

Governmentally-Subsidized Housing Opportunities for Immigrants



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Objectives

- Obtain general familiarity with federal protections for immigrant tenants
- Learn the main restrictions on access to federally-subsidized housing benefits based on immigration status
- Identify the exceptions to federal restrictions pertaining to immigration status and the governmentally-funded housing opportunities that are currently available to immigrant tenants

Federal Nondiscrimination Protections

- The Fair Housing Act - 42 USC 3604 - prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability
- The Fair Housing Act does not expressly protect non-citizens. **However, a person's immigration status does not affect their federal fair housing rights.**
- Differential treatment based on immigration status may constitute **national origin discrimination**, which the Fair Housing Act expressly prohibits

Federal Nondiscrimination Protections (cont'd)

- **Examples of illegal national origin discrimination:** Refusing to rent to persons who were born in another country or whose primary language is other than English; Offering different rent rates based on ethnicity; Failing to provide the same level or service or housing amenities because a tenant was born in another country.
- Landlords must also uniformly apply selection criteria and tenancy policies, and may not single out tenants based on their actual or perceived national origin/ immigration status
- So if a landlord asks for additional identification documents in a particular case based on an individual applicant's perceived national origin, but does not uniformly impose the same requirement on other applicants, that may be construed as unlawful discrimination regardless of the applicant's immigration status

Immigrant Eligibility for Federally Subsidized Housing Programs

- Even though federal discrimination protections apply regardless of a person's immigration status, existing statutes do restrict eligibility for federal housing and housing subsidies based on an applicant's particular immigration status
- Eligibility for many HUD subsidized housing programs is restricted by immigration status requirements provided by a federal law called Section 214 of the Housing and Community Development Act of 1980 ("Section 214").

Federal Housing Programs Subject to Section 214

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

Categories of Eligible Immigrants Under Section 214

Eligible: • U.S. Citizens and Nationals • Lawful Permanent Residents • VAWA Self-Petitioners • Asylees and Refugees • Parolees • Persons Granted Withholding of Removal/Deportation • Victims of Trafficking • Persons granted admission for emergent or public interest reasons • Persons granted amnesty under 1986 Immigration Reform and Control Act • Immigrants eligible for registry who entered the U.S. before June 30, 1948 • Lawful U.S. residents under the Compacts of Free Association with the Marshall Islands, Micronesia, Palau and Guam • Immigrants admitted for lawful temporary residence prior to January 1, 1982

Ineligible: • All other categories of noncitizens – e.g. student visa holders • employment visa holders • U-visa holders • DACA recipients • Temporary Protected Status recipients • undocumented immigrants

Caveat: • Ineligible does NOT mean undocumented (e.g. DACA and U Visa holders have nonimmigrant status yet do not qualify to receive housing subsidies for programs governed under Sec. 214)

Federal Housing Assistance Options for Immigrants Lacking the Requisite Status

- Despite general prohibition on providing federal housing assistance or benefits to certain immigrants, important exceptions exist that would allow otherwise unqualified immigrants to access limited housing opportunities – these include:
 - 1) The mixed-status exemptions for Section 214 housing, and
 - 2) Exemptions for federal programs subject to PRWORA (“Welfare Reform” Act)
 - 3) Housing options under the LIHTC Program

HUD Mixed Status Family Provisions

Current regulations applicable to Section 214 HUD housing programs allow families with at least one U.S. citizen or eligible immigrant to live together with family members who are ineligible in a subsidized housing unit. These families are known as “mixed-status” families.

Current Mixed-Status Rules (cont'd)

Characteristics of Mixed-status families:

- Mixed-status families receive “prorated assistance” – meaning that subsidy is allocated only for eligible members
- Leaseholder/Head of household does not need to be eligible
- Ineligible members have option to “not contend” or claim eligibility
- Ineligible does NOT mean undocumented (e.g. DACA and U Visa holders have nonimmigrant status yet do not qualify to receive housing subsidies)

How the Current Rule Works

The Flores are a family of three that have had a Housing Choice Voucher (HCV) since 2012.

- Jane, a domestic violence survivor, is the head of household and is a U-visa holder.
- Her children are Laura (age 8) and Samuel (age 6) who are U.S. citizens.
- The family's Housing Choice Voucher subsidy is decreased so that only Laura and Samuel are assisted.
- Jane is an ineligible immigrant and does not receive HCV assistance. She pays out of pocket to cover the remaining rent owed.

Portrait of Mixed-Status Families

- As many as 108,000 persons form part of mixed-status households receiving federal housing assistance
- Almost $\frac{3}{4}$ of these individuals in affected mixed-status families are lawfully eligible for continued federal housing assistance
- 95% of these eligible individuals are U.S. citizens
- Mixed-status families comprise less than 1% of assisted families & a tinier share of the 17 million eligible but-unassisted families

HUD's Proposed Rule Change: What Would It Do?

Effectively eliminates mixed-status families in HUD programs covered by Section 214

- Requires everyone in household to be U.S. citizen or eligible immigrant; leaseholder must be U.S.C. or eligible immigrant
- Eliminates “do not contend” option
- Eliminates permanent proration of assistance

Creates new documentation requirements for U.S. citizens and elderly immigrants:

- All current and future citizen beneficiaries will have to provide proof of citizenship, such as a birth certificate, passport, or other documentation deemed acceptable by HUD

How HUD's Proposed Rule Would Work

- Jane Flores is the leaseholder yet she will no longer be allowed to elect a 'do not contend' option. As she is also not program eligible she would no longer be able to serve as head of household/ leaseholder.
- Her US citizen children, Laura and Samuel, are minors and cannot be heads of household.
- The Flores family would not be allowed to continue receiving assistance under the proposed rule as it eliminates continued prorated assistance where any family member is ineligible.

Counterarguments to HUD's Proposed Rule

HUD's proposal does nothing to curtail program abuse or to address the housing crisis:

- Mixed-status families' aid is prorated, meaning that ineligible persons already do not receive a subsidy allocation
- Because aid is prorated, shifting it to others yields no net gain in number of eligible people receiving aid
- Will make housing crisis worse -HUD admits rule will raise costs by \$210 million and will "reduce quality and quantity of assisted housing"
- The proposed rule will have devastating effects on vulnerable communities- e.g. families, children, the elderly, persons with disabilities, and racial/ ethnic minorities

HUD's Proposed Rule Will Harm Vulnerable Communities

- Mixed-status families will be forced to either completely abandon their subsidized housing as a family unit, or to separate in order for the eligible members to retain housing
- The rule change would displace over 55,000 U.S. Citizen and LPR children who are otherwise program eligible
- Persons with disabilities and the elderly will face significant barriers in complying with the documentation requirements that the proposed rule will impose, thereby increasing the potential for displacement
- HUD's Proposed Rule will disproportionately impact racial/ethnic minorities- with Latinx/ Black families bearing the brunt

Measures Taken in Opposition to the Proposed Rule

- More than 28,000 Public Comments opposing changes to the mixed-status rule were submitted to HUD by the July 9, 2019 public comment deadline
- HUD must now review and analyze the submitted comments – unclear how long this will take. Yet currently, **the previous mixed-status regulations are still in effect**
- Stakeholders are currently exploring new legislation and potential avenues for litigation if proposed rule is enacted

Housing Assistance Exceptions in Non-Section 214 Programs

- Federally funded programs not governed by Section 214 - such as Emergency Solutions Grant, Community Development Block Grants, FEMA disaster programs - may still be generally restricted from offering assistance to certain immigrants under separate laws such as the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)
- Yet under specific conditions, these programs may provide limited housing benefits to otherwise ineligible immigrants

Eligibility Exceptions for non-Section 214 Programs (cont'd)

1) Programs necessary for the protection of life and safety

These must a) deliver in-kind services at the community level; b) must not condition the provision of assistance on income; and c) are necessary for the protection of life and safety

- **Examples:** Street Outreach Services ● Emergency Shelter ● Safe Haven ● Rapid Re-Housing ● Transitional Housing, but ONLY “when the recipient or subrecipient owns or leases the building used to provide transitional housing.” (Transitional housing provided in the form of rental assistance based on the applicant’s income is NOT an exempted activity)

Eligibility Exceptions for non-Section 214 Programs (cont'd)

2) Short-term, non-cash, in-kind emergency disaster relief this may be made available regardless of immigration status.

- **Examples:** FEMA -related disaster relief such as noncash assistance in the form of Crisis Counseling and Disaster Legal Services households, FEMA-administered cash assistance if an eligible adult or eligible minor child in that household applies for assistance (in these cases “no information regarding [the non-qualified individual’s] status will be gathered.”)

3) Nonprofit charitable Organization exemption -some qualifying nonprofit organizations are exempt from verifying an applicant’s immigration status, effectively allowing them to provide limited assistance to non-qualified individuals

TAX CREDIT PROGRAM (LIHTC)

- Low Income Housing Tax Credit Properties Owners of these properties obtain federal **tax credits** for their eligible buildings in return for renting some or all of the apartments to low-income tenants at a restricted rent
- **The LIHTC is not subject to Section 214** and does not have uniform immigration status restrictions
- However, tax credit projects that receive concurrent subsidies under a Section 214 program (e.g. Project-Based Voucher Program) may be subject to Section 214 immigration status restrictions.

Additional Subsidized Housing Options (Non-federal)

- There are state and county housing programs that may allow undocumented immigrants as well as others with various visa types to apply
- Examples: the City of Berkeley and Alameda County have respective Housing Healthcare programs that do not exclude people b/c of immigration status
- There is not a centralized categorization of these programs. As eligibility varies from program-to-program – it is a good idea to make individual inquiries to see if an individual client qualifies

Bay Area Legal Aid's Services

- The Alameda County office assists over 1,500 clients per year with housing related issues – by phone or in person.
- **FREE Legal Assistance and Representation:** BayLegal can help eligible individuals with housing related legal issues, e.g., evictions, subsidy terminations, housing denials, reasonable accommodation and fair housing issues.
- **Tenant Rights Line: (888) 382-3405** – for Alameda County Residents currently experiencing housing-related legal issue.
- Also, BayLegal has a general **Legal Advice Line – (800) 551-5554** – for low income Bay Area residents in need of legal advice or assistance with Housing, DV, Public Benefits, Health Access, Re-entry, Consumer or Youth Justice.



Wrap-up

- Monthly affordable housing lists available via <https://www.openhousesf.org/housing>
- Questions?
- Thanks again for your vital support!

