which are not restricted), but if that building receives Project-Based Section 8 funding (which are restricted), then all the units subsidized by Project-Based Section 8 would be restricted. Note that sometimes a particular funding source only covers some of the units in a project. If only some units are funded by a Section 214-covered program, then only those units are restricted.

II. Section 214 and Other Federal Restrictions Override Any State Funding

A building might be financed with funding from CalHFA or HCD and also have some federal funding. At the current time, it is unclear whether HCD or CalHFA regulations are being uniformly enforced, so there would not be any immigrant restrictions under the state programs. However, if there were also federal dollars covered by Section 214 in the building, the Section 214 regulations would control, under federal preemption principles. For example, if a building financed with CalHFA funds also has some Section 8 Project-Based units in it, the Section 8 units would be subject to the Section 214 regulations, but the remaining units would be unrestricted. CalHFA specifically says in its regulations that CalHFA units where the tenant has a Housing Choice Voucher are covered by the Section 214 regulations, not the CalHFA regulations.¹⁰⁴

III. Federal Funding Without Restrictions Overrides Any State Funding Restrictions

¹⁰³ 42 U.S.C.A. 1436a(a) (West, Westlaw through Pub. L. No. 119-18).

¹⁰⁴ CAL. CODE REGS. tit. 25, § 12105 (West, Westlaw through July 4, 2025, Register 2025, No. 27). This section also provides that any housing unit that is determined to be a federal public benefit under PRWORA shall be covered by the provisions relating to the federal public benefit, and not the CalHFA regulations. This section does not explicitly address which benefits control if there are other Section 214 funds in a CalHFA building, or other federal funds that have not been determined to be a federal public benefit. Under those circumstances, general federal preemption principles would control.

A building may have federal CDBG, HOME, tax credits or McKinney Act unrestricted funding and some additional state funding from the CalHFA or HCD. At the current time, no HCD or CalHFA regulations are being enforced, so there would not be any immigrant restrictions. If any state regulations were in effect, the federal program without restrictions would override any state restrictions, under federal preemption principles.¹⁰⁵

For example, if a building financed by CalHFA was also financed by CDBG, the CDBG funds are unrestricted. The federal law controls, and none of the units are subject to any immigrant restrictions despite any CalHFA restrictions.

IV. What if There is Local Funding in the Housing Unit?

In programs with mixed funding that includes a local component (for example, local redevelopment funds), the same general rules apply. The federal funding would generally control, regardless of the presence of local funds. If there are no federal funds, generally the state funding rules would control, even if there is local funding.

¹⁰⁵ This situation is not explicitly addressed in the CalHFA regulations. To the extent that the CalHFA regulations, and in particular CAL. CODE REGS. tit. 25, §§ 12002(d) or 12105, imply to the contrary, they would violate general federal preemption principles.

CHAPTER 4

WHAT ARE THE HUD SECTION 214 IMMIGRANT RULES?

In this chapter, we discuss the rules that apply in housing covered by the HUD Section 214 regulations.¹⁰⁶ (See Chapters 2 and 3, *supra*, to figure out if housing is covered by Section 214). First, we review who is responsible for implementing Section 214 rules. Next, we describe the types of immigrants who are considered “eligible immigrants” and “ineligible immigrants” under Section 214. Then we discuss the procedures and rules used to verify eligibility. The rules for applicants (households seeking admission to the housing) are different from the rules for tenants (households already living in the housing), so they are discussed separately.

I. Who Must Implement the Section 214 Rules?

In most rental housing, the landlord implements the rules. This includes the public housing authority (PHA) in public housing, and the owner or manager (the “landlord”) in most other rental programs. Three exceptions are the Housing Choice Voucher program, the Moderate Rehabilitation programs, where the PHA implements the rules, not the landlord,¹⁰⁷ and the Rural Development Demonstration Voucher Program, where a contractor implements the rules.

Under the Section 235 Homeownership Program, the lender (the mortgagee) conducts any necessary immigration verification.

II. Eligible and Ineligible Immigrants

A. Which Categories of Immigrants are Considered “Eligible” under HUD’s Section 214 Rules?

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 the statute and regulations.¹⁰⁸ Immigration law is highly technical and contains many different categories. If there is any uncertainty about the nature of an individual’s immigration status, an immigration expert should be consulted.

¹⁰⁶ 24 C.F.R. pt. 5 (2025); HUD HANDBOOK 4350.3, *supra* note 3.

¹⁰⁷ These are the “responsible entities” who are required to comply with Section 214. 24 C.F.R. §§ 5.500(b)(2) and 5.504 (2025). See also HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.C.

¹⁰⁸ 42 U.S.C.A. § 1436a(a) (West, Westlaw through Pub. L. No. 119-18); 24 C.F.R. § 5.506(a)(2) (2025). See also HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.B (2013). (HUD Handbook 4350.3 does not address eligibility categories in detail.)

In general, the following persons are qualified for admission to HUD-subsidized housing:

- i. U.S. citizens and U.S. nationals.
- ii. Persons lawfully admitted for permanent residence.¹⁰⁹ (Lawful Permanent Residents or LPRs). These are immigrants who have been granted a status that allows them to reside and work permanently in the United States. These are sometimes referred to as “green card holders.”
- iii. 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.¹¹⁰ (Refugees and Asylees.) In general, refugees obtain their status before coming to the U.S. and asylees apply for their status after arriving in the U.S.
- iv. Persons granted “parole” by the U.S. Attorney General for emergent or public interest reasons¹¹¹ (Parolee). Parole is a procedure that allows a noncitizen to come into the United States without being granted official admission.
- v. Persons granted withholding of deportation or removal¹¹² (Withholding of Deportation). 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. This allows persons to remain in the U.S. as long as they maintain that status (or in some instances to be deported only to a third country).
- vi. Persons granted temporary residence under the general amnesty provisions of the Immigration Reform and Control Act of 1986 (IRCA) based on having resided in the U.S. since before January 1, 1982.¹¹³ (Amnesty). Amnesty is the common term for programs created by IRCA that granted legal immigration status to certain previously undocumented immigrants.
- vii. 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. Under some circumstances these persons are entitled to the same treatment as refugees.¹¹⁴ There are also victims of severe

¹⁰⁹ 42 U.S.C.A. § 1436a(a)(1)-(2) (West, Westlaw through Pub. L. No. 119-18).

¹¹⁰ *Id.* § 1436a(a)(3).

¹¹¹ *Id.* § 1436a(a)(4).

¹¹² *Id.* § 1436a(a)(5).

¹¹³ *Id.* § 1436a(a)(6).

¹¹⁴ Under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat 1464 (2000), a victim of trafficking may obtain a nonimmigrant visa (T-VISA), permitting him or her to remain in the U.S. and to work, if federal law enforcement officials determine that the individual is a potential witness to trafficking. Individuals who have been continuously present in the United States for at least three years following issuance of a T-VISA may adjust their status to lawful permanent residence status.

Victims of trafficking is eligible for federal and state benefits to the same extent as a refugee, provided that they are either:

(1) under 18 years of age, or

trafficking who do not have T-visas but have certifications from United States Department of Health and Human Services.¹¹⁵

- viii. Noncitizens lawfully present in the United States (including U.S. 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 and Palau. Known as persons residing under “COFA,” these individuals are considered “nonimmigrants” and are authorized to remain in the U.S. permanently. These individuals are now eligible for most benefits to the same degree as U.S. citizens.
- ix. Noncitizens who have pending petitions for lawful permanent resident status under the Violence Against Women Act. (VAWA self-petitioners.) Note that eligibility for VAWA self-petitioners extends from the time of filing the petition and continues throughout any appeal processes following an adverse determination.

B. Which Immigrants Are Ineligible for Housing Covered by Section 214?

Section 214 prohibits assistance to visitors, tourists, diplomats, and students,¹¹⁶ as well as any noncitizens not falling within the specified eligible categories. Provisions regarding noncitizen students are specific. The prohibitions against noncitizen students extend to their noncitizen spouses and minor children if “accompanying the student or following to join the student.”¹¹⁷ However, families with noncitizen students may receive prorated assistance if the eligible family members are U.S. citizens or are eligible noncitizens who did not accompany or follow the student from abroad.¹¹⁸ Also, the prohibition on assistance to noncitizen students does not apply to children of the noncitizen student and a U.S. citizen spouse.¹¹⁹

Noncitizen students are not entitled to continued assistance or temporary deferral (see below), although (*e.g.*, citizen spouses and citizen children) are noncitizen spouse, and to the minor children of the noncitizen student if married to a noncitizen.¹²⁰ For information on proration, see the

(2) a person who has been certified by the Secretary of Health and Human Services to be willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons, and who either (a) has made a bona fide application for a T-visa (under INA § 101(a)(15)(T) that has not been denied, or (b) is a person whose continued presence in the U.S. is being ensured by the Attorney General in order to effectuate the prosecution of traffickers in persons.

¹¹⁵ 22 U.S.C. § 7105 states that “an alien who is a victim of a severe form of trafficking in persons, . . . shall be eligible for benefits and services under any Federal or State program or activity funded or administered by any official or agency described in subparagraph (B) to the same extent as an alien who is admitted to the United States as a refugee under section 1157 of title 8.” People admitted as refugees under 8 U.S.C. § 1157 are eligible for housing assistance under Section 214 (*i.e.*, 42 U.S.C. § 1436a(a)(3)). The U.S. Department of Health and Human Services, and not the U.S. Department of Homeland Security, makes the finding of “severe trafficking” victim.

¹¹⁶ 42 U.S.C.A. § 1436a(a)(1) (West, Westlaw through Pub. L. 119-18).

¹¹⁷ 24 C.F.R. 5.522(b)(1) (2025).

¹¹⁸ 24 C.F.R. 5.522(b)(1) (2025).

¹¹⁹ 24 C.F.R. 5.522(b)(2) (2025).

¹²⁰ 24 C.F.R. § 5.522 (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.R.

discussion on mixed families below.

III. Rules for Verifying Household Eligibility

A. What Are the Rules for Applicants?

In order to qualify for admission to HUD housing covered by Section 214, at least one household member must be a citizen or a noncitizen with eligible immigration status as defined in Section 214. The eligible member does not need to be the head of household.¹²¹

1. Who in the Applicant Household Has to Be a Citizen or a Eligible Immigrant?

Any household member, *including a minor child*, who is a citizen or eligible immigrant will qualify the household for admission to covered housing. Under normal admission rules for the applicable programs, the persons seeking admission must also qualify as a household or “family.”¹²² Households with no eligible members are not permitted to move into covered housing.

2. Proration of Assistance for Mixed Households: What Happens If One of the Members of the Household Is Not a Citizen or Eligible Immigrant?

A household that has at least one eligible household member, as well as other ineligible household members, is called a “mixed” household.¹²³ Mixed households are permitted to live in housing covered by the Section 214 restrictions. However, they will not receive the full amount of rent subsidy. They will therefore pay a higher rent. The amount of assistance they receive will be “prorated.”¹²⁴ The rent is thus 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.

3. Which Applicant Households Are Eligible for Proration?

All “mixed” households are eligible for prorated assistance. However, households with no eligible members are not permitted to move into the housing or to pay prorated rents. Eligible mixed households who request prorated assistance must have the assistance extended to them.

¹²¹ 24 C.F.R. §§ 5.506(b)(2), 5.512(a) and (e), 5.516(b), and 5.520(a) (2025). *See generally* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12 (does not directly address head of household issue).

¹²² 24 C.F.R. § 5.504(b) (2025) (definition of “family”).

¹²³ *Id.* § 5.504. *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.B.5.

¹²⁴ 42 U.S.C.A. § 1436a(b)(2) (West, Westlaw through Pub. L. No. 119-18), 24 C.F.R. §§ 5.518 and 5.520 (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.B.5.

4. How Is Prorated Assistance Calculated?

Prorated assistance is calculated differently for each program.¹²⁵ A specific calculation for each program can be found in Appendix C. The calculations have several steps. They are not too complicated if you take them step by step, but mistakes can easily occur. Because prorated rents are higher than normal subsidized rents, it is important for advocates and housing staff to double-check the calculations to be sure “mixed” households are not overcharged.

In general, the amount of rent the household would pay if all members were eligible is adjusted for mixed households by multiplying the usual rent subsidy by a formula based on the number of eligible household members divided by the entire number of household members.

5. What Information Must Be Given to Applicants About the Rules?

PHAs and other landlords covered by the Section 214 regulations are required to give a notice to tenants at the time they apply for assistance that explains the immigration requirements and the right to elect not to declare that one has eligible status.¹²⁶ The notice to applicants must:¹²⁷

- i. State that financial assistance is contingent upon the submission and verification of evidence of citizenship or eligible immigration status by at least one household member.¹²⁸
- ii. Describe the type of evidence and documents required, and when it must be submitted.¹²⁹
- iii. State that assistance will be prorated, denied, or terminated, as appropriate, upon a final determination of ineligibility after all appeals are exhausted or at a designated time if appeals are not pursued.¹³⁰
- iv. State the right of some household members not to claim eligible status.¹³¹

6. Who Will Have to Declare That They Are Eligible and When Will They Have to Do That?

Applicants for housing covered by the Section 214 regulations will have to provide information about their citizenship or immigration status only once, at the same time that they provide other initial eligibility and financial information to the PHA, landlord, or other entity that conducts the

¹²⁵ 24 C.F.R. § 5.520 (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.P.

¹²⁶ 24 C.F.R. § 5.508(f)(1)(i) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.G.

¹²⁷ 24 C.F.R. § 5.508(f)(2) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.G.1.

¹²⁸ 24 C.F.R. § 5.508(f)(2)(i) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.G.1.a.

¹²⁹ 24 C.F.R. § 5.508(f)(2)(ii) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.G.1.b. and c.

¹³⁰ 24 C.F.R. § 5.508(f)(2)(iii) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.G.1.d.

¹³¹ 24 C.F.R. § 5.508(f)(1) (2025). *But see* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.G.1. (Omitting the right of some household members not to claim eligible status).

verification.¹³² This usually occurs when the applicants get to the top of the waiting list and a unit or voucher is available, although landlords and PHAs can require such information at an earlier date.¹³³ At the time the information is requested, the household will have to declare which family members are eligible and which family members decline to state eligibility, although they may get additional time to provide documentation, as described below. Normally, the head of household will provide the information about which family members are declaring eligibility. However, any adult household member may provide that information. Each household member who declares his or her eligibility must provide a declaration and supporting documentation. Information about citizenship or immigration status does not have to be resubmitted at interim or annual recertifications.¹³⁴

a. Can Household Members Who Know That They Are not Eligible Simply Refuse to State What Their Status Is, and What Happens If They Do That?

Under HUD regulations, yes. Any household member who does not want to claim that he or she is eligible can simply choose to say that he or she does not claim to be eligible. Those household members do not have to provide documents regarding their immigration status. However, the household does have to provide in writing the names of all household members, including those who decline to state their eligibility.¹³⁵ The amount of income paid to each household member, regardless of status, must be provided in order to calculate any prorated subsidy. Failure to provide the *names* of all household members (not the immigration status) can result in significant penalties, including termination of the housing assistance for at least two years.¹³⁶

b. Who Has to Submit Documents?

All household members who claim that they are eligible have to submit documents. Each eligible adult must sign a declaration regarding their immigration or citizenship status. Additional documents and a verification consent form may be required, depending on citizenship or immigration status and age, as described below. For each eligible child, the declaration and form must be signed by an adult residing in the assisted unit who is responsible for the child.¹³⁷ The declarations and form may be

¹³² 24 C.F.R. § 5.508(g)(1) (2025); *see also id.* § 982.551(b) (applicants for Section 8 Voucher Program must supply required evidence of citizenship or eligible immigration status as provided in 24 C.F.R. Part 5). *And see* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.E.

¹³³ 24 C.F.R. § 5.508(g)(1) (2025). For public housing and Section 8, the PHA Plan should establish admission procedures, including the time at which eligibility information must be submitted. *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.J.

¹³⁴ 24 C.F.R. § 5.508(g)(5) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.E.

¹³⁵ 24 C.F.R. § 5.508(e) (2025) (“If one or more members of a family elect not to contend that they have eligible immigration status . . . the family may be eligible for assistance . . . despite the fact that no declaration or documentation of eligible status is submitted for one or more members of the family.”). Note that the HUD multifamily housing handbook is technically inconsistent with 24 C.F.R. § 5.508(e). The handbook indicates that family members not claiming eligibility are to submit a declaration to that effect. HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.I.2. (“Noncitizens not claiming eligible immigration status may elect to sign a statement that they acknowledge their ineligibility for assistance.”) and ex. 3-5 (sample declaration: “I am not contending eligible immigration status and I understand that I am not eligible for financial assistance.”).

¹³⁶ 42 U.S.C.A. § 1436a(d)(6) (West, Westlaw through Pub. L. No. 119-18); 24 C.F.R. § 5.514(c)(1)(iii) (2025).

¹³⁷ 24 C.F.R. § 5.508(c)(1) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at ex. 3-5.

made part of the rental application form or may be separate.¹³⁸

7. What Types of Immigration Documents Establish the Immigrant's Eligibility Status?

Different documents are required depending on the applicant's status.

a. U.S. Citizens and U.S. Nationals

The applicant must sign a declaration under penalty of perjury of U.S. citizenship or nationality. The PHA or landlord may, but need not, require presentation of supporting documents such as a U.S. passport or other "appropriate documentation, as specified in HUD guidance."¹³⁹ A passport is one example of acceptable documentation.¹⁴⁰ Birth certificates, certificates of nationality, hospital birth records, adoption records, or other documents should also be acceptable.¹⁴¹ The U.S. Attorney General has published a lengthy list of documents that are acceptable to establish citizenship under PRWORA, and any of the documents on that list should be sufficient for HUD purposes.¹⁴²

b. Noncitizens 62 Years of Age or Older

The applicant must submit: (1) a signed declaration under penalty of perjury of eligible immigration status, and (2) a document establishing proof of age.¹⁴³ The applicant may not be asked for supporting documentation regarding immigration status.

However, as of January 30, 2010, all new applicants for public and assisted housing, who were not previously determined eligible to reside in public or assisted housing, must provide their landlords with a copy of their Social Security number.¹⁴⁴ This may adversely affect undocumented immigrants who are over 62 years of age because their self-declaration will no longer suffice to establish their eligibility for assistance. Moreover, if they are single person households, they may be disqualified

¹³⁸ 24 C.F.R. § 5.508(c)(2) and (d) (2025).

¹³⁹ *Id.* § 5.508(b)(1). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.I.1.a..

¹⁴⁰ Revised Restrictions on Assistance to Noncitizens, 64 Fed. Reg. 25726, 25728 (May 12, 1999). HUD's response to comments requesting a more specific list of documents to establish citizenship stated: "If HUD determines that *additional examples* are necessary, HUD will more appropriately provide them through notice, handbook, or other non-regulatory guidance." (Emphasis added.) Thus, the passport is only one example of acceptable documents.

¹⁴¹ 42 U.S.C.A. § 1436a(d)(1)(A) (West, Westlaw through Pub. L. No. 119-18) (disallowing the use of a resident alien card or Social Security Cards as evidence of U.S. citizenship or nationality). Therefore HUD removed these from the list of examples in 24 C.F.R. § 5.508(b)(1). Revised Restrictions on Assistance to Noncitizens, Final Rule, 64 Fed. Reg. 25726, 25728 (May 12, 1999). It is uncertain, given the statutory language providing discretion to the Secretary, whether the documents listed in the statute might still qualify as appropriate documentation. The HUD multifamily housing handbook states: "Owners may require verification of the declaration by requiring presentation of a U.S. birth certificate or U.S. passport." HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.I.1.a..

¹⁴² Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344, 61362 (Nov. 17, 1997) (Attachment 4, Documentary Evidence of Status as a [Citizen or] Non-Citizen National).

¹⁴³ 24 C.F.R. § 5.508(b)(2) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.I.1.b..

¹⁴⁴ 24 C.F.R. § 5.216 (2025).

from living in the housing if they are unable to produce a valid Social Security number.

The Social Security number requirement does not apply to persons whose eligibility to reside was determined or was in the process of being determined prior to January 30, 2010. These persons may move to other housing without having to provide a Social Security number provided their prior landlord will verify that they were eligible to reside in public or assisted housing.¹⁴⁵

c. Noncitizens Under 62 Years of Age

The applicant must submit: (1) a signed declaration under penalty of perjury of eligible immigration status, (2) a document designated by the United States Citizenship and Immigration Services (USCIS) (formerly the INS), which is a part of the Department of Homeland Security, as acceptable evidence of immigration status in one of the permitted categories,¹⁴⁶ and (3) a signed verification consent form.¹⁴⁷

8. How Will Landlords Verify the Authenticity of the Documents?

For citizens and U.S. nationals, the PHA and landlords only need to review the signed declarations, or if they choose, the supporting documents. For noncitizens 62 and older, the PHA and landlords only need to review the signed declarations and proof of age. In both these circumstances, no further verification or verification consent form is required or authorized.¹⁴⁸

For noncitizens under the age of 62, the PHA or landlord verifies authenticity by checking with USCIS. Before verifying documents, the PHA or landlord must obtain a “verification consent form” from each noncitizen under the age of 62 who declares eligible immigration status. The verification consent form advises the applicant that the PHA or landlord may release evidence of eligible immigration status to HUD (which, in turn, may also release it to USCIS for purposes of verifying eligibility), or to USCIS for purposes of verification.¹⁴⁹

The PHA or landlord must review and copy the original documents obtained from the tenant. The landlord keeps a copy and returns the original to the household.¹⁵⁰ The PHA or landlord must keep copies of specified documents for a minimum of 5 years, including the application, forms completed by the household, copies of any USCIS documents, the signed verification consent form, USCIS verification results, the request for a USCIS appeal, the final USCIS determination, the request for an informal hearing, and the final informal hearing decision.¹⁵¹

¹⁴⁵ *Id.* § 5.216(e).

¹⁴⁶ 24 C.F.R. § 5.510(b) (2025). HUD has stated that specific documents considered acceptable may be announced from time to time in the Federal Register. 61 Fed. Reg. 13596-01, 13,613-14 (1996). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at ex. 3-4 (setting forth “Acceptable DHS [USCIS] Documents”).

¹⁴⁷ 24 C.F.R. § 5.508(b)(3) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.I.1.c..

¹⁴⁸ 24 C.F.R. § 5.508(b)(1)-(2), § 5.508(c)(1)-(2), § 5.508 (d)(1) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.I.1.

¹⁴⁹ 24 C.F.R. § 5.508(d) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at ex. 3-6.

¹⁵⁰ 24 C.F.R. § 5.510(a) (2025).

¹⁵¹ *Id.* at § 5.514(h). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 4-31.E.7.

Certain confidentiality requirements are imposed on the PHA, the landlord and USCIS, and there are restrictions on the use of submitted documents by USCIS. In general, as stated in the verification consent form, the PHA and landlord can only release the immigration information to HUD and USCIS and only for purposes of verifying eligibility. They are not authorized to release it to anyone else or for any other purpose.¹⁵² For more information, *see* Chapter 8.

9. How Does the USCIS Verification Process Work?

The USCIS verification process is called the “Systematic Alien Verification for Entitlements Alien Status Verification Index” or “SAVE.”¹⁵³ The PHA submits the tenants’ names to the SAVE system at USCIS to verify immigration status of noncitizens.¹⁵⁴ The PHA generally uses the tenant’s name, date of birth, and alien registration number (admission number, or “A” number) from the supporting immigration documents for submission of the primary verification request to the SAVE system. A Social Security number may also be submitted but is not required by the SAVE system.¹⁵⁵

The first or primary step in the SAVE process checks the applicant’s information against available electronic records. The automated SAVE system, however contains limited information. Immigrant records are often incomplete, inaccurate, or not up to date.¹⁵⁶ Therefore, if the automated SAVE system does not provide confirmation of the applicant’s status, USCIS may ask for additional documents. If the response still does not confirm that the applicant has an “eligible” status, the PHA *must* try the next step in the SAVE process, which may involve a manual search.¹⁵⁷

Within 10 days of receiving a nonconfirming reply from the automated SAVE system, the PHA must submit a request to USCIS for a manual search of USCIS records. The PHA submits to USCIS

¹⁵² 24 C.F.R. § 5.508(d)(2)-(d)(3) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at ex. 3-6.

¹⁵³ Pub. L. No. 99-603, § 121(d), 100 Stat. 3359, 3384 (1986) (codified at 42 U.S.C.A. § 1320b-7) (creating the SAVE system). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.L.

¹⁵⁴ 24 C.F.R. § 5.512(c) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.L.1.

¹⁵⁵ 42 U.S.C.A. § 1320b-7(d)(2)-(3) (West, WESTLAW through Pub. L. No. 119-18). *See also* 5 U.S.C.A. § 552a(b) and (e) (West, Westlaw through Pub. L. No. 119-18) *amended by* Computer Matching and Privacy Protection Act of 1988, Pub. L. No. 100-503, 102 Stat 2507 (1988) (restrictions on requesting information not required by law). *See also* Chapter 8, *infra*.

¹⁵⁶ In addressing the Immigration Reform and Control Act of 1986, Congress recognized the “perceived inadequacies of the INS’ database and the potential misuse of the information available through the verification procedures.” H.R. REP. NO. 99-682(I) (1986). *See also* GENERAL ACCOUNTING OFFICE, GAO/AIMD-95-147, LAW ENFORCEMENT SUPPORT CENTER: NAME-BASED SYSTEMS LIMIT ABILITY TO IDENTIFY ARRESTED ALIENS (1995), *available at* <http://www.gao.gov>; GENERAL ACCOUNTING OFFICE, GAO/IMTEC-90-75, INFORMATION MANAGEMENT: IMMIGRATION AND NATURALIZATION SERVICES LACK READY ACCESS TO ESSENTIAL DATA (1990), *available at* <http://www.gao.gov>; INS, *SAVE Program User Satisfaction Survey Analysis Report* (September 1994); OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF HEALTH AND HUMAN SERVICES, OEI-07-91-01231, REVIEW OF SAVE SYSTEM’S PROCESSES ii, 8 (1995) (SAVE data is “not always provided in a timely manner; the SAVE data base is not current; INS immigration status responses are not always clear; and SAVE is prone to manual keying error.” “[T]he SAVE database often does not have recently arrived aliens in the system for extended periods of time after their arrival (often exceeding six months).”). *See also* [GAO-17-204, IMMIGRATION STATUS VERIFICATION FOR BENEFITS: Actions Needed to Improve Effectiveness and Oversight](#). For more information about problems with the SAVE system, contact the National Immigration Law Center listed in Appendix D.

¹⁵⁷ 24 C.F.R. § 5.512(c)(2) and (d)(1) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.L.2. (“If the message “institute secondary verification” is displayed on the screen, the manual verification process must be used.”).

copies of the front and back of the tenants' documents, attached to a USCIS Document Verification Request Form G-845S or similar form from USCIS.¹⁵⁸ Unfortunately, even after using the manual search system, errors are frequently made in verifying eligibility. In part because of such errors, the law establishing the SAVE system requires that persons denied benefits because their eligibility was not confirmed in the SAVE process are entitled to a hearing, and prohibits delay, denial, reduction, or termination of benefits during the verification process.¹⁵⁹ HUD has proposed new procedures to verify U.S. citizenship through SAVE.¹⁶⁰

10. At What Stage in the Verification Process Can an Applicant Move In?

The rules distinguish between submission of documents and completion of the verification process with USCIS. The applicant household is *entitled* to move in when at least one household member has signed the required declaration and provided any initial documents that may be required. If that household member is a noncitizen, the household member must also sign any verification consent form that may be required.¹⁶¹

a. What If the Applicant Needs More Time to Obtain Documents?

If the applicant household needs more time to obtain relevant documents, they are entitled to a 30-day extension of time from the date of initial application to get them. In order to obtain the 30-day extension, the household member must: (1) submit a declaration stating that the person without the documents is a noncitizen with eligible immigration status, and (2) certify that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.¹⁶² The PHA or landlord must provide a written notice to the household stating whether they are granting or denying the extension and for how long (up to 30 days).¹⁶³ If the extension is denied, the notice must state the reasons.

¹⁵⁸ 24 C.F.R. § 5.512(d) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.L.2.a. and ex. 4-2.

¹⁵⁹ 42 U.S.C.A. §§ 1320b-7(d)(4)(A) and (d)(5)(B) (West, Westlaw through Pub. L. No. 119-18). It appears that the hearing referred to is the one seeking verification for the benefit program. *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.K.

¹⁶⁰ Housing and Community Development Act of 1980: Verification of Eligible Status, 91 Fed Reg. 8151, 8155 (Feb. 20, 2026) (“HUD is proposing in § 5.508(b)(1) to require persons declaring U.S. citizenship or U.S. nationality to provide a verification consent form as described in proposed § 5.508(d) to consent to responsible entities’ submission of information to SAVE.”).

¹⁶¹ 24 C.F.R. §§ 5.512(a) and 5.508(a) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.K.

¹⁶² 24 C.F.R. § 5.508(h)(1)-(2) (2025). *But see* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.J.2. (“Although the extension period may not exceed 30 days, the owner may establish a shorter extension period based on the circumstances of the individual case.”).

¹⁶³ 24 C.F.R. § 5.508(h)(3) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.J.3.

b. Who Is Entitled to Move in with the Applicant and What Rent Will the Household Be Charged?

The household cannot move into the unit until the documents are obtained from at least one household member. As soon as one household member submits the documents to the PHA or landlord, the entire household may move into the unit. However, no assistance can be provided to other household members until they provide their documents, and rent will be prorated for those households until they provide the documents (in other words, they will be treated as if they are declining to state their eligibility status.)

A household can choose to move into the unit and pay prorated rent while other household members are obtaining documents, or they can choose to wait up to 30 days so that they can move in with a lower rent upon all eligible members submitting their documents. Once the remaining household members have submitted documents for verification, the housing authority must stop prorating the rent and provide the household with the full amount of the subsidy. If they do move in and then obtain the documents for the remaining family member, rent should be adjusted retroactively.¹⁶⁴

As an alternative, PHAs *may* choose to admit households to public housing or provide Section 8 assistance *before* obtaining all necessary documents from even a single member of the household, although they are not required to do so. Private landlords *must* obtain all necessary documents concerning the eligible status of at least one household member *before* admitting a household into the housing.¹⁶⁵

c. What Happens If the Household Cannot Produce the Necessary Documents, Even After an Extension of Time?

If *any* member of the household has produced the necessary documents, the application cannot be denied. Similarly, if the household has already moved in, assistance to the household cannot be terminated. Rent will continue to be prorated to account for the household member(s) who did not produce documents.

If the PHA has allowed the household to move into the unit before documents are submitted, and *no* member of the household can produce documents, assistance can be denied or terminated. The household will either have to pay market rent or face eviction, depending on the program. The household has the same right to notice and an informal hearing with the landlord or PHA that they have if USCIS cannot confirm their eligibility, as described below (although the USCIS appeal process would not be applicable). In addition, any termination of assistance or any eviction for failure to provide documents must comply with all the termination and eviction procedures that apply to termination or eviction for any other reason.¹⁶⁶

¹⁶⁴ 24 C.F.R. § 5.512(a) (2025); Revised Restrictions on Assistance to Noncitizens, 64 Fed. Reg. 25726, 25728-29 (May 12, 1999) (HUD comments on verification of eligible status). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.K. (providing no specific discussion of family's right to wait 30 days or right to receive assistance retroactively).

¹⁶⁵ 24 C.F.R. § 5.512(a)-(b) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.K.

¹⁶⁶ 24 C.F.R. § 5.514(c)(1)(i); Revised Restrictions on Assistance to Noncitizens, Final Rule, 64 Fed. Reg. 25,726-29 (May 12, 1999) (HUD Comments on Delay, Denial, Reduction, or Termination of Assistance). *See also* HUD

11. If the Documents Are Rejected by USCIS, What Rights Do the Applicants Have to Appeal?

If USCIS does not confirm eligible immigration status through either the SAVE ASVI system (primary verification) or a manual search (secondary verification), or if an applicant cannot produce the required documentation after moving in, the PHA or landlord must provide the applicant with a written notice.¹⁶⁷ The notice must advise the applicant:

- i. of the right to appeal the USCIS determination to USCIS;
- ii. of the right to submit additional documentation or a written explanation in support of the appeal to USCIS;
- iii. that financial assistance will be denied or terminated;
- iv. of the reasons for the proposed denial or termination;
- v. that the household may be eligible for proration of assistance;
- vi. (for tenants) of the possibility for obtaining relief under the preservation of households procedures (see below);
- vii. of the right to request an informal hearing with the PHA or landlord either upon completion of the USCIS appeal or in lieu of the USCIS appeal; and
- viii. that assistance to applicants may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the pendency of the informal hearing process.

The household has 30 days from the date of notification by the PHA or landlord to request a USCIS appeal or an informal hearing with the PHA or landlord. In order to request a USCIS appeal, the household must submit a written request directly to USCIS. The household must provide the PHA or landlord with a copy of the written request to USCIS for appeal, along with proof of mailing.¹⁶⁸ It is highly recommended that the household submit the request by certified mail, return receipt requested, or some other method that provides proof of submission. The appeal must include a copy of the USCIS Document Verification Request Form G-845S submitted by the PHA or landlord during the secondary verification. The appeal should include additional documentation or a written explanation. The cover letter must state that the household is requesting an appeal of the USCIS immigration status verification results.

HANDBOOK 4350.3, *supra* note 3, at § 4-31.B..

¹⁶⁷ 24 C.F.R. §§ 5.512(d)(3) and 5.514(d) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.M., exs. 3-10 and 3-11, § 4-31.D..

¹⁶⁸ 24 C.F.R. § 5.514(e) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 4-31.E.1.

According to HUD, under most circumstances, USCIS will respond within 30 days from the date it receives the request from the household. If there is a delay, under the HUD rules, USCIS is supposed to inform both the household and the PHA or landlord of the reasons for the delay. The USCIS also is supposed to issue a written decision to the household with a copy to the PHA or landlord.¹⁶⁹

Advocates should be aware that the response time and the notice obligation of the USCIS are only set forth in HUD regulations. They are not part of any USCIS regulations. Therefore, HUD's estimate of the USCIS response time may not be accurate, and the USCIS staff may be unaware of the HUD notice requirements or the appeal process.

During the USCIS appeal, the application cannot be delayed or denied, and assistance cannot be reduced or terminated, on the basis of immigration status.¹⁷⁰ Therefore, rents should not be prorated during the USCIS verification process for household members whose status is being verified. Rents can be prorated until the initial documents are submitted to the PHA or landlord. However, once they are submitted and the USCIS verification process is occurring, they cannot continue to be prorated. The full subsidy must be extended to all household members who have submitted documentation for verification.

The household can also request an informal hearing with the PHA or landlord. In contrast to the USCIS appeal process, assistance can continue to be delayed during the informal hearing process for household members who have not yet submitted documents subject to verification. However, persons already receiving benefits may not have them terminated during the informal hearing. The informal hearing may be held *instead of* the USCIS appeal, in which case the request for the hearing has to be made within 30 days of the notice of the USCIS secondary verification findings. Or, the household can request an informal hearing *after* USCIS makes an unfavorable appeal determination, in which case the appeal must be requested within 30 days of receipt of the USCIS appeal decision.¹⁷¹

12. What Are the Informal Hearing Procedures for Applicants?

For all applicants in all programs, the hearing procedures are set out in the Section 214 regulations.¹⁷² Under those procedures, households are entitled to certain due process rights, including:

- i. a hearing before an impartial individual;¹⁷³
- ii. the right to examine and copy all documents in advance of the hearing at the applicant's expense;
- iii. the right to present evidence and arguments without regard to formal evidentiary

¹⁶⁹ 24 C.F.R. § 5.514(e)(3) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 4-31.E.3.

¹⁷⁰ Subsection 214(d)(4)(B)(ii) of the Housing and Community Development Act of 1980 (as amended by the 1996 Immigration Act); 24 C.F.R. § 5.514 (e)(4) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 4-31.E.5.

¹⁷¹ 24 C.F.R. § 5.514(f) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 4-31.E.

¹⁷² 24 C.F.R. § 5.514(f)(2)(iii) (2025). *See also, e.g., id.* § 982.554(d) (Informal hearing procedures of Section 8 Voucher applicants for denial based on ineligible immigration status are in 24 C.F.R. Part 5.).

¹⁷³ There is also a minimal level of subject matter competence required. *See, e.g., Shepherd v. Weldon Mediation Servs., Inc.*, 794 F. Supp. 2d 1173, 1184 (W.D. Wash. 2011).

- rules;
- iv. the right to cross examine the PHA or landlord witnesses;
 - v. the right to be represented by an attorney or advocate at the applicant’s expense;
 - vi. the right to have an interpreter at either the applicant’s or landlord/PHA’s expense as determined by the parties before the hearing; and
 - vii. the right to have the hearing tape recorded.¹⁷⁴

The landlord or PHA may, but is not required by federal law, provide a transcript of the hearing. State law may, however, require provision of the transcript.

Under Section 214, applicants are entitled to a written final decision, based solely on the facts presented at the hearing, within 14 days of the date of the informal hearing. The decision shall state the basis for the decision.¹⁷⁵

For households who have already moved into the housing, the hearing procedures are those used for existing tenants, as described below.¹⁷⁶

All households may also pursue any rights that may be available through judicial procedures.¹⁷⁷

13. Should the Household Use the Informal Hearing or the USCIS Appeal Process?

Households should consider a number of factors when deciding whether to appeal and whether to use the USCIS appeal process or the informal hearing process. If they need more time to obtain the initial documents to submit to the landlord or PHA, the informal hearing process may be the only process available.

If they believe that USCIS has not accurately characterized their immigration status, the USCIS appeal process is usually best, both because USCIS is the entity with ultimate authority over that issue, and because assistance cannot be delayed, terminated or reduced during the USCIS appeal process.

Households that have lost the USCIS appeal process may wish to consider an informal hearing if they believe USCIS has made an error and they can document such error in the informal hearing and convince the landlord or PHA to resubmit the verification. An informal hearing may also be useful if the household does not dispute the USCIS determination, but believes that the landlord or PHA has taken the wrong action in response to the determination—for example, terminating the assistance to the entire household instead of prorating the rent, or prorating the rent even though the ineligible

¹⁷⁴ *Id.* § 5.514 (f)(2)(iii).

¹⁷⁵ *Id.* § 5.514(f)(3).

¹⁷⁶ *Id.* § 5.504 (definition of “tenant”).

¹⁷⁷ *Id.* § 5.514(g).

household member has moved out of the assisted dwelling unit.¹⁷⁸ Advocates should consider other individual factors when advising applicants on the appropriate action, including that exercising the right to appeal will prolong the termination process.

14. What Happens to a Mixed Household If the Applicant Loses the Appeals After Having Moved In?

The PHA or landlord must terminate assistance to ineligible household members once a final determination of non-eligibility is made.¹⁷⁹ However, so long as at least one household member is eligible, the household can continue to remain in the unit or keep the Housing Choice Voucher. Several options may be available to a mixed household (with at least one eligible member) under those circumstances:

- i. First, in very limited circumstances the household may be eligible for continuation of the full housing subsidy under the “continued assistance” provisions for “preservation assistance.”¹⁸⁰ This allows the household to remain in the unit. To qualify, the household must have been receiving the benefits as of June 19, 1995. *See infra* Section B.1.a for a discussion of “continued assistance.”
- ii. Second, the household may be eligible for a “temporary deferral” of termination of assistance for a maximum of 18 months, if necessary to permit the household additional time to find affordable housing.¹⁸¹ “Temporary deferrals” are another type of “preservation assistance” that is discussed below (and only available to families in the program since 1995). *See infra* Section B.1.d.
- iii. Third, if the first two options are not available or if the deferral period has been exhausted, the family may consider having the ineligible household member(s) move out. This would enable the remaining members of the household to retain the full housing subsidy, though potentially having to relocate to a smaller unit if the remaining members would be “overhoused” in the existing premises. Of course this “option” carries significant burdens in terms of family separation, and may be entirely impractical when the person moving out is essential to provide care for other members of the household.
- iv. Fourth, if eligible members remain, the household is eligible for a pro rata reduction of the rent. However, the reduction cannot be applied retroactively.¹⁸²
- v. Fifth, if the household cannot afford the reduced rent, the household may have to

¹⁷⁸ *Id.* § 5.514(b)(ii) and (iii).

¹⁷⁹ *Id.* § 5.514(c). *See also* HUD HANDBOOK 4350.3, *supra* note 3, HUD HANDBOOK 4350.3, *supra* note 3, at § 8-7.C.

¹⁸⁰ 24 C.F.R. § 5.518(a) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.O.

¹⁸¹ 24 C.F.R. § 5.518(b) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.Q.

¹⁸² 24 C.F.R. § 5.514(a) (2025); Revised Restrictions on Assistance to Noncitizens, Final Rule, 64 Fed. Reg. 25726, 25729 (May 12, 1999) (HUD comments on verification of eligible status).

move.

15. What Happens to a Household with No Eligible Members If the Applicant Loses the Appeal After Having Moved In?

a. Termination of Assistance

The PHA or landlord must terminate assistance to the entire household once a final determination is made that there are no eligible household members.¹⁸³ However, under very limited circumstances, the household may be eligible for a “temporary deferral” of termination of assistance for a maximum of 18 months, if necessary to permit the household additional time to find affordable housing.¹⁸⁴ The household must have been receiving the benefits as of June 19, 1995. *See infra* Section B.1.d.

If the deferral period is inapplicable or has been exhausted, assistance will terminate. As described below, the consequences of termination of assistance vary from program to program. The PHA or landlord must follow applicable administrative procedures for termination or reduction of rents or subsidies, and state law eviction procedures if an eviction is proposed.¹⁸⁵ The notice of termination of assistance must again advise the household that the assistance is being terminated, the reason for the termination, the possible eligibility for prorated assistance for remaining household members, and the right (for household members who moved in prior to June 19, 1995) to relief under the provisions for preservation of households. *See infra* Section B.1.c. If all hearing rights have not been exhausted, the notice must include information on any remaining appeals¹⁸⁶ *See supra* subsections 9-11.

16. Can the Household Be Evicted?

If permitted under the lease in rental housing, such as Section 236 or Section 8 New Construction, where not all units are subsidized (unlike, for example, public housing), the household may have the financial assistance terminated but not their tenancy. In that case, the household will be notified that their assisted occupancy is terminated and they are then required to pay the HUD-approved market rent for the unit.¹⁸⁷ If the lease does not allow for a market rate alternative, the landlord and the household may enter into a new lease without any financial assistance.¹⁸⁸ If the household cannot pay market rent or refuses to enter into a new lease, it can be evicted. During the pendency of the eviction process, HUD will continue to pay financial assistance to the landlord so long as the

¹⁸³ 24 C.F.R. §§ 5.514(c) and 982.552(b)(4) (2025) (PHA must terminate or deny assistance in Section 8 voucher program for failure to submit required evidence of citizenship or eligible immigration status). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 8-5.E.

¹⁸⁴ 24 C.F.R. § 5.518(b) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.Q.

¹⁸⁵ Revised Restrictions on Assistance to Noncitizens, 64 Fed. Reg. 25,726, 25,729 (1999) (HUD Comments on Delay, Denial, Reduction, or Termination of Assistance).

¹⁸⁶ 24 C.F.R. § 5.514(c)(2) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at exs. 3-8 to 3-11.

¹⁸⁷ 24 C.F.R. § 5.514(i)(1)(i) (2025). *See also, e.g.*, HUD HANDBOOK 4350.3, *supra* note 3, at ex. 3-10.

¹⁸⁸ 24 C.F.R. § 5.514(i)(1)(ii) (2025).

eviction is prosecuted with due diligence.¹⁸⁹

In public housing and other programs where all units are subsidized, the PHA or landlord may evict the household using the normal eviction notices and procedures that apply anytime someone is no longer eligible. The PHA or landlord may continue to provide assistance or subsidized rent until the tenant vacates.¹⁹⁰ In most instances, consistent with the policies underlying the Section 214 regulations of minimizing harm to existing tenant households, the PHA or landlord should use at least a 30 day notice to quit, subject to any longer requirements that may arise out of the particular lease in use.

In the Housing Choice Voucher and Section 8 Moderate Rehabilitation programs, the PHA will terminate the assistance payments to the landlord on behalf of the tenant household, and may not approve a new lease, enter into a new contract or process a move for the household.¹⁹¹ Termination of assistance should be done in compliance with the regular termination procedures. Even if the Section 8 assistance is terminated, the landlord need not evict the household if the household is able to pay market rent.

17. What Happens if the Applicant, Now Tenant, Intentionally Misrepresented Eligibility Status?

If the tenant has received the subsidy or unit because the tenant intentionally misrepresented his or her eligible status, the tenant is obligated to reimburse HUD for the assistance improperly paid. The landlord or PHA has discretion to determine if any action beyond repayment is required. If the amount of wrongfully paid assistance is substantial, HUD encourages the PHA or landlord to refer the case to the HUD Inspector General's (IG) office for further investigation. The IG's office may prosecute the tenant based on the False Statements Act.¹⁹² Advocates working with tenants who have obtained housing benefits through intentional misrepresentation should be careful not to assist those tenants in obtaining further benefits through fraud, but at the same time avoid taking actions that may expose past fraudulent activity to detection or enforcement action (unless as part of a client-approved plan to mitigate liability or resulting sanctions).

18. Does a Tenant Have to Produce the Documents Again at the Next Recertification?

No. Once an individual has shown his or her eligibility, he or she does not need to produce documents again for the same PHA or landlord for continued occupancy in that unit.¹⁹³ Also, documentation does not need to be re-submitted if the household changes types of housing operated by the same

¹⁸⁹ *Id.* § 5.514(i)(1)(iii).

¹⁹⁰ *Id.* § 5.514(i)(1)(iii). *See also, e.g.,* HUD HANDBOOK 4350.3, *supra* note 3, at ex. 3-11.

¹⁹¹ 24 C.F.R. § 5.514(i)(2) (2025).

¹⁹² *Id.* § 5.528. *See generally* HUD HANDBOOK 4350.3, *supra* note 3, at § 8-17.

¹⁹³ 24 C.F.R. § 5.508(g)(5) (2025).

landlord.¹⁹⁴ This is true even if the household switches programs.¹⁹⁵ For example, if a tenant submits information upon moving into a public housing unit, and then changes to a Section 8 voucher, the tenant does not need to resubmit the information. However, an individual will need to produce documents again if they transfer to a different PHA or a different apartment with a different landlord.¹⁹⁶

19. What Happens if a New Household Member Moves into the Unit?

Any new occupant must submit evidence of his or her immigration or citizenship status at the first interim or regular reexamination following the person's occupancy.¹⁹⁷ A new occupant who does not claim to be an eligible immigrant need not submit documentary evidence, but the household must report the presence and income of the new household member and inform the landlord or PHA that the new occupant does not claim eligible status. The household's prorated assistance will be recalculated at the reexamination to account for any new occupant who is ineligible.

B. What Are the Rules for Existing Tenants?

When a landlord or PHA begins to implement the Section 214 regulations, existing tenants are entitled to notice of the need to produce documents concerning their citizenship or immigration status. The notice must inform them that the information should be submitted at the first regular reexamination, and language access requirements apply.¹⁹⁸ Extensions of time to produce the documents must be granted under certain circumstances.¹⁹⁹ A tenant households' financial assistance and tenancy cannot be terminated until they have exhausted all possible appeals.

The eligibility rules for existing tenants are generally the same as for applicants, as are the procedures by which the landlords or PHAs verify eligibility and establish levels of assistance and rents. However, in some instances, existing tenants may be entitled to special assistance because they resided in the assisted housing before the landlord began to implement Section 214, because they resided in the assisted housing before the HUD regulations became effective, or because their immigration status was not verified until a certain date.

¹⁹⁴ 24 C.F.R. § 5.508(g)(4) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.E. (not specifically addressing changes in type of housing).

¹⁹⁵ 24 C.F.R. § 5.508(g)(4) (2025).

¹⁹⁶ *Id.* § 5.508(g)(4)-(5).

¹⁹⁷ *Id.* § 5.508(g)(3). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.E. For more on certification procedures generally, see, e.g., 24 C.F.R. §§ 982.201(a) and 982.551(b)(1) (Tenant Based Section 8 Program), pt. 983 (Project Based Voucher Program), 882.514(f) and 882.515(a)-(c) (Section 8 Moderate Rehabilitation Program), 882.808(i)(1) (Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals), 904.107(j)(2) and (m) (Turnkey III Homeownership Program) (2025).

¹⁹⁸ 24 C.F.R. § 5.508(g)(2)(i) (2025). HUD's Initial Guidance on QHWR, 64 Fed. Reg. 8192, 8206 (Feb. 18, 1999) (time limits for PHA that opted out of the Section 214 requirements to begin verifications).

¹⁹⁹ 24 C.F.R. § 5.508(h) (2025).

1. What Is “Preservation Assistance” and Who Is Entitled to It?

“Preservation assistance” is HUD’s term for special assistance that can be given to ineligible or mixed households which were receiving full housing benefits before the Section 214 restrictions were adopted.²⁰⁰ It is designed to ease the transition for households that are no longer eligible to remain in subsidized housing by providing some benefits that are not available to households applying after the restrictions were in place.

There are three types of preservation assistance. The first is “continued assistance,” which applies to certain mixed households which were receiving the housing benefits as of June 19, 1995.²⁰¹ The second type is proration of assistance, which is the same proration available to applicants.²⁰² The third type is “temporary deferral of termination of assistance,” which allows certain households to defer the termination of their subsidy to allow “additional time for the orderly transition . . . to other affordable housing.”²⁰³

a. What Is “Continued Assistance?”

In order to prevent the breakup of families already in assisted housing, “continued assistance” allows a few mixed households to continue to receive full benefits if they meet all of the following specific criteria:

- i. The household must have been receiving the housing benefits as of June 19, 1995,²⁰⁴
- ii. The head of household or the spouse of the head of household must be an eligible immigrant;²⁰⁵
- iii. The household cannot include any ineligible immigrants except the head of household, the spouse of the head of household, the parents of the head of household or his/her spouse, and the children of the head of household or his/her spouse;²⁰⁶ and
- iv. The household’s eligibility for continued assistance must have been established prior to November 29, 1996.²⁰⁷

Under the third requirement, household members such as aunts, uncles, and cousins who are not eligible immigrants will make a household ineligible for continued assistance unless the ineligible

²⁰⁰ *Id.* §§ 5.516, 5.518. HUD Handbook 4350.3 does not use this specific term.

²⁰¹ 24 C.F.R. §§ 5.516(a)(1)(i), 5.518(a)(1) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.O.

²⁰² 24 C.F.R. §§ 5.516(a)(1)(iii), 5.518(a)(2), 5.520 (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.P.

²⁰³ 24 C.F.R. §§ 5.516(a), 5.518(b) (2025). A person who had a Section 8 certificate that has since been converted to a Section 8 voucher as a result of the merger of the two Section 8 programs should be considered to have been receiving the housing benefits continuously. 24 C.F.R. § 982.502(d) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.Q.

²⁰⁴ 24 C.F.R. § 5.518(a)(1)(i) (2025).

²⁰⁵ 24 C.F.R. § 5.518(a)(1)(ii) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.O.1.a.

²⁰⁶ 24 C.F.R. § 5.518(a)(1)(iii) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.O.1.b.

²⁰⁷ 24 C.F.R. § 5.518(a)(2) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at §§ 3-12.O.1. and 3-12.O.2.

household member moves out. However, the extended household would still be eligible as a mixed household for proration, and might be eligible for deferred termination. Extended household members who are eligible immigrants will not adversely impact on the household's right to get full continued assistance.

PHAs have to determine whether to offer continued assistance rather than deferred termination to eligible households.²⁰⁸ They can choose to offer either continued assistance or deferred termination to households which meet all of the first three criteria and are receiving public housing or Section 8. Landlords in all other subsidized programs must offer both continued assistance and deferred termination. *All* mixed families must also be offered proration.

b. Why Is "Continued Assistance" Still Relevant?

Most households who were receiving benefits as of June 19, 1995, will have already long since exhausted any deferrals of assistance or had their benefit status adjusted to either continued assistance or proration. However, for some households, the Section 214 regulations are being applied for the first time currently, even though the households have resided in the subsidized housing for many years.

Between 1996 and 1999, PHAs were allowed to "opt out" of the 214 immigration requirements. PHAs that "opted out" could ignore the 214 rules and many, such as the San Francisco Housing Authority, chose to do so. Thus, Section 214 would not have been applied to households in public housing where PHAs had "opted out." The "opt-out" provisions were eliminated in 1999. Thus, all PHAs are now required to comply with Section 214²⁰⁹ and determine eligibility for existing households no later than the date of the annual reexamination.²¹⁰

Continued assistance may also still apply to households whose buildings were not previously subsidized but are now becoming subsidized under a sale or rehabilitation program. For PHAs and landlords that are applying the Section 214 restrictions for the first time to an existing building or program, the preservation assistance time limits should run from the date the PHA first begins recertification of the household under Section 214.

In addition, some households who obtained continued assistance may still be receiving such assistance.

²⁰⁸ 24 C.F.R. § 5.516(c)-(d) (2025).

²⁰⁹ When Congress amended Section 214 by adding Section 214(h) on verification, it included an "opt-out" provision for public housing authorities. Pub. L. No. 104-208, 110 Stat. 3009, 3009-3684 (1997). The opt-out provision was narrowed by the Quality Housing and Work Responsibility Act (QHWRA). Pub. L. No. 105-276, Title V, 112 Stat. 2461, 2518 (1999). After 1999, PHAs could only opt out of the requirement to verify eligibility before providing assistance. HUD's Initial Guidance on QHWRA, 64 Fed. Reg. 8192, 8206 (Feb. 18, 1999), set out time limits for PHA that had opted out of the Section 214 requirements for those PHA to begin verifications.

²¹⁰ 42 U.S.C.A. 1436a(h) (through Pub. L. No. 119-18) (as amended by Pub. L. No. 105-276, Title V, § 592(a), 112 Stat. 2461, 2518 (1998)); 24 C.F.R. 5.512(b) (2025); HUD's Initial Guidance on QHWRA, 64 Fed. Reg. 8192, 8206 (Feb. 18, 1999).

c. What Is “Proration” as a Form of “Preservation Assistance?”

Proration, as a form of preservation assistance, is exactly the same as proration for applicants.²¹¹ It is available to all mixed households in all programs. All of the calculations are performed exactly the same for applicants and existing tenants.

d. What Is “Temporary Deferral of Termination of Assistance?”

“Temporary deferral of termination of assistance” allows a household to continue receiving full benefits for up to 18 months while it seeks other affordable housing.²¹² Temporary deferrals of assistance are available to:

- i. Households with no eligible members that were receiving continued assistance, or that were receiving assistance on June 19, 1995.
- ii. Mixed households that decide to move instead of accepting proration, or that need time for an ineligible member to move out so that the remainder of the household will be eligible for full benefits.

Temporary assistance is available for up to six months, if certain criteria are met. The six months may be extended twice, up to a total of 18 months. (Households which were granted deferrals prior to November 29, 1996, were entitled to a total deferral of up to three years.) At the end of the 18 months, a mixed household that has made an unsuccessful but good faith effort to locate other affordable housing may then choose proration.²¹³

The time limits on deferral of termination of assistance do not apply to a household that includes a refugee under Section 207 of the Immigration and Nationality Act or an individual seeking asylum under Section 208 of that Act.²¹⁴ These households are entitled to receive full benefits indefinitely.

Temporary deferrals of assistance may only be offered by the PHA or landlord if other affordable housing is hard to find. For this purpose, “affordable housing” refers to housing that is not substandard, is of the appropriate size for the household, and can be rented for an amount that does not exceed the household’s current subsidized rent (including utilities) plus 25%.²¹⁵

Deferrals should be granted if any of the following conditions can be met:

- i. The household demonstrates that they made reasonable efforts to find other

²¹¹ 24 C.F.R. § 5.520(a) (2025).

²¹² *Id.* §§ 5.516(a)(1)(ii) and (c), 5.518(b). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.Q.2.

²¹³ 24 C.F.R. § 5.518(c) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.Q.2.b.

²¹⁴ 24 C.F.R. § 5.518(b)(3) (2025). HUD Handbook 4350.3 does not address this exception for refugees and asylees.

²¹⁵ 24 C.F.R. § 5.518(b) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.Q.2.b.(4).

appropriate housing, including seeking and following through on leads from government agencies, the PHA, and landlord;

- ii. The vacancy rate for affordable housing of appropriate size is below 5% in the local housing market; or
- iii. The local consolidated plan indicates that the local housing market lacks sufficient affordable housing opportunities for households of similar size and income.

At least one, if not both, of the last two conditions will exist in most housing markets in California for most households.

At the beginning of the deferral period and at least 60 days before the expiration of the deferral period, or of the extension of the deferral period, the PHA or landlord must provide notice to the household of their ineligible status and inform them whether an extension of the deferral will be provided and if so, for how long. The PHA or landlord must determine, at the end of each deferral period, whether affordable housing is available based on the above criteria and the experiences of the PHA or landlord and of the household.

If affordable housing is not available, the deferral should be extended.²¹⁶ If an extension is not provided, the notice must specify whether the time limits have been reached or a determination has been made that there is affordable housing available. The notice must inform the household about their eligibility or ineligibility for other forms of preservation assistance. If an extension is provided, the PHA or landlord must also offer information and referrals to assist in finding affordable housing. If an extension is not provided, the PHA or landlord must provide information about appeal rights.

Households that are no longer eligible for deferral of termination may still be eligible for regular proration if any member of the immediate household (parent, grandparent, child) is eligible.²¹⁷ (*See, supra*, Section II.A.). If no member of the household is eligible, such households are now subject to termination of their subsidy and/or eviction.

2. What Are the Rules for Tenants Who Moved in Before June 19, 1995, when the HUD Regulations Became Effective?

The Section 214 regulations became effective on June 19, 1995. Tenants residing in housing covered by the 214 regulations before June 19, 1995, are entitled to preservation assistance.²¹⁸ Under some circumstances, preservation assistance may enable mixed households to obtain more assistance than the proration generally available to mixed households, including continuation of the full housing subsidy. It may also allow households with no eligible members to certain benefits that would not be available to applicants. See the description of preservation assistance above to see which type of preservation assistance is likely to be applicable.

²¹⁶ 24 C.F.R. § 5.518(b) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.Q.2.b.

²¹⁷ 24 C.F.R. § 5.518(c) (2025).

²¹⁸ *Id.* § 5.516.

3. What Are the Rules for Tenants Who Moved in Before June 19, 1995, but Whose Immigrant Status Was Not Verified Until After November 29, 1996?

The Section 214 law has been amended several times by Congress since it was originally adopted in 1980. For many years, the law was not enforced due to court challenges. In March 1995, HUD issued new regulations implementing the law, which were effective on June 19, 1995. More changes were made to the law in 1996, so HUD issued revised regulations to implement the changes, and those revised regulations became effective on November 29, 1996. These revisions resulted in some technical eligibility issues for tenants already receiving housing benefits during this time period. The regulations were further updated in 1999.²¹⁹

Mixed households already receiving housing benefits at the time HUD adopted regulations in 1995 were allowed to keep those benefits by obtaining full continued assistance. Generally, landlords and PHAs were required to verify the immigration status of all of those existing tenants by June 19, 1996, one year after the 1995 Section 214 regulations became effective, and to determine if those households were entitled to continued assistance. However, in some instances, a household may have moved into housing covered by Section 214 before June 19, 1995, when the regulations became effective, but their immigrant status may not have been verified until much later. For example, their annual recertification may have been delayed past November 29, 1996, or the unit may not have received any subsidy until after November 29, 1996.

A household which moved in before June 19, 1995, and had a completed verification process prior to November 29, 1996, is entitled to receive the full benefits indefinitely. In other words, as to these households, the provisions on prorating continued assistance are not retroactive and persons who had already completed the certification process will not have their full assistance taken away.

However, a household that moved in before June 19, 1995, but that did not become entitled to continued assistance until after November 29, 1996, because of a delayed verification or because the unit was not covered until after that date, is no longer entitled to receive full continued assistance, but can receive only prorated continuation assistance or deferred termination.

4. Does PRWORA Affect These Provisions?

Another possible exemption may arise if the household has resided in the unit since August 22, 1996, the date PRWORA was adopted. PRWORA immigration restrictions do not apply to households receiving specified housing assistance as of that date.²²⁰ Some advocates have argued that households living in housing covered by Section 214 should be protected as a result of the PRWORA exemption, even though no such exemption specifically occurs in Section 214 itself. No court has addressed this issue as of the date of this writing.

²¹⁹ Revised Restrictions on Assistance to Noncitizens, 64 Fed. Reg. 25726 (May 12, 1999).

²²⁰ 8 U.S.C.A. § 1601 (through Pub. L. No. 119-18); Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, Tit. IV, § 401(b)(1)(e), 110 Stat. 2105, 2260 (1996).

5. What Are the Informal Hearing Procedures for Existing Households?

In general, the informal hearing procedures for existing tenants are those that apply in the specific housing program.²²¹ For existing tenants in specific programs, the applicable regulations are as follows:

- i. Section 8 Moderate Rehabilitation: 24 C.F.R. Part 882;
- ii. Section 8 Tenant-Based Assistance (Housing Choice Vouchers): 24 C.F.R. Part 982;
- iii. Section 8 Project Based Program: 24 C.F.R. Part 983;
- iv. All other Section 8 programs and Public Housing: 24 C.F.R. Part 966; and
- v. Section 235, Section 236, and Rent Supplement: As described in the Section 214 regulations.²²²

Under the Section 214 informal hearing procedures, households are entitled to certain due process rights, including a hearing before an impartial individual, the right to examine and copy all documents in advance of the hearing at the applicant's expense, the right to present evidence and arguments without regard to formal evidentiary rules, the right to cross examine the PHA or landlord witnesses, the right to be represented by an attorney or advocate at the applicant's expense, the right to have an interpreter at either the applicant's or landlord/PHA's expense as determined by the parties before the hearing, and the right to have the hearing tape recorded. The landlord or PHA may, but is not required to, provide a transcript of the hearing, although under certain circumstances provision of the transcript may be required by state law.²²³

All households, regardless of which procedures apply, are entitled to a written final decision, based solely on the facts presented at the hearing, within 14 days of the date of the informal hearing. The decision must state the basis for the decision.²²⁴ All households may also pursue any rights that may be available through judicial procedures.²²⁵

IV. Are Immigrants Subject to a Five-Year Ban on HUD Benefits Depending on When They Entered the United States?

Section 403 of PRWORA imposes restrictions on providing "federal means-tested public benefits" to certain "qualified" immigrants.²²⁶ These restrictions make certain immigrants who enter the United States after August 22, 1996, ineligible for such benefits during their first five years in

²²¹ 24 C.F.R. § 5.514(f)(2) (2025). In some of these programs, the applicable appeal procedures refer back to the procedures in 24 C.F.R. Part 5. *See, e.g.*, 24 C.F.R. § 982.555(g) (2025) (informal hearing procedures for Housing Choice Voucher participants).

²²² 24 C.F.R. § 5.514(f)(2)(iii) (2025).

²²³ 24 C.F.R. § 5.514 (f)(2)(iii) (2025).

²²⁴ *Id.* § 5.514(f)(3). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 8-7.C.3.

²²⁵ 24 C.F.R. § 5.514(g) (2025). *See also* HUD HANDBOOK 4350.3, *supra* note 3, at § 8-7.C.4.

²²⁶ 8 U.S.C.A. § 1613 (West, Westlaw through Pub. L. No. 119-18).

“qualified” immigration status. The restrictions also affect how the income of the sponsors of those immigrants are treated. HUD determined that none of its programs fell within the definition of “federal means-tested public benefits.”²²⁷ However, HUD’s interpretation was based on a 1997 DOJ Office of Legal Counsel Opinion, which has since been rescinded.²²⁸ Historically, immigrants have not been subject to the five-year ban on HUD benefits, but advocates should monitor whether HUD changes its interpretation. Neither RD nor any other housing agencies have yet addressed this issue.

V. Non-Discrimination and Access Provisions

Section 214 requires that implementation of the immigration restrictions be conducted in a non-discriminatory manner, with no difference in application on the basis of race, color, national origin, sex, religion, age, disability, and familial status. The PHA or landlord must comply with all applicable fair housing and civil rights laws.²²⁹ In particular, providers should be careful to avoid making assumptions about citizenship or immigration status on the basis of language, color, race, country of origin, speech accent, familial association with ineligible persons, or other personal characteristics. All provisions should be applied uniformly to all tenants, homeowners, and applicants.

In addition, the only information provided to USCIS (formerly INS) should be the information necessary to verify information provided by applicants. Providers should not contact USCIS about persons who do not claim eligible immigration status.²³⁰ See Chapter 8, *infra*.

Any notice or document that must be provided under Section 214, or that must be signed by an individual applying for or receiving benefits pursuant to Section 214, must, where feasible, be provided in a language that is understood by an individual who does not speak English proficiently.²³¹ Persons with disabilities must be provided reasonable accommodations as necessary to assist them with complying with Section 214.²³²

See Chapter 9, *infra*, for more information on discrimination and access.

²²⁷ HUD determined that “federal means-tested public benefits” refers not to discretionary programs, but only mandatory spending programs. All of HUD programs are discretionary programs. This is consistent with conclusions reached by the Dept. of Health and Human Services and the Social Security Administration. HUD also concluded in this Notice that the income and resources of the sponsors of certain aliens under Section 213A of the Immigration and Nationality Act are not counted as part of income, because Section 403 of PRWORA is inapplicable to HUD programs. Eligibility Restrictions on Noncitizens: Inapplicability of Welfare Reform Act Restrictions on Federal Means-Tested Public Benefits, 65 Fed. Reg. 49994 (Aug. 16, 2000).

²²⁸ Interpretation of “Federal Means-Tested Public Benefit” In The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 2025 WL 4055306 (O.L.C.) (Dec. 16, 2025) rescinding Proposed Agency Interpretation of “Federal Means-Tested Public Benefits” Under Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 21 Op. O.L.C. 21 (1997); 62 Fed. Reg. 45256 (Aug. 26, 1997) .

²²⁹ 24 C.F.R. § 5.524 (2025). See also HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.C.

²³⁰ Fair Housing Issues in Noncitizen Rule for Field Office and Housing Provider Guidance, FHEO Notice 95-6 (Nov. 30, 1995).

²³¹ 24 C.F.R. § 5.502 (2025).

²³² *Id.* §§ 5.502 and 8.6. See also HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.B.2.

CHAPTER 5

WHAT ARE THE RURAL DEVELOPMENT (RD) PROGRAM RULES?

This chapter describes the immigrant restrictions in Rural Development (RD) housing. On July 10, 2025, USDA determined that all of its housing programs constitute a “federal public benefit” for PRWORA purposes. Pursuant to PRWORA, individuals who are not qualified immigrants would no longer be eligible for RD’s housing programs. Because RD has not yet issued guidance on how this determination interacts with other laws governing citizenship and immigration eligibility for its housing programs, this chapter does not address these potential conflicts.

The rules for the RD multi-family rental housing programs (Sections 514, 515, and 516) were revised on November 24, 2004, with an effective date February 24, 2005.²³³ The residency provisions of these rules made major changes in household eligibility for Section 515 housing that were not in conformity with the Section 214 restrictions. As a consequence, RD postponed implementation of those provisions prior to their effective date.²³⁴ Thus, until such time as new rules are proposed by RD, there are no residency restrictions based on immigration status for the Section 515 program, while the statutory restrictions that were applicable to the Section 514 and 516 programs continue in place.

On March 24, 2008, RD published its initial notice in the Federal Register outlining the administration of the Rural Demonstration Voucher Program.²³⁵ The program is intended to protect residents of Section 515 housing from the financial hardship likely to result when a project owner pays off their Section 515 mortgage or in case of foreclosure.²³⁶ Like the 2008 notice, the most recent program notice, which was published in 2017, provides that eligible prospective voucher tenants must be citizens or persons admitted for permanent residency to the United States.²³⁷ Because this notice was not published in the Federal Register as a rule with an opportunity for comment and because the notice does not extend to voucher applicants any of the protective provisions of Section 214, the rules are not consistent with the law and can be challenged.²³⁸

I. Farm Labor Housing Loans and Grants (Section 514 and Section 516), including Units with Rental Assistance or Project-Based Section 8

²³³ Reinvention of the Sections 514, 515, 516, and 521 Multi-Family Housing Programs, 69 Fed. Reg. 69031 (Nov. 24, 2004) (these rules were published as interim final rules with a request for comments).

²³⁴ Reinvention of the Sections 514, 515, 516, and 521 Multi-Family Housing Programs, Interim Final Rule, 70 Fed. Reg. 8503 (Feb. 22, 2005) (delaying effective date).

²³⁵ USDA Rural Development Voucher Program, 73 Fed. Reg. 15473 (March 24, 2008).

²³⁶ Rural Development Voucher Program Guide (September 2010) at p. 1 § 1.1, available at <https://www.rd.usda.gov/media/file/download/mfh-rd-voucher-program-guidebook.pdf>.

²³⁷ Rural Development Voucher Program, 82 Fed. Reg. 21972 (May 11, 2017).

²³⁸ 42 U.S.C.A. § 1490n(a) (“Notwithstanding any other provision of law, no rule or regulation pursuant to this subchapter may become effective unless it has first been published for public comment in the Federal Register for at least 60 days, and published in final form for at least 30 days.”)

1. Which Household Members Must Be Eligible Under the Section 514/516 Farmworker Housing Program?

Under current RD regulations, occupancy in rental housing funded under the Farm Labor Housing Programs (both Section 514 and 516) is limited to domestic farm laborers and their immediate families.²³⁹ Under the regulations, the domestic farm laborer, who must be the lessee of the unit, must be an eligible resident. Critically, the residency restriction applies only to the lessee of the unit. No immigrant restrictions are placed on other household members²⁴⁰ and, therefore, landlords should not inquire into their immigration status, unless necessary to comply with another legal obligation under federal law, a subpoena, warrant, or other order issued by a court.²⁴¹

Some 514/516 housing units also have Rental Assistance under RD's Section 521 program to reduce the rents to deeply subsidized levels.²⁴² Even though such assistance is subject to Section 214 restrictions, the rules are currently the same for those units as for units without such assistance. That is, eligibility for Rental Assistance is determined for the head of household only, there is no proration of benefits for mixed-status families.²⁴³ (Essentially, RD has adopted the same criteria as for RD farm labor housing residency restrictions which are based on RD statutory authority, not Section 214.)²⁴⁴ As discussed below, there is a strong argument that the Section 514/516 residency restrictions have been superseded by Section 214 and that the regulations are, therefore, overly restrictive with respect to who is eligible to reside in Section 514/516 housing.

Some 514/516 housing units also have Section 8 assistance attached to the units. Landlords administering both programs are likely to apply the more restrictive RD regulations to determine eligibility for admission to a Section 514/516 unit that is also assisted by the Section 8 program. As noted below, this is probably illegal. However, advocates need to evaluate on a case-by-case basis how to apply any conflicting portions of the Section 514/516 regulations and HUD Section 214 regulations when both are applicable. For example, when representing an applicant to the housing, the provisions of the Section 214 regulations are more favorable because they authorize a broader range of residents. However, when representing occupants, the Section 214 regulations are more restrictive in that they require an examination of the immigrant status of all household members and a proration of the assistance based on the number of eligible residents.²⁴⁵

2. Which Categories of Immigrants Meet the Section 514/516 Eligibility Rules?

²³⁹ 42 U.S.C.A. §§ 1484(f)(3)(A) (Section 514), 1484(g)(f) (Section 516) (West, Westlaw through Pub. L. No. 119-18)); 7 C.F.R. § 3560.11 (2025) (definition of "Domestic farm laborer").

²⁴⁰ Memorandum from Ronnie O. Tharrington, FmHA Assistant Administrator, Housing, to Donald D. Thompson, Oregon State Director (Dec. 1992).

²⁴¹ CAL. CIV. CODE § 1940.3(b)(1), (c).

²⁴² 42 U.S.C.A. § 1490a (West, Westlaw through Pub. L. No. 119-18); 7 C.F.R. § 3560.254 (2025).

²⁴³ 7 C.F.R. § 3560.254(c)(3) (2025).

²⁴⁴ 42 U.S.C.A. § 1486(g)(4) (West, Westlaw through Pub. L. No. 119-18) (authorizing assistance for domestic farm labor as defined).

²⁴⁵ 24 C.F.R. § 5.508(b) (2025).

According to current RD rules, the farmworker must be either a citizen of the United States; a person legally admitted for permanent residence; or a person legally admitted to the United States and authorized to work in agriculture.²⁴⁶ According to USDA guidance, the latter category includes H2-A agricultural workers.²⁴⁷

3. Do All Household Members Have to Be Eligible?

No, unless the development is receiving Section 8 assistance. Unlike Section 214, once the household is eligible based on the status of the lease signer, no other household members need to declare their immigration status. There is no reduction or proration of the subsidy based on the status of other household members in projects that are not receiving Section 8 assistance.

4. How Is Eligibility Determined?

The landlord determines immigration eligibility at the same time as other eligibility determinations are made.²⁴⁸ Applicants have the same appeal rights as they do for all other eligibility determinations under the RD program.²⁴⁹ They have not been extended any of the appeal rights that are included in Section 214. This violates the residents statutory appeal rights.

5. Are Any Other Immigrants Potentially Eligible for 514/516 Housing?

Units financed under the farm labor housing programs may be financed by Section 514 loans, Section 516 grants, or some combination of these programs and other forms of assistance. If the units financed under any of these programs are not receiving Rental Assistance or Section 8, they are not covered by Section 214 because Section 214 does not cover the Section 514 or 516 programs, only Rental Assistance and Section 8. RD has not restricted residency in Section 514 or 516 housing based on the Section 214 restrictions but has chosen to limit occupancy in farm labor housing based on the narrower statutory Section 514/516 restrictions.

For some households, this may be a problem. Some categories of immigrants, such as refugees, are eligible under Section 214 even though they are not currently eligible under the existing RD regulations or the Farmworker Labor Housing statute. An argument can be made that persons in those additional eligible Section 214 immigrant categories should be considered eligible for units with Rental Assistance.²⁵⁰ This is because federal law provides that RD may not bar immigrants from RD housing if those persons would be eligible under the Section 214 rules.²⁵¹ This is a technical argument involving conflicting statutory provisions and the principle that more recent and superseding statutes should prevail. Advocates are, however, cautioned about making this argument. As noted earlier, the

²⁴⁶ 42 U.S.C.A. §§ 1484(f)(3)(A) (for Section 514) and 1486(g)(4) (for Section 516) (West, Westlaw through Pub. L. No. 119-18); 7 C.F.R. § 3560.11 (2025) (definition of “Domestic farm laborer”).

²⁴⁷ RD Unnumbered Letter, *Implementation of the Revised Definition of Domestic Farm Labor Housing* (May 30, 2019).

²⁴⁸ See 7 C.F.R. § 3560.152 (2025).

²⁴⁹ *Id.* §§ 3560.160 (2025) (Tenant Grievance and Appeals Procedure).

²⁵⁰ 42 U.S.C.A. § 1436a (West, Westlaw through Pub. L. No. 119-18).

²⁵¹ *Id.* § 1471(h).

Section 214 regulations carry both positive and negative consequences for applicant farm laborer households. Thus, this argument should not be made without considering all the ramifications of attempting to partially implement this change before RD can adopt a comprehensive regulatory scheme.²⁵²

II. Section 502 New Construction and Major Rehabilitation Rural Homeownership Loan Program and the Section 504 Minor Rehabilitation Program for Single Family Homes²⁵³

A. Which Household Members Must Be Eligible Under the Section 502 and Section 504 Programs?

Section 502 and Section 504 are home loan programs for single family dwellings. Under RD regulations, all “applicants” for Section 502 and Section 504 loans must have eligible immigration status. An applicant is an adult member of the household who will be responsible for repayment of the loan. The restriction applies to all adults on the title of the property and not to any other household members.²⁵⁴ No other household members need to declare their immigration status. There is no reduction or proration of the subsidy based on the status of other household members.

B. Which Categories of Immigrants Meet the Section 502 and Section 504 Eligibility Rules?

Applicants in the Section 502 and Section 504 loan programs must be either:

- i. citizens of the United States or its territories; or
- ii. persons lawfully admitted to the country who meet the Section 214 criteria.²⁵⁵

Thus, all persons who are eligible under the Section 214 program are eligible for Section 502 and Section 504. *See, supra*, Chapter 4, Section II.A. of this handbook for a list of Section 214 eligible immigrants. In addition, RD has recognized that persons who are Cuban/Haitian Entrants as defined by Section 501(e) of the Refugee Education Assistance Act of 1980 and persons who were admitted to the United States because they have been battered or subjected to extreme cruelty under Section 431 of the Immigration and Nationality Act (INA) are also eligible for RD loans.²⁵⁶

C. How Is Eligibility Determined?

²⁵² *See supra* § I.A.1.

²⁵³ 42 U.S.C.A. § 1474 (West, Westlaw through Pub. L. No. 119-18), 7 C.F.R. pt. 3550 (2025).

²⁵⁴ 7 C.F.R. §§ 3550.53(b) (Section 502 Eligibility Requirements), 3550.103 (Section 504 Eligibility Requirements), 3550.10 (Definitions of “Applicant,” “Legal Alien,” and “U.S. Citizen”) (2025).

²⁵⁵ *Id.*

²⁵⁶ USDA, RD, DLOS FIELD OFFICE HANDBOOK, HB-1-3550, Attachment 4-D p.1 (2024), *available at* <https://www.rd.usda.gov/resources/directives/handbooks> (available as of July 28, 2025).

RD housing programs are administered in each state by RD staff. The RD “loan originator,” determines immigration eligibility at the same time as other eligibility determinations are made. Applicants have the same RD appeal rights as with all other eligibility determinations. The specific procedural requirements are set out in RD Handbooks which are available free from RD and on the web.²⁵⁷ They do not have the appeal rights extended by Section 214.

Applicants who are citizens can simply indicate their citizen status on the loan application form, and no further questions should be asked about their immigration status.²⁵⁸

Noncitizens must provide evidence acceptable to the RD of their eligible immigration status.²⁵⁹ Attachment 4-D of RD Handbook HB-1-3550 lists documents that RD has identified as acceptable.²⁶⁰ However, Attachment 4-D is seriously incomplete. It does not list all eligible immigration categories under Section 214. In addition, the document list in the exhibit fails to include many of the documents that are legally sufficient to establish that a person's immigration status falls within one of Section 214's eligibility categories. RD's failure to extend assistance to these households should be challenged.

For noncitizens, the loan originator is required to review the original document and make legible photocopies of both sides. If there is a question about the authenticity of the information, the loan originator must contact USCIS for verification.²⁶¹ No further information is provided in the handbooks about any standards for determining authenticity, nor are there any specifics about how to contact USCIS. Given all of the problems with USCIS data sources, applicants may face significant delays or erroneous information as a result of this lack of clarity about the verification process. (*See* discussion in Chapter 4, *supra*.) Moreover, Section 214 allows applicants who are deemed ineligible by the USCIS to appeal ineligibility decisions to the USCIS.²⁶² The RD regulations and handbooks are totally silent on these issues.

²⁵⁷ See Reengineering and Reinvention of the Direct Section 502 and 504 Single Family Housing (SFH) Programs, 61 Fed. Reg. 59762, 59764 (Nov. 22, 1996); Reengineering and Reinvention of the Direct Section 502 and 504 Single Family Housing (SFH) Programs, Correction, 61 Fed. Reg. 63928 (Dec. 2, 1996); Reengineering and Reinvention of the Direct Section 502 and 504 Single Family Housing (SFH) Programs, Correction, 61 Fed. Reg. 65266 (Dec. 11, 1996), USDA, RD, DLOS FIELD OFFICE HANDBOOK, HB-1-3550 (2024), available at <https://www.rd.usda.gov/resources/directives/handbooks> (available as of July 28, 2025) (used in Rural Development field offices and deals primarily with loan originations and property management); USDA, RD, DLOS CENTRALIZED SERVICE CENTER, HB-2-3550 (2021), available at <https://www.rd.usda.gov/resources/directives/handbooks> (used in the Centralized Servicing Center in St. Louis, Mo., and deals primarily with loan servicing, liquidation and debt settlement).

²⁵⁸ USDA, RD, DLOS FIELD OFFICE HANDBOOK, HB-1-3550, § 4.20 (2024), available at <https://www.rd.usda.gov/resources/directives/handbooks>.

²⁵⁹ *Id.* §§ 4.21 to 4.22

²⁶⁰ *Id.*

²⁶¹ *Id.* § 4.22 (and accompanying text box).

²⁶² 42 U.S.C.A. §1436a(d)(4)(A) (West, Westlaw through Pub. L. No. 119-18).

CHAPTER 6

WHAT ARE THE RULES IN THE CALIFORNIA STATE HOUSING PROGRAMS (THE SUSPENDED HCD RULES AND THE CalHFA RULES)?

I. The Suspended HCD Regulations

Claiming authorization under PRWORA and in response to a 1996 executive order issued by Governor Pete Wilson,²⁶³ the California Department of Housing and Community Development (HCD) issued regulations making certain immigrants ineligible for housing funded by HCD.²⁶⁴ The San Francisco Superior Court enjoined the enforcement of these regulations, finding that the California Legislature had denied by formal action HCD's request for an appropriation to implement the regulations, and that HCD did not have authority therefore to implement or enforce the regulations.²⁶⁵ No programs funded by HCD currently have immigration restrictions (unless there is also federal funding in the housing unit, *see* Chapter 3).

II. The CalHFA Regulations

Similarly, in response to PRWORA and Gov. Wilson's Executive Order, the California Housing Finance Agency (CalHFA) issued regulations making immigrants ineligible for housing that has received funding from CalHFA.²⁶⁶ At the current time, it is unclear if CalHFA is actively enforcing these regulations on *rental* housing. It has not provided training or documents to any owners or landlords on enforcement. However, the rental regulations remain on the books. CalHFA *is* enforcing immigrant restrictions in its *homeownership* program. Because the regulations are not being enforced on rental housing, this Chapter provides only summary information on the CalHFA restrictions.

The CalHFA rules cover multifamily housing which has received a loan or grant from CalHFA (but not benefits through the California Housing Loan Insurance Fund). Not all units in a multifamily building are restricted. If the rental unit is required by law or a regulatory agreement to be occupied by a low- or very low-income household under a CalHFA program, it is restricted. Market rate units are not restricted.²⁶⁷ Some units may also have Section 8 or other federal funding in which case they may be restricted (*see* Chapter 3).

The CalHFA rules also cover CalHFA loans to single family homeowners, including any mortgage

²⁶³ California Exec. Order No. W-135-96, Governor Pete Wilson (August 27, 1996) (directing California Agencies to comply with PRWORA).

²⁶⁴ HCD Applicant Verification Requirements, CAL. CODE REGS. tit. 25, §§ 6935 *et seq.* (West, Westlaw, Register 2025, No. 27) (currently enjoined by court order).

²⁶⁵ *Mercy Charities Hous. California v. Dept. of Hous. and Cmty. Dev.*, No. 305541 (Cal. Sup. Ct., San Francisco, filed May 5, 2000) (Order Granting Peremptory Writ of Mandate and Writ of Mandate). *See also* NHLP, *California's Attempt to Deny Housing Benefits to Unqualified Immigrants Halted*, 30 HOUS. L. BULL. 61, 70 (2000).

²⁶⁶ CalHFA Regulations, CAL. CODE REGS. tit. 25, §§ 12001-12108 (West, Westlaw through July 4, 2024, Register 2025, No. 27) (especially § 12001).

²⁶⁷ *Id.* §§ 12002(d)(1) and (p).

loan originated or purchased by CalHFA for construction, acquisition and/or rehabilitation of an owner-occupied structure, as well as homebuyer assistance.²⁶⁸

For new rental households, CalHFA regulations differ from Section 214 in that they require all adult household members to be eligible and do not allow proration for new applicants.²⁶⁹ A household that is moving in with an existing household is considered a new household.²⁷⁰

Existing rental households are those households living in CalHFA financed housing prior to the application of the regulations to the building, either because they lived in the building before August 1, 1998 when the regulations became effective, or because they lived in the building before the owner obtained CalHFA financing.²⁷¹ For existing households, either the head of household or his or her spouse must be eligible. In addition, any other adults other than parents and grandparents of the head of household and spouse must be eligible.²⁷²

The effect of these restrictions is to bar eligible family members simply because their household includes ineligible members, which raises significant legal issues, as discussed below.

For the homeownership programs, each person whose name will appear on the legal title to the home must be eligible.²⁷³

CalHFA categories are generally based on PRWORA's category of "qualified" immigrants, although they are not entirely identical.²⁷⁴ These PRWORA categories are slightly different from the Section 214 categories (*see* Appendix A).

For rental units, eligibility is determined at the time general eligibility is determined for the unit.²⁷⁵ In most instances, it is determined by the landlord for the rental housing, which CalHFA refers to as the housing sponsor (nonprofit or for profit developer or public agency).²⁷⁶ Most, but not all, nonprofit housing sponsors are exempt from this requirement, as discussed above.²⁷⁷

For home loans, the lender applies the immigrant eligibility criteria when lending under the program, either by financing or refinancing a mortgage, or when adding an applicant to the title of an existing loan.²⁷⁸ The criteria are applied to all persons appearing on the title.²⁷⁹ There is no verification of other household members. The restrictions should not be applied retroactively to an existing loan.²⁸⁰

²⁶⁸ *Id.* §§ 12002(d)(2) and (aa).
²⁶⁹ *Id.* §§ 12002(f)(1), 12002(s)(1), and 12101.
²⁷⁰ *Id.* § 12002(s)(2).
²⁷¹ *Id.* § 12002(h)(1) and (h)(2).
²⁷² *Id.* §§ 12002(f)(2), 12002(h), and 12101.
²⁷³ *Id.* §§ 12002(f)(3), 12101, and 12103(a).
²⁷⁴ *Id.* §§ 12002(f)(3), 12101.
²⁷⁵ *Id.* § 12102.
²⁷⁶ *Id.* § 12103(b).
²⁷⁷ *Id.* § 12103(c).
²⁷⁸ *Id.* § 12102.
²⁷⁹ *Id.* § 12002(f)(3).
²⁸⁰ *Id.* §§ 12002(f)(3), 12101, and 12103(a).

In both the rental and homeownership programs, CalHFA itself (rather than the landlord) determines eligibility for immigrants qualifying for the abused immigrant exemption.²⁸¹

The procedures and criteria are generally the same as for the rental and homeownership programs. In rental programs, each adult member of the household must sign a CalHFA form entitled “Statement of Citizenship, Alienage and Immigration Status for State Public Benefits” under penalty of perjury, and provide a photograph and specified documents.²⁸² In most cases, presentation of the original documents to be copied by the landlord is sufficient. If the landlord has a question about the authenticity or acceptability of the documents, it can contact the government agency that issued the documents. Specified USCIS documents that are potentially suspect must be verified by USCIS. If the household member’s eligibility status has been verified by another public entity, the landlord may accept that verification.²⁸³ Households may move in once every adult has signed the CalHFA form and presented documents, even if further verification is occurring.²⁸⁴ Existing tenants must present documents prior to the next annual certification.

In homeownership programs, each member of the household that will appear on the title must sign the form and provide the documents. The lender reviews the documents. The loan will not close until all persons on the title have met the requirements.

A request for an appeal must be submitted in writing to CalHFA by hand, faxed or postmarked within 15 days of the notice of ineligibility and must state the reason for the appeal. CalHFA appoints a review officer who can be an employee or independent contractor of CalHFA. The review officer will review documents submitted by both parties and any third parties the review officer feels is appropriate, and must issue a written decision.²⁸⁵ Additional procedural protections may apply under other state laws.

Applicants will be denied occupancy or the loan will be denied. Households already living in a CalHFA building will either be evicted using state law proceedings or transferred to a market rate unit.²⁸⁶

III. What Are Some of the Legal Problems with the CalHFA Regulations?

There are serious legal issues concerning the validity of the CalHFA regulations. A full discussion of the legal issues is beyond the scope of this handbook. Those issues include whether CalHFA programs are “public benefits” within the meaning of PRWORA, an improperly narrow definition of “nonprofit,” general federal preemption, constitutional issues concerning retroactive application and mixed households, lack of state statutory authority, and others.

At a minimum, strong arguments exist that any building with some federal funding should be exempt,

²⁸¹ *Id.* § 12103(e).

²⁸² *Id.* § 12104(a).

²⁸³ CAL. CODE REGS. tit. 25, § 12104(a)(3)-(6) (West, Westlaw through Pub. L. No. 119-18).

²⁸⁴ *Id.* §§ 12102(a), 12002(v).

²⁸⁵ *Id.* § 12107.

²⁸⁶ *Id.* § 12106.

any housing managed by a nonprofit general partner or other nonprofit should be exempt, and households with some eligible members should not be excluded. No legal challenge has yet been brought because CalHFA does not appear to be enforcing the regulations in its rental housing programs. The authors of this handbook request that any person who hears of such enforcement contact them.

CHAPTER 7

WHAT HAPPENS WITH OTHER HOUSING-RELATED PROGRAMS AND BENEFITS?

I. The Federal Emergency Management Agency (FEMA)

FEMA has determined that immigrants who are not “qualified” immigrants under PRWORA will be eligible only for short-term, non-cash, in-kind emergency disaster relief, such as crisis counseling, disaster legal services, and other short-term non-cash emergency assistance.²⁸⁷ All individuals, regardless of status, affected by a major disaster may also be eligible for other nonmonetary, in-kind emergency disaster relief programs, including medical care, shelter, food, and water.²⁸⁸ Similarly, all individuals, regardless of status, may be eligible for assistance provided by charitable non-profit agencies.²⁸⁹

For cash assistance programs, households with non-qualifying individuals can receive cash assistance if an eligible adult or eligible minor child in that household applies for assistance.²⁹⁰ In addition, a parent without eligible immigration status can apply for disaster relief programs on behalf of their minor U.S. citizen child. In such cases, the parent must provide the child’s social security number. However, the parent should not be required to provide their own social security number or provide any information about their own immigration status.

II. California Homeowners and Renters Tax Credits

California has placed restrictions on the ability of noncitizens to get homeowners and renters property tax credits. Relying on PRWORA, the state has determined that immigrants who are not “qualified” immigrants under PRWORA, nonimmigrant aliens under the Immigration and Nationality Act (INA), and immigrants paroled into the United States under Section 212(d)(5) of the INA for less than one year are not eligible to receive Homeowners and Renters Property Tax Assistance (including Senior Citizens Tax Credits) under California Revenue and Tax Code Part 10.5.²⁹¹ Everyone applying for these benefits must declare their citizenship or immigration status when they file for the tax assistance.

²⁸⁷ FEMA Policy 104-009-03, Individual Assistance Program and Policy Guide (IAPPG) (Version 1.1), 46-48 (May 2021).

²⁸⁸ *Id.* at 48.

²⁸⁹ 8 U.S.C.A. § 1611(b)(1)(B) & (D) (West, Westlaw through Pub. L. No. 119-18).

²⁹⁰ FEMA Policy 104-009-03, Individual Assistance Program and Policy Guide (IAPPG) (Version 1.1), 46-48 (May 2021); FEMA Fact Sheet, Qualifying for Disaster Assistance – Citizenship and Immigration Status Requirements (January 21, 2025).

²⁹¹ CAL. CODE REGS. tit. 18, §§ 20561 *et seq.* (West, Westlaw through July 4, 2025, Register 2025, No. 27).

III. Relocation Benefits

A. Federal Relocation Benefits

Relocation benefits may be available for persons who are displaced by government action. Specifically, the Uniform Relocation and Real Property Acquisition Act (URA) provides for relocation benefits for families displaced from their homes as a direct result of an acquisition, rehabilitation, demolition, or certain other displacing activities that occur under a program or project undertaken by a federal agency or with federal financial assistance.²⁹² Federal relocation benefits are not available to “aliens not lawfully present in the United States.”²⁹³ This prohibition is less restrictive than the prohibitions in PRWORA and Section 214, because it only bars benefits to immigrants not lawfully in the U.S. (PRWORA and Section 214 bar benefits to certain categories of immigrants who are lawfully present.)²⁹⁴ If relocation benefits are being paid by federal funds to persons living in a building affected by a project carried out by a federal agency, the immigrant restrictions apply. The regulations contain specific notice and verification procedures. For mixed households, benefits are prorated.

There is an exception to the restriction on federal relocation benefits. Displaced persons who would otherwise be eligible except for their immigration status may qualify for a hardship exemption to the ban on federal relocation benefits. If the ban would result in “exceptional and extremely unusual hardship” to the displaced person’s citizen or eligible immigrant household members, the displaced person may obtain relocation benefits.²⁹⁵ For example, if an immigrant not lawfully in the United States and the immigrant’s minor citizen child are displaced, the immigrant would be entitled to federal relocation benefits if the child (and the household) would otherwise be homeless.

Note that if the displacing activity is funded by CDBG, CDBG-DR, or HOME funds, displaced families have a choice between URA benefits, and similar benefits under Section 104(d) of the Housing and Community Development Act of 1974.²⁹⁶ Section 104(d) does not have the same restriction based on immigration status as the URA. Therefore a family that does not qualify for assistance under the URA may qualify under Section 104(d).

B. California State Relocation Benefits

There are no restrictions on relocation benefits which are required to be paid to displaced persons under California’s Relocation Act.²⁹⁷ A bill that would have restricted immigrant access to such

²⁹² 42 U.S.C.A. § 4601(6)(A)(i) (West, Westlaw through Pub. L. No. 119-18). Certain benefits are only available to families displaced for more than 12 months.

²⁹³ 49 C.F.R. § 24.208(a) (2025).

²⁹⁴ 42 U.S.C.A. § 4605(a) (West, Westlaw through Pub. L. No. 119-18); 49 C.F.R. § 24.2 (2025) (definition of “alien not lawfully present in the United States”).

²⁹⁵ 42 U.S.C.A. § 4605(c) (West, Westlaw through Pub. L. No. 119-18); 49 C.F.R. § 24.208(g)-(h) (2025).

²⁹⁶ 42 U.S.C.A. § 5304(d)(2)(B) (West, Westlaw through Pub. L. No. 119-18).

²⁹⁷ CAL. GOV’T CODE §§ 7260 *et seq.* (West, Westlaw through Ch. 45 of 2025 Reg.Sess.)

benefits was never passed.²⁹⁸ Thus, if relocation benefits are being paid by state or local funds to persons living in a building affected by a project carried out by a state or local agency or a nongovernmental entity, no immigrant restrictions apply.

C. Relocation Benefits in Mixed Federal/State Projects

If relocation benefits are required for residents in a building involved in a project that is carried out by a state or local agency or a nongovernmental entity where both federal and state funds are involved, relocation benefits are still required under the California statute. The U.S. Department of Transportation has determined that the federal relocation statute does not preempt the provisions of state relocation statutes. While federal funds may not be used to pay benefits barred by the federal statute, displaced persons are still entitled to the state benefits. Any benefits required under state law must be paid from state or local funds.²⁹⁹

IV. California Weatherization, Energy Assistance, and Community Services Block Grants

The United States Department of Health and Human Services (HHS) and the United States Department of Energy (DOE) provide funds under the Low Income Weatherization Assistance Program (LIWAP) and the Low Income Home Energy Assistance Programs (LIHEAP) for energy assistance and weatherization services (insulation, new windows) to low-income homeowners and renters.³⁰⁰ The State of California Department of Community Services and Development (DCSD) receives funding under these programs, and in turn allocates that funding to local nonprofit and for-profit contractors and government agencies to provide services to households. With respect to individual households, services under these related programs are often coordinated with lead paint hazard reduction services (see below).

In 1998, in response to PRWORA and Gov. Wilson's Executive Order, DCSD issued regulations making certain immigrants ineligible for funding under the energy and weatherization programs, as well as the Lead-Based Paint Hazard Reduction Grant Program, purporting to rely on PRWORA.³⁰¹

²⁹⁸ A.B. 2089 (Cal. 1998).

²⁹⁹ Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs, 64 Fed. Reg. 7127, 7130 (Feb. 12, 1999); Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs, 63 Fed. Reg. 32175, 32176 (proposed June 12, 1998).

³⁰⁰ Weatherization Assistance Program For Low Income Persons (LIWAP or WAP): 42 U.S.C.A. §§ 6861- 6873 (West, Westlaw through Pub. L. No. 119-18), 10 C.F.R. §§ 440.1- 440.30 (2025); DOE Low Income Home Energy Assistance Programs (LIHEAP): 42 U.S.C.A. §§ 8621-8629 (West, Westlaw through Pub. L. No. 119-18), 45 C.F.R. pt. 96 (2025), CAL. GOV. CODE § 16367.5 (West, Westlaw through Ch. 45 of 2025 Reg. Sess.). The LIHEAP programs have three components: The Home Energy Assistance Program (HEAP), the Weatherization Program, and the Energy Crisis Intervention Program (ECIP). The Weatherization program pays for work to perform certain energy and conservation repairs to low-income housing units. HEAP and ECIP provide utility payments for households who cannot pay their bills. LIWAP is similar to the LIHEAP weatherization program.

³⁰¹ CAL. CODE REGS. tit. 22, § 100900 (West, Westlaw through July 4, 2025, Register 2025, No. 27) (amended 2001) (Limitations on Public Benefits for Aliens Under the Community Services Block Grant, the Low-Income Home Energy Assistance Program, the Department of Energy Weatherization Assistance Program for Low-Income Persons, and

The regulations also made those immigrants ineligible for programs funded with federal Community Services Block Grant funds.³⁰² The DCSD regulations were challenged in California Superior Court.³⁰³ As a result of subsequent HHS and DOE determinations and the settlement of the litigation, DCSD has revised the regulations.³⁰⁴

No restrictions remain in the Lead-Based Paint Hazard Reduction Grant Program or the Community Services Block Grant Program. HHS determined that the Community Services Block Grant Program was not a federal public benefit and that immigration restrictions did not apply, and DCSD notified its contractors that they did not need to do immigrant verifications on that program.³⁰⁵ A similar determination was made by HUD on the lead program (see below).

The restrictions have been substantially modified in the weatherization and energy assistance programs. Immigrant restrictions in the weatherization programs do not apply to multi-unit buildings under LIHEAP and LIWAP.³⁰⁶ Households living in multi-unit buildings are entitled to benefits under the weatherization programs without regard to immigration status because eligibility for these programs is not based on individual or household eligibility criteria. However, immigration restrictions based on PRWORA do apply to households residing in single family buildings. Immigration restrictions also continue to apply to funds distributed to households under the ECIP and HEAP energy assistance programs, regardless of whether they reside in single family or multi-unit dwellings. (Those programs provide direct payments to or on behalf of households for energy costs.)

If the funds are administered by a nonprofit agency, the agency is not obligated to verify immigrant status.³⁰⁷ Under state guidance, the nonprofit agency is required to deny services if, during the intake process, the agency is made aware the applicant is a non-qualified non-citizen.³⁰⁸ However, federal

the Lead-Hazard Control Program).

³⁰² See CAL. GOV'T CODE §§ 12,725 *et seq.* (West, Westlaw through Ch. 45 of 2025 Reg. Sess.) (California statute relating to Community Services Block Grant Funds).

³⁰³ Nonprofit Hous. Ass'n of Northern California (NPH), et al, v. Micciche, Case No. 999554 (Cal. Sup. Ct., San Francisco, filed November 30, 1998) (Settlement Agreement approved by court and filed April 5, 2001).

³⁰⁴ CAL. CODE REGS. tit. 22, § 100900 (West, Westlaw through Ch. 45 of 2025 Reg. Sess.) (Verification for Public Benefits for Noncitizens Under the Low-Income Home Energy Assistance Program and the Department of Energy Weatherization Assistance Program).

³⁰⁵ Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Interpretation of "Federal Public Benefit," 63 Fed. Reg. 41658 (Aug. 4, 1998) (Defines which HHS programs are federal public benefits subject to verification of immigration status. LIHEAP benefits to single family units are covered but not funds for weatherization of multi-unit buildings. Community Services Block Grants are not listed among covered programs); Information Memorandum from HHS, Community Services Block Grant Program to State Community Services Block Grant Program Administrators (Sept. 30, 1998) ("Guidance on the Interpretation of 'Federal Public Benefit' Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193") (CSBG Program does not provide federal public benefits and no verification of immigration status is required).

³⁰⁶ CAL. CODE REGS. tit. 22, § 100900 (West, Westlaw through Ch. 45 of 2025 Reg. Sess.); Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Interpretation of "Federal Public Benefit," 63 Fed. Reg. 41658 (Aug. 4, 1998); Low-income Home Energy Assistance (LIHEAP): Guidance on the Interpretation of "Federal Public Benefits" Under the Welfare Reform Law, Information Memorandum, Transmittal No. LIHEAP-IM-98-25 (August 6, 1998); Low-Income Home Energy Assistance (LIHEAP): Revision - Guidance on the Interpretation of "Federal Public Benefits" Under the Welfare Reform Law, Information Memorandum, Transmittal No. LIHEAP-IM-99-10 (June 15, 1999).

³⁰⁷ 8 U.S.C. § 1642(d); CAL. CODE REGS. tit. 22, § 100904(a) (West, Westlaw through Ch. 45 of 2025 Reg. Sess.).

³⁰⁸ State of California, Department of Community Services and Development, California Law Income Home Energy Assistance Program State Plan, Federal Fiscal Year 2025, § 1.4 available at

guidance provides that in certain cases LIHEAP assistance may go to a household that includes immigrants who are not qualified, provided that the household also includes eligible members.³⁰⁹ Where the assistance can be prorated, such as in this case of energy bill reductions, the agencies must prorate the assistance based on the number of eligible household members.³¹⁰ A considerable amount of the California funds are distributed by nonprofit agencies. DCSD has issued letters verifying the nonprofit status of those agencies.

For the persons who are still covered, detailed provisions for verification of immigration status are set out in the regulations.³¹¹ They are similar in many ways to the CalHFA regulations discussed above.

V. Lead-Based Paint Programs

HUD has determined that lead hazard abatement and education activities funded by HUD's Lead-Based Paint Hazard Reduction Grant Program are not federal public benefits and are not subject to immigration restrictions under PRWORA.³¹² Therefore, no immigration restrictions bar tenants or homeowners from obtaining funds to address lead hazards in either rental or ownership housing. As a result of HUD's determination and of litigation brought by advocates, the California Department of Community Services and Development has withdrawn previously promulgated regulations that restricted such funds³¹³ and has notified all recipients of such funds that they are not restricted.

<https://www.csd.ca.gov/Shared%20Documents/2025-Final-LIHEAP-State-Plan.pdf>. Further states that if an applicant is found to be ineligible, another household member with legal status may submit a new application. The LIWAP program does not have the same requirement. *See* State of California, Department of Community Services and Development, Weatherization Assistance Program for Low-Income Persons, DRAFT 2025 State Plan and Application to the U.S. Department of Energy, at p. 28 available at <https://www.csd.ca.gov/Shared%20Documents/2025-Draft-DOE-WAP-State-Plan.pdf>.

³⁰⁹ Office of Community Services, Low Income Housing Energy Assistance Program Information Memorandum (June 2023), available at https://acf.gov/sites/default/files/documents/ocs/LIHEAP_IM%202023-03_Proposed%20Policy%20for%20Eligible%20Household%20Members%20Living%20with%20Ineligible%20Members.pdf.

³¹⁰ *Id.* at 1.

³¹¹ CAL. CODE REGS. tit. 22, §§ 100900-100904.5 (West, Westlaw through Ch. 45 of 2025 Reg. Sess.).

³¹² Lead-Based Paint Hazard Reduction Grant Program: 42 U.S.C.A. §§ 4851 *et seq.* (West, Westlaw through Pub. L. No. 119-18); Letter from David Jacobs, Director, Office of Lead Hazard Control, HUD, to Timothy Dayonot, Director, CA Dep't of Community Services and Development (Mar. 27, 2000).

³¹³ CAL. CODE REGS. tit. 22, § 100900 (West, Westlaw through Ch. 45 of 2025 Reg. Sess.) (amended 2001).

CHAPTER 8

ARE THERE ANY IMMIGRATION CONSEQUENCES OF LIVING IN AFFORDABLE HOUSING? PRIVACY, REPORTING, AND PUBLIC CHARGE ISSUES

I. Privacy Obligations Under Federal and State Law

A. Information Collection

PHAs and landlords should carefully follow verification procedures as set out in the applicable rules. For many reasons, they should not seek information that is not required by the applicable rule. In addition, they should not disclose information they obtain about an individual's immigration status to other people, except to designated persons for the limited purpose of verifying status under the applicable rule. Before beginning any verification process, it is important for housing staff to know the rules and to obtain the client's written consent to any required disclosure.

Collecting unauthorized or unnecessary information may invade a person's privacy rights, in violation of federal or state laws. In particular, the Privacy Act of 1974 restricts the use and disclosure of any personal information provided to a government agency. The act acknowledges the harm that can be done to an individual when agencies misuse personal information.³¹⁴ Therefore, PHAs and landlords should only ask about the status of the applicant, and not about the status of other persons or household members who are not seeking benefits.³¹⁵ They should not ask questions that are not necessary to determine eligibility, such as whether or not an applicant is "undocumented," why someone is in the country, or whether a non-applicant household member has a Social Security number.

1. Disclosure of Social Security Numbers

Federal law generally bars agencies from asking for Social Security numbers unless such numbers are required under federal law, and then only for specified purposes disclosed in writing to the applicant.³¹⁶ Federal law also prohibits agencies from denying benefits or assistance to people

³¹⁴ 5 U.S.C.A. § 552a (West, Westlaw through Pub. L. No. 119-18); Pub. L. 93-579, § 2, 88 Stat. 1896 (1974).

³¹⁵ Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344, 61347 (Nov. 17, 1997).

³¹⁶ 5 U.S.C.A. § 552a (West, Westlaw through Pub. L. No. 119-18). The other exception is when there is a system of records that was in place and operating before 1/1/75 that required disclosure of a Social Security number under a statute or regulation that had been adopted before that date.

because they lack a Social Security number (unless required by a specific federal law). When an agency requests a Social Security number, it must inform the applicant whether providing a number is mandatory or voluntary, the legal authority for the request, and how the agency will use the Social Security number.³¹⁷ Nevertheless, HUD does generally require all applicant household members and residents of HUD assisted or financed housing to provide their Social Security numbers.³¹⁸ However this rule is “inapplicable to individuals who do not contend eligible immigration status.”³¹⁹

Note that under Section 214, persons who are 62 years of age or older are not required to produce evidence of their immigration status.³²⁰ Such persons can simply certify that they have eligible immigration status and provide proof of their age.³²¹ Under the HUD regulations, this is still true with respect to persons who had their eligibility determined prior to January 31, 2010. However, persons 62 years of age or older who seek admission to public or assisted housing after January 30, 2010, must also produce their Social Security number.³²²

RD regulations require that landlords collect Social Security numbers from their residents and household members.³²³ RD’s tenant certification form contains a statement as required by the Privacy Act that the agency is authorized by the Housing Act of 1949 to collect the information on the certification form, that disclosure of the information is voluntary, that failure to disclose the information may result in delay of assistance, but that it will not deny assistance to an individual who refuses to supply a Social Security number.³²⁴ Unfortunately, most applicants to, or residents of, RD housing are not likely to read this note or to understand its full force and effect when their landlord insists that they provide a Social Security number. In their Multi-Family Housing Handbook, RD has clarified that social security numbers must be collected only once for each resident and that all family members 6 years old and older must submit their social security number. Household members that do not have a social security number must submit certification that they have never been issued a social security number.³²⁵

In particular, PHAs and landlords should not assume that an applicant’s or tenant’s reluctance to disclose status or their Social Security number means that the applicant or tenant is in fact undocumented. “Not eligible” or “decline to state” are *not* the same thing as unlawfully in the country, as set forth below.

³¹⁷ 5 U.S.C.A. § 552a(b) and (c) (West, Westlaw through Pub. L. No. 119-18).

³¹⁸ Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System - Amendments, 74 Fed. Reg. 68924, 68933 (December 29, 2009).

³¹⁹ 24 C.F.R. §5.216(a) (2025). *See* subpart E, §5.508 (e) “Individuals who do not contend that they have eligible status.”

³²⁰ *See* 42 U.S.C.A. § 1436a(d) (West, Westlaw through Pub. L. No. 119-18).

³²¹ *See* 42 U.S.C.A. § 1436a(d)(1)(A) (West, Westlaw through Pub. L. No. 119-18).

³²² Any person 62 years of age or older who, prior to January 10, 2010, was found eligible to reside in HUD assisted housing need not provide his or her Social Security number providing the person’s prior landlord can verify that the person was found eligible to reside in HUD assisted housing prior to January 31, 2010. This is true even if the person did not reside in HUD assisted housing for an interim period. *See* 24 C.F.R. 5.216(e)(1) (2025).

³²³ 7 C.F.R. § 3560.154 (a)(10) (2025).

³²⁴ Form RD 3560-8 (Rev. 04/25).

³²⁵ RD, MFH Asset Management Handbook, HB-2-3560, Ch. 6, Attachment 6-H, at 8-9 (June 2025).

B. Declining to Provide Information Does Not Establish that Someone is Undocumented

Members of households in “mixed households” can choose not to declare their immigration status. They need—and should not—tell the landlord or PHA whether or not they are documented or the nature of their immigration visa. Many immigrants, even if they are lawfully present, do not want information shared with the Department of Homeland Security, United States Citizenship and Immigration Services (USCIS), unless it is necessary. They may have serious fears that accepting government services to which they are entitled, or reporting information about themselves or their household members, will have adverse consequences for them or their family.

Furthermore, many immigrants are lawfully residing in the U.S. but do not qualify for federally-subsidized housing programs. For example, asylum applicants with work authorization or persons granted temporary protected status do not qualify for federal financial assistance under Section 214, even though they are lawfully present in the U.S.³²⁶ Yet so long as their lack of eligibility is not “affirmatively established,” such persons may live in HUD housing with eligible family members so long as the financial subsidy is prorated.³²⁷ Disclosing that a family member has an immigration status that is outside an eligible category creates a danger that such person’s lack of eligibility will be affirmatively established, jeopardizing that person’s ability to remain in a mixed status household with prorated assistance.

Disclosing that a family member is undocumented or out-of-status raises even greater risks because HUD is obligated to report individuals it “knows” to be unlawfully present in the United States at least four times annually to USCIS.³²⁸ For purposes of this provision, HUD “knows” a person is unlawfully present “only when the unlawful presence is a finding of fact or conclusion of law that is made by the entity as part of a formal determination that is subject to administrative review on an alien’s claim for [housing assistance],” and “must be supported by a determination by the Service or the Executive Office of Immigration Review, such as a Final Order of Deportation.”³²⁹ Though cases where sufficient knowledge of unlawful presence to trigger reporting to USCIS should be rare, this is nevertheless a risk to be avoided. This risk has been heightened since 2025, when several federal agencies, including HUD, entered into agreements to share information with DHS.³³⁰

C. USCIS Use of Documents Submitted to USCIS During the Verification Process

³²⁶ See 42 U.S.C.A. § 1436a(a) (West, Westlaw through Pub. L. No. 119-18).

³²⁷ See 42 U.S.C.A. § 1436a(b)(2); see 24 C.F.R. § 5.508(a) (2025).

³²⁸ See Responsibility of Certain Entities To Notify the Immigration and Naturalization Service of Any Alien Who the Entity “Knows” Is Not Lawfully Present in the United States, 65 Fed. Reg. 58301 (Sept. 28, 2000).

³²⁹ 65 Fed.Reg. at 58301.

³³⁰ Memorandum of Understanding Between United States Department of Homeland Security and United States Department of Housing & Urban Development (Mar. 24, 2025), <https://www.hud.gov/sites/default/files/PA/documents/DHS-HUD-MOU-032425.pdf>.

Individuals may have concerns about what USCIS can do with information that is reported to them. There are restrictions on the USCIS's use of documents submitted during the verification process. The authorizing legislation of the Systematic Alien Verification of Entitlements (SAVE) system governs the federal computer matching program that connects benefits agencies to USCIS for verification of a person's immigration status.³³¹ The SAVE system allows for the exchange of information only to the extent necessary to assist in the valid administrative needs of the program, protects against unauthorized disclosure of information for other purposes, and is intended to protect the individual's privacy to the maximum degree possible.³³² In particular, USCIS is prohibited from using the information gained through SAVE to mount a civil immigration enforcement action against the individual.³³³ The restrictions apply to the entire SAVE process, including primary and secondary (manual) verification.

D. Confidentiality of Immigration Status Information

Once immigration and other personal information has been obtained, the PHA or landlord should not disclose it to others except as specifically authorized by law. If a PHA or landlord engages in unauthorized disclosures or communications with USCIS (formerly INS) or other persons, they may be subject to a charge of discrimination or a charge of breaching confidentiality laws.

As to HUD and other federal agencies, the federal Privacy Act prohibits disclosing records to any person (including other agency staff lacking a job-related need for the information) or to another agency without the prior written consent of the individual to whom the record pertains, subject to certain exceptions. Problematically in this connection, however, "records" means information about "an individual" that an agency maintains—and the definition of "individual" includes only U.S. citizens and lawful permanent residents. This means other noncitizens (i.e., those who are not LPRs) are not "individuals" for purposes of the Privacy Act, and hence their information does not constitute "records" entitled to protection. Of particular concern is the risk that HUD might share information about members of mixed status households who do not contend eligibility for federal financial assistance with the Department of Homeland Security for use in immigration enforcement proceedings.

One potential argument by which to avoid this problem is to contend that entire records concerning mixed status families pertain to every person in the household—meaning the disclosure of information pertaining to a person not covered by the Privacy Act could still violate the Act as to citizens or lawful permanent residents in the same household. This argument is largely untested, though the case of *Crumpton v. U.S.* rejected a widow's claim that her rights under the Privacy Act barred the disclosure of investigation records pertaining to her deceased

³³¹ 42 U.S.C.A. § 1320b-7 (West, Westlaw through Pub. L. No. 119-18).

³³² *Id.*

³³³ Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 121(e)(1), 100 Stat. 3359, 3388 (1986). These protections were incorporated into INS proposed rules for verification of immigration status by public benefits programs. *See* Verification of Eligibility for Public Benefits, Proposed Rule, 63 Fed. Reg. 41,662, 41,672 (proposed Aug. 4, 1998) (§§ 104.49, 104.51). While this statutory provision appears still to be in effect and not specifically abrogated, the authors have not reviewed recent federal homeland security legislation—e.g., Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002)—for any limitation or modification such legislation may have made to the protections set forth in the 1986 act.

husband because “all of the records released were contained within systems of records retrievable in the name of plaintiff’s husband or by some identifying number, symbol or other identifying particular assigned to him.”

As in *Crumpton*, HUD likely has the ability to retrieve documents using the names or alien registration numbers of suspected out-of-status family members. But if HUD were to search for records using names or personal identifiers of Privacy Act-protected persons, or fail to exclude all information pertaining to such persons from any disclosures HUD did make, such disclosure would appear to violate the Privacy Act.

Another potential argument by which to oppose HUD disclosures of immigration status information belonging to persons not protected by the Privacy Act is that federal law prohibits the Department of Homeland Security from making adverse immigration determinations based on information supplied by abusive household members. The only information HUD routinely receives about persons who may be undocumented or out-of-status are application and recertification materials listing members of mixed status families who do not contend eligibility (which, as noted above, does not establish that a person is without lawful immigration status—only that they could be). Those materials are prepared and submitted by members of HUD-assisted households—yet nothing in those materials would enable DHS to identify circumstances where the information was supplied by an abusive household member. For this reason, DHS arguably could not lawfully receive or make use of such records unless and until some method of identifying information provided by abusive household members were created.

Under the California Information Practices Act, public agencies covered by the Act are precluded from disclosing any personal information except under limited circumstances. Such information can only be disclosed if the household consents (such as when they sign a release allowing certain information to be checked with USCIS during the verification process); to another government entity, if required by state or federal law; under court subpoena; or as otherwise required by law.³³⁴ There are also limitations on disclosure when records are requested under the California Public Records Act.³³⁵ Both the federal and the California Constitution also contain privacy protections.³³⁶

As specified in the required verification consent form, Section 214 only allows PHAs and landlords to disclose the immigration information received from the household to HUD or USCIS, and then only for the purpose of verifying eligibility.³³⁷ This does not authorize communications with USCIS concerning persons who decline to provide their immigration status. The only law requiring disclosure outside of the verification process applies in the very limited circumstance where the PHA *knows* that a member of the household is unlawfully in the country (*see, infra*, Section II). Therefore, PHAs should not share immigration information with

³³⁴ CAL. CIV. CODE §§ 1798 *et seq.* (West, Westlaw through Ch. 45 of 2025 Reg.Sess.) (§ 1798.24 lists some of the relevant circumstances under which personal information can be disclosed).

³³⁵ CAL. GOV’T CODE §§ 7920.000 (West, Westlaw through Ch. 45 of 2025 Reg.Sess.) (amended 2005) (PRA exempts from disclosure files, the disclosure of which would constitute an unwarranted invasion of personal privacy).

³³⁶ *Whalen v. Roe*, 429 U.S. 589, 97 S.Ct. 869 (1977) (Fifth and Fourteenth Amendments to the Constitution limit the extent to which the government can interfere in the privacy of individuals); CAL. CONST. art. 1, § 1.

³³⁷ Restrictions on Assistance to Noncitizens, 60 Fed. Reg. 14816, 14817, 14822 (Mar. 20, 1995); 24 C.F.R. § 5.508(d)(2)-(3) (2025).

others, including USCIS, except as specifically required by the verification process or under an appropriate, lawful subpoena that has been approved by a court.

Even though private landlords are not covered by state government confidentiality requirements, they should not voluntarily disclose immigration information except as required during the verification process. The Immigrant Tenant Protection Act applies to private landlords.³³⁸ Section 214 requires landlords as well as PHAs to use a verification consent form that only allows PHAs to disclose the immigration information received from the household to HUD or USCIS, and then only for the purpose of verifying eligibility.³³⁹ Inappropriate disclosure could subject landlords to charges of invasion of privacy, discrimination, fraud, or unlawful business practices.³⁴⁰ (See Chapter 9.)

Landlords and PHAs should not report persons to USCIS who decline to declare their immigration status, for all of the reasons outlined above. HUD has stated that “Providers should not contact USCIS about persons who do not claim eligible immigration status.”³⁴¹

II. Other Reporting to USCIS: What Does “Know” Mean?

While PHAs and landlords are generally prohibited from communicating with USCIS except with the household’s consent and for the limited purpose of verifying eligibility, there is one limited exception that applies only to PHAs in connection with the public housing and Section 8 programs. Under the rare circumstances described below, and only then, PHAs that “know” that someone is in the country illegally must report that information to USCIS on a quarterly basis.³⁴² “Know” is defined very narrowly. The fact that someone chooses not to claim immigration status is not sufficient to “know” that the person is undocumented. Unless all these criteria below are met, PHAs are not required to report information about immigrants who are not lawfully present to the U.S. Note, the reporting provision does *not* apply to landlords and does *not* apply to PHAs in connection with their other housing programs.

The Department of Justice, USCIS, HUD, and other agencies issued a joint notice explaining the very limited circumstances when someone must report to USCIS. HUD has also posted “Clarification Questions and Answers” on its website explaining PHA’s responsibilities pursuant to the joint notice.³⁴³ The notice specifies the circumstances for reporting.

³³⁸ See, *infra*, Chapter 9, § I.

³³⁹ 24 C.F.R. § 5.508(d)(2)-(3) (2025). See also HUD HANDBOOK 4350.3, *supra* note 3, at ex. 3-6.

³⁴⁰ See, e.g. CAL. BUS. & PROF. CODE §§ 17200 *et seq.* (West, Westlaw through Ch. 45 of 2025 Reg.Sess.).

³⁴¹ Fair Housing Issues in Noncitizen Rule for Field Office and Housing Provider Guidance, § B(2)(a), FHEO 95-6 (Nov. 30, 1995). Although technically expired, HUD has not expressly rescinded, repudiated or changed the positions taken in this notice on this issue.

³⁴² 8 U.S.C.A. § 1614(d) (West, Westlaw through Pub. L. No. 119-18), Pub. L. No. 104-193, § 404(d), 110 Stat. 2105 (1996), *as amended by* Pub. L. No. 105-33, § 5564, 111 Stat. 251 (1997). Responsibility of Certain Entities To Notify the Immigration and Naturalization Service of Any Alien Who the Entity “Knows” Is Not Lawfully Present in the United States, Notice, 65 Fed. Reg. 58301 (Sept. 28, 2000).

³⁴³ Responsibility of Certain Entities To Notify the Immigration and Naturalization Service of Any Alien Who the Entity “Knows” Is Not Lawfully Present in the United States, Notice, 65 Fed. Reg. 58301 (Sept. 28, 2000). HUD, Clarification Questions and Answers, PHA Responsibility to Notify the Immigration and Naturalization Service (INS)

A. Who Should Report?

For housing programs, only HUD and PHAs are authorized to report and reporting only applies to the Public Housing and Section 8 programs.³⁴⁴

B. Who Should Be Reported?

Only people who make a claim for benefits under one of the above programs should be reported. The obligation does not apply to family or household members who are not seeking benefits on their own behalf. Thus, it does not apply to persons who decline to declare their eligibility.

C. When Should Reporting Occur?

Reporting is only authorized when a PHA “knows” that a person is not lawfully present, and ONLY when the unlawful presence is:

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.

D. When Is Reporting Not Triggered?

Reporting is *not* triggered by:

- i. an oral or written admission by the immigrant;
- ii. a worker’s suspicion, assumption, or firm conviction about the person’s immigration status;
- iii. 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

of Aliens not Lawfully Present in the United States Under Section 404 of the Welfare Reform Act, *at* http://www.hud.gov/offices/pih/publications/fedreg/section_404.cfm (updated July 5, 2001).

³⁴⁴ Responsibility of Certain Entities To Notify the Immigration and Naturalization Service of Any Alien Who the Entity “Knows” Is Not Lawfully Present in the United States, Notice, 65 Fed. Reg. 58301, 58302 (Sept. 28, 2000) (Reporting is required “with respect only to the United States Housing Act of 1937, as amended, 42 U.S.C.A. § 1437 *et seq.*,” and “any public housing agency that enters into a contract for assistance under section 6 or 8 of Title I of the United States Housing Act of 1937, as amended, 42 U.S.C.A. § 1437 *et seq.*”).

- iv. a formal finding that the person is ineligible for a benefit.

E. What Limits Are on the PHAs?

PHAs are not required to, and should not:

- i. Make determinations about immigration status that aren't necessary to determine eligibility for a benefit;
- ii. Inquire about the immigration status of persons who are not seeking to receive a benefit,
- iii. Submit reports to USCIS unless they have "knowledge" that meets the above requirements.

F. Can PHAs Report Under Other Circumstances?

PRWORA and the 1996 Immigration Act (IIRIRA) contain provisions barring restrictions on communications with USCIS by government officials.³⁴⁵ These provisions were intended to limit the reach of "sanctuary ordinances" that had been adopted by the State of New Mexico and many local governments.³⁴⁶

These provisions must be interpreted in the context of other immigration verification laws, privacy laws, and the reporting requirement itself. The provisions are permissive, not mandatory. They do not require or authorize any release of information to USCIS, and they do not empower USCIS to seek or demand information from agencies. They impose no duty on agencies to permit or require their employees to ask questions of applicants, or to make information available to employees beyond what is required to conduct agency business. They do not bar a government agency from regulating communications by employees with applicants and with USCIS to ensure that employees neither intentionally nor inadvertently violate immigrants' rights. Federal agencies have confirmed that the communications provisions do not override existing privacy laws in various programs.³⁴⁷

PHA and landlord policies should ensure that information gathering and dissemination complies with confidentiality laws, slander and libel laws, anti-discrimination laws, privacy laws, and other federal and state laws, and is focused only on the information necessary to determine eligibility. They may include time, place, and manner restrictions to ensure compliance with these other considerations. In fact, the Privacy Act of 1974 requires that agencies establish rules of conduct for persons involved in record keeping to prevent violations of statutory requirements, and requires that agencies establish appropriate administrative, technical, and physical

³⁴⁵ 8 U.S.C.A. §§ 1644, 1373 (West, Westlaw through Pub. L. No. 119-18).

³⁴⁶ See H.R. Rep. No. 104-725 (1996) (Conf. Rep.).

³⁴⁷ See Letter from Sally K. Richardson, U.S. Dep't of Health and Human Services, to State Medicaid Directors (Dec. 17, 1997).

safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.³⁴⁸ Similarly, it is appropriate for PHAs to generally ensure that information about participation in their programs is maintained in a confidential manner.

III. Public Charge Issues

“Public charge” describes persons who rely on the government for support. Under some circumstances, the government can exclude a person from the United States, prevent a person from getting a “green card,” or, in rare instances, deport an immigrant currently in the United States, if the person is or is likely to become a public charge.

In deciding whether someone is likely to become a public charge, USCIS looks at the person’s entire situation. However, the only benefits currently considered in this decision are cash welfare and long-term care. Housing benefits, including vouchers or cash for housing purposes, are not considered in public charge decisions.³⁴⁹ In November 2025, DHS published a proposed rule that, if finalized, expand the scope of benefits that USCIS could consider to include housing benefits broadly.³⁵⁰

³⁴⁸ 5 U.S.C.A. § 552a(e)(9)-(10) (West, Westlaw through Pub. L. No. 119-18).

³⁴⁹ Inadmissibility and Deportability on Public Charge Grounds, Proposed Rule, 64 Fed. Reg. 28676 (proposed May 26, 1999) (proposed 8 C.F.R. § 212.105(a) and (b)(7), and § 237.14(a) and (b)(7)); Guidance on Definition of ‘Public Charge’ in Immigration Laws, H-99-20 (July 22, 1999) (“[R]eceipt of benefits/services under HUD’s programs will not be considered by immigration officials as part of a public charge determination.”).

³⁵⁰ Public Charge of Inadmissibility, 90 Fed. Reg. 52168 (Nov. 19, 2025).

CHAPTER 9

ARE THERE ANY CIVIL RIGHTS OR ACCESS ISSUES?

I. Discrimination

Although the details are beyond the scope of this handbook, any individual or systematic actions by the landlord or PHA in the application or verification process which are based on an applicant's appearance, name, language, race, national origin, or inability to speak English may constitute discrimination in violation of Title VI of the Civil Rights Act of 1964 or state and federal fair housing laws.

Any verification process must be applied equally to all applicants and tenants. PHAs and landlords should not use an applicant's limited English proficiency or foreign-sounding name to justify assumptions or questions about citizenship or immigration status. They may not, on these bases, post threatening signs that discourage participation, request different or additional documents, or induce delays due to unnecessary additional verification steps or contacts with USCIS (formerly INS). Efforts to harass or retaliate against individuals for choosing not to declare their status, or because of their status, may constitute unlawful discrimination. Requesting information that is not required by the specific applicable law may also constitute discrimination.

The HUD Section 214 regulations specifically require PHAs and landlords to administer the rules in compliance with all applicable nondiscrimination and equal opportunity requirements.³⁵¹ HUD has specifically cautioned PHAs and landlords that all "procedures in implementation of Section 214 must be administered in the uniform manner prescribed without regard to race, national origin, or personal characteristics (e.g., accent, language spoken, or familial association with a noncitizen.)"³⁵² RD regulations also contain nondiscrimination provisions.³⁵³

Both the HCD regulations (which have been enjoined by the court), and the CalHFA regulations (which are only being enforced in the homeownership programs) contain nondiscrimination

³⁵¹ 24 C.F.R. § 5.524 (2025). HUD explicitly requires compliance with fair housing and civil rights requirements including, but not limited to: Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§. 2000d to 2000d-5) and the implementing regulations at 24 C.F.R. pt. 1; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A § 794) and the implementing regulations at 24 C.F.R. pt. 8; the Fair Housing Act (42 U.S.C.A. §§ 3601-3619) and the implementing regulations at 24 C.F.R. pt. 100; *see also* Restrictions on Assistance to Noncitizens, Final Rule, 60 Fed. Reg. 14,816, 14,816-14,817 (Mar. 20, 1995); Revised Restrictions on Assistance to Noncitizens, Final Rule, 64 Fed. Reg. 25,726, 25,730 (May 12, 1999); Fair Housing Issues in Noncitizen Rule for Field Office and Housing Provider Guidance, FHEO 95-6 (Nov. 30, 1995) (Although technically expired, HUD has not expressly rescinded, repudiated or changed the positions taken in this notice on this issue).

³⁵² Revised Restrictions on Assistance to Noncitizens, 64 Fed. Reg. 25726, 25730 (May 12, 1999); *see also* HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.C..

³⁵³ *See, e.g.*, 7 C.F.R. § 3550.3 and pt. 1901, subpt. E (2025).

provisions.³⁵⁴ Federal relocation regulations also contain nondiscrimination provisions.³⁵⁵

California provides additional anti-discrimination protections under state law. The Fair Employment and Housing Act (FEHA) prohibits housing discrimination in housing based on a broader range of protected classes than its federal counterpart, the Federal Housing Administration (FHA).³⁵⁶ In addition to the protected categories in the FHA, FEHA also includes ancestry and military status.³⁵⁷ National origin has been broadly interpreted to include citizenship, meaning that using a person’s immigration status or requesting immigration documents as a way to deny housing or impose different terms or conditions on that person violated FEHA, unless such requirements are specifically mandated by federal law.³⁵⁸

FEHA’s fair housing protections apply broadly to all entities involved in housing, including government agencies, private landlords, real estate agents and brokers, and financial institutions.³⁵⁹ Corporations and other entities that own rental housing can also be held vicariously liable for the discriminatory actions of their agents or employees.³⁶⁰ In addition, the Unruh Civil Rights Act prohibits discrimination by all business establishments, including housing providers, based on immigration status.³⁶¹ State funded-programs are prohibited from discriminating based on nationality, origin, ancestry, or ethnic group identification.³⁶²

California law imposes an obligation on government entities to affirmatively further fair housing (AFFH) in all land use and planning decisions, including taking affirmative steps to combat segregation and promote integration. To comply with AFFH, government entities must create plans and take concrete actions to “transform racially and ethnically concentrated areas of poverty into areas of opportunity” and to “foster and maintain compliance with civil rights and fair housing laws.”³⁶³ The duty to affirmatively further fair housing under is both incorporated into California’s Housing Element Law and is also a stand-alone obligation that applies to individual government actions.³⁶⁴

The Immigrant Tenant Protection Act protects tenants from discriminatory conduct including harassment, retaliation, and evictions based on the tenant’s immigration or citizen status or

³⁵⁴ CAL. CODE REGS. tit. 25, §§ 6935.6 (HCD), 12005 (CalHFA) (West, Westlaw through July 11, 2025, Register 2025, No. 28).

³⁵⁵ 49 C.F.R. § 24.208(e) (2025).

³⁵⁶ CAL. GOV’T CODE §12955 (West, Westlaw, current with urgency legislation through Ch. 45 of 2025 Reg.Sess.).

³⁵⁷ *Id.* § 12955(i).

³⁵⁸ 2 CAL. CODE. REGS. tit. 2, § 11028(f) (“Citizenship requirements that are a pretext for discrimination or have the purpose or effect of discriminating against applicants or employees on the basis of national origin or ancestry are unlawful, unless pursuant to a permissible defense.”).

³⁵⁹ *Id.* § 12005(f).

³⁶⁰ *Id.* § 12010.

³⁶¹ CAL. CIV. CODE § 51. (West, Westlaw, current with urgency legislation through Ch. 45 of 2025 Reg.Sess.).

³⁶² CAL. GOV. CODE § 11135. (West, Westlaw, current with urgency legislation through Ch. 45 of 2025 Reg.Sess.).

³⁶³ CAL. GOV. CODE § 8899.50(a)(1). (West, Westlaw, current with urgency legislation through Ch. 45 of 2025 Reg.Sess.).

³⁶⁴ *Id.* §§ 65583, 65583.2, 8899.50. (West, Westlaw, current with urgency legislation through Ch. 45 of 2025 Reg.Sess.).

assumed immigration or citizenship status.³⁶⁵ Assumed immigration or citizenship status means “a perception that the person has a particular immigration status or citizenship status, or that the person is associated with a person who has, or is perceived to have, a particular immigration status or citizenship status.”³⁶⁶

A landlord cannot not disclose or threaten to disclose a tenant, occupant, or person associated with a tenant’s immigration status in order to coerce a tenant/occupant out of a unit,³⁶⁷ harass, intimidate, or disrupt the quiet enjoyment of existing or prospective tenants/occupants,³⁶⁸ or retaliate against a tenant/occupant exercising their rights.³⁶⁹

A landlord who reports or threatens to report immigration status to the authorities when a tenant exercises their housing rights is considered retaliatory conduct.³⁷⁰ However, landlords are permitted to disclose a tenant’s immigration status pursuant to a court-issued warrant or subpoena, they are prohibited from violating a tenant’s rights in response to an administrative subpoena, such as those issued by Immigration and Customs Enforcement (ICE) or the Department of Homeland Security.³⁷¹

II. Language Access

All housing providers must take steps to ensure that all persons have access to their programs, even if they are not proficient in English.

PHAs and landlords must take reasonable steps to ensure meaningful access to information and services to non-English speaking persons.³⁷² Where feasible, the landlord or PHA must arrange for significant immigrant eligibility verification notices and documents to be provided in a language that is understood by the individual if the individual is not proficient in English. This

³⁶⁵ CAL. CIV. CODE § 1940.05. (West, Westlaw, current with urgency legislation through Ch. 45 of 2025 Reg.Sess.).

³⁶⁶ *Id.*

³⁶⁷ CAL. CIV. CODE § 1940.2(a)(5). (West, Westlaw, current with urgency legislation through Ch. 45 of 2025 Reg.Sess.).

³⁶⁸ *Id.* § 1940.2(a)(3).

³⁶⁹ *Id.*

³⁷⁰ CAL. CIV. CODE § 1942.5(c). (West, Westlaw, current with urgency legislation through Ch. 45 of 2025 Reg.Sess.).

³⁷¹ CAL. CIV. CODE §§ 1940.3(c)(1), 1940.35(c). (West, Westlaw, current with urgency legislation through Ch. 45 of 2025 Reg.Sess.).

³⁷² Exec. Order No. 13166, 65 Fed. Reg. 50121 (Aug. 16, 2000); Enforcement of Title VI of the Civil Rights Act of 1964 -- National Origin Discrimination Against Persons With Limited English Proficiency; Policy Guidance, 65 Fed. Reg. 50123 (Aug. 16, 2000); 24 C.F.R. § 5.502 (2025); *see also* HUD, Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, FR-4648-N-02 (72 Fed. Reg. 2732 (Jan. 22, 2007)). Similar policies have been issued by other federal agencies — see, e.g., 66 Fed. Reg. 4596 (Jan. 17, 2001) (Labor); 66 Fed. Reg. 3834 (Jan. 16, 2001) (Justice); 66 Fed. Reg. 6733 (Jan. 22, 2001) (Transportation); 66 Fed. Reg. 13829 (Mar. 7, 2001) (Treasury); 66 Fed. Reg. 4026 (Jan. 17, 2001) (General Services Administration); 65 Fed. Reg. 52672 (2000) (Health and Human Services).

includes any required Section 214 notices or documents to be provided to the person or signed by the person.³⁷³ Failure to provide appropriate language access to those with limited English proficiency may violate Title VI of the Civil Rights Act of 1964 and other federal fair housing and civil rights laws, as well as Section 214.³⁷⁴

PHAs and landlords also are required by California law to translate leases and rental agreements into Spanish, Chinese, Tagalog, Vietnamese, or Korean if the lease or rental agreement is primarily negotiated orally or in writing in those languages.³⁷⁵ Any subsequent document making substantial changes in the rights and obligations of the parties must also be translated.³⁷⁶

California PHAs may have additional obligations. Under the California Dymally-Alatorre Bilingual Services Act, PHAs with a substantial number of non-English speaking persons in their service areas must employ sufficient bilingual staff or translators to ensure provision of information and services in the language of the non-English-speaking persons. They must also ensure that any materials explaining available services shall be translated into any non-English language spoken by a substantial number of the public served by the agency. FEHA also prohibits discrimination based on limited English proficiency or speaking a language other than English.³⁷⁷ Even where not specifically required by a statute, regulation, or subregulatory document, the failure to provide adequate translation or interpretation in a denial/termination context could amount to a due process violation if it materially contributed to the loss of assistance.

III. Reasonable Accommodations for Persons with Disabilities

PHAs and landlords must provide reasonable accommodations for persons with disabilities, including during the verification process, as required by federal and state fair housing laws.³⁷⁸ This might include:

- i. providing an interpreter and a TDD phone line for a person who is hearing impaired and relies on American Sign Language (ASL);
- ii. providing a large type, braille, or oral translation of documents to someone who is visually impaired;
- iii. providing additional time and assistance to a person with developmental or psychiatric disabilities; or

³⁷³ 24 C.F.R. § 5.502 (2025).

³⁷⁴ Enforcement of Title VI of the Civil Rights Act of 1964 -- National Origin Discrimination Against Persons With Limited English Proficiency, Policy Guidance, 65 Fed. Reg.50123, 50123-124 (Aug. 16, 2000).

³⁷⁵ CAL. CIV. CODE § 1632(b)(3).

³⁷⁶ *Id.* § 1632(g).

³⁷⁷ CAL. CODE REGS. tit. 2 § 12161(b)(11),

³⁷⁸ 24 C.F.R. § 8.6; *see also* § 5.502; *And see generally* 24 C.F.R. §§ 8.1-8.6 (2025).

- iv. ensuring that all offices where transactions take place are physically accessible to persons with mobility impairments.

Landlords and PHAs may not discriminate against persons with disabilities in the provision of services or the process of verifying eligibility.³⁷⁹

IV. Nondiscrimination – California Specific Protections

California enacted the Tenant Protection Act of 2019 (TPA), a statewide rent stabilization and just cause eviction law regardless of immigration status. However, the TPA exempts certain affordable housing, including properties governed by a deed or regulatory agreement with a government agency to provide housing for low-, very low-, or moderate-income households.³⁸⁰

Because the Low Income Housing Tax Credit (LIHTC) program involves such regulatory agreements and is federally funded, LIHTC properties were initially exempt from the TPA’s rent cap. Effective January 1, 2025, rent increases for a LIHTC unit cannot exceed 5% plus inflation or 10%, whichever is lower, during any 12-month period.³⁸¹ This limit is the same as the rent increase limit under the TPA, and the LIHTC regulations expressly incorporate Civil Code Section 1947.12 from the TPA when establishing that cap.³⁸²

Although the cap is the same as the TPA’s cap, the LIHTC regulations do not contain all of the TPA’s limitations and exemptions. For example, the LIHTC rent cap applies no matter how long (or short) a tenant has occupied their unit. Beginning in June 2026, the California Tax Credit Allocation Committee’s Executive Director must annually assess the rent cap and may recommend an adjustment.³⁸³ However, adjusting the rent cap will involve a regulation change, which will require a public hearing on the proposed regulation with the opportunity for public comment.³⁸⁴ The LIHTC rent cap applies to all LIHTC units, irrespective of whether the tenant is paying the maximum LIHTC rent or not. However, advocates should be familiar with the LIHTC regulations because there are exceptions to the LIHTC rent cap and specific notice requirements.³⁸⁵

In California, a landlord may not initiate an eviction based on a tenant’s or occupant’s immigration or citizenship status, or that of an associated person, when the unit does not have a federal subsidy attached.³⁸⁶ Additionally, private landlords may not evict tenants who use Housing Choice (Section 8) vouchers based on their immigration status as a tenant with a Section 8 voucher has already been deemed eligible by the public housing authority under

³⁷⁹ *Id.* § 8.4.

³⁸⁰ CAL. CIV. CODE § 1947.12(d)(1).

³⁸¹ CAL. CODE REGS. tit. 4 § 10336(a)(1).

³⁸² *Id.*

³⁸³ CAL. CODE REGS. tit. 4 § 10336(a)(4).

³⁸⁴ CAL. GOV. CODE § 11342.300.

³⁸⁵ CAL. CODE REGS. tit. 4 § 10336(a)(1)-(3).

³⁸⁶ CAL. CIV. CODE § 1161.4(a), (b).

federal immigration status requirements.³⁸⁷

³⁸⁷ 24 C.F.R. § 982.201(a).

CHAPTER 10

CONCLUSION

Low-income immigrants face difficult challenges—poverty, language and cultural differences, and discrimination. They often desperately need access to affordable housing, but may be afraid to seek housing for fear of discrimination or immigration repercussions. This handbook was written to help you to assist such households. It is intended to provide a path through the labyrinth of immigration verification processes applicable to affordable housing programs. It is our hope that it will aid you in providing fair and prompt service to affordable housing tenants and applicants, regardless of their immigration status, and that it will prevent the unnecessary exclusion of immigrant households from the housing resources to which they are entitled.

APPENDICES

APPENDIX A

SUMMARY CHART OF IMMIGRANT ELIGIBILITY FOR HOUSING PROGRAMS

I. Federally Assisted Housing and Immigrant Eligibility

A. HUD Programs Covered by Section 214 of the Housing and Community Development Act of 1980

- Public Housing
- Section 8 Vouchers (including Project-based Vouchers)
- Project-Based Section 8
- Section 236 Housing, with or without Rent Supplements (low-income units only)
- Section 235 Homeownership housing
- Housing Development Grants (HoDAG) (low-income units only)
- Section 23 Leased Housing Assistance Program

1. Eligible Immigrants

- U.S. Citizens and Nationals
- Lawful Permanent Residents (LPR)
- VAWA Self-Petitioners
- Asylees and Refugees
- Parolees
- Persons Granted Withholding of Removal/Deportation
- Qualified Victims of Trafficking
- Persons granted parole for emergent or public interest reasons
- Persons granted amnesty under the Immigration Reform and Control Act of 1986
- Immigrants eligible for registry who entered the U.S. before January 1, 1972
- Persons residing in the U.S. under the Compacts of Free Association with the Marshall Islands, Micronesia, and Palau
- Guam³⁸⁸
- Immigrants admitted for lawful temporary residence prior to January 1, 1982

³⁸⁸ People born in Guam are generally U.S. citizens. Within Guam only, any U.S. citizen or national has a preference or priority to receive financial assistance before any alien who is otherwise eligible for the assistance. 24 C.F.R. § 5.506(c).

B. Rural Development (RD) Programs Covered by Section 214

- Rental housing units in Section 515 and Section 514/516 development that are receiving RD Rental Assistance³⁸⁹
- Section 514 Farm Labor Housing
- Section 502 Direct Homeownership Loan Program
- Section 504 Minor Rehabilitation Loan and Grant Programs for Single Family Homes
- RD Voucher Program

1. Eligible Immigrants

- Section 514/516: Lessee (but not household) must be U.S. Citizen or LPR³⁹⁰
- Section 502/504: Persons responsible for paying the loan must be U.S. Citizen or Section 214 eligible immigrant
- RD Voucher: Section 214 eligible immigrants

C. Programs Unrestricted by Section 214 (non-comprehensive list)

- Low Income Housing Tax Credit
- Section 202
- Section 811
- Section 221(d)(3) and (5)
- CDBG
- HOME
- HOPWA
- Indian Housing
- Rental Rehabilitation
- McKinney-Vento/HEARTH Act Programs³⁹¹
- HOPE 2
- Rural Housing Preservation Grants
- Section 515 Rural Rental Housing Program
- Section 538 Multifamily Loan Guarantees

³⁸⁹ RD regulations improperly extend restriction to all occupants of Section 515 Rental Housing. However, RD has indefinitely postponed the application of this requirement. 7 C.F.R. § 3560.152 note.

³⁹⁰ RD takes position that Sections 514 and 516 are more restrictive than Section 214. There is no proration of rents.

³⁹¹ This does not include the Section 8 Moderate Rehabilitation SRO Program, which is covered by Section 214.

APPENDIX B:
**LIST OF KEY STATUTES AND REGULATIONS RELATING TO IMMIGRANTS &
HOUSING**

I. Federal Statutes

- Restriction on Use of Assisted Housing, Housing and Community Development Act of 1980, Pub. L. No. 96-399, § 214, 94 Stat. 1614, 1637 (1980) (codified as amended at 42 U.S.C. § 1436a).
- Use of Assisted Housing by Aliens Act of 1996, Pub. L. No. 104-208, §§ 571-577, 110 Stat. 3009, 3009-684-688 (1996) (amending Section 214).
- Quality Housing and Work Responsibility Act of 1998 (QHWRA), Pub. L. No. 105-276, § 592, 112 Stat. 2461, 2518 (1998).
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, “Welfare Act”), H.R. 3734, Pub. L. No. 104-193, §§ 400-451, 110 Stat. 2105, 2260-77 (1996), *amended by* Balanced Budget Act of 1997, Pub. L. No. 105-33, §§ 5564, 5572, 111 Stat. 251, 639, 641 (1997) *and* Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, § 504, 110 Stat. 3009, 3009-672 (1996) (codified as amended at 8 U.S.C. §§ 1601 *et seq.*).
- Immigration & Nationality Act, Pub. L. No. 82-414, § 274(a), 66 Stat. 163 (1952) (codified at 8 U.S.C. §§ 1101 *et seq.*).
- Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359 (1986) (codified at 8 U.S.C. § 1101 *et seq.* (especially § 1255a)).
- Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, 1996 Immigration Act), Pub. L. No. 104-208, 110 Stat. 3009 (1996) (codified at 8 U.S.C. §§ 1101 *et seq.*).
- Violence Against Women Act of 1994 (Protections for Battered Immigrant Women and Children), Pub. L. No. 103-322, §§ 40701-705, 108 Stat. 1953-55 (1994).
- Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251(1997).
- 1997 Amendments to federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), Pub. L. No. 105-117, 111 Stat. 2384 (1997) (amending 42 U.S.C. §§ 4601, *et seq.*, and § 4605 (particularly § 4601(6)(B) and § 4633(a))).
- H.R. Rep. No. 108-10 (2003) (accompanying H.J. Res. 2, Consolidated Appropriations

Resolutions, 2003, 476, 1495 Pub. L. No. 108-7, 117 Stat. 11 (2003).

- Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000).
- Immigrant Restrictions on the RD Section 514 and Section 516 Programs: Sections 514 and 516 of the Housing Act of 1949 (codified at 42 U.S.C. §§ 1484 (f)(3)(A) (for Section 514) and 1486(g)(4) (for Section 516) (cross referencing the Section 514 restrictions); Rental Assistance through Section 521, 42 U.S.C. § 1490a).
- Application of Section 214 to RD Programs: 42 U.S.C. § 1471(h).

II. Federal Regulations/Directives/Notices/Handbooks

A. Department of Justice/USCIS

- Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 61 Fed. Reg. 45985 (Aug. 30, 1996).
- Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344 (Nov. 17, 1997).
- Notice of Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits, and Recission of Prior Order, 62 Fed. Reg. 65285 (Dec. 11, 1997).
- Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689 (May 26, 1999).
- Policy Guidance Document: Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons With Limited English Proficiency (LEP Guidance), 65 Fed. Reg. 50123 (Aug. 16, 2000).
- Improving Access to Services for Persons With Limited English Proficiency, Part IV, Exec. Order No. 13166, 65 Fed. Reg. 50121 (Aug. 11, 2000).
- DOJ, Revised Specification Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 90 Fed. Reg. 32,023 (July 16, 2025).

B. Department of Housing and Urban Development (HUD)

- Restrictions on Assistance to Noncitizens, 24 C.F.R. §§ 5.500-5.528 (2025)
- Rule on Restrictions on Assistance to Noncitizens, 60 Fed. Reg. 14815 (Mar. 20, 1995) (earlier rule, now superseded).
- Consolidation and Streamlining of the Restrictions on Assistance to Noncitizens; 61 Fed. Reg. 13614 (Mar. 27, 1996).
- Interim Rule, Revised Restrictions on Assistance to Noncitizens, 61 Fed. Reg. 60535 (Nov. 29, 1996)
- Section 8 Certificate and Voucher Programs Conforming Rule 63 Fed. Reg. 23826, 23853 (Apr. 30, 1998) (revising Restrictions on Assistance to Noncitizens)
- Section 8 Certificate and Voucher Programs Conforming Rule; Technical Amendment, 64 Fed. Reg. 13056 (Mar. 16, 1999) (revising Restrictions on Assistance to Noncitizens).
- Revised Restrictions on Assistance to Noncitizens; 64 Fed. Reg. 25726 (May 12, 1999).
- HUD, H 95-55, Procedures for Implementing Section 214, (June 16, 1995).
- HUD, 7465.7G, RESTRICTIONS ON ASSISTANCE TO NONCITIZENS (July 1995) (superseded).
- HUD, H 95-68, Revisions to Notice H 95-55, (Aug. 3, 1995).
- HUD, FHEO 95-6, Fair Housing Issues in Noncitizen Rule, (Nov. 30, 1995).
- Initial Guidance on QHWRA, 64 Fed. Reg. 8192 (Feb. 18, 1999).
- HUD, Guidance on Definition of “Public Charge” in Immigration Laws, H 99-20 (July 22, 1999).
- Eligibility Restrictions on Noncitizens: Inapplicability of Welfare Reform Act Restrictions on Federal Means-Tested Public Benefits, 65 Fed. Reg. 49994 (Aug. 16, 2000).
- HUD Draft Policy Guidance: Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency, 66 Fed. Reg. 7702 (Jan. 20, 2001) (withdrawn from publication by order of President Bush, January 2001, FR-4648-N-01, Memorandum for the Heads and Acting Heads of Executive Departments and Agencies, from Andrew H. Card, Jr. Assistant to the President and Chief of Staff).

- HUD Handbook No. 4350.3, OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, through REV-1, CHG-4 (revised Nov. 27, 2013).
- **Note:** HUD Handbook 4350.3 covers the following multifamily housing programs: Section 221(d)(3) Below-Market Interest Rate (Section 221(d)(3) BMIR), Section 236 Rental Assistance Payment (RAP), Rent Supplement, Section 8 Project-Based Assistance (with the notable exception of Section 8 Moderate Rehabilitation), Section 202 with 162 Assistance – Project Assistance Contracts (Section 202 PACs), Section 202 with Project Rental Assistance Contracts (Section 202 PRACs), Section 202 without Assistance (Income Limits Only) and Section 811 with Project Rental Assistance Contracts (Section 811 PRACs). HUD HANDBOOK 4350.3 at fig. 1-1. However, not all of these programs are subject to restrictions on assistance to non-U.S. citizens. HUD HANDBOOK 4350.3 at § 3-12.F.
- HUD, Public Housing Occupancy Guidebook (Jan. 2025 (most recent update to a chapter)).
- Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs, 74 Fed. Reg. 483232 (Jan. 27, 2009). Implementation delayed: 74 Fed. Reg. 442859 (Aug. 28, 2009).
- Department of Housing & Urban Development, Department of Health and Human Services, and Department of Justice, Joint Letter Regarding Immigrant Access to Housing and Services (Aug. 5, 2016), <https://niwaplibrary.wcl.american.edu/pubs/hud-hhs-doj-letter-regarding-immigrant-access-housing-services/>.
- HUD Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit”, 90 Fed. Reg. 54,363 (Nov. 26, 2025).
- Letter from Andrew Cuomo, Secretary of HUD, to HUD Funds recipients (Jan. 19, 2001), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/pdf/PB-Gov-MemoHUDTransitionalHousing-01.19.01.pdf>.

C. Rural Development (RD) (Formerly Farmers Home Administration (FmHA))

- 7 C.F.R. §§ 3560.1 – 3560.800 (2025) (Rules Governing RD Direct Multi-Family Housing Loans and Grants (covers Section 515 Rental Housing and Section 514 and 516 Farm Labor Housing (subparts L and M)). Occupancy requirements, which include immigration status, are set out in Subpart D.

- 7 C.F.R. §§ 3550.51-3550.100 (Section 502 and Section 504 Program Regulations).
- Reinvention of the Sections 514, 515, 516, and 521, 70 Fed. Reg. 8503 (Feb. 22, 2005) (RD Notice delaying effect of immigration status eligibility requirements with respect to Section 515 program).
- RD Voucher Program, 82 Fed. Reg. 21972 (May 11, 2017).
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,” 90 Fed. Reg. 30621 (July 10, 2025).
- RD, HB 2-3560, MFH Asset Management Handbook (2024).
- RD, HB-1-3550, Direct Single Family Housing Loans and Grants Handbook, (2022) (governing Section 502 and 504 loan programs).
- USDA, Rural Development Voucher Program Guide, (September 2010).
- *See also* Joint HHS/USDA memos at II.G.9, below.

D. Department of Transportation (DOT)

- Uniform Relocation Assistance and-Real Property Acquisition Regulations for Federal and Federally Assisted Programs, 49 C.F. R. §§ 24 .1 – 24.603 (2025) (70 Fed. Reg. 590, 611 (Jan. 4, 2005)). 49 C.F.R. §§ 24.2 (definition), 24.203 (notices) and 24.208 (immigrant restrictions).
- **Note:** Department of Transportation (DOT) is the lead agency for rulemaking for relocation benefits. Its regulations on undocumented persons are codified at 49 C.F.R. § 24.208 (2025). Related and cross-referenced Uniform Relocation Act regulations are promulgated by all federal agencies. For example, HUD’s relocation regulations for the Community Development Block Grant Program are at 24 C.F.R. § 570.606, which incorporate the DOT regulations but do not specifically exclude ineligible immigrants.
- HUD Relocations regulations, 24 C.F.R. § 570.606 (2025)

E. Department of Health and Human Services/Department of Energy (HHS/DOE)

- Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (PRWORA), Interpretation of "Federal Means-Tested Public Benefit," 62 Fed. Reg. 45256 (Aug. 26,

1997) (Federal means-tested benefit restrictions do not apply to any HHS programs other than Medicaid and TANF, and therefore do not apply to weatherization or CSBG programs).

- Low-Income Home Energy Assistance (LIHEAP) Information Memorandum LIHEAP-IM-97-25 (Aug. 28, 1997) (current as of June 11, 2019) (LIHEAP Program does not provide federal means-tested public benefits).
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Interpretation of “Federal Public Benefit,” Notice with Comment Period, 63 Fed. Reg. 41658 (Aug. 4, 1998) (defines which HHS programs are federal public benefits subject to verification of immigration status. LIHEAP benefits to single family units are covered but not funds for weatherization of multi-unit buildings. Community Services Block Grants are not listed among covered programs).
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,” 90 Fed. Reg. 31232 (July 14, 2025).
- Low-Income Home Energy Assistance (LIHEAP) Guidance on the Interpretation of “Federal Public Benefits” Under the Welfare Reform Law, Information Memorandum, Transmittal No. LIHEAP-IM-98-25 (Aug. 6, 1998) (immigration restrictions do not apply to weatherization program used in certain multi-family buildings; nonprofit charitable providers are not required to verify benefits); LIHEAP IM HHS Guidance on the Use of Social Security Numbers (SSNs) and Citizenship Status Verification (Dec. 12, 2014).
- Community Services Block Grant Program, Information Memorandum, Transmittal No. 30 to State Community Services Block Grant Program Administrators (Sept. 30, 1998) (“Guidance on the Interpretation of ‘Federal Public Benefit’ Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. No. 104-193”) (CSBG Program does not provide federal public benefits and no verification of immigration status is required).
- Low-Income Home Energy Assistance (LIHEAP Revision - Guidance on the Interpretation of “Federal Public Benefits” Under the Welfare Reform Law LIHEAP-IM-99-10 (June 15, 1999) (immigration restrictions do not apply to weatherization program used in any multifamily buildings).
- HHS/USDA Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children’s Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF) and Food Stamp Benefits, Issued to State Health and Welfare Officials (last revised Mar. 25, 2006) (including related Questions and Answers, Sample Notice to Applicants and Chart).
- Letter from Sally K. Richardson, Director of Center for Medicaid and State Operations, Dep’t of Health and Human Services, to State Medicaid Directors (Dec. 17, 1997)

(concluding that state Medicaid agencies are not authorized to provide information about receipt of benefits or amount of benefits to the INS).

F. Legal Services Corporation (LSC)

- Legal Services Corporation (LSC) Act, Pub. L. No. 93-55,, Title X, § 1001, 88 Stat. 378 (1974) (amending Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 508) (codified as amended at 42 USC §§ 2996 *et seq*) 45 C.F.R. pt 1626 (2025).
- Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 504(a)(11), 110 Stat. 1321, 1321-54-55 (1996) (expanding restrictions on legal assistance to aliens).
- Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, § 502(2)(c), 110 Stat. 3009, 3009-60 (1996) (amending the § 504(a)(11) restriction in the 1996 Appropriations Act to permit recipients to use non-LSC funds to serve indigent aliens who are victims of domestic abuse on matters directly related to the abuse (“Kennedy Amendment”). The Kennedy Amendment became effective on October 1, 1996.).
- Interim Rule, Restrictions On Legal Assistance to Aliens, 61 Fed. Reg. 45750 (Aug. 29, 1996).
- Restrictions on Legal Assistance to Aliens, 62 Fed. Reg. 19409 (Apr. 21, 1997) (Final Rule effective May 21, 1997. Interim Provisions §§ 1626.2(f) & (g) and § 1626.4 are effective April 21, 1997.).
- CHRISTOPHER BUERGER, WHAT CAN AND CANNOT BE DONE: REPRESENTATION OF CLIENTS BY LSC-FUNDED PROGRAMS (2018), available at <https://www.nlada.org/sites/default/files/What%20Can%20and%20Cannot%20Be%20Done%20Updated%20July%202018.pdf>

G. Federal Emergency Management Agency (FEMA)

- FEMA Policy 104-009-03, Individual Assistance Program and Policy Guide (IAPPG) (Version 1.1) (May 2021) (discusses eligibility for each of FEMA’s Individual Assistance programs).
- FEMA Policy 104-21-0008, Transitional Sheltering Assistance (July 26, 2021).
- Memorandum from Frank Matranga, Dir. Individual Assistance Division, FEMA, Compact of Free Association Citizen Eligibility for the Individuals and Households Program and Amendment to FP 104-009-03, Individual Assistance Program and Policy Guide, Version 1.1 (April 6, 2024) (expanding FEMA disaster assistance eligibility to

citizens of Micronesia, Marshall Islands and Palau).

- FEMA Fact Sheet, Qualifying for Disaster Assistance – Citizenship and Immigration Status Requirements (last updated Aug. 12, 2025).

III. STATE OF CALIFORNIA REGULATIONS AND NOTICES

A. Executive Orders/Legal Opinions

- Exec. Order No. W-135-96 (ordering state agencies to adopt immigration restrictions pursuant to PRWORA) (Aug. 27, 1996) (with implementing memoranda and responses).

B. California Housing Finance Agency (CalHFA)

- CHFA Restrictions on Agency Public Benefits to Aliens, CAL. CODE REGS. tit. 25, §§ 12001-12108 (2026).

C. California Housing and Community Development Department (HCD)

- HCD Applicant Verification Requirements, CAL. CODE REGS. tit. 25, §§ 6935-6939.4 (currently enjoined by Court order) (2025).
- *Mercy Charities Housing California, et al. v. Department of Housing and Community Development*, No. 305541 (Cal. Sup. Ct., San Francisco, filed May 5, 2000) (Order Granting Peremptory Writ of Mandate and Writ of Mandate (Ninth Cause of Action) (Enjoining HCD Regulations).
- Qualification for Public Benefits, CAL. CODE REGS. tit. 25, §§ 5802-5820 (restricting certain immigrant access to employee housing permits, mobilehome park operating permits, factory-built housing certifications, manufactured housing certifications, and other licenses; not directly covered by the Writ of Mandate in *Mercy v. HCD*).

D. California Department of Community Services and Development (DSCD)

- Applicant Verification Regulations: Verification for Public Benefits for Noncitizens Under the Low-Income Home Energy Assistance Program and the Department of Energy Weatherization Assistance Program for Low-Income Persons, CAL. CODE REGS. tit. 22,

§ 100900.

- Nonprofit Housing Association of Northern California (NPH) et al, v. Micciche, No. 999554 (Cal. Sup. Ct., San Francisco, filed Nov. 30, 1998) (challenging legality of immigration restrictions in State of California weatherization and lead paint programs, pending) (settlement agreement approved by court and filed Apr. 5, 2001).

E. Franchise Tax Board

- Limitations on Homeowners and Renters Property Tax Assistance, Cal. Code Regs. tit. 18, § 20561 (2026).

F. California Department of Transportation

- Non-Emergency Relocation Assistance Benefits for Persons Who are Not Qualified Aliens, Nonimmigrant Aliens, or Aliens Paroled into the United States Under Section 212(d)(5) of the Immigration and Nationality Act (Aug. 1997) (never adopted).

IV. CASES

- *Mercy Charities Hous. Cal., et al. v. Dep't of Hous. & Community Dev.*, No. 305541 (Cal. Sup. Ct., San Francisco, Order Granting Peremptory Writ of Mandate and Writ of Mandate (Ninth Cause of Action) filed May 5, 2000).
- *Nonprofit Housing Association of Northern California (NHP) et al. v. Micciche*, No. 999554 (Cal. Sup. Ct., San Francisco, Settlement Agreement Approved by Court and filed Apr. 5, 2001).
- *Yolano Donnelly Tenant Assoc. v. Pierce*, No. CIV S 86-0846 MLS (E.D. Cal. Sept. 18, 1986).

APPENDIX C
PRORATION CALCULATION RULES FOR SPECIFIC HUD PROGRAMS COVERED
BY SECTION 214

APPENDIX C-1: PUBLIC HOUSING PROGRAM PRORATION
FORMULA

(24 C.F.R. § 5.520(d))

The Public Housing Authority (PHA) does the following calculations to figure out the rent of a mixed household in a public housing program.³⁹²

Step 1. The PHA figures out what the total tenant rent would normally be if all household members were eligible.³⁹³ The PHA counts the income paid to all household members, whether or not they are eligible household members (citizens or eligible household members), and calculates the rent based on that income. This is called the “total tenant payment.”

Step 2. The PHA subtracts the “total tenant payment” from the “public housing maximum rent” for the housing unit. (HUD sets the “maximum rent” using the 95th percentile rent for the PHA). The “maximum rent” minus the “total tenant payment” is the “family maximum subsidy,” which is the maximum subsidy for which the household could qualify if all members were eligible.

Step 3. The PHA divides the “family maximum subsidy” by the total number of persons in the household. All household members are counted, whether or not they are eligible members. This gives the PHA the maximum subsidy for each household member. The subsidy per household member is the “member maximum subsidy.” Although all household members are counted in determining the amount of the “member maximum subsidy,” only eligible members are entitled to actually receive the “member maximum subsidy.”

Step 4. The PHA multiplies the “member maximum subsidy” by the number of eligible household members (household members who have citizenship or eligible immigration status). This gives the PHA the total amount of subsidy for which the household is eligible, called the “eligible subsidy.”

Step 5. The PHA subtracts the “eligible subsidy” from the “public housing maximum rent” (the amount given to the PHA by HUD and used in Step 2.) The result is the amount of rent the household pays.

EXAMPLE

The Garcia household consists of Juan, a lawful permanent resident with disabilities; his wife Maria, and their minor sons Jose and Francisco. Francisco is a U.S. citizen. The household has chosen not to disclose the immigrant status of Jose and Maria, and therefore they are not “eligible” household members. Juan receives SSI of \$600, Maria earns \$250 from a part-time

³⁹² 24 C.F.R. § 5.520(d) (2025).

³⁹³ 24 C.F.R. § 960.253(c)(3) (2025) (how PHA determines the total rent (total tenant payment, or TTP)); *see also* 24 C.F.R. § 5.628 (2025).

job, and the household receives \$200 per month in TANF for Francisco. The total household income is \$1,050 per month.

Step 1: Based on a household income of \$1,050 per month and with all usual deductions for child care and health expenses, the PHA calculates that the household's normal monthly rent (“tenant payment”) would be \$300 if all household members were eligible.

Step 2: HUD has told the PHA that the “public housing maximum rent” for the 2-bedroom unit that the Garcias are applying for would be \$780. The PHA subtracts the \$300 “total tenant payment:” from the \$780 “public housing maximum rent” and calculates that \$480 is the “household maximum subsidy.”

Step 3: The PHA divides the \$480 “family maximum subsidy” by 4, the total number of people in the Garcia household. This results in a "family member maximum subsidy" of \$120 per person.

Step 4: The PHA multiplies the \$120 “member maximum subsidy” by 2, the number of eligible household members (Juan and Francisco). The result is \$240. This is the “eligible subsidy”, the total amount of subsidy for which the Garcia household is eligible.

Step 5: The PHA deducts the \$240 “eligible subsidy” from the \$780 “public housing maximum rent.” The result, \$540, is the amount of the rent the Garcia household must pay. This is significantly higher than the amount they would pay if all household members were eligible, but it is still much less than they would pay in the private market.

APPENDIX C-2: PRORATION FORMULA FOR HOUSING CHOICE 8 VOUCHERS

(24 C.F.R. § 5.520(c)(2))

Under the Housing Choice Voucher Program, landlords can charge and tenants can pay rents in excess of the Fair Market Rents (FMR’s). Prorated subsidies for Vouchers are calculated as follows:

Step 1. The PHA figures out 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. The PHA establishes a fraction, the numerator (the top number) of which is the number of household members who have established eligible immigration status and the denominator is the total number of household members. The fraction looks like this:

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

Step 3. The PHA multiplies the amount in Step 1 by the fraction in Step 2. This amount is the “prorated housing assistance.” This is the amount of rent the PHA will pay to the landlord. The

tenant household pays the rest of the contract rent plus utilities.

IMPORTANT NOTE

With Vouchers, the proration has no effect on the contract rent (the total amount paid to the landlord from the tenant’s payment and the PHA’s payment combined. Proration means the PHA pays less of the contract amount to the landlord and the tenant household pays more of the contract rent to the landlord.

EXAMPLE

The PHA provides the Putin household a Voucher. Mr. Putin and two of the children are citizens and therefore eligible. Ms. Putin and the third son choose not to declare their status, and therefore they are not “eligible” household members. The total household income is \$1,450 per month, based on the income of both Mr. and Ms. Putin.

The Putins locate a two-bedroom apartment where the monthly rent is \$820. This is just above the \$780 Fair Market Rent (FMR) for their jurisdiction, but the Putins like it because it has a little study which can actually be a nursery for the baby. The PHA determines that the apartment meets habitability standards. Therefore, the PHA agrees that the Putins can use their Section 8 Voucher in this apartment. The Putins will have to pay utility bills. The utility allowance for this apartment, based on HUD standards, is \$50 per month. Therefore the “gross rent” for the apartment is \$870 (\$820 rent plus \$50 tenant-paid utilities).

Step 1: The Putin’s household income is \$1,450 per month, but there are \$50 per month in deductions for child care and health care expenses, leaving an adjusted household income of \$1400 per month. Based on an income of \$1,400 per month, the PHA calculates that the amount of the Housing Assistance Payment (the amount that the PHA pays to the landlord) would be \$410 if all household members were eligible.

Step 2: The PHA applies the household configuration to the fraction:

$$\frac{\text{Eligible Household Members} = 3}{\text{Total Number of Household Members } 5}$$

Step 3: The PHA multiplies 3/5 by the \$410 HAP from Step 1, and gets \$246. This amount is the “prorated Housing Assistance Payment.” This is the amount of rent the PHA will pay to the landlord. The Putin household will pay \$574, the balance of the \$820 rent, to the landlord. They will also pay the utilities of \$50. Note that the amount of rent the landlord gets (\$820) is the same regardless of the proration. If the Putin household members were all eligible, they would only pay \$410 for their share of the rent, plus the \$50 utilities.

APPENDIX C-3: PRORATION FORMULA FOR SECTION 236 PROGRAM WITHOUT ADDITIONAL ASSISTANCE

(24 C.F.R. § 5.520(b)(3))

Some apartments owned and operated by private landlords, including nonprofit owners, received funding from HUD under the Section 236 program. In these apartments, HUD gave the developer some financial assistance to build the units. In return, HUD sets a limit on the amount of rent that can be charged. In these Section 236 buildings, there are usually three kinds of rents: “Market rents;” “below-market rents;” and “basic rents.” “Market rents” are the highest rent HUD will let the landlord charge for an apartment, regardless of the income of the tenant. “Basic rents” are the minimum rent that is charged for households who qualify, based on household income. In between “market rents” and “basic rents” are “below-market rents.” “Below-market rents” are set, based on household income, at the higher of 30% of income or “basic rent,” provided the rent does not exceed “market rent.” “Basic rents” and “below-market rents” are only available to households who qualify based on their income.

In Section 236 buildings, tenants apply directly to the owner of the building for an apartment, and a PHA is not involved. At the time the tenant household is admitted, it is told whether they will pay “market rent,” “below-market rent,” or “basic rent.” The amount and category of rent may change with every certification, depending on the tenant household’s income at that time.

In a Section 236 building, the landlord (the owner or manager) figures out the amount of prorated rent as follows.³⁹⁴

Step 1. The landlord figures out the amount that the tenant household would normally pay if all household members were eligible household members, using the income paid to all household members.

Step 2. The landlord subtracts the amount of rent the tenant household would normally pay from the “market rent” for the unit, as restricted by HUD.

Step 3. The landlord establishes a fraction, the numerator (the top number) of which is the number of **ineligible** persons in the household. (This is a different fraction than the PHA uses for Section 8 and public housing.) The denominator (the bottom number) is the total number of household members. The fraction looks like this:

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

Step 5. The landlord multiplies the amount in Step 2 by the fraction in Step 3.

Step 6. The landlord adds the amount in Step 5 to the amount in Step 1 (the amount the tenant would pay if everyone were eligible). The combined amount of Step 5 and Step 1 is the amount of rent the household pays to the landlord.

EXAMPLE

The Garcia household decides to move into a nice two-bedroom apartment in a Section 236 building which is close to the children's school. The Garcia household consists of Juan, a lawful permanent resident with disabilities; his wife Maria, and their minor sons Jose and Francisco.

³⁹⁴ *Id.* § 5.520(b)(3). See also HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.P.3. and ex. 3-13.

Francisco is a U.S. citizen. The household has chosen not to disclose the immigrant status of Jose and Maria, and therefore they are not “eligible” household members. Juan receives Supplemental Security Income (SSI) of \$600, Maria earns \$250 from a part-time job, and the household receives \$200 per month in TANF for Francisco. The total household income is \$1,050 per month.

Step 1: The Section 236 landlord figures out that the Garcias, if they were all eligible, would pay a subsidized rent of \$450 per month, based on the Garcias’ combined household income of \$1,050 per month.

Step 2. HUD has determined that the most the landlord can charge for a two-bedroom unit in the building is \$700 per month. This is the “market rent.” The landlord subtracts \$450, the amount of rent the Garcias would have normally have paid, from the “market rent” of \$700 per month. The result is \$250 per month.

Step 3. The landlord figures out a fraction:

$$\frac{\text{Ineligible Household Members} = 2}{\text{Total Number of Household Members} 4}$$

Step 4. The landlord multiplies \$250, the amount in Step 2 by 2/4, the fraction in Step 3. The result is \$125.

Step 5. The landlord adds \$125, the amount in Step 4, to \$450, the amount in Step 1 (the amount the household would pay if everyone were eligible.) The total is \$575. This is the amount of rent the household pays to the landlord.

**APPENDIX C-4: PRORATION FORMULA FOR SECTION 236
PROGRAM WITH ADDITIONAL ASSISTANCE
(24 C.F.R. § 5.520(b)(4))**

In some Section 236 apartments (see above), HUD gives the owners “additional assistance” to help make rents lower. The additional assistance consists of a rent supplement, rental assistance payment or Section 8 subsidy for some or all of the units in the building. This additional subsidy is in addition to the financial assistance HUD gave the owner to build the units. In these Section 236 buildings with additional assistance, there are several kinds of rents: Market rents; below-market rents based on income; basic rents (minimum rents without additional subsidies); and the Section 8 units or units with additional assistance, (where rent is generally based on a percentage of the tenant's income).

Market rents are the highest rent HUD will let the landlord charge for an apartment, regardless of the income of the tenant. Basic rents are the minimum rent that is charged for households who qualify. In between market rents and basic rents are below-market rents. Below-market rents are set, based on household income, at the higher of 30% of income or basic rent. If 30% of household income exceeds the market rent, the rent is capped at the market rent. Section 8 rents, or rents in units with additional assistance, are set at 30% of the household’s income. Basic rents,

below-market rents, and Section 8 rents are only available to households who qualify based on their income.

Just as in other Section 236 buildings, tenants apply directly to the building owner or manager for an apartment, and the PHA is not involved. At the time the tenant household is admitted, they are told whether they will pay market rent, basic, or rent subsidized with additional assistance (Section 8, rent supplement, or rental assistance). The amount and category of rent may change with every certification, depending on the tenant household's income at that time.

In a Section 236 building with additional assistance, the landlord (the owner or manager) figures out the amount of prorated rent as follows:³⁹⁵

Step 1. The landlord figures out the amount that the tenant household would normally pay for the unit with additional assistance if all household members were eligible household members, using the income paid to all household members.

Step 2. The landlord figures out the difference between the market rent (the highest rent HUD allows) and the basic rent (the minimum below-market rent charged for the lower income units without any additional subsidy). Effectively, this provides the landlord with the maximum subsidy that may be extended in that unit.

Step 3. The landlord establishes a fraction in which the numerator (the top number) is the number of ineligible persons in the household. (This is a different fraction than the PHA uses for Section 8 and public housing). The denominator (the bottom number) of the fraction is the total number of household members. The fraction looks like this:

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

Step 4. The landlord multiplies the number in Step 2 (the difference between the market rent and the basic rent) times the fraction from Step 3.

Step 5. Next, the landlord figures out the amount of the rent supplement, housing assistance payment or rental assistance payment the household would be entitled to receive if all household members were eligible.

Step 6. The landlord multiplies the number in Step 5 (the usual supplemental assistance) by the same fraction from Step 3.

Step 7. The landlord adds the amounts in Step 1, 4, and 6. The combined amount of Steps 1, 4, and 6 is the amount of rent the household pays to the landlord, before including any available subsidy.

EXAMPLE

The landlord for the Garcia household tells them that a rent subsidy is now available for their 2-

³⁹⁵ 24 C.F.R. § 5.520(b)(4) (2025). See also HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.P.4 and ex. 3-14.

bedroom apartment in the Section 236 building. Their rent will now need to be recalculated to account for the subsidy. The Garcia household consists of Juan, a lawful permanent resident with disabilities; his wife Maria, and their minor sons Jose and Francisco. Francisco is a U.S. citizen. The household has chosen not to disclose the immigrant status of Jose and Maria, and therefore they are not “eligible” household members. Juan receives SSI of \$600, Maria earns \$250 from a part-time job, and the household receives \$200 per month in TANF for Francisco. The total household income is \$1,050 per month.

Step 1: The Section 236 landlord figures out that the Garcias, if they were all eligible, would pay \$250 per month rent for the unit with additional assistance, based on the Garcias’ combined household income of \$1,050 per month.

Step 2. HUD has determined that the most the landlord can charge for a 2-bedroom unit in the building is \$700 per month. This is the market rent. The basic rent, or the minimum charged for a unit without additional subsidies, is \$400 per month. The landlord subtracts the \$400 basic rent from the \$700 market rent and comes up with \$300.

Step 3. The landlord figures out a fraction:

$$\frac{\text{Ineligible Household Members} = 2}{\text{Total Number of Household Members} 4}$$

Step 4. The landlord multiplies \$300, the amount in Step 2 by 2/4, the fraction in Step 3. The result is \$150.

Step 5. Next, the landlord figures out that the amount of the rent supplement, housing assistance payment or rental assistance payment the Garcia household would be entitled to receive if all household members were eligible is \$150.

Step 6. The landlord multiplies the number in Step 5 (the usual supplemental assistance) by the same fraction from Step 3. For the Garcias, the result is \$150 times 2/4, or \$75.

Step 7. The landlord adds the results in Steps 1, 4, and 6: \$250 + \$150 + \$75. The total is \$475.00. The combined amount of Steps 1, 4, and 6 is the amount of rent due. (This represents the rent before proration, plus a prorated amount of both the subsidies in the unit.)

**APPENDIX C-5: PRORATION FORMULA FOR UNITS WITH
ASSISTANCE UNDER THE RENT SUPPLEMENT PROGRAM
(24 C.F.R. § 5.520(b)(1))**

The Rent Supplement Program provides additional rental supplements to lower income tenants living in buildings that already participate in a HUD Program, such as Section 236, but in which rents are not low enough to provide significant help to very low-income persons. A landlord in a HUD program would calculate the amount of the Rent Supplement subsidy to which the

household is entitled as follows:³⁹⁶

Step 1. The landlord calculates the rent supplement to which the household would otherwise be entitled if all household members were eligible.

Step 2. The landlord calculates a fraction the numerator (the top number) of which is the number of household members who have established eligible immigration status. The denominator is the total number of household members. The fraction looks like this:

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

Step 3. The landlord multiplies the amount of subsidy from Step 1 by the fraction in Step 2.

Step 4. The result is the amount of subsidy to which the household is entitled. This subsidy is deducted from the rent the household pays, and is paid by HUD to the landlord.

EXAMPLE

The Garcia household from the previous problem is now getting a Section 236 unit that has Rent Supplement attached. The landlord must calculate the amount of the Garcias' Rent Supplement as follows:

Step 1: The landlord calculates that the amount of the Rent Supplement the Garcia household would be entitled to receive if all household members were eligible, which is \$450.

Step 2: The landlord establishes the fraction:

$$\frac{\text{Eligible Household Members} = 2}{\text{Total Number of Household Members} 4}$$

Step 3: The landlord multiplies the fraction 2/4 times the \$450 figure in Step 1, and gets \$225. This amount is the amount of Rent Supplement to which the Garcias are entitled.

Step 4: The landlord deducts this amount of Rent Subsidy from the Garcia household's rent to determine how much rent the Garcias must pay. See section (e) above.

APPENDIX C-6: PRORATION FORMULA FOR THE SECTION 235 HOMEOWNERSHIP PROGRAM (24 C.F.R. § 5.520(b)(2))

Under the Section 235 Program, low- income households purchase homes with financial assistance from HUD. HUD pays part of the interest on the mortgage loans, and the amount of the interest reduction payment is based on household income. When calculating the household payment, the mortgagee (lender) determines any adjustment required by the household's

³⁹⁶ 24 C.F.R. § 5.520(b)(1) (2025); see also HUD HANDBOOK 4350.3, *supra* note 3, at § 3-12.P.2. and ex. 3-12.

immigration status. The amount of the interest deduction for a mixed household is calculated as follows:

Step 1. The lender calculates the interest reduction payment to which the household would otherwise be entitled if all household members were eligible.

Step 2. The lender establishes a fraction, in which the numerator (the top number) is the number of household members who have established eligible immigration status. The denominator is 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 of the interest reduction payment from Step 1 by the fraction in Step 2.

Step 4. The result is the amount of interest reduction payment to which the household is entitled. This interest reduction payment is the amount that the household's monthly mortgage payment is reduced.

EXAMPLE

The Garcias are finally able to buy a home under the Section 235 program. The Garcia household consists of Juan, a lawful permanent resident with disabilities; his wife Maria, and their minor sons Jose and Francisco. Francisco is a U.S. citizen. The household has chosen not to disclose the immigrant status of Jose and Maria, and therefore they are not "eligible" household members. Juan receives SSI of \$600, Maria earns \$250 from a part-time job, and the household receives \$200 per month in TANF for Francisco. The total household income is \$1,050 per month.

Step 1: The Garcia household pays \$600 per month mortgage payments under the Section 235 program for their home, which includes principle and interest. The interest reduction payment to which they would be entitled if they were all eligible would be \$300.

Step 2: The fraction is calculated:

$$\frac{\text{Eligible Household Members} = 2}{\text{Total Number of Household Members} 4}$$

Step 3: The fraction from Step 2, of 2/4, is multiplied by the \$300 figure from Step 1, resulting in \$150. This amount is the amount of interest reduction payments to which the Garcias are entitled.

Step 4: The Garcia household can reduce the amount of the interest payment on their mortgage by the \$150 in Step 4, so that the total amount of their mortgage payments is \$450 per month. (\$600 - \$150 = \$450.)

APPENDIX D
HOUSING AND IMMIGRATION RESOURCES

A. Resources for Legal and Immigration Advocates in California

These organizations do not provide legal representation to individual clients, but do publish useful publications and provide technical and litigation assistance to lawyers and advocates. Their web sites contain very useful information and links for clients and advocates.

National Housing Law Project (NHLP)

Main Office:

90 New Montgomery St., Suite 1015

San Francisco, CA 94105

Phone: 415 546-7000

nhlp@nhlp.org

www.nhlp.org

Washington, DC Office:

1275 K St. NW Suite 300

Washington, D.C. 20005

Phone: 415 546-7000

National Immigration Law Center (NILC)

Los Angeles Office:

3450 Wilshire Blvd. #108 – 62

Los Angeles, CA 90010

Phone: 213-639-3900; Fax: 213-639-3911

nilc@nilc.org

www.nilc.org

Washington, D.C. Office:

P.O. Box 34573

Washington, DC 20043

Phone: (202) 216-0261

Western Center on Law & Poverty (WCLP)

Bay Area Office

449 Fifteenth Street, Suite 301

Oakland, CA 94612

Phone: 213-487-7211

www.wclp.org

Los Angeles Office:
3701 Wilshire Boulevard, Suite 208
Los Angeles, CA 90010
Phone: 213-487-7211; Fax: 213-487-0242

Sacramento Office:
1107 Ninth Street, Suite 680
Sacramento, CA 95814-3600
(916) 442-0753

B. Resources for Direct Assistance to Individual Clients

California Legal Services Programs

Throughout California, there are legal services programs that provide free legal assistance to eligible lower income persons. These programs can be located at <https://www.lawhelpca.org/find-legal-help/directory/area>

Local Bar Associations

Local bar associations often have referral services for low cost legal services. Look in the yellow pages or check the California Bar Association listings at www.calbar.org.

American Immigration Lawyers Association (AILA)

1331 G Street, NW, Suite 300
Washington, DC 20004-1400
Phone: 202-507-7600; Fax: 202-783-7853
www.aila.org

The AILA web site contains helpful tips on choosing an immigration lawyer as well as referral information. For a referral, email ilrs@aila.org.

C. Housing Agencies

These agencies can help you identify housing resources, as well as the type of funding that was used to assist a particular building or unit.

U.S. Department of Housing and Urban Development

<http://www.hud.gov/>

HUD's home page has tons of information on federal housing programs and funding. It also has free access to HUD's official repository of policies, regulations, procedures, announcements, and other materials. The HUD site contains full text searchable databases of the following: handbooks, notices, mortgagee, preservation, and Title I letters, U.S.C.A. Titles 12

and 42, C.F.R. Title 24, Housing Waivers, OGC Preservation Documents, Federal Register notices, forms.

<http://www.hud.gov/local/>

List of Local HUD Offices and Contact Numbers. The websites for the local offices allow you to search for public and subsidized housing by location, project name, or type of housing, depending on the office.

<https://preservationdatabase.org/>

National Housing Preservation Database where you can search for Section 8 Project-Based housing units in your community.

California Department of Housing and Community Development

<http://www.hcd.ca.gov>

Information on HCD programs and contacting the agency.

California Housing Finance Agency (CalHFA)

<http://www.calhfa.ca.gov/>

Information on CalHFA programs and contacting the agency.

California Tax Credit Allocation Committee (TCAC)

<http://www.treasurer.ca.gov/ctcac/index.asp>

Information on tax credit programs and contacting the agency.

Local Governments

California Cities Information:

<https://my.calcities.org/Directories/City-Directory?lawtype=2>

Links to home pages for California city governments.

California Counties Information:

<https://www.counties.org/counties/>

Links to home pages for California county governments.

USDA – Rural Development (RD)

<http://www.rurdev.usda.gov/>

The main RD web page.

<http://www.rurdev.usda.gov/CA/>

The California RD web page, listing local office information.

<https://www.rd.usda.gov/resources/regulations-and-guidance>

USDA rural development publications, including *Federal Register* provisions.

<https://www.rd.usda.gov/resources/directives/handbooks>

RHS handbooks and related publications.