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Noncitizen Eligibility for Federal Housing Programs

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SUMMARY

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Maggie McCarty
Specialist in Housing Policy

Abigail F. Kolker
Analyst in Immigration Policy

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Noncitizen Eligibility for Federal Housing Programs

Noncitizen eligibility for federal housing programs varies based on the programs in question, the laws and regulations that govern them, the agency that administers them, the immigration status of a noncitizen, and the composition of the noncitizen's household.

Two primary laws directly address noncitizen eligibility for federal housing programs. The first is Section 214 of the Housing and Community Development Act of 1980, as amended. It applies to specified programs; primarily, federal rental assistance programs administered by the Department of Housing and Urban Development (HUD) and the Department of Agriculture (USDA), including the Public Housing, Housing Choice Voucher, Section 8 project-based rental assistance programs, and rural rental assistance. The law makes eligible for assistance certain categories of noncitizens, including most categories of immigrants, while excluding unauthorized immigrants and those in temporary status (e.g., tourists and students). The second is Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193). This law restricts access to *federal public benefits* to aliens, other than *qualified aliens*, terms defined in the law. While HUD and USDA have issued rules and guidance implementing Section 214 and some subsequent laws, PRWORA's provisions have not been fully implemented via rulemaking. Some federal housing programs are not covered by either of these laws and in some cases (e.g., Farm Labor Housing) are governed by noncitizen restrictions included in their authorizing statutes. In other cases, noncitizen restrictions are at agency discretion.

Under the terms of these laws and agency guidance, the following conditions apply:

- In the case of most federal rental assistance programs, including public housing, Housing Choice Vouchers, Section 8 project-based rental assistance, and rural rental assistance, most noncitizens with permanent status are eligible for assistance, whereas temporary and unauthorized immigrants are ineligible. Mixed-status families (those comprised of both eligible and ineligible members) may receive prorated, or reduced, benefits, depending on the program.
- In the case of most federal grant-funded and other housing assistance programs (including HUD homeless assistance), federal regulations do not require the verification of recipients' immigration status.
- In the case of federally guaranteed single-family mortgage programs, noncitizen eligibility varies based on agency guidance.

Recent administrative actions have proposed or implemented policy changes in the treatment of mixed-status families and the treatment of housing assistance in public charge determinations.

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Introduction

The federal government has authorized and funds a variety of housing programs, including direct assistance for low-income renters; grants and other aid for states, localities, and nonprofits to meet local housing needs; and loans and loan guarantees for mortgage lending to support homeownership. The availability of these programs for noncitizens[1] varies depending on the underlying laws that authorize or govern them, the federal agencies that administer them and the guidance they have issued, and the immigration status of a noncitizen and his or her household members. (While this report discusses policy implementation and the positions agencies have taken under the statutes, it does not provide a legal analysis of ambiguities in the statutes.)

This report begins by introducing the range of federal housing programs and the range of immigration statuses of noncitizens. It continues with an overview of the relevant statutes governing noncitizen eligibility, followed by a discussion of policy implementation as applied to various programs. The report closes with a discussion of recent administrative actions relevant to federal housing programs.

Housing Programs

Federal housing programs include both direct assistance programs that provide low-cost apartments and rental vouchers to low-income families, administered through local public, quasi-public, and private intermediaries; as well as relatively flexible grants to state and local governments that can be used to serve homeless people, build affordable housing, provide assistance to first-time homebuyers, and promote community development. The federal government also makes tax credits available to states to distribute to developers of low-cost housing and provides mortgage insurance or guarantees to lenders that make certain types of mortgages to eligible homebuyers or developers of multifamily housing.

Most of these programs are administered at the federal level by the Department of Housing and Urban Development (HUD), although some are administered by other agencies, including the Department of Agriculture's (USDA's) Rural Housing Service (RHS), the Internal Revenue Service (IRS), and the Department of Veterans Affairs (VA). In nearly all cases, the assistance the programs provide flows through other entities, including local, quasi-governmental Public Housing Agencies (PHAs); state or local governments; nonprofit or in some cases for-profit organizations; or, in the case of mortgage insurance programs, financial institutions. (For more information about federal housing programs, see CRS Report RL34591, *Overview of Federal Housing Assistance Programs and Policy*.)

Different laws, and different agency interpretations of those laws, govern noncitizen eligibility for federal housing programs. Two primary laws address their eligibility for the programs. Section 214 of the Housing and Community Development Act of 1980, as amended, makes certain categories of noncitizens eligible for a prescribed set of federal direct housing assistance programs (including the largest rental assistance programs: Public Housing, Housing Choice Vouchers, and Section 8 project-based rental assistance, as well as rural rental assistance). The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-

[1] Throughout this report, the terms *noncitizens, foreign nationals,* and *aliens* are used interchangeably. U.S. immigration law uses the term *alien,* defined by the Immigration and Nationality Act, to mean persons who are not U.S. citizens or U.S. nationals (e.g., persons born in certain U.S. territories, such as American Samoa). Moreover, for the purposes of this report, the term *U.S. citizen* includes U.S. nationals.

193), makes all noncitizens except those deemed *qualified aliens* ineligible for *federal public benefits*, defined to include housing assistance.

Noncitizens and Immigration Categories

Noncitizen eligibility for public benefits, including housing programs, varies by immigration status. The following is a list of the immigration categories discussed in this report:

- Certain humanitarian cases include **Cuban-Haitian Entrants**[2] and **certain abused spouses and children** (e.g., Violence Against Women Act (VAWA) Self-Petitioners).[3]
- **Deferred Action for Childhood Arrivals (DACA)**[4] recipients are unauthorized childhood arrivals who have been granted renewable two-year protection from removal.
- **Freely Associated States (FAS) migrants**[5] are citizens of the Marshall Islands, Micronesia, or Palau. They are permitted to live in the United States indefinitely under the terms of those nations' Compacts of Free Association with the United States.[6]
- **Lawful permanent residents (LPRs)**[7] are permitted to live in the United States permanently (also referred to as *green card* holders).
- **Nonimmigrants**[8] are admitted to stay in the United States on a temporary basis and for a specific purpose (e.g., tourists; students; diplomats; temporary workers, including H-2A agricultural guest workers).[9]
- **Parolees**[10] are aliens granted permission to enter or remain temporarily in the United States for urgent humanitarian reasons or significant public benefit. Immigration parole is granted on a case-by-case basis.
- **Refugees**[11] and **asylees**[12] are persons fleeing their countries because of persecution, or a well-founded fear of persecution, on account of race, religion, nationality, membership in a particular social group, or political opinion. They

[2] For more information, see U.S. Citizens and Immigration Services (USCIS), *Cuban Haitian Entrant Program (CHEP)*, at https://www.uscis.gov/archive/archive-news/cuban-haitian-entrant-program-chep.

[3] This refers to certain aliens who have been abused (subject to battery or extreme cruelty) in the United States by a spouse or other family/household member, aliens whose children have been abused, and alien children whose parent has been abused. In these cases, an alien must have been approved for, or has pending an application/petition with a prima facie case for, immigration preference as a spouse or child or cancellation of removal.

[4] For more information, see CRS Report R45995, *Unauthorized Childhood Arrivals, DACA, and Related Legislation*.

[5] For background information, see CD1316834, *Summary of S. 2218, the Covering Our FAS Allies Act, as introduced* (available to congressional clients upon request).

[6] For background information on the compacts, see CRS Report RL31737, *The Marshall Islands and Micronesia: Amendments to the Compact of Free Association with the United States*.

[7] For more information, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

[8] For more information, see CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

[9] For more information, see CRS Report R44849, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*.

[10] 8 U.S.C. §1182(d)(5).

[11] For more information, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.

[12] For more information, see CRS Report R45539, *Immigration: U.S. Asylum Policy*.

are permitted to live in the United States indefinitely. After one year in these statuses, they may apply to adjust their immigration status to become LPRs.[13]

- **Temporary Protected Status (TPS)**[14] holders have been granted temporary relief from removal due to armed conflict, natural disaster, or other extraordinary circumstances in their home countries that prevent their safe return.
- **Unauthorized immigrants** (sometimes referred to as *undocumented* immigrants) are foreign nationals who enter without inspection, enter with fraudulent documents, or enter legally but overstay the terms of their temporary stay.
- **Victims of Trafficking**[15] and their families who have received a T nonimmigrant visa can live in the United States for up to four years;[16] they may apply for LPR status after three years.
- Certain aliens present in the United States are granted **withholding of removal**[17] based on persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Withholding of removal provides protection from removal. [18]

As discussed below, different federal housing programs are governed by different laws and regulations. Depending on the program, noncitizens may or may not be eligible based on their immigration status. (In addition, they must also meet the program's eligibility requirements.) Mixed status families are comprised of members with differing immigration statuses. For the purposes of this report, *mixed-status families* refers to families that contain individuals who are eligible and individuals who are ineligible for housing programs based on their varying immigration statuses.

Laws Governing Noncitizen Eligibility

Section 214

Section 214 of the Housing and Community Development Act of 1980[19] established the first federal restrictions on noncitizen eligibility for federal housing programs. The original restrictions were limited to nonimmigrant students, but over time the restrictions were expanded to additional categories of noncitizens.[20]

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[13] Applying for an *adjustment of status* refers to the process of applying for LPR status (i.e., a green card) from within the United States (as opposed to applying for an immigrant visa from a U.S. embassy or consulate abroad).

[14] For more information, see CRS Report RS20844, *Temporary Protected Status: Overview and Current Issues*.

[15] 22 U.S.C. §7101 et seq.

[16] Victims of trafficking who have not received a T visa but have received a Continued Presence document from the Department of Homeland Security (granted in order to help law enforcement prosecute human traffickers) may also remain in the United States. U.S. Department of Homeland Security (DHS), *Continued Presence: Temporary Immigration Status for Victims of Human Trafficking*, at https://www.dhs.gov/blue-campaign/materials/pamphlet-continued-presence.

[17] 8 U.S.C. §1231.

[18] For more information, see CRS Report R45993, *Legalization Framework Under the Immigration and Nationality Act (INA)*.

[19] P.L. 96-399, §214, 94 Stat. 1637, codified at 42 U.S.C. §1436a.

[20] The original student restrictions were expanded by the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35), Section 329. Section 214 has been amended numerous times since.

As currently written, Section 214 states that only certain categories of noncitizens are eligible for benefits under specified housing programs. Programs covered under Section 214 include the programs under the U.S. Housing Act of 1937 (Public Housing, Housing Choice Vouchers, and Section 8 project-based rental assistance) as well as some older programs that are no longer active.[21] Section 214 was amended by PRWORA in 1996 to also apply to certain rural housing programs administered by USDA's RHS, including the Section 502 Single Family Direct Loan program, the Section 504 Very Low-Income Rural Housing Repair loan and grant program, the Section 521 Rural Rental Assistance program, and the Section 542 Rural Development Voucher program.[22] (Prior to the extension of Section 214 to select rural housing programs, the Secretary of Agriculture was prohibited from restricting access to rural housing programs to anyone who would otherwise qualify under Section 214.)[23]

The programs to which Section 214 applies provide direct rental or homeownership assistance to low-income families. Public Housing and Housing Choice Vouchers are administered by quasi-governmental, local PHAs. Single-family rural housing programs are administered by local Rural Development offices. The other Section 214-covered programs are primarily administered by private property owners—both for-profit and nonprofit—under contract with HUD or RHS.[24]

Under Section 214, the applicable Secretary may not make financial assistance available to a noncitizen unless the noncitizen is a resident of the United States and also is an LPR,[25] refugee,[26] asylee,[27] or parolee;[28] is granted withholding of removal on the basis of prospective persecution;[29] or is a citizen of a Freely Associated State (FAS) living in the United States.[30] Unauthorized aliens, DACA recipients, TPS holders, and temporary nonimmigrants are ineligible for assistance under Section 214-covered programs.

[21] These include the Section 235 Homeownership Assistance, Section 236 Rental Assistance, and Section 101 Rental Supplement programs.

[22] For more information on rural housing programs, see CRS Report RL31837, *An Overview of USDA Rural Development Programs.*

[23] This restriction on the Secretary was added to the Housing Act of 1949 in 1988 by P.L. 100-242, § 302(a); see 42 U.S.C. §1471(h).

[24] For more information about federal housing programs, see CRS Report RL34591, *Overview of Federal Housing Assistance Programs and Policy*.

[25] 42 U.S.C. §1436a(a)(1) and (2) and (6).

[26] 42 U.S.C. §1436a(a)(3).

[27] 42 U.S.C. §1436a(a)(3).

[28] 42 U.S.C. §1436a(a)(4). In contrast to PRWORA (see section below), under Section 214 there is no time restriction on parolees.

[29] 42 U.S.C. §1436a(a)(5).

[30] 42 U.S.C. §1436a(a)(7). P.L. 114-201 amended Section 214 to give preference for covered federal housing programs in Guam to U.S. citizens and nationals over all other eligible noncitizens This policy change had been advocated by the Delegate from Guam out of concern that migrants from the Federated States of Micronesia, Palau, and the Marshall Islands are competing with Guam residents for limited housing assistance. See Representative Madeleine Z. Bordallo, "Bordallo Housing Amendment Passes House," press release, February 2, 2016, https://bordallo.house.gov/media-center/press-releases/bordallo-housing-amendment-passes-house.

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA; P.L. 104-193)

Among other things,[31] PRWORA established new restrictions on the eligibility of noncitizens for public benefits. PRWORA explicitly states that aliens, unless they are qualified aliens, are not eligible for federal public benefits. PRWORA defines *federal public benefit* to include "public or assisted housing … or any similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States."[32] However, the law does not specify further; thus, it has been left to agency guidance to determine which programs are federal public benefit programs (see the "Implementing Regulations" section). PRWORA also included more stringent eligibility requirements for *federal means-tested public benefit programs*, but no housing programs have been determined to fall under this category.[33]

Qualified Alien

PRWORA created the term *qualified alien*,[34] which did not previously exist in immigration law, to encompass the categories of noncitizens who are *not prohibited* by PRWORA from receiving federal public benefits. Qualified aliens are legal permanent residents,[35] refugees,[36] asylees,[37] aliens paroled into the United States for at least one year,[38] and aliens granted withholding of removal.[39] The Illegal Immigration Reform and Immigrant Responsibility Act (P.L. 104-208) added certain abused spouses and children (e.g., VAWA Self-Petitioners) as another class of qualified aliens.[40] The Balanced Budget Act of 1997 (P.L. 105-33) added Cuban-Haitian

[31] As mentioned in the previous section, PRWORA extended Section 214 to also apply to certain rural housing programs administered by the U.S. Department of Agriculture (USDA), including the Sections 502 (direct), 504, 521, and 542 programs (P.L. 104-193, §441).

[32] P.L. 104-193, §401(c)(1)(B).

[33] Federal means-tested public benefits (FMTPB) are programs where eligibility is partially based on one's household income. These include Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), non-emergency Medicaid, and State Child Health Insurance Program (CHIP). Many qualified aliens are barred from FMTBP for five years. In addition, many qualified aliens are subject to *sponsor deeming*, meaning that a portion of the immigrant's sponsor's income and resources are used for the purpose of determining whether the alien meets the financial eligibility requirement of the FMTPB. Moreover, if the alien does receive a FMTPB, the granting agency can seek reimbursement from the immigrant's sponsor. Some categories of noncitizens are not subject to these stricter rules for FMTPB, including refugees, asylees, Cuban/Haitian Entrants, Vietnamese-born Amerasians, and aliens granted withholding of removal. For more information, see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview*.

[34] P.L. 104-193 §431; 8 U.S.C. §1641.

[35] 8 U.S.C. §1641(b)(1).

[36] 8 U.S.C. §1641(b)(3) and (6). For the purposes of this report, this includes refugee-like conditional entrants who arrived prior to 1980. For more information, see CRS Report R45539, *Immigration: U.S. Asylum Policy*.

[37] 8 U.S.C. §1641(b)(2).

[38] 8 U.S.C. §1641(b)(4).

[39] 8 U.S.C. §1641(b)(5).

[40] Certain battered aliens are eligible for federal public benefits if they can demonstrate (in the opinion of the agency providing such benefits) "[that] there is a substantial connection between such battery or cruelty and the need for the benefits to be provided" (P.L. 104-193 §431(c)(1)(A); 8 U.S.C. §1641(c)).

entrants.[41] Qualified aliens are not automatically eligible for federal benefit programs; they are still subject to all eligibility and availability restrictions of the program.

Nonqualified aliens are all other noncitizens, including nonimmigrants, DACA recipients, TPS holders, short-term parolees, asylum applicants, and unauthorized immigrants.

Exemptions

PRWORA exempts certain types of programs, usually thought of as emergency programs, from alien eligibility requirements, including short-term, in-kind emergency disaster relief and services or assistance (such as short-term shelters) designated by the Attorney General as (1) delivering in-kind services at the community level, (2) providing assistance without individual determinations of each recipient's needs, and (3) being necessary for the protection of life and safety. For housing, then-Attorney General Janet Reno determined this to include the following:

- short-term shelter or housing assistance for the homeless; victims of domestic violence; or runaway, abused, or abandoned children; and
- programs, services, or assistance to help individuals during periods of heat, cold, or other adverse weather conditions. [42]

Aliens who do not meet the definition of qualified aliens are eligible for these emergency programs.

In addition, any aliens who were receiving the following assistance on the date of the enactment of PRWORA (August 22, 1996) are exempt from PRWORA's eligibility restrictions as they pertain to those programs:

- programs for housing or community development assistance or financial assistance administered by the Secretary of HUD,
- any program under Title V of the Housing Act of 1949 (USDA rural housing programs), or
- any assistance under Section 306C of the Consolidated Farm and Rural Development Act (USDA rural development programs).[43]

Finally, PRWORA exempts nonprofit charitable organizations that provide federal public benefits from having to verify the eligibility of program participants.[44] Many housing programs, such as homeless assistance programs, are administered by nonprofit organizations and therefore are not required to verify their clients' citizenship status. Thus, nonqualified aliens may receive housing services from these organizations, regardless of their eligibility status. Programs not administered by nonprofit organizations must verify noncitizen applicants' immigration status (for example, see discussion in the "Verification of Immigration Status and Documentation Requirements: HUD" text box later in this report).

[41] 8 U.S.C. §1641(b)(7).

[42] 61 *Federal Register*, p. 45985, August 30, 1996, https://www.govinfo.gov/content/pkg/FR-1996-08-30/pdf/96-22233.pdf. The notice of final order was published in January 2001, and did not significantly alter the original notice. 66 *Federal Register*, p. 3613, January 16, 2001, https://www.govinfo.gov/content/pkg/FR-2001-01-16/pdf/01-1158.pdf.

[43] P.L. 104-193 §401(b)(1)(E); 8 U.S.C. §1611(b)(1)(E). For a description of USDA rural housing and rural development programs, see CRS Report RL31837, *An Overview of USDA Rural Development Programs*.

[44] 8 U.S.C. §1642(d).

Victims of Trafficking and Violence Protection Act of 2000

Subsequent to the enactment of Section 214 and PRWORA, Congress enacted the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386). While the law did not amend Section 214 or PRWORA, it made victims of trafficking eligible for benefits and services "under any Federal or State program" to the same extent as refugees (§107). As a result, victims of trafficking are eligible/not prohibited from receiving housing assistance.

Differences Between Section 214 and PRWORA

As shown in **Table 1**, nearly all noncitizens who are eligible under Section 214 are qualified aliens under PRWORA, and vice versa. However, there are several categories of noncitizens where the laws are different:

- While both statutes allow eligibility for parolees, PRWORA states that parolees are only *qualified aliens* after having been in the United States for one year, while no time limit is specified in Section 214.
- PRWORA permits otherwise ineligible aliens receiving certain benefits on August 22, 1996, to continue to receive such benefits.
- Section 214 lists FAS migrants as eligible but they are not qualified under PRWORA.
- There are two categories of noncitizens listed as qualified aliens under PRWORA that are not listed as eligible under Section 214:
  - Certain abused spouses and children (e.g., VAWA Self-Petitioners), and
  - Cuban/Haitian entrants.

The inconsistent statutory treatment of certain categories of noncitizens between Section 214 and PRWORA has led some to call for statutory changes.[45] For Section 214-covered programs, the importance of these differences is unclear because the applicability of PRWORA to such programs has not been clarified. However, it would appear that administratively, aliens who are qualified under PRWORA may be being treated as eligible under Section 214 programs. As a specific example, HUD's Office of General Counsel issued a memorandum in late 2016 stating that the department has determined that VAWA Self-Petitioners are in "satisfactory immigration status" when applying for assistance under Section 214-covered programs.[46] HUD has not issued similarly direct guidance regarding Cuban/Haitian entrants. However, when asked for clarification on the status of Cuban/Haitian entrants in a comment on a proposed rule, HUD responded that "any immigrant who is lawfully in this country and meets other program eligibility

[45] For example, in the 108th Congress, Senator Christopher (Kit) Bond offered S.Amdt. 224, which was passed by a voice-vote and added to the Senate version of H.J.Res. 2, a FY2003 omnibus appropriations bill, but it was not included in the final version of the bill. The amendment would have added the category *qualified alien* to the categories of noncitizens eligible for housing benefits under Section 214, bringing the section into conformity with PRWORA. While the Bond amendment was not included in the conference agreement, the conference report directed: "the Department [of Housing and Urban Development] to work with the Department of Justice to develop any necessary technical corrections to applicable housing statutes with respect to qualified aliens who are victims of domestic violence and Cuban and Haitian immigrants to ensure that such statutes are consistent with the Personal Responsibility and Work Opportunity Act of 1996 and the Illegal Immigration Reform and Personal Responsibility Act of 1996" (H.Rept. 108-10).

[46] Memorandum from Tonya Robinson, Acting General Counsel, to Julian Castro, Secretary, Subject: "Eligibility of Battered Noncitizen Self-Petitioners for Financial Assistance under Section 214 of the Housing and Community Development Act of 1980," December 15, 2016, http://library.niwap.org/wp-content/uploads/Eligibility-of-VAWA-Self-Petitioners-2016-12-14.pdf.

requirements is eligible to participate in HUD's rental assistance programs."[47] As Cuban/Haitian entrants are legally present, it may be presumed they are to be treated as eligible under Section 214 (and there are some indications that program administrators are doing so).[48]

Table 1. Eligible Immigration Categories: Comparison of Section 214 and PRWORA

Immigration Categories	Section 214-Eligible	Qualified Alien under PRWORA
Certain abused spouses and children (e.g., VAWA Self-Petitioners)	Deemed eligible[a]	Qualified
Cuban-Haitian Entrants	Presumed eligible[b]	Qualified
Deferred Action for Childhood Arrivals (DACA)	Ineligible	Not Qualified
Freely Associated States (FAS) Migrants	Eligible	Not Qualified
Lawful permanent residents	Eligible	Qualified
Nonimmigrants (e.g., tourists, students, temporary workers)	Ineligible	Not Qualified
Otherwise ineligible aliens receiving certain benefits on August 22, 1996	Ineligible	Qualified for federal public benefits[c]
Parolees	Eligible (no time limit)	Qualified after one year
Refugees and asylees	Eligible	Qualified
Temporary Protected Status (TPS)	Ineligible	Not Qualified
Unauthorized Immigrants	Ineligible	Not Qualified
Victims of Trafficking	Eligible[d]	Qualified[d]
Withholding of Removal	Eligible	Qualified

Source: Table prepared by CRS, based on 42 U.S.C. Section1436a (for Section 214) and 8 U.S.C. Section1641 (for PRWORA), unless otherwise noted.

a. See discussion in the "Differences Between Section 214 and PRWORA" section.

b. While not explicitly listed under Section 214, HUD guidance indicates these categories may be being treated as eligible for assistance under it. See discussion in the "Differences Between Section 214 and PRWORA" section.

c. Otherwise ineligible aliens who were receiving housing, community development, or financial assistance administered by the Secretary of HUD, assistance under any program under Title V of the Housing Act of 1949; or any assistance under Section 306C of the Consolidated Farm and Rural Development Act on the date PRWORA was enacted (August 22, 1996) are exempt from PRWORA's eligibility restrictions.

d. The Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386) made victims of trafficking eligible for benefits and services "under any Federal or State program" to the same extent as refugees (§107; 22 U.S.C. 7101 et seq.) Thus, victims of trafficking are eligible for housing programs to the same extent that refugees are eligible for them.

[47] U.S. Department of Housing and Urban Development (HUD), "Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs; Final Rule," 74 *Federal Register* 4826, January 27, 2009.

[48] For example, the HUD Multifamily Occupancy Guidebook lists Cuban/Haitian Entrant status as one of the statuses that is acceptable when verifying tenant eligibility (https://www.hud.gov/sites/documents/43503C3HSGH.PDF). Further, the administrative plans of some entities administering federal housing programs list Cuban/Haitian entrants as eligible for assistance (see, for example, https://www.cityofpensacola.com/DocumentCenter/View/1796/Housing-Choice-Voucher-Program-Administrative-Plan-PDF).

Other Laws

While Section 214 and PRWORA are the primary laws governing noncitizen eligibility for federal housing programs, these two laws do not cover the full universe of housing programs. In most cases, authorizing statutes for other housing programs do not address noncitizen eligibility.

However, the statute authorizing the Farm Labor Housing grant and loan programs (the Section 514 and Section 516 programs) administered by USDA establishes noncitizen eligibility requirements for those programs.[49] Specifically, it requires that residents of Farm Labor Housing properties be either U.S. citizens or persons legally admitted for permanent residence. In 2018, the law was amended to also make eligible persons legally admitted and authorized to work in agriculture (e.g., temporary agricultural workers under the H2A program).[50]

Implementing Regulations

The statutory restrictions on noncitizen eligibility for federal housing programs included in Section 214, PRWORA, and others laws require federal agencies to issue regulations and guidance to interpret and apply the provisions to specific programs. That implementation process has taken many years in some cases, and never begun in others. This section of the report briefly outlines the relevant regulatory processes by agency. It is followed by a discussion of how these policies are implemented for specific programs.

HUD

While Section 214 was enacted in 1980, and substantially amended and expanded in scope in 1981, HUD's regulations to implement the law were not finalized until the late 1990s. The delay is attributable to a number of factors, including laws directing the agency to suspend implementation of various final rules issued over that period,[51] a court injunction,[52] and the need to amend the proposed rules to reflect statutory changes to Section 214.[53]

HUD's current regulations implementing Section 214 can be found at 24 C.F.R Section 5.500, Subpart E. They establish treatment of mixed-status families as well as requirements regarding how program administrators should verify noncitizen eligibility.

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[49] The Farm Labor Housing loan program is authorized by Section 514 of the Housing Act of 1949, as amended (42 U.S.C. §1484); the Farm Labor Housing Grant program is authorized by Section 516 of the act, as amended (42 U.S.C. §1486). In order to be eligible, a tenant must be *domestic farm labor*, a term defined to include limitations on noncitizen eligibility (42 U.S.C. §1484(f)(3)(A)).

[50] See P.L. 115-141, 132 STAT. 365.

[51] For example, following publication of a final rule to implement Section 214 on October 4, 1982, but before it was made effective, P.L. 98-181 was enacted, which contained a provision prohibiting HUD from implementing the statutory changes contained in the rule for at least one year. HUD published a new final rule on April 1, 1986, but after several delayed implementation dates, the FY1987 HUD appropriations law (P.L. 99-500) prohibited HUD from using funds appropriated in that or any other act to implement the rule.

[52] For more information, see the "Supplementary Information" section of Department of Housing and Urban Development, "Aliens: Withdrawal of Restrictions on the Use of Assisted Housing: Final Rule," 53 *Federal Register* 842, January 13, 1988.

[53] For a summary of the regulatory process for the implementation of Section 214, see the "Supplementary Information" section of Department of Housing and Urban Development, "Revised Restrictions on Assistance to Noncitizens," 91 *Federal Register* 25726, May 12, 1999.

HUD has not issued regulations implementing the noncitizen provisions of PRWORA. The agency has also not defined which of its programs are federal public benefits and thus subject to PRWORA's noncitizen eligibility restrictions.[54] One exception is HUD homeless programs; HUD has clarified via a letter and fact sheet that a number of activities funded under those programs are exempt from PRWORA restrictions, as discussed later in this report. Further, HUD has clarified that none of its programs are considered to be *federal means-tested public benefits*[55] (such programs have more stringent eligibility requirements under PRWORA).

USDA

As noted previously, in 1996 PRWORA amended Section 214 to expand its noncitizen restrictions to certain rural housing programs. From 1988 until PRWORA was enacted, the law had prohibited the Secretary of Agriculture from restricting access to rural housing programs to anyone who would otherwise be eligible under Section 214.

USDA did not undertake a separate rulemaking process to implement laws restricting noncitizen eligibility in rural housing programs, nor did it issue any clarification regarding which, if any, of its rural housing programs (particularly those not covered by Section 214) are considered federal public benefits for purposes of PRWORA. Instead, USDA has implemented various noncitizen restrictions as a part of broader rural housing program rulemaking.[56]

One notable aspect of USDA's implementation of Section 214—compared to HUD's—is that USDA regulations do not directly address treatment of mixed-status families and, instead, only require the verification of eligibility for the head of household.

Policies for Specific Federal Housing Programs

Section 214-Covered Programs

The largest federal direct housing assistance programs are all covered by the restrictions on noncitizen eligibility set forth in Section 214. These include HUD's Public Housing program, the Housing Choice Voucher (HCV) program, and the Section 8 project-based rental assistance program, as well as USDA's Section 521 rental assistance, Section 542 voucher, and Section 502 and Section 504 single-family direct loan and grant programs. These programs all provide deep subsidies to reduce the costs of low-income families' rent or mortgage payments. Combined, they serve roughly 5 million families.[57]

Under Section 214, each of these programs limits eligibility to U.S. citizens and certain noncitizens made eligible under the section (for specific immigration categories and their

[54] The exception is the Lead Hazard Control program. The comments section of a Department of Justice Attorney General Final Order (66 *Federal Register* 3615) issued in 2001 notes that HUD had determined that benefits under the Lead Hazard Control Program were not federal public benefits within the meaning of PRWORA.

[55] See 65 *Federal Register* 49994, August 16, 2000; 8 C.F.R. §213a. Both HUD and the Department of Health and Human Services contended that the term *federal means-tested public benefit* should only apply to mandatory funded programs. (None of HUD's programs are mandatory funded programs.) The Department of Justice found that this was a permissible interpretation of the statute (see Department of Justice, "Memorandum Opinion for the General Counsel for the Department of Health and Human Services, Proposed Agency Interpretation of 'Federal Means-Tested Public Benefits' Under Personal Responsibility and Work Opportunity Reconciliation Act of 1996," January 14, 1997).

[56] For specific regulations, see **Table 2** later in this report.

[57] For more information on these and other federal housing programs, see CRS Report RL34591, *Overview of Federal Housing Assistance Programs and Policy*.

eligibility under Section 214, see **Table 1**). However, there are differences in how these restrictions are implemented for mixed-status families between those programs administered by HUD and those administered by USDA.

Mixed-Status Families in Section 214-Covered Programs

Some households that include U.S. citizens or eligible noncitizens also include ineligible noncitizens (including, but not limited to, unauthorized noncitizens). These mixed-status families are treated differently in Section 214-covered programs administered by HUD and USDA.

HUD's regulations implementing Section 214 require the proration of assistance to families in which at least one member—which may include the head of household—has ineligible immigration status. A prorated housing benefit is calculated by reducing the benefit due to the family by the proportion of ineligible noncitizens in the household.[58]

In contrast, USDA's regulations implementing Section 214 for rural housing programs do not directly address mixed-status families. Instead, they base noncitizen eligibility only on the status of the head of household, with no proration of benefit for mixed-status households. Thus, a mixed-status family headed by an ineligible noncitizen (e.g., an ineligible mother with two U.S. citizen children) is ineligible for assistance under Section 214-covered USDA rural housing programs, but is eligible for prorated benefits under Section 214-covered HUD programs. Conversely, a mixed-status family headed by a U.S. citizen with ineligible noncitizen members (e.g., a U.S. citizen married to an ineligible noncitizen) is eligible for full benefits under Section 214-covered USDA rural housing programs, but would receive prorated benefits under Section 214-covered HUD programs.

HUD has recently issued a proposed regulatory change to the treatment of mixed-status families (see the "HUD Proposed Revision to Section 214 Regulations" section). According to the Office of Management and Budget's Spring 2019 Unified Agenda and Regulatory Plan, USDA intends to publish regulatory revisions to the treatment of mixed-status families for rural housing programs.[59] As of the date of this report, HUD's proposed rule had not been finalized and USDA's revisions had not been published in the *Federal Register*.

[58] 24 C.F.R. §5.520.

[59] See Office of Management and Budget, Office of Information and Regulatory Affairs, "Implementation of the Multi-Family Housing U.S. Citizenship Requirements," at https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=0575-AC86.

Verification of Immigration Status and Documentation Requirements: HUD

Section 214 requires noncitizen applicants to provide documentation of eligible immigration status. In the case of HUD programs, under federal regulations and guidance all applicants must sign a certification (under penalty of perjury) for each household member (1) declaring status as a U.S. citizen, (2) declaring eligible immigration status and providing supporting documentation, or (3) stating that the individual is choosing not to claim eligible status and acknowledging ineligibility for assistance. Individuals age 62 and older and individuals who were receiving assistance prior to September 30, 1996, are exempted from providing documentation.

HUD program administrators are required to verify any documentation provided by noncitizens. They are authorized to use the Systematic Alien Verification for Entitlements (SAVE) system, administered by U.S. Citizenship and Immigration Services (USCIS). SAVE is used to obtain immigration status information to determine eligibility for public benefits based on noncitizen eligibility restrictions, which vary depending on which laws govern the program (e.g., Section 214 or PRWORA). The SAVE system does not determine eligibility for HUD programs, but rather provides information on the noncitizen's status so that the program's administrators can make an eligibility determination.

U.S. citizens are not required under federal law to provide proof of status beyond the signed declaration, although HUD's recent proposed rule (discussed later in this report) would create new documentation requirements for U.S. citizens participating in Section 214-covered programs.

Non-Section 214 HUD Housing Assistance and Grant Programs

Other housing programs administered by HUD include both programs that are substantially similar to those covered by Section 214 and programs that are substantially different. Some HUD rental assistance programs, including those for persons who are elderly or have disabilities (under the Section 202 and Section 811 programs),[60] are not covered by Section 214 even though they are structurally similar to rental assistance programs that *are* covered under it (such as Section 8 project-based rental assistance).[61] Other HUD programs are significantly different from the Section 214-covered programs in that they provide grants to states, localities, and nonprofits for various housing and related activities; these include, among others, the Community Development Block Grant (CDBG) program[62] and the HOME Investment Partnerships program.[63]

The extent to which PRWORA restrictions on noncitizen eligibility apply to HUD programs not covered by Section 214 is unclear. HUD has not issued guidance defining which types of assistance under these programs are federal public benefits and thus subject to PRWORA's noncitizen eligibility restrictions.[64]

If these programs provide federal public benefits triggering PRWORA restrictions, then nonqualified aliens (e.g., unauthorized aliens) would not be legally eligible for assistance.[65] However, as noted earlier in this report, nonprofit charitable organizations are not required to verify immigration status under PRWORA. Thus, even if PRWORA is determined to apply to

[60] For more information about these programs, see CRS Report RL33508, *Section 202 and Other HUD Rental Housing Programs for Low-Income Elderly Residents* and CRS Report RL34728, *Section 811 and Other HUD Housing Programs for Persons with Disabilities*.

[61] Some older Section 202 direct loan properties may have Section 8 project-based rental assistance (a Section 214-covered program) attached to some or all of their units. Tenants living in units with Section 8 project-based rental assistance are subject to that program's requirements.

[62] For more information, see CRS Report R43520, *Community Development Block Grants and Related Programs: A Primer*.

[63] For more information, see CRS Report R40118, *An Overview of the HOME Investment Partnerships Program*.

[64] The exception is the Lead Hazard Control program. The comments section of a Department of Justice Attorney General Final Order (66 *Federal Register* 3615) issued in 2001 notes that HUD had determined that benefits under the Lead Hazard Control Program were not federal public benefits within the meaning of PRWORA.

[65] Except for exempted activities, such as emergency shelter, as discussed earlier in this report.

benefits under these programs, beneficiaries' citizenship or immigration status is not required to be verified for assistance that is provided by charitable organizations.

HUD Homeless Assistance Programs

Additional considerations apply to HUD homeless assistance programs, including the Emergency Solutions Grants (ESG) program, the Continuum of Care (CoC) program, and the Housing Opportunities for Persons with AIDS (HOPWA) program.[66] These programs fund various forms of housing assistance and related supports for persons who are homeless, including emergency shelter, transitional housing, short-term rental assistance, and permanent supportive housing.

As noted previously, PRWORA contains an exception allowing nonqualified aliens access to emergency programs. The exception applies if the benefit provided meets three requirements:

1. it is an in-kind benefit provided through public or private nonprofit organizations,
2. it is not conditioned on a client's income or resources, and
3. it is necessary for the protection of life and safety.

As is the case with the other housing assistance and grant programs, HUD has not issued regulations to clarify whether HUD homeless assistance programs are considered federal public benefits and therefore subject to PRWORA's noncitizen eligibility restrictions. However, in 2016 HUD, the Department of Justice, and the Department of Health and Human Services issued a joint letter regarding the PRWORA life and safety exception's applicability to homeless assistance.[67] This guidance clarifies that certain activities funded through ESG and CoC are covered under PRWORA's life and safety exception:

- Street Outreach Services,
- Emergency Shelter,
- Safe Haven,
- Rapid Rehousing, and
- Transitional Housing (in some cases).

HUD has determined that transitional housing meets the exception only when the recipient (or subrecipient) of a HUD grant owns or leases the building used to provide the transitional housing. When a transitional housing program uses rental assistance payments on behalf of program participants, HUD has determined the assistance is based on tenant income and therefore does not qualify for exemption. However, the letter reminds recipients that PRWORA does not require nonprofit charitable organizations to verify the immigration status of recipients.

In 2017, HUD's Office of Inspector General issued a memorandum noting the lack of guidance regarding the applicability of PRWORA to HOPWA and other HUD programs. The memorandum recommended HUD issue clarification regarding whether its programs are considered federal

[66] For more information, see CRS Report RL33764, *The HUD Homeless Assistance Grants: Programs Authorized by the HEARTH Act*; and CRS Report RL34318, *Housing for Persons Living with HIV/AIDS*.

[67] Letter from Loretta E. Lynch, Attorney General of the United States, Sylvia M. Burwell, Secretary of Health and Human Services, and Julian Castro, Secretary of Housing and Urban Development, to Recipients of Federal Financial Assistance, August 5, 2016, available at https://files.hudexchange.info/resources/documents/HUD-HHS-DOJ-Letter-Regarding-Immigrant-Access-to-Housing-and-Services.pdf. In addition to the letter, HUD issued a fact sheet, available at https://files.hudexchange.info/resources/documents/PRWORA-Fact-Sheet.pdf.

public benefits and, if they are, whether they meet the criteria for exemption from PRWORA.[68] As of the date of this report, HUD has not done so.

Non-Section 214 USDA Rural Rental Housing Programs

USDA's RHS administers several rental housing programs. Two of those programs—Rural Rental Assistance (Section 521) and the Rural Development Voucher Program (Section 542)—are covered by the noncitizen eligibility restrictions of Section 214 (and were discussed previously in this report). The other programs—Farm Labor Housing Loans and Grants (Section 514 and Section 516), Rural Rental Housing Loans (Section 515), and Multifamily Guaranteed Loans (Section 538)—each have different noncitizen restrictions.

Farm Labor Housing (Section 514 and Section 516): The Farm Labor Housing programs provide grants and loans for the development of rental housing for domestic farm laborers, either on or off farm property. In order to be eligible to reside in Farm Labor Housing, the head of household must be a *domestic farmworker*. The law that governs the program defines a *domestic farmworker* to include only those who are U.S. citizens, LPRs, or (since 2018) legally authorized to work in agriculture (i.e., H2A visa holders). However, if a Farm Labor Housing program subsidized unit is also receiving rental assistance under Section 521, then the occupant of the unit is also subject to Section 521 eligibility restrictions (discussed previously in the "Section 214-Covered Programs" section).

Rural Rental Housing Loans (Section 515): The Section 515 program provides direct federal loans to fund the construction or rehabilitation of below-market rental housing for low-income residents in rural areas. The program is not covered under Section 214 and USDA has not clarified whether the program is considered to provide a federal public benefit under PRWORA. In late 2004, USDA issued interim final regulations for most of its rental housing programs.[69] These "reinvention" regulations proposed, for the first time, to implement noncitizen restrictions in the Section 515 program that were modeled after those applicable to Section 214-covered programs. The rule was scheduled to take effect in 2005, but USDA published a second interim notice indefinitely delaying the application of noncitizen restrictions to the Section 515 program before they took effect.[70] In that suspension notice, USDA noted that comments received "suggested that Agency procedures unnecessarily imposed more requirements" than those required under HUD programs and that the agency intended to "harmonize its procedures with HUD."[71] As of the date of this report, no additional rulemaking has taken place. Thus, there are no current noncitizen restrictions on occupancy in Section 515 units. However, if a Section 515 unit is also receiving rental assistance under Section 521, the more restrictive Section 521 noncitizen eligibility criteria are in effect.[72]

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[68] Christeen Thomas, Director, Joint Civil Fraud Division, HUD Needs to Clarify Whether Illegal-Undocumented Aliens Are Eligible for Assistance Under the Housing Opportunities for Persons With AIDS Program, HUD Office of Inspector General, Memorandum No: 2017-CF-0801, Kansas City, KS, August 21, 2017, https://www.hudoig.gov/sites/default/files/documents/2017-CF-0801.pdf.

[69] U.S. Department of Agriculture (USDA), "Reinvention of the Sections 514, 515, 516, and 521 Multi-Family Housing Programs," 69 *Federal Register* 69032, November 26, 2004, available at https://www.federalregister.gov/documents/2004/11/26/04-25599/reinvention-of-the-sections-514-515-516-and-521-multi-family-housing-programs.

[70] U.S. Department of Agriculture (USDA), "Reinvention of the Sections 514, 515, 516 and 521 Multi-Family Housing Programs: Interim final rule; delay of effective date," 70 *Federal Register* 8503, February 22, 2005, available at https://www.govinfo.gov/content/pkg/FR-2005-02-22/pdf/05-3226.pdf.

[71] Ibid. See "Summary."

[72] Some older Section 515 properties may have Section 8 project-based rental assistance (a Section 214-covered

Multifamily Guaranteed Loan Program (Section 538). The Section 538 program allows USDA to guarantee loans for certain multifamily housing properties in rural areas. Occupancy in Section 538 properties is restricted to *qualified aliens*, defined in USDA regulations as those eligible under Section 214.[73]

Low Income Housing Tax Credits

The Low Income Housing Tax Credit (LIHTC) program, administered by the Internal Revenue Service (IRS), provides per capita federal tax credit allocations to states, which in turn allocate those credits to developers of affordable rental housing for lower-income individuals and families.[74] The law authorizing the program does not address noncitizen eligibility for tenancy in LIHTC-funded housing developments, nor do the program's implementing regulations or guidance. Thus, there are no current federal noncitizen eligibility restrictions for LIHTC units.[75]

However, many LIHTC developments are financed or otherwise assisted by other federal housing programs. For example, LIHTCs may be used to help finance the redevelopment of public housing or properties with project-based rental assistance; HOME or CDBG grants may be part of a LIHTC development's financing package; and/or Housing Choice Vouchers may be used in LIHTC units. Noncitizen restrictions applicable to any other assistance is applicable to LIHTC units receiving that assistance.

Single-Family Mortgage Insurance Programs

The federal government supports a number of single-family mortgage insurance or guarantee programs. These programs allow the government to insure or guarantee single-family mortgage loans made by lenders to qualified borrowers. The guarantees protect the lender against possible future losses associated with a borrower's default. Each of the single-family guaranteed loan programs has different requirements for noncitizen eligibility.

FHA loans. The Federal Housing Administration (FHA) at HUD insures certain single-family mortgages offered through private lenders.[76] While no statute or regulations address noncitizen eligibility for FHA-insured single-family loans, guidance in FHA's Single-Family Housing Policy Handbook[77] states that only lawful permanent resident aliens and "non-permanent resident aliens"[78] are eligible to receive an FHA-insured loan and that "non-U.S. Citizens without lawful

program) attached to some or all of their units. Tenants living in units with Section 8 project-based rental assistance are subject to that program's requirements.

[73] U.S. Department of Agriculture (USDA), "Guaranteed Rural Rental Housing Program: Interim Final Rule with Request for Comments," 63 *Federal Register* 39452 et seq., July 22, 1998, https://www.govinfo.gov/content/pkg/FR-1998-07-22/pdf/98-19558.pdf.

[74] For more information, see CRS Report RS22389, *An Introduction to the Low-Income Housing Tax Credit*.

[75] While there are no federal restrictions related to noncitizen eligibility, individual LITHC property owners and managers may elect to require that tenants provide proof of legal residency in the United States, as long as they do so uniformly and without violation of the Fair Housing Act. See "IRS Publication Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition," available at https://www.irs.gov/pub/irs-utl/lihc-form8823guide.pdf.

[76] For more information, see CRS Report RS20530, *FHA-Insured Home Loans: An Overview*.

[77] FHA Single-Family Housing Policy Handbook 4000.1, Section II.A.1.b.ii.(A)(9). https://www.hud.gov/sites/documents/40001HSGH.PDF.

[78] The term *non-permanent resident alien* is not explicitly defined in the handbook. It states that "non-U.S. Citizens without lawful residency in the U.S. are not eligible" and that *non-permanent resident aliens* may be eligible if they have a valid Social Security Number (or are employed by the World Bank, an embassy, or equivalent) and if they are

residency in the U.S. are not eligible." There was some debate about the extent to which recipients of deferred action (DACA) were eligible for FHA-insured loans, but FHA has since stated that DACA recipients are not currently, and never technically were, eligible for FHA-insured loans.[79]

RHS loans. RHS offers a Rural Housing guaranteed single-family loan product (Section 502(h)) for eligible borrowers in rural areas. (It also offers the Section 502 Direct Loan program, which is covered under Section 214, as discussed earlier in this report.) USDA regulations require that a Section 502 guaranteed loan borrower be a U.S. citizen or qualified alien.[80] The regulations define *qualified alien* by referencing the definition under PRWORA.

VA loans. VA home loan programs do not include requirements directly related to immigration status. Instead, eligibility for VA loans is tied to veteran status, which is based on military service. Generally, only U.S. nationals, FAS citizens, and legal permanent residents are eligible to enlist in the U.S. military.[81]

Table 2. Noncitizen Eligibility for Housing Programs

Programs	Relevant Statute, Regulations, or Guidance	Noncitizen Eligibility
Section 214-Covered Programs		
HUD: • Public Housing • Housing Choice Vouchers • Section 8 project-based rental assistance	42 U.S.C. §1437a 24 C.F.R. §5.500 Subpart E	Section 214-eligible noncitizens are eligible for assistance. Mixed-status families receive prorated/reduced benefits.
USDA: • Rural Rental Assistance (Section 521)	42 U.S.C. §1437a 7 C.F.R. §§3560.254(c)(3) and 3560.11	Section 214-eligible noncitizens are eligible for assistance. Eligibility is determined only for the head of household; no proration of benefits for mixed-status families.
• Rural Development Voucher Program (Section 542)	*Federal Register* Notices[a]	Section 214-eligible noncitizens are eligible for assistance. Eligibility is determined only for the head of household; no proration of benefits for mixed-status families.
• Single Family 502 Direct Loans and 504 Direct Loans and Grants	42 U.S.C. §1436a 7 C.F.R. §§3550.53 and 3550.10 (Section 502) 7 C.F.R. §§3550.103(d) and 3550.10 (Section 504)	Section 214-eligible noncitizens are eligible for assistance. Eligibility is determined only for the head of household; no proration of benefits for mixed-status families.

eligible to work in the United States (including refugees and asylees). Ibid, p. 134.

[79] See Letter from Len Wolfson, Assistant Secretary for Congressional and Intergovernmental Affairs, to Representative Aguilar, June 11, 2019, available at https://www.ncsha.org/resource/hud-letter-on-daca-fha-mortgage-eligibility/.

[80] 7 C.F.R. §3555.151(b)

[81] See 10 U.S.C §504(b). The law allows for those who do not meet these requirements to enlist under certain circumstances, and those that do enlist are then offered a pathway to citizenship. However, this authority is not currently in use. For more information, see CRS In Focus IF10884, *Expedited Citizenship through Military Service*.

Programs	Relevant Statute, Regulations, or Guidance	Noncitizen Eligibility
Non-Section 214 HUD Grant and Housing Assistance Programs		
Section 202 and Section 811 Project Rental Assistance	No provision[b]	No regulatory restrictions on noncitizen eligibility; no federal requirement for verification of status.
HOME, Community Development Block Grants, other grant programs	No provision[b]	No regulatory restrictions on noncitizen eligibility; no federal requirement for verification of status.
Homeless Programs (Emergency Solutions Grants, Continuum of Care grants, and HOPWA)	No regulatory provision,[b] HUD joint letter and fact sheet[c]	Specific activities identified as exempt from PRWORA restrictions. No federal requirement for verification of status.
Non-Section 214 USDA Rural Rental Housing Programs		
Farm Labor Housing (Section 514 and 516)	42 U.S.C. §1484 and 42 U.S.C. §1486 7 C.F.R. §3560.624; 7 C.F.R. §3560.576; 7 C.F.R. §3560.11; and USDA guidance[c]	LPRs and persons legally authorized for work in agriculture (i.e., H2A visa holders) are eligible for assistance. Eligibility only determined for head of household; no proration of benefits for mixed-status families. If a unit is receiving Section 521 assistance (a Section 214-covered program), Section 521 eligibility requirements apply.
Rural Rental Housing Loans (Section 515)	7 C.F.R. §3560.152 Regulation indefinitely suspended[d]	No current regulatory restriction on noncitizen eligibility and no federal requirement for verification of status. If a unit is receiving Section 521 or Section 8 project-based rental assistance (Section 214-covered programs), that program's eligibility requirements apply.
Multi-Family Housing Loan Guarantees (Section 538)	7 C.F.R. §§3565.202(b) and 3565.3	Tenant must be a *qualified alien*, defined using Section 214 eligibility.
Other		
Low Income Housing Tax Credit Program (LIHTC)	No provision	No federal noncitizen restrictions for LIHTC properties. Units receiving other assistance are subject to those programs' noncitizen restrictions.
Single-Family Mortgage Insurance Programs		
HUD FHA Single-Family Loans	FHA Single Family Housing Policy Handbook 4000.1	LPRs and *non-permanent resident aliens* (including refugees and asylees) are eligible borrowers.[e] Those without *lawful residency* are not eligible.
USDA RHS 502(h) Guaranteed Loans	7 C.F.R. §§3555.151(b) and 3555.10	Applicant must be a *qualified alien*, defined using PRWORA definition.
VA Home Loans	No provision	Eligibility based on veteran status, which is based on military service. Generally, only U.S. nationals, LPRs, and FAS citizens are eligible to enlist.[f]

Source: Prepared by CRS.

a. U.S. Department of Agriculture (USDA), "Rural Development Voucher Program: Notice," 82 *Federal Register* 21972 et. seq., May 11, 2017.

b. Except as otherwise noted, HUD has not identified which of its programs provide federal public benefits and are thus subject to PRWORA. HUD has not issued regulations to implement PRWORA's noncitizen restrictions for any of these programs.

c. Letter from Loretta E. Lynch, Attorney General of the United States, Sylvia M. Burwell, Secretary of Health and Human Services, and Julian Castro, Secretary of Housing and Urban Development, to Recipients of Federal Financial Assistance, August 5, 2016, available at https://files.hudexchange.info/resources/documents/HUD-HHS-DOJ-Letter-Regarding-Immigrant-Access-to-Housing-and-Services.pdf. USDA Rural Development internal guidance, "Implementation of the Revised Definition of Domestic Farm Laborers for Farm Labor Housing," July 5, 2018, available at https://www.rd.usda.gov/files/RDUL-domestic.pdf.

d. U.S. Department of Agriculture (USDA), "Reinvention of the Sections 514, 515, 516 and 521 Multi-Family Housing Programs: Interim final rule; delay of effective date," 70 *Federal Register* 8503, February 22, 2005, available at https://www.govinfo.gov/content/pkg/FR-2005-02-22/pdf/05-3226.pdf.

e. See footnote 79.

f. See footnote 81.

Recent Administrative Actions

HUD Proposed Revision to Section 214 Regulations

On May 10, 2019, HUD released a proposed rule to revise its interpretation of Section 214 and end eligibility for mixed-status families in Section 214-covered programs.[82] Additionally, the rule would establish new documentation requirements for citizens. In the preamble to the proposed rule as published in the *Federal Register*, HUD contends that this policy change is consistent with various executive orders issued by President Trump.[83]

Mixed-Status Families

Under HUD's 2019 proposed rule, mixed-status families would be ineligible for assistance. The only exception would be for certain households that were receiving assistance on the date the current regulations took effect (June 19, 1995). All other mixed-status households currently being served would either have to remove ineligible household members to continue to receive assistance (an option that would not be available for families with eligible children but no eligible adults) or to move to unassisted housing, either voluntarily or by formal eviction. Program administrators could continue assistance for mixed-status families for 6 to 18 months while families seek new housing. No future mixed-status families would be eligible for assistance.

According to 2017 HUD data (as published in the economic analysis accompanying the rule and analyzed by CRS) the programs covered by the regulation were serving more than 25,000 mixed-status families consisting of more than 108,000 people. More than three-quarters of these households were families with children, primarily households containing eligible children and ineligible adult members. This included roughly 55,000 children who were U.S. citizens or had eligible immigration status.

Mixed-status families make up a relatively small share of the overall assistance caseload nationally, accounting for approximately 0.5% of all assisted households. However, mixed-status

[82] U.S. Department of Housing and Urban Development (HUD), "Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980," 84 *Federal Register* 20589, May 10, 2019.

[83] Ibid.

families make up a more significant share of the caseloads of some PHAs administering Public Housing and/or Housing Choice Vouchers. Based on CRS analysis of HUD data, mixed-status families account for 10% or more of the caseload for approximately 40 PHAs, in some instances accounting for more than one-third of all families served by the PHA. Geographically, the largest numbers of mixed-status families are in California, Texas, and New York.

Documentation Requirements for Citizens

As noted previously in this report, under current HUD regulations each applicant for housing assistance must provide, for each member of the applicant household: (1) a declaration of U.S. citizenship, signed under penalty of perjury; (2) a declaration of eligible immigration status, signed under penalty of perjury, along with appropriate verification documentation; or (3) a statement that the member does not contend to have eligible immigration status (thus making the family a mixed-status family). The proposed rule would make changes to the first option by requiring documentation of citizenship. Currently, program administrators may, but are not required to, request citizenship documentation of applicants. Under the proposed rule, all current and future citizen beneficiaries would have to provide proof of citizenship, such as a birth certificate, passport, or other documentation deemed acceptable by HUD, as established in future guidance. The vast majority of the roughly 9.6 million people receiving assistance under the Section 214-covered programs are citizens who would be subject to this requirement.

Economic Analysis and Current Status

HUD's economic analysis[84] found that the proposed rule would increase subsidy costs by roughly $200 million annually, as mixed-status families receiving a reduced benefit would be replaced by families receiving full benefits. However, in a limited funding environment this would likely result in fewer families being served overall or a decrease in the quality of the housing provided. Additionally, turnover in housing programs can be costly for program administrators. These costs can include the court-related expenses related to formal evictions, cleaning and repairs to prepare a unit for new occupants, and/or the costs of processing new applicants for assistance. HUD notes that these costs may be sizeable. In addition, HUD estimated that displaced mixed-status families would bear moving costs of approximately $500 each and further noted that some families may face homelessness as a result of the rule change. The agency did not quantify that impact, but noted that researchers estimate that the costs of homelessness borne by society can exceed $20,000 per homeless person annually.

The potential administrative or other program costs of the new documentation requirement are not contemplated in HUD's economic analysis of the proposed rule. A 2007 Government Accountability Office report assessed the implications of citizenship documentation requirements added to the Medicaid program and found that such requirements appeared to increase administrative costs of the program and served as a barrier to program enrollment or resulted in loss of benefits for otherwise eligible citizens.[85]

The proposed rule received over 30,000 comments. Commentators raised concerns about administrative burdens and impacts on families, as well as the possibility of legal challenges

[84] Regulatory Impact Analysis 6124-P-01 Housing and Community Development of 1980 Verification of Eligible Status RIA 5.8.19, available at https://beta.regulations.gov/document/HUD-2019-0044-0002.

[85] U.S. Government Accountability Office (GAO), States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens, GAO-07-889, June 2007, https://www.gao.gov/new.items/d07889.pdf.

under the Fair Housing Act and the Administrative Procedures Act. As of the date of this report, the proposed rule had not been finalized.

Public Charge

Under the Immigration and Nationality Act (INA), an alien may be denied admission into the United States or LPR status if he or she is "likely at any time to become a public charge" (8 U.S.C. §1182(a)(4)).[86] The INA does not define the term *public charge*.[87] Thus, the determination of whether an alien is inadmissible[88] on public charge grounds turns largely on standards set forth in agency guidance materials.[89]

On August 15, 2019, the Department of Homeland Security (DHS) published a final rule that defines *public charge* as someone "more likely than not at any time in the future to receive one or more public benefits ... for more than 12 months within any 36-month period."[90] This rule expanded the list of public benefits considered in public charge determinations to include nine programs, including three housing programs: Section 8 project-based rental assistance, the Housing Choice Vouchers, and Public Housing.[91]

Numerous commenters raised concerns that this rule could have a "chilling effect" on the use of housing benefits by both individuals subject to the rule and those who are not.[92] According to DHS's economic analysis, this rule will lead to over 14,500 households with at least one foreign-born noncitizen disenrolling or foregoing enrollment in one of the three specified housing programs.[93] Furthermore, according to DHS's regulatory impact analysis, that will lead to increased housing instability.[94] Commenters also raised concerns that this rule could lead to increased homelessness as well.[95] DHS asserted that the rule upholds the American value of self-sufficiency and ensures that the availability of public benefits will not incentivize immigration to the United States.[96]

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[86] An admitted alien may also be subject to removal from the United States based on a separate public charge ground of deportability, but this is rarely employed.

[87] For more information on the public charge, see CRS In Focus IF11467, *Immigration: Public Charge*.

[88] "Aliens who are inadmissible ... are ineligible to receive visas and ineligible to be admitted to the United States" (8 U.S.C. §1182). A noncitizen can be deemed inadmissible for health, security, public charge, and criminal-related grounds, among others.

[89] The Department of Homeland Security and the Department of State have primary responsibility for implementing the public charge ground of inadmissibility.

[90] Benefits received by certain groups, such as members of the U.S. Armed Forces and their spouses and children, do not count as public benefits under the regulations. Additionally, DHS is to consider only benefits directly received by the alien for the alien's own benefit; it is not to consider benefits received by a legal guardian on behalf of another (e.g., a U.S. citizen child).

[91] The other six programs are Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), state general assistance, benefits provided for institutionalized long-term care, the Supplemental Nutrition Assistance Program (SNAP), and Medicaid (with exceptions).

[92] U.S. Department of Homeland Security (DHS), "Inadmissibility on Public Charge Grounds," 84 *Federal Register*, August 14, 2019, p. 41310.

[93] U.S. Department of Homeland Security (DHS), *Proposed Rule: Inadmissibility on Public Charge Grounds: Economic Analysis Supplemental Information for Analysis of Public Benefits Programs*, August 2019, p. 7.

[94] U.S. Department of Homeland Security (DHS), *Regulatory Impact Analysis: Inadmissibility on Public Charge Grounds*, August 2019, p. 109.

[95] U.S. Department of Homeland Security (DHS), "Inadmissibility on Public Charge Grounds," 84 *Federal Register*, August 14, 2019, p. 41471.

[96] Ibid., p. 41312.

Author Information

Maggie McCarty
Specialist in Housing Policy

Abigail F. Kolker
Analyst in Immigration Policy

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