

## *HUD Programs and Immigrant Eligibility<sup>1</sup>*

February 8, 2017

By Miguel Morales and Leslye E. Orloff<sup>2</sup>

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)<sup>3</sup> explicitly declared that programs necessary to protect life and safety<sup>4</sup> were to remain open to all persons without regard to immigration status.<sup>5</sup> In PRWORA, Congress granted the U.S. Attorney General the sole discretion to designate the programs necessary to protect life and safety that were to be open to all persons without regard to immigration or citizenship status or nationality.<sup>6</sup>

PRWORA listed “short-term housing” explicitly in the statute as an example of a program necessary to protect life and safety.<sup>7</sup> Furthermore, the Attorney General issued the Final Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation on January 16, 2001, stating that, among the programs that were to be open to all persons without regard to immigration status as necessary to protect life and safety are:

- “Crisis counseling and intervention programs; services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity...Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children”<sup>8</sup>

<sup>1</sup> This publication is supported by Grant No. 2015-TA-AX-K043 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women. The authors would like to thank Karlo Ng of the National Housing Law Project for her assistance in reviewing this publication.

<sup>2</sup> For technical assistance regarding immigrant survivor access to emergency shelter, transitional housing, public and assisted housing, and other government funded housing programs, please contact: Karlo Ng, Staff Attorney, National Housing Law Project at [kng@nhlp.org](mailto:kng@nhlp.org), (415) 546-7000 Ext. 3117, <http://nhlp.org/OVWgrantees> and the National Immigrant Women’s Advocacy Project (NIWAP) at [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu), (202) 274-4457, [www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)

<sup>3</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereinafter “PRWORA”), Pub. L. 104-193, 110 Stat. 2105 (codified at 8 U.S.C. § 1611)

<sup>4</sup> 8 U.S.C. § 1611(b)(1)(D)

<sup>5</sup> 8 U.S.C. § 1621(b)(2)

<sup>6</sup> 8 U.S.C. §§ 1611(b)(1)(D); 1621(b)(4)

<sup>7</sup> 8 U.S.C. § 1611(b)(1)(D)

<sup>8</sup> *Id.*

Following the issuance of the Attorney General's order, HUD issued two policy directives (2001 and 2016) defining which HUD funded programs fell within the category of "short-term shelter or housing assistance" that were to be available as a matter of law to all persons without regard to immigration status:

- In 2001 HUD stated that "Both emergency shelter and transitional housing programs are necessary for the protection of life and safety. Transitional housing is by nature short-term intended to be a step from emergency shelter to permanent housing."<sup>9</sup>
- On August 5, 2016, the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Health and Human Services (HHS), and the U.S. Department of Justice (DOJ)<sup>10</sup> issued a joint letter reminding that federal grant recipients that they may not deny immigrants access to emergency shelter, and other short-term housing programs that are necessary to protect life or safety.<sup>11</sup>
- The HUD guidance implementing the above August 5, 2016 joint letter was released on August 16, 2016 by the Office of Special Needs Assistance Programs.<sup>12</sup>
- More recently HUD published a final rule expanding housing protections for survivors of violence, implementing the assistance established by the Violence Against Women Reauthorization Act of 2013.<sup>13</sup> This final rule VAWA rule applies equally to all victims eligible for HUD funded housing programs without regard to the victim's immigration status. The VAWA rule applies to many HUD programs including, but not limited to programs covered by Section 214 of the Housing Act. Only programs listed in Section 214 of the Housing Act have immigrant restrictions.

### **Housing Programs Open to All Immigrants Without Immigration Restrictions**

Emergency shelter, transitional housing, and several other programs funded by HUD are open to all persons including undocumented immigrants. Programs receiving federal funds either directly or through the state cannot discriminate or turn away immigrants or persons with limited English proficiency from emergency shelter and transitional housing. Immigrant victims of domestic violence, sexual assault, human trafficking, child abuse or abandonment and homeless immigrants are eligible to participate in emergency shelter and transitional housing programs funded by HUD, DOJ and HHS. The following is a list of the HUD funded programs and HUD funding streams that provide or fund shelter and transitional housing that is open to all immigrants.<sup>14</sup> Some of these unrestricted housing programs also fund housing that exceeds duration of stay limitations for emergency shelter and transitional housing.

---

<sup>9</sup> HUD Fund Recipients Shelter and Transitional Housing Letter (January 19, 2001) available at <http://niwaplibrary.wcl.american.edu/pubs/hud-memo-transitional-housing/>

<sup>10</sup> HUD, HHS, and DOJ Letter Regarding Immigrant Access to Housing and Services (August 12, 2016) available with all cited documents at <http://niwaplibrary.wcl.american.edu/joint-agency-letter-shelters-transitional-housing/>

<sup>11</sup> This joint HUD, HHS, DOJ letter, all of the materials cited in it in the footnotes and all materials issued by HUD, HHS and DOJ related to this joint letter are available on the following webpage: <http://niwaplibrary.wcl.american.edu/joint-agency-letter-shelters-transitional-housing/>

<sup>12</sup> Office of Special Needs Housing, *The Personal Responsibility and Work Opportunity Act of 1996 and HUD's Homeless Assistance Programs*, Department of Housing and Urban Development (August 16, 2016), available at <http://niwaplibrary.wcl.american.edu/pubs/prwora-fact-sheet/>

<sup>13</sup> Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, available at: <http://portal.hud.gov/hudportal/documents/huddoc?id=5720-F-03VAWAFinRule.pdf>

<sup>14</sup> See generally, HUD, HHS, and DOJ Letter Regarding Immigrant Access to Housing and Services (August 12, 2016) available with all cited documents at <http://niwaplibrary.wcl.american.edu/joint-agency-letter-shelters-transitional-housing/>

## HUD Programs and Immigrant Eligibility

For an uncomprehensive list of federal housing programs that are not restricted by Section 214, please see the National Housing Law Project’s attached chart on federally assisted housing and immigrant eligibility. (Attachment A) When an immigrant family meets program requirements for these HUD and USDA Rural Development funded programs, unless the program is subject to Section 214 restrictions, the immigrant applicant may qualify for admission.<sup>15</sup>

<b>Program open to Immigrants without restrictions</b>		<b>Program Information</b>
Continuum of Care (CoC) Program <sup>16</sup>	<a href="http://portal.hud.gov/hudportal/HUD?src=/hudprograms/continuumofcare">http://portal.hud.gov/hudportal/HUD?src=/hudprograms/continuumofcare</a>	Provides funding for efforts by nonprofit providers, and state and local governments to quickly re-house homeless individuals and families while minimizing the trauma and dislocation caused by homeless individuals, families, and communities by homelessness; promote access to and effect utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness. CoC program funds can be used for projects under five program components: permanent housing, transitional housing, supportive services, homeless management information system, and homelessness prevention for CoCs designated as high-performing communities.
Emergency Solution Grants (ESG) Program	<a href="https://www.hudexchange.info/programs/esg/">https://www.hudexchange.info/programs/esg/</a>	Grants to support essential services related to emergency shelter and street outreach, rehabilitation and conversion of buildings to be used as emergency shelter, operation of emergency shelter, short-term and medium-term rental assistance, and housing relocation and stabilization services for individuals and families who are homeless or at risk of homelessness.
Street Outreach Services	<a href="https://www.hudexchange.info/programs/esg/esg-requirements/">https://www.hudexchange.info/programs/esg/esg-requirements/</a>	Provide essential services related to reaching out to unsheltered homeless individuals and families, connecting them with emergency shelter, housing, or critical services and providing them with urgent, non-facility based care. Component services generally consists of engagement, case management, emergency health and mental health services and transportation.
Safe Haven	<a href="https://www.hudexchange.info/resource/2719/safe-haven-fact-sheet/">https://www.hudexchange.info/resource/2719/safe-haven-fact-sheet/</a>	Safe Haven is a form of supportive housing that serves hard-to-reach homeless persons with severe mental illness who come primarily from the streets and have been unable or unwilling to participate in housing or supportive services previously.

<sup>15</sup> If you are working with an immigrant survivor who is seeking access to a HUD or RD funded housing program, please contact the National Housing Law Project for technical assistance. For assistance, contact Karlo Ng at [kng@nhlp.org](mailto:kng@nhlp.org); (415) 546-7000 Ext. 3117; <http://nhlp.org/OVWgrantees>.

<sup>16</sup> A program funded through the Homeless Assistance Grants is a Section 214 program: the Single Room Occupancy (SRO) program. Since housing units for homeless individuals provided through the SRO program are developed through Section 8 Moderate Rehabilitation program and receive Section 8 rental assistance, nonqualified immigrants as defined by Section 214 are ineligible for the SRO program. Maggie McCarthy and Alison Siskin, Congressional Research Service, *Immigration: Noncitizen Eligibility for Needs-Based Housing Programs* (Dec. 8, 2015), available at <https://fas.org/sgp/crs/homesecc/RL31753.pdf>

## HUD Programs and Immigrant Eligibility

Rapid Re-Housing	<a href="https://www.hudexchange.info/programs/esg/esg-requirements/">https://www.hudexchange.info/programs/esg/esg-requirements/</a>	Provided housing relocation and stabilization services and/or short or medium term rental assistance as necessary to help individuals or families living in shelters or in places not meant for human habitation move as quickly as possible into permanent housing and achieve stability in that housing.
------------------	---	--

### Programs Open Only to Immigrants Listed in 214 of the Housing Act<sup>17</sup>

Section 214 of the Housing and Community Development Act restricts access to certain HUD programs to eligible immigrants including qualified immigrants.<sup>18</sup> The following programs are only available to “qualified immigrants” as defined by the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA),<sup>19</sup> VAWA self-petitioners,<sup>20</sup> and immigrants considered “eligible immigrants” under Section 214 of the Housing and Community Development Act.<sup>21</sup> Additionally, the list below provides a few examples of project-based Section 8 programs, which are covered by Section 214.<sup>22</sup>

Programs Restricted to Immigrants		Program Information
Public Housing	<a href="https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph">https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph</a>	Public housing was established to provide decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities. Public housing comes in all sizes and types, from scattered single family houses to high rise apartments for elderly families. There are approximately 1.2 million households living in public housing units, managed by some 3,300 HAS.

<sup>17</sup> For more information, see the National Housing Law Project’s memo on Housing Covered by Section 214 of the Housing and Community and Development Act, available at <http://nhlp.org/files/greenbook4/Chapter2/FN%20179%20NHLP%20Memo%20Housing%20Covered%20by%20Section%20214.pdf>.

<sup>18</sup> See 42 U.S.C. 1436(a) (2006).

<sup>19</sup> 8 U.S.C. 1641 defines qualified immigrants to include: lawful permanent residents (conditional permanent residents), asylees, refugees, persons paroled into the United States for a period of at least one year, persons granted withholding of deportation, persons granted conditional entry, Cuban and Haitian entrants, Amerasian immigrants, victims of human trafficking who has filed for, had a prima facie determination or has been awarded a T-visa under INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T), persons who have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent, who have VAWA self-petitions or petitions for suspension of deportation or cancellation of removal pending or approved and their undocumented immigrant children listed as dependents in their VAWA self-petition application. Parents of children have been battered or subject to extreme cruelty by the other U.S. citizen or lawful permanent resident, and who have VAWA self-petitions or petitions for suspension of deportation or cancellation of removal pending or approved and their undocumented immigrant children listed as dependents in their VAWA self-petition application.

<sup>20</sup> See Access to Public and Assisted Housing VAWA Self-Petitioners <http://niwaplibrary.wcl.american.edu/access-public-assisted-housing-va-wa-self-petitioners/>

<sup>21</sup> Immigrants eligible to receive housing under Section 214 are: U.S. citizens, U.S. nationals, lawful permanent residents, VAWA self-petitioners, asylees, immigrants eligible for registry who entered the U.S. before June 30, 1948, refugees, parolees, persons granted withholding of removal, Immigration Reform and Control Act 1986 Amnesty and qualified victims of human trafficking, lawful residence of the United States under the Compacts of Free Association with the Marshall Islands, Micronesia, Palau and Guam, and immigrants admitted for lawful temporary residence prior to January 1, 1982.

<sup>22</sup> Project-based Section 8 programs include Section 8 New Construction, Section 8 Moderate Rehabilitation, Section 8 Substantial Rehabilitation, State Housing Finance Agency Section 8, Section 202 and 811 projects with Section 8 assistance, Section 8 Loan Management Set-Aside, Section 8 Community Investment Demonstration Program, and Section 8 Moderate Rehabilitation Single Residency Occupancy (SRO) Program. If you have questions about whether a unit or complex may be subsidized by project-based Section 8 or subject to Section 214 restrictions, please contact Karlo Ng, Staff Attorney, National Housing Law Project at [kng@nhlp.org](mailto:kng@nhlp.org), (415) 546-7000 Ext. 3117, <http://nhlp.org/OVWgrantees>

## HUD Programs and Immigrant Eligibility

Housing Choice Voucher Program	<a href="http://www.hud.gov/offices/pih/programs/hcv/about/fact_sheet.cfm">www.hud.gov/offices/pih/programs/hcv/about/fact_sheet.cfm</a>	These are tenant-based vouchers that provide rental subsidies for units that are chosen by the tenants in the private market. The participant is free to choose any housing that meets the requirements of the program and is not limited to units located in subsidized housing projects. The subsidy moves with the tenant.
Project-Based Voucher Program	<a href="https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/project">https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/project</a>	Project-based vouchers are a component of a public housing agencies (PHAs) housing choice voucher program. A PHA can attach up to 20 percent of its voucher assistance to specific housing units if the owner agrees to either rehabilitate or construct the units, or the owner agrees to set-aside a portion of the units in an existing development.
Section 8 Moderate Rehabilitation	<a href="https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/modrehab">https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/modrehab</a>	The moderate rehabilitation program provides project-based rental assistance for low income families. The program was repealed in 1991 and no new projects are authorized for development. Assistance is limited to properties previously rehabilitated pursuant to a housing assistance payments (HAP) contract between an owner and a Public Housing Agency (PHA).
Section 8 Moderate Rehabilitation Single Room Occupancy (SRO)	<a href="https://portal.hud.gov/hudportal/HUD?src=/hudprograms/sro">https://portal.hud.gov/hudportal/HUD?src=/hudprograms/sro</a>	Assists very low-income, single, homeless individuals in obtaining decent, safe, and sanitary housing in privately owned, rehabilitated buildings. Under the SRO program, HUD enters into annual contributions contracts (ACCs) with public housing agencies (PHAs) in connection with the moderate rehabilitation of residential properties. These PHAs make Section 8 rental assistance payments to participating landlords on behalf of homeless individuals who rent the rehabilitated dwellings.
Section 202 Supportive Housing for the Elderly with Section 8 assistance	<a href="https://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/progdesc/eld202">https://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/progdesc/eld202</a>	HUD provides direct loans and grants to developers for housing for people with disabilities.
Section 811 Supportive Housing for Persons with Disabilities with Section 8 assistance	<a href="https://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/progdesc/disab811">https://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/progdesc/disab811</a>	Through the Section 811 Supportive Housing for Persons with Disabilities program, HUD provides funding to develop and subsidize rental housing with the availability of supportive services for very low- and extremely low-income adults with disabilities.
Section 236 Preservation Program (including Rental Assistance Payment (RAP))	<a href="https://www.hudexchange.info/programs/section-236-preservation/">https://www.hudexchange.info/programs/section-236-preservation/</a> ; Tenant RAP factsheet: <a href="http://www.hud.gov/offices/hsg/mfh/gendocs/factsrap.pdf">http://www.hud.gov/offices/hsg/mfh/gendocs/factsrap.pdf</a> ; Tenant Section 236 fact sheet: <a href="http://www.hud.gov/offices/hsg/mfh/gendocs/facts236.pdf">http://www.hud.gov/offices/hsg/mfh/gendocs/facts236.pdf</a>	The objective of HUD’s Section 236 Preservation initiative is to preserve the affordability of rental housing units originally developed through the Section 236 mortgage program. The Rental Assistance Program (RAP) is a rental assistance program in which the amount of rent is calculated based on the tenant’s household income.

## HUD Programs and Immigrant Eligibility

<p>Section 235 Homeownership Housing</p>	<p><a href="http://nhlp.org/files/greenbook4/Chapter2/FN%20179%20NHLP%20Memo%20Housing%20Covered%20by%20Section%20214.pdf">http://nhlp.org/files/greenbook4/Chapter2/FN%20179%20NHLP%20Memo%20Housing%20Covered%20by%20Section%20214.pdf</a></p>	<p>Allows lower income persons to purchase their homes using a HUD insured loan with a mortgage interest subsidy. The immigrant restrictions apply only to those applicants with contracts executed on or after June 19, 1995, or to contracts refinanced or revised on or after that date for a reason other than adjusting the mortgage interest rate.</p>
<p>Housing Development Grants (HoDAG) (low-income units only)</p>	<p><a href="http://nhlp.org/files/greenbook4/Chapter2/FN%20179%20NHLP%20Memo%20Housing%20Covered%20by%20Section%20214.pdf">http://nhlp.org/files/greenbook4/Chapter2/FN%20179%20NHLP%20Memo%20Housing%20Covered%20by%20Section%20214.pdf</a></p>	<p>HoDAG provided funds for new construction and substantial rehabilitation of affordable rental housing between 1983 and 1990. Low-income units financed with funds from the HoDAG program are covered by Section 214 but not market rate units.</p>
<p>Rural Development housing programs</p>	<p><a href="https://www.rd.usda.gov/pr ograms-services/all-programs">https://www.rd.usda.gov/pr ograms-services/all-programs</a></p>	<p>The following Rural Development Programs have certain immigrant restrictions. Only the following immigrants qualify:</p> <ul style="list-style-type: none"> <li>• Section 514/516: Lessee (but not household) must be U.S. Citizen or LPR</li> <li>• Section 502/504: Persons responsible for paying the loan must be U.S. Citizen or Section 214 eligible immigrant.</li> <li>• RD Voucher: Section 214 eligible immigrants</li> </ul>
<p>Section 23 Leased Housing Assistance Program</p>	<p><a href="https://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8">https://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8</a></p>	<p>The housing choice voucher program is the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. Since housing assistance is provided on behalf of the family or individual, participants are able to find their own housing, including single-family homes, townhouses and apartments. Housing choice vouchers are administered locally by public housing agencies (PHAs). The PHAs receive federal funds from the U.S. Department of Housing and Urban Development (HUD) to administer the voucher program.</p>

## Attachment A Federally Assisted Housing and Immigrant Eligibility

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

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

### Eligible Immigrants

- U.S. Citizens and Nationals
- Lawful Permanent Residents (LPR)
- VAWA Self-Petitioners
- Asylees and Refugees
- Parolees
- Persons Granted Withholding of Removal/Deportation
- Qualified Victims of Trafficking
- Persons granted admission for emergent or public interest reasons
- Persons granted amnesty under the Immigration Reform and Control Act of 1986
- Immigrants eligible for registry who entered the U.S. before 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

### Rural Development (RD) Programs Covered by Section 214

- Rental housing units in Section 515 and Section 514/516 development that are receiving RD Rental Assistance<sup>1</sup>
- Section 514 Farm Labor Housing
- Section 502 Direct Homeownership Loan Program
- Section 504 Minor Rehabilitation Loan and Grant Programs for Single Family Homes
- RD Voucher Program

### Eligible Immigrants

- Section 514/516: Lessee (but not household) must be U.S. Citizen or LPR<sup>2</sup>
- Section 502/504: Persons responsible for paying the loan must be U.S. Citizen or Section 214 eligible immigrant
- RD Voucher: Section 214 eligible immigrants

### Programs Unrestricted by Section 214 (non-comprehensive list)

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

<sup>1</sup> RD regulations improperly extend restriction to all occupants of Section 515 Rental Housing. However, RD has indefinitely postponed the application of this requirement. 7 C.F.R. § 3560.152 note.

<sup>2</sup> RD takes position that Sections 514 and 516 are more restrictive than Section 214. There is no proration of rents.