



Homelessness Among Undocumented Individuals

Solutions for Individual Homeless Adults

San Diego, CA

February 21, 2019

Immigration Status Requirements in Federal Housing and Homeless Assistance Programs

What is “Section 214” Restricted Housing?



Section 214 of the Housing and Community Development Act of 1980

- Only U.S. citizens, lawful permanent residents (LPRs), and certain categories of immigrants are eligible for the majority of HUD programs.
- Immigration restrictions for these programs are found at Section 214 of the Act.

“Section 214” Restricted HUD Programs

- Public Housing
- Housing Choice Voucher Program
- Section 8 Project-based Housing
- **Section 8 Moderate Rehab**
- Section 236 Housing
- Section 235 Homeownership Housing
- Rent Supplement Housing
- Housing Development Grants (HoDAG)
- Section 23 Leased Housing Program
- HOPE for Public and Indian Housing



Programs Not Restricted by Section 214

- Low Income Housing Tax Credit (LIHTC)
- Section 202 Housing for the Elderly*
- Section 811 Housing for the Disabled*
- Section 221(d)(3)
- Indian Housing
- CDBG
- HOME
- HOPWA
- **McKinney-Vento/HEARTH Act***
- Rental Rehabilitation
- HOPE for Homeownership (HOPE 2)
- Section 515 Rural Rental Housing Program (without Rental Assistance)
- Rural Housing Preservation Grants
- Section 538 Multi-family Loan Guarantees

Who is Eligible for Section 214 Housing?

- U.S. Citizens/U.S. Nationals
- Lawful Permanent Residents
- VAWA self-petitioners
- Refugees and asylees
- Parolees
- Persons granted withholding of removal/deportation
- Qualified victims of trafficking
- Persons granted admission for emergent or public interest reasons
- Lawful U.S. residents under the Compacts of Free Association with the Marshall Islands, Micronesia, Palau and Guam
- 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
- Immigrants admitted for lawful temporary residence prior to January 1, 1982

Personal Responsibility and Work Opportunity Reconciliation Act of 1996

- A federal welfare and immigration law that introduced a number of restrictions for immigrants to access federal assistance
- Only “qualified immigrants” can access “federal public benefits”, which includes “public and assisted housing”
- “Qualified immigrants”
 - Lawful permanent residents
 - Refugees, asylees, individuals granted withholding of deportation/removal, conditional entrants
 - People granted parole by DHS for at least a year
 - Cuban and Haitian entrants
 - Certain abused immigrants, their children, or their parents
 - Certain survivors of trafficking
- “Public and assisted housing” not defined in statute

What Programs Does PRWORA Apply to?

- HUD has not officially implemented PRWORA; has not defined “public and assisted housing”
- In 1995, in issuing Section 214 regulations, HUD instructed entities not to implement PRWORA
- Despite this -
 - PRWORA and HOME
 - HUD Region 1 and McKinney-Vento programs

What Programs Does PRWORA NOT Apply to?

- Federally funded programs, services, and assistance necessary to protect life or safety
 - 2016 HUD/DOJ/HHS Letter Joint Letter
- 2016 HUD SNAPS Determination
 - Emergency Solutions Grant (ESG) and Continuum of Care (CoC) programs with NO immigration restrictions
 - Street Outreach Services
 - Emergency Shelter
 - Safe Haven
 - Rapid Re-Housing
 - Transitional Housing (unless assistance requires income test)
- Nonprofit charitable organizations are not required to determine or verify immigration status

Proposed Public Charge Rule

A punitive Trump proposal stokes panic among immigrants — even before it's official

Trump Has Scared Immigrants Into Forfeiting Their Kids' Nutritional Benefits

By Eric Levitz [@EricLevitz](#)



How Trump's Plan for Immigrants on Welfare Could Hurt a Million New Yorkers

Trump Administration Proposal Could Punish Legal Immigrants If Their Family Members Use Public Assistance

How does the proposed rule impact housing programs?

- The proposed rule **departs from longstanding immigration policy** by making it more likely for certain non-citizens to be deemed a “public charge” because **they either receive, or are deemed likely to receive in the future, one or more specific federal housing subsidies.**

What is a “public charge”?



- Origins of the public charge law
- Immigration officials can deem a person inadmissible to the U.S. or deny an application for a green card (lawful permanent residence) because the person is likely to become a public charge.

What is a “public charge”?

- Currently, public charge is defined as:
 - A person who is primarily dependent on the government for subsistence, as shown by either:
 - (i) the receipt of **public cash assistance** or
 - (ii) institutionalization for long-term care at the government’s expense
- Is housing assistance currently considered? No.

Who is subject to the public charge determination?

Currently, noncitizens seeking

(1) Admission into the U.S. or

(2) Adjustment of status to LPR

Who cannot be considered a public charge?

- Categories of non-citizens not subject to a public charge determination:
 - Lawful permanent residents applying for U.S. citizenship
 - Refugees and asylees
 - VAWA self-petitioners, survivors of domestic violence, trafficking, or other serious crimes
 - Special immigrant juveniles
 - Certain parolees
 - Several other categories of non-citizens

What is considered in public charge determinations?

“Totality of the circumstances”- Immigration officials review these factors:

- Age
- Health
- Family status
- Assets, resources, financial status
- Education and skills
- Affidavit of support

Proposed changes to “public charge” definition

Current definition – Person who is *primarily dependent* on the government for subsistence, as shown by either (i) the receipt of *public cash assistance* or (ii) institutionalization for long-term care at the government’s expense

Under the proposed rule, a “public charge” would be any applicant who **uses or receives, or is likely to use or receive, one or more “public benefit(s)”**

What would be a “public benefit”?

- DHS has proposed an **exclusive** list of **federal** public benefits that would be considered.
- **Housing assistance** listed in proposed rule:
 - Public Housing
 - Section 8 Housing Choice Voucher Program
 - Project-based Section 8 Rental Assistance
- Homeless assistance is **NOT** explicitly included, except for Section 8 Moderate Rehabilitation

What other assistance would be a “public benefit”?

Cash Benefits that would continue to be considered:

- SSI
- TANF
- Federal, State, local, or tribal cash benefit programs for income maintenance

Monetized Non-Cash Benefits considered:

- SNAP (formerly Food Stamps)
- Section 8 Housing Choice Voucher Program
- Section 8 Project-Based Rental Assistance

Non-Monetized Non-Cash Benefits considered:

- Medicaid (with limited exceptions)
- Any benefit for long-term institutionalized care at government expense
- Premium and Cost Sharing Subsidies for Medicare Part D
- Public Housing

How would this rule impact immigrant families?

- The rule would force immigrants to choose between receiving critical services and getting immigration status.
- The rule would harm immigrants and their dependents, including U.S. citizens, who live together and force more mixed-status families into homelessness.
- The rule would deter eligible families from receiving or seeking housing assistance.
- Chilling access to critical services would undermine the goal of self-sufficiency. People are more likely to give up any support if any counts in public charge test.
- The rule would exacerbate child poverty and homelessness.

Public opposition against the rule

- Over 200,000 comments to DHS
- Federal, state and local officials
- Faith-based groups
- Public health groups
- National, state, and local advocacy groups

Public Charge and Housing Resources

- Protecting Immigrant Families website – www.protectingimmigrantfamilies.org
- <https://www.nhlp.org/our-initiatives/public-charge-and-housing/>
 - “Technical” Fact Sheet
 - Basics FAQ
 - Talking Points

How Would the Public Charge Rule Impact Families Seeking and Using Federal Housing Assistance?

On October 10, 2018, the U.S. Department of Homeland Security (DHS) published a proposed rule that seeks to change the way in which DHS determines whether an immigrant is likely to become a "public charge." **The proposed rule would affect immigrant families that use or qualify for federal housing assistance.**

What is a public charge?
Currently, many noncitizens are subject to a "public charge" test as part of their immigration process. The test looks at whether an individual is likely to be **primarily dependent** on the government for subsistence, as shown by either the receipt of **public cash assistance** or institutionalization for long-term care at the government's expense" (emphasis added). **The current test does not consider federal housing assistance.** If a person is determined to be a public charge, they can be denied admission into the U.S. or denied a green card.

How does the proposed rule change the public charge test?
The proposed rule would change the public charge test to examine whether an applicant **uses or receives, or is likely to use or receive, one or more public benefits, including non-cash benefits, such as certain federal housing assistance.** This means that immigrants and their families may be forced to choose between receiving critical benefits and risking their ability to enter or stay in the United States.

What affordable housing programs are covered by the rule?
The proposed rule explicitly includes three federal housing programs: Section 8 Housing Choice Voucher Program, Project-Based Section 8 Rental Assistance (including Section 8 Moderate Rehabilitation), and Public Housing.

Who would be directly affected by the rule?
The rule would primarily affect noncitizens who are applying for lawful permanent resident status (a green card), individuals seeking an extension of or changes to their non-immigrant status, and immigrants seeking admission into the U.S.
Some immigrants will not be subject to the public charge test. These include refugees, asylees, survivors of trafficking and other serious crimes, self-petitioners under the Violence Against Women Act, special immigrant juveniles, certain people who have been paroled into the U.S., as well as lawful permanent residents applying for U.S. citizenship.

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