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Immigration: Noncitizen Eligibility for Needs-Based Housing Programs

Updated December 8, 2015

Congressional Research Service
https://crsreports.congress.gov
RL31753

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

The issue of noncitizen eligibility for federally funded programs, including needs-based housing programs, is a perennial issue in Congress. Noncitizen eligibility varies among the needs-based housing programs administered by the U.S. Department of Housing and Urban Development (HUD), such as Public Housing, Section 8 vouchers and project-based rental assistance, homeless assistance programs, housing for the elderly (§202) and the disabled (§811), the HOME program, and the Community Development Block Grants (CDBG) program. Two laws govern noncitizen eligibility for housing programs: Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform) and Section 214 of the Housing and Community Development Act of 1980, as amended.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) explicitly states that aliens, unless they are qualified aliens, are not eligible for "federal public benefits," a term defined in the law to include public and assisted housing. Under the statute, unauthorized (illegal) aliens do not meet the definition of qualified aliens, and as a result, they are ineligible for "federal public benefits." However, PRWORA did not make those who had been receiving housing benefits before the date of enactment (August 22, 1996) ineligible for housing benefits. Likewise, PRWORA exempts certain types of programs that are usually thought of as emergency programs from the alien eligibility restrictions. HUD has not issued guidance implementing the PRWORA provisions.

Section 214 of the Housing and Community Development Act of 1980 states that only certain categories of noncitizens are eligible for benefits under the housing programs covered by Section 214. Unauthorized aliens are not eligible for benefits under Section 214. The aliens eligible for housing assistance under Section 214 are similar to those eligible for federal public benefits under PRWORA, with some exceptions.

There is uncertainty surrounding how the eligibility requirements of PRWORA and Section 214 interact, leading to conflicting interpretations of the categories of noncitizens eligible for housing programs. A provision addressing this issue was considered during the FY2003 appropriations debate, but not included in the final bill.

There has been congressional interest regarding the implementation of the eligibility requirements for housing programs. Specifically, questions have been raised as to the documentation requirements placed on both citizens and noncitizens in determining eligibility for housing programs. The documentation requirements are dependent on (1) the housing program, (2) the citizenship status of the applicant, and (3) the age of the applicant.

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Introduction

Noncitizen eligibility varies among the needs-based housing programs[1] administered by the U.S. Department of Housing and Urban Development (HUD). Two laws govern noncitizen treatment in housing programs: Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996[2] (PRWORA) and Section 214 of the Housing and Community Development Act of 1980, as amended. There is uncertainty surrounding how the eligibility requirements of PRWORA and Section 214 interact, leading to conflicting interpretations of the categories of noncitizens eligible for certain housing programs. Also, the documentation requirements for establishing eligible immigration status reflect the differing eligibility rules and are dependent on (1) the housing program, (2) the citizenship status of the applicant, and (3) the age of the applicant.

Laws and Regulations Governing Alien Eligibility

Personal Responsibility and Work Opportunity Reconciliation Act of 1996

In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) which 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," a term defined in the law to include public and assisted housing. However, PRWORA did not make those who had been receiving housing benefits before the date of enactment (August 22, 1996) ineligible for housing benefits. Likewise, PRWORA exempted certain types of programs that are usually thought of as emergency programs from the eligibility restrictions. In addition, although no HUD program is considered a "federal *means-tested* public benefit" (FMTPB), PRWORA also included more stringent eligibility requirements for FMTPBs (discussed later in this report).

Qualified Alien

PRWORA created the term "qualified alien," a term which did not previously exist in immigration law, to encompass the different categories of noncitizens who are *not prohibited* by PRWORA from receiving federal public benefits.[3] Qualified aliens are defined as

- Legal Permanent Residents (an alien admitted for lawful permanent residence (LPR));
- refugees (an alien who is admitted to the United States under §207 of the Immigration and Nationality Act (INA));[4]
- asylees (an alien who is granted asylum under INA §208);

[1] For an introduction to HUD's housing programs, see CRS Report RL34591, *Overview of Federal Housing Assistance Programs and Policy*, by Maggie McCarty, Libby Perl, and Katie Jones.

[2] P.L. 104-193, signed into law on August 22, 1996.

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

[4] Under law, victims of severe forms of trafficking in persons are to be treated as refugees for eligibility purposes. (See discussion below.)

- an alien who is paroled into the United States (under INA §212(d)(5)) for a period of at least one year;
- an alien whose deportation is being withheld on the basis of prospective persecution (under INA §243(h) or §241(b)(3));
- an alien granted conditional entry pursuant to INA §203(a)(7) as in effect prior to April 1, 1980; and
- Cuban/Haitian entrants (as defined by P.L. 96-422).[5]

Additionally, under PRWORA, 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."[6] Nonimmigrants (i.e., aliens in the United States for a temporary period of time such as foreign students and agricultural workers) and unauthorized (illegal) aliens are not considered qualified aliens. In addition, aliens who have been granted deferred action[7] are not considered qualified aliens.

Aliens Receiving Benefits on August 22, 1996

Although PRWORA explicitly states that aliens, unless they are qualified aliens, are not eligible for "federal public benefits," certain aliens—including aliens who are not qualified aliens—are exempt from this eligibility restriction. Specifically, any alien who was receiving assistance from programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, 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 of the enactment of PRWORA (August 22, 1996) is exempt from PRWORA's eligibility restrictions.[8]

Emergency Programs

PRWORA also exempts types of *programs*, usually thought of as emergency programs, from alien eligibility requirements including

> Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.[9]

[5] For a discussion of the different categories of noncitizens see CRS Report RS20916, *Immigration and Naturalization Fundamentals*, by Ruth Ellen Wasem.

[6] P.L. 104-193 §431(c)(1)(A); 8 U.S.C. §1641.

[7] Deferred action is not an immigration status. Deferred action is "a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion." U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Consideration of Deferred Action for Childhood Arrivals Process, Frequently Asked Questions, http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions. See also "A Note About Deferred Action for Childhood Arrivals (DACA)" text box on page 10.

[8] P.L. 104-193 §401(b)(1)(E); 8 U.S.C. §1611.

[9] P.L. 104-193 §401(b)(1)(D); 8 U.S.C. §1611.

Thus, nonimmigrants and unauthorized aliens (i.e., aliens who do not meet the definition of qualified aliens) are eligible for emergency programs.

A week after the enactment of PRWORA, former Attorney General Janet Reno published a notice specifying what types of programs, services and assistance were exempt from alien eligibility limitations.[10] According to the notice, services or assistance necessary for the protection of life and safety include

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

Although PRWORA includes "public or assisted housing" in the definition of federal public benefits, HUD has released few regulations interpreting PRWORA or its impact on alien eligibility for the housing programs administered by HUD. Part of HUD's failure to issue regulations regarding the impact of PRWORA on housing programs reportedly stems from an ongoing discussion of how to classify HUD's homeless programs and which, if any, fit the definition of "necessary for the protection of life and safety" as defined in the notice.

Federal Means-Tested Public Benefit

HUD published a regulation in 2000 which stated that no HUD program was a "federal *means-tested* public benefit" (FMTPB).[11] FMTPBs have stricter eligibility requirements than federal public benefits including

- five-year ban for qualified aliens entering after the date of enactment (August 22, 1996);[12]
- "deeming" which means that the sponsor's resources (and those of the sponsor's spouse) are used in calculating the financial eligibility of a qualified alien until the noncitizen becomes naturalized or has accumulated 40 quarters (10 years) of documented work;[13] and
- authority of the government to seek reimbursement from the alien's sponsor for the cost of FMTPB provided to the sponsored alien.[14]

[10] 61 *Federal Register*, p. 45985, August 30, 1996. 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.

[11] See 65 *Federal Register*, p. 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 programs. (None of HUD's programs are mandatory programs.) The Department of Justice found that this was a permissible interpretation of the statute (see 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*, Department of Justice, January 14, 1997).

[12] Refugees, asylees, aliens whose deportation is being withheld, Cuban/Haitian entrants, Amerasian immigrants, and immigrants with a military connection are excluded from the five-year ban.

[13] This deeming requirement only applies to aliens who enter after December 19, 1997, the effective date of the new legally binding affidavit of support.

[14] For an expanded discussion of noncitizen restrictions in PRWORA, see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Alison Siskin.

Since HUD programs are not considered FMTPBs, none of the more stringent eligibility requirements apply to any HUD program.[15]

Victims of Trafficking and Violence Protection Act of 2000

Subsequent to the enactment of PRWORA, Congress enacted legislation which made victims of trafficking eligible for public benefits.[16] This law did not amend PRWORA to include trafficking victims as eligible for public benefits; rather, it stated that victims of trafficking shall be eligible for benefits and services "under any Federal or State program" to the same extent as refugees.[17] Thus, victims of trafficking are eligible for housing programs to the same extent that refugees are eligible for these programs.

Section 214 of the Housing and Community Development Act of 1980

Section 214 of the Housing and Community Development Act of 1980, as amended,[18] states that only certain categories of noncitizens are eligible for benefits under specified housing programs. HUD programs covered under Section 214 include the programs under the U.S. Housing Act of 1937 (Public Housing and Section 8 tenant-based vouchers and project-based rental assistance), Section 235 Homeownership Assistance, Section 236 Rental Assistance and Section 101 Rental Supplements.[19] These programs provide direct rental or homeownership assistance to low-income families. Public Housing and Section 8 tenant-based vouchers are administered by quasi-governmental, local public housing authorities (PHAs); the other programs are primarily administered by private property owners under contract with HUD.

Section 214 predates PRWORA. Under Section 214, the Secretary of Housing and Urban Development may not make financial assistance available to an alien unless the alien both is a resident of the United States and is

- an alien lawfully admitted for permanent residence as an immigrant ... excluding, among others, alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country;
- an alien who ... is deemed to be lawfully admitted for permanent residence [under the registry provisions of the INA];[20]

[15] Since this determination was made by regulation and not in statute, it is possible that the regulation could be administratively changed by HUD to reinterpret the meaning of FMTPBs as it relates to HUD programs.

[16] Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386) signed into law on October 28, 2000. For more on this act, see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Alison Siskin and Liana W. Rosen.

[17] P.L. 106-386, §107.

[18] P.L. 96-399, §214, 94 Stat. 1637, *codified at* 42 U.S.C. §1436a. The original provision has since been amended by the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, §329, 95 Stat. 408, and by the Housing and Community Development Act of 1987, P.L. 100-242, §164, 101 Stat. 1860.

[19] §214 also applies to certain rural housing programs administered by the U.S. Department of Agriculture, including the §502, §504, §521, and §542 programs. For more information on rural housing programs, see CRS Report RL31837, *An Overview of USDA Rural Development Programs*, by Tadlock Cowan.

[20] INA, §249, 8 U.S.C. §1259. §203(a) of IRCA changed the entry cut-off date for adjustment under the registry provision from June 30, 1948 to January 1, 1972.

- an alien who has qualified ... [as a refugee or asylee];
- an alien who is lawfully present in the United States as a result of an exercise [of the Attorney General's parole authority] ...;
- an alien within the United States as to whom the Attorney General has withheld deportation [on the basis of prospective persecution] ...; or
- an alien lawfully admitted for temporary or permanent residence under Section 245A of the Immigration and Nationality Act.[21]

Unauthorized aliens are not eligible for financial assistance under Section 214-covered programs.

Mixed Families

Many households that include U.S. citizens or qualified aliens also include ineligible aliens (e.g., unauthorized aliens). Section 214 of the Housing and Community Development Act of 1980, as amended, requires HUD and local public housing authorities to provide prorated assistance to families in which at least one member has eligible immigration status. A prorated housing benefit is calculated by reducing the benefit due to the family by the proportion of nonqualified aliens in the household.[22]

Comparison of PRWORA and Section 214

The aliens eligible for housing assistance under Section 214 are similar to those eligible for federal public benefits under PRWORA (i.e., those who are not prohibited from eligibility), with some exceptions.

- Both statutes allow LPRs, asylees, refugees, and those on the registry to be eligible for assistance.
- Both statutes allow parolees eligibility, but PRWORA states that the alien must be paroled into the U.S. for a period of one year, while no time-limit is specified in §214.
- Both statutes extend eligibility to aliens whose deportation is being withheld on the basis of prospective persecution, but §214 only references those whose deportation is withheld on the basis of prospective persecution post-1996, while PRWORA includes anyone whose deportation is withheld pre- *or* post-1996.
- Only PRWORA specifically allows eligibility for Cuban/Haitian entrants.[23]
- Only PRWORA allows battered immigrants who can show a substantial connection between the battery and the need for benefits to be eligible.

Both PWORA and Section 214 do not make nonimmigrants and unauthorized aliens eligible for benefits. In addition, neither section makes those with deferred action[24] eligible for benefits.

It is also important to note that while Section 214 applies only to those programs covered by Section 214 (primarily the direct rental assistance programs), PRWORA applies to all programs

[21] 42 U.S.C. §1436a(a).

[22] 42 U.S.C. §1436a(b); 24 C.F.R. §5.520.

[23] Although §214 does not specify that Cuban/Haitian entrants are eligible, under immigration law they are technically parolees and may be eligible for housing assistance as such.

[24] See footnote 7 and "A Note About Deferred Action for Childhood Arrivals (DACA)" text box on p. 10.

providing federal public benefits. As noted earlier, HUD has not published guidance as to which of its programs are considered as providing federal public benefits.[25]

Previous Legislation Addressing Section 214 and PRWORA Differences

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 of the Housing and Community Development Act of 1980, bringing Section 214 into conformity with PRWORA. The amendment would have effectively made Cuban/Haitian entrants, aliens whose deportation was being withheld on the basis of prospective persecution prior to 1996, and certain battered aliens statutorily eligible for housing benefits.

Due to the complicated nature of the interaction of the housing law and PRWORA there was confusion over the purpose of the amendment. While some viewed the amendment as a technical correction, others were concerned that it would have broadened noncitizens' eligibility for housing programs, and still others were concerned that it might have restricted eligibility.

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).

Alien Eligibility as Applied to Specific Housing Programs

Section 214-Covered Programs (Including Public Housing and Section 8)

There are several potentially conflicting interpretations of the interaction of Section 214 and PRWORA and uncertainty regarding HUD's interpretation of the noncitizen eligibility restrictions. Under one possible interpretation, to be eligible for Section 214 programs, a class of noncitizens cannot be prohibited from receiving benefits under PRWORA *and* must be listed as an eligible class under Section 214. For example, parolees who have been in the United States for less than one year would be ineligible for Section 214 programs because, although they are eligible under Section 214, they are prohibited under PRWORA. On the other hand, battered immigrants would be ineligible for Section 214 programs because, although they are not ineligible for benefits under PRWORA, they are not listed as eligible under Section 214. Interestingly, under this interpretation, the interaction between Section 214 and PRWORA make the alien eligibility requirements for Section 214 housing programs more restrictive than the

[25] The one exception appears to be in the case of the Lead Hazard Control grant programs. 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.

requirements for other federal public benefits, although *by itself* Section 214 is not necessarily more restrictive than the provisions in PRWORA.

A second possible interpretation depends on whether or not PRWORA makes qualified aliens affirmatively eligible for benefits. PRWORA states "[n]otwithstanding any other provision in the law ... an alien who is not a qualified alien ... is not eligible for any federal public benefits."[26] It could be asserted that by not prohibiting qualified aliens from federal public benefits, PRWORA grants eligibility to qualified aliens for federal public benefits. Since PRWORA *effectively* supercedes Section 214 (given the "notwithstanding" clause), under this interpretation, all noncitizens who are qualified aliens would be eligible for Section 214-covered housing programs.

Despite statutory and regulatory arguments, this second interpretation may, in fact, reflect what is happening in practice. Prior to the enactment of PRWORA, HUD released regulations based on Section 214 that established a standard for verifying an applicant's immigration status.[27] To verify eligibility, PHAs and property owners use the Systematic Alien Verification for Entitlements (SAVE) program,[28] which enables federal, state, and local governmental agencies to obtain immigration status information to determine eligibility for public benefits.[29] The SAVE system is also used to determine noncitizen eligibility for other benefits including Medicaid, Temporary Assistance for Needy Families (TANF), and food assistance which use the noncitizen eligibility restrictions outlined in PRWORA. As a result, it is possible that some housing authorities are using the noncitizen eligibility requirements specified in PRWORA, without regard to Section 214.[30]

As noted earlier, mixed families are eligible to receive prorated assistance from Section 214-covered programs.

HUD's Homeless Assistance Programs

HUD's homeless programs include the Shelter Plus Care (S+C) program, the Supportive Housing Program (SHP), the Single Room Occupancy (SRO) program, and the Emergency Shelter Grants (ESG) program, all of which are funded under the Homeless Assistance Grants account, as well as the Housing for Persons with AIDS (HOPWA) program. One of the programs funded through the Homeless Assistance Grants is a Section 214-covered program: the SRO program. Housing units for homeless individuals provided through the SRO program are developed through the Section 8 Moderate Rehabilitation program and receive Section 8 rental assistance. As a result, nonqualified aliens (e.g., nonimmigrants and unauthorized aliens) as defined by Section 214 are ineligible for the SRO program. However, HOPWA and the remaining homeless programs—S+C, SHP, and ESG—are not covered by Section 214.

Although PRWORA lists "housing assistance" as a federal public benefit governed by the statute, HUD has not issued regulations to clarify whether HUD homeless assistance programs are

[26] P.L. 104-193, §401(a).

[27] See 24 C.F.R. §5.500.

[28] The SAVE program (of which the SAVE system is a component) is administered by the Department of Homeland Security's Citizenship and Immigration Services (USCIS).

[29] The program allows access to USCIS' Verification Information System (VIS) database which contains approximately 60 million records on immigrants to the United States. The SAVE system does not determine eligibility for any program, but provides information on the alien's status so that the program's administrators can make an eligibility determination. For more information on the SAVE program, seehttp://www.uscis.gov/save/about-save-program, accessed December 9, 2015.

[30] For example, Cuban/Haitian entrants are eligible for housing benefits in Florida.

considered "federal public benefits," and therefore subject to PRWORA's noncitizen eligibility restrictions. Assuming the homeless assistance programs (S+C, SHP, ESG, and HOPWA) are governed by PRWORA, citizens and qualified aliens are *effectively*[31] eligible for benefits from all homeless assistance programs if they meet need standards. The status of nonqualified aliens is less clear, as the assistance provided through some of HUD's homeless programs could fit the PRWORA 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. the benefit is not conditioned on a client's income or resources, and
3. the benefit is necessary for the protection of life and safety.

Temporary emergency shelter provided through the ESG program could fulfill the requirements of this exception. However, some transitional and all permanent housing may not meet the second requirement. Formerly homeless individuals who reside in permanent supportive housing provided through S+C or SHP pay a portion of their income toward rent. The same is true for some transitional housing provided through SHP. HUD has not published guidance indicating which, if any, of its programs are considered to meet the three requirements for exception from PRWORA as emergency programs.

Another portion of PRWORA that could be relevant for homeless assistance programs is a provision that exempts "nonprofit charitable organizations" that provide federal public benefits from having to verify the eligibility of program participants.[32] To the extent that administrators of HUD's homeless assistance programs are nonprofit organizations, which many of them are, they are not required under the terms of PRWORA to verify their clients' citizenship status. Thus, nonqualified aliens may be receiving services from these organizations, regardless of their eligibility status. Furthermore, HUD has not published guidance regarding the verification of immigration status for homeless programs that are not governed by Section 214, whether or not they are administered by a charitable organization, making it even more unclear whether or not, in practice, nonqualified aliens receive benefits. (See discussion under "Documentation and Verification" later in this report.)

Mixed families are not separately dealt with in regulations for HUD homeless assistance programs and, given their ambiguous eligibility status and the lack of verification guidance, it is unclear how they are treated.

Other HUD Needs-Based Programs

The other needs-based housing programs administered by HUD are significantly different from the Section 214-covered programs in that they primarily provide funding to nonprofits, states, and units of local governments to provide a variety of forms of assistance to low-income individuals, families, and communities. Examples of other HUD needs-based housing programs include the Section 202 Housing for the Elderly program, the Section 811 Housing for the Disabled program, the Community Development Block Grant program and the HOME Investment Partnerships program. The Section 202 and 811 programs are similar to the Section 8 project-based rental assistance program (which is a Section 214-covered program), but they are administered by

[31] As noted earlier, PRWORA does not necessarily affirmatively make qualified aliens eligible for benefits; rather, it excludes aliens who are not "qualified aliens" from receiving federal public benefits. Since HUD has not issued regulations regarding alien eligibility for homeless programs, one can conclude that since qualified aliens are not prohibited from receiving benefits, they are effectively eligible for these benefits.

[32] 8 U.S.C. §1642(d).

nonprofits rather than PHAs. HOME and CDBG are block grants administered by units of state and local government, who generally award the funds to nonprofit partners. HOME funds housing activities; CDBG funds community development-related activities.

Presumably, the PRWORA restrictions on noncitizen eligibility apply to the other HUD needs-based housing programs; however, the assistance provided through these programs may or may not be considered "federal public benefits." HUD has not issued guidance defining which types of assistance under the other needs-based housing programs are "federal public benefits" and subject to PRWORA's noncitizen eligibility restrictions.[33] Further, HUD has not issued guidance as to how participating entities should implement the PRWORA restrictions.

Assuming the PRWORA restrictions apply to these programs, and since they are not covered by Section 214, it can be interpreted that citizens and qualified aliens are *effectively*[34] eligible for benefits from all other HUD needs-based programs, if they meet need standards. Nonqualified aliens (e.g., unauthorized aliens), as a result of PRWORA, are not legally eligible for any housing benefits from other HUD needs-based programs.[35] However, it is important to note that, unlike Section 214-covered programs, there are no regulations requiring the verification of beneficiaries' citizenship for other HUD needs-based programs, so it is possible that nonqualified aliens may be receiving housing benefits, regardless of their eligibility. (See discussion under "Documentation and Verification" later in this report.) Further, much of the assistance provided by the other needs-based housing programs is administered through nonprofits, which, as noted earlier in this report, are not required to verify immigration status. As a result, while certain nonqualified aliens may be ineligible for assistance under the other HUD needs-based programs, to the extent that assistance is provided by charitable organizations, their status is not required to be verified, so they may be receiving assistance.

Mixed families are not separately dealt with in regulations for other HUD needs-based housing programs and, given their ambiguous eligibility status and the lack of verification guidance, it is unclear how they are treated.

[33] With the exception of 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.

[34] As noted earlier, PRWORA does not necessarily affirmatively make qualified aliens eligible for benefits; rather, it excludes aliens who are not "qualified aliens" from receiving federal public benefits. Since HUD has not issued regulations regarding alien eligibility for other HUD needs-based programs, one can conclude that since qualified aliens are not prohibited from receiving benefits, they are effectively eligible for benefits.

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

A Note About Deferred Action for Childhood Arrivals (DACA)

In 2012, the Department of Homeland Security (DHS) issued a memorandum announcing that certain unauthorized individuals who were brought to the United States as children and meet other criteria would be considered on a case-by-case basis for protection from removal for two years, subject to renewal, under an initiative known as Deferred Action for Childhood Arrivals, or DACA.[36] (DHS defines deferred action as "a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion.")

On November 20, 2014, DHS announced an expansion of the criteria to qualify for the original DACA initiative and the establishment of another DACA-like process to exercise prosecutorial discretion through the granting of deferred action for the unauthorized alien parents of U.S. citizens and LPRs who meet specified criteria. (This initiative is known as DAPA.)[37] Due to legal challenges, the expanded DACA initiative and DAPA have not been implemented.[38]

Like other unauthorized aliens, those with deferred action are generally not eligible for federal housing assistance. The receipt of deferred action under DACA (or potentially under the DACA expansion or DAPA, if those were to be implemented) does not make an individual eligible for federal housing assistance programs.

Documentation and Verification

As discussed above, noncitizen eligibility varies among HUD's needs-based housing programs,[39] and is governed by both PRWORA and Section 214. An important component of any policy discussion on eligibility is the mechanism by which eligibility is determined. The following section discusses the documentation requirements for citizens and noncitizens to demonstrate eligibility for housing assistance.

Section 214-Covered Programs

For the Section 214-covered programs, which include the largest housing assistance programs (Public Housing and the Section 8 tenant-based voucher and project-based rental assistance programs), PHAs and private property owners are required to verify the eligibility of each person in a household.

Every applicant must declare in writing under threat of perjury that he or she is a citizen, an eligible noncitizen, or is choosing not to provide documentation (and is therefore ineligible for assistance).[40]

Citizens are not required to provide documentation of their citizenship status, although PHAs may adopt a policy requiring documentation, such as a U.S. passport.[41] Also, household members over the age of 6 must provide their Social Security numbers and/or certify that they have not

[36] For more on DACA, see CRS Report R43747, *Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*, by Andorra Bruno.

[37] For a discussion of DAPA, see CRS Report R43852, *The President's Immigration Accountability Executive Action of November 20, 2014: Overview and Issues*, coordinated by William A. Kandel.

[38] CRS Legal Sidebar WSLG1442, *The Obama Administration's November 20, 2014, Actions as to Immigration: Pending Legal Challenges One Year Later*, by Kate M. Manuel.

[39] For an introduction to HUD's housing programs, see CRS Report RL34591, *Overview of Federal Housing Assistance Programs and Policy*, by Maggie McCarty, Libby Perl, and Katie Jones.

[40] 42 U.S.C. §1436a(d), 24 C.F.R. §5.508(b)(1).

[41] 42 U.S.C. §1436a(d), 24 C.F.R. §5.508(b)(1).

received a Social Security number in order to receive housing assistance.[42] It is important to note, however, that Social Security numbers do not prove citizenship or eligible immigration status.[43]

Noncitizens age 62 or older are required to provide a signed declaration under threat of perjury of their eligible immigration status and proof of their age.[44] PHAs and property owners are not required to further verify their immigration status.

Other eligible noncitizens/qualified aliens must provide a signed declaration under threat of perjury of their eligible immigration status, documentation from the Department of Homeland Security (DHS),[45] and a signed verification consent form relating to communications between DHS and HUD.[46] A PHA or property owner may provide an extension of up to 30 days if a family certifies that the required evidence is temporarily unavailable and they need more time to locate the required documents.[47] Once the documents have been submitted, a PHA or property owner must verify the documents using the SAVE system (discussed earlier in this report). If the alien thinks that the information returned through the SAVE system is inaccurate, the alien may appeal to DHS. A PHA or property owner may provide assistance temporarily while the alien's status is being verified.[48]

Other noncitizens who are members of households that include eligible noncitizens/qualified aliens may choose not to contend that they have eligible immigration status. In the case of these mixed-status families, eligible noncitizen/qualified alien members of the families may receive pro-rated benefits; however, the family must identify in writing to the PHA or property owner any family members who will be living in the household but have elected not to contend that they have eligible immigration status.[49]

Other HUD Needs-Based Housing Programs (Including Homeless Assistance Programs)

As discussed above, HUD has not issued guidance defining which programs or types of assistance under the other needs-based housing programs are subject to PRWORA's noncitizen eligibility restrictions.[50] Further, HUD has not issued guidance as to how participating entities

[42] 42 U.S.C. §3543(a) 25 C.F.R. §5.210 et. seq.

[43] A Social Security card (or having a valid Social Security number (SSN)) does not denote citizenship, and is not useful for determining citizenship status. Social Security cards issued to noncitizens who are residing permanently in the United States are identical to those issued to U.S. citizens. In addition, aliens who are in the United States temporarily are also eligible for valid SSNs. The SSN issued to a noncitizen in the country temporarily does not change if the noncitizen adjusts status (e.g., a person who is in the United States temporarily may marry a U.S. citizen, become a legal permanent resident, and then naturalize and become a U.S. citizen). Although the noncitizen is supposed to report any change of status to SSA, this does not always occur. As a result, it is possible that some U.S. citizens have a Social Security card with the inscription, "VALID FOR WORK ONLY WITH DHS AUTHORIZATION."

[44] 42 U.S.C. §1436a(d), 24 C.F.R. §5.508(b)(2).

[45] Although the law and the regulation refer to the former Immigration and Naturalization Service (INS), in March 2003 the INS was abolished and all its functions were transferred to DHS.

[46] 42 U.S.C. §1436a(d), 24 C.F.R. §5.508(b)(3).

[47] 42 U.S.C. §1436a, 24 C.F.R. §5.508(h).

[48] 42 U.S.C. §1436a, 24 C.F.R. §5.512.

[49] 42 U.S.C. §1436a, 24 C.F.R. §5.508(e).

[50] With the exception of 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.

should implement the PRWORA restrictions. As a result, the documentation requirements for these programs are unknown. Therefore, it is unclear how, and the extent to which, the entities that administer other needs-based housing assistance are verifying eligible immigration status for noncitizen beneficiaries.

Additionally, much of the funding provided through HUD's other needs-based housing programs is administered through charitable organizations. As noted earlier, PRWORA included language permitting nonprofit charitable organizations to choose not to verify noncitizen eligibility for federal public benefits.[51]

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[51] 8 U.S.C. §1642.