

# Immigrant Access to Federally Assisted Housing



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# GoToWebinar Interface

## 1. Viewer Window

The screenshot shows the GoToWebinar Viewer application window. The title bar reads "GoToWebinar Viewer". The main content area displays a presentation slide with the following information:

- CB Presentations™**
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Below the slide, there is a profile picture of Corena Bahr, CEO and Founder of CB Presentations. The Citrix logo is visible in the bottom left corner of the window. The desktop background is green, and the taskbar at the bottom shows various icons and the system clock at 4:11 PM.

## 2. Control Panel

The screenshot shows the GoToWebinar Control Panel window. The title bar reads "File View Help". The window is divided into several sections:

- Audio**: Contains "Audio Mode" with radio buttons for "Use Telephone" (selected) and "Use Mic & Speakers". Below this, it lists "Dial: (805) 879-4135", "Access Code: 105-748-644", and "Audio PIN: 74". A note says "If you're already on the call, press #74# now." The "Audio PIN: 74" is circled in red.
- Questions**: A section with a "Questions Log" containing the text "Welcome! Please type any questions/comments in the Question and Answer section of your control panel." Below the log is a text input field with the placeholder "[Enter a question for staff]" and a "Send" button. The "Questions" section header is circled in red.
- Footer**: Displays "Give Online Punch", "Webinar ID: 576-794-892", and the "GoToWebinar™" logo.

On the left side of the control panel, there are several icons: a play button, a stop button, a hand icon (circled in red), and a microphone icon.

# Housekeeping

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- Materials were emailed to registrants and will be emailed again after the webinar, along with the evaluations.
- Materials and recording will be posted at <http://nhlp.org/OVWgrantees>.
- NHLP will email MCLE certificates to California attorneys.
- If you are seeking MCLE in other states, please contact NIWAP at [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu)



# Goals Today

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- Provide an overview of the rights of immigrants to access
  - Federally assisted housing
  - Federally funded emergency shelter and transitional housing programs
- Identify and discuss issues specific to survivors of domestic violence, dating violence, sexual assault, stalking, and human trafficking.

# Who is in the Audience?

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- Poll: Are you an
  - Advocate that works with domestic and sexual violence survivors?
  - Attorney that works with survivors?
  - Shelter or transitional housing provider?
  - Public housing authority or other permanent housing provider?
  - Government agency staff?
  - Other – Tell us who you are in the chat box.

# “Section 214” Restrictions

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# “Section 214” Restricted Housing

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- What is Section 214 of the Housing and Community Development Act of 1980?
- Poll: Which program is **not** Section 214-restricted?
  - Public housing
  - Section 8 vouchers
  - Project-based Section 8
  - Low Income Housing Tax Credit
  - Section 514 and 516 Farm Labor Housing programs

# “Section 214” Restricted HUD Programs

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- Public Housing
- Housing Choice Voucher Program
- Section 8 Project-Based Housing
- Section 236 Housing
- Section 235 Homeownership Housing
- Rent Supplement Housing
- Housing Development Grants (HoDAG)
- Section 23 Leased Housing Program



# “Section 214” Restricted RD Programs

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- Section 514 and 516 Farm Labor Housing programs
- Section 502 home loan program
- Section 504 rehabilitation loan and grant program
- Section 521 Rental Assistance Program
- RD Voucher Program

# Programs Not Restricted by Section 214

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- 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 2
- Section 515 Rural Rental Housing Program (without Rental Assistance)
- Rural Housing Preservation Grants
- Section 538 Multi-family Loan Guarantees



NIWAP

# Who is Eligible for Section 214 Housing?

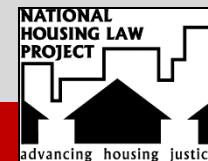
11

- Poll: Which one is **not** eligible for 214-restricted housing?
  - Legal permanent residents
  - Bona fide T visas
  - U visa applicants/recipients
  - VAWA self-petitioners
  - Asylum recipients

# Section 214 Eligible Categories

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- 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
- 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



# Immigrant Survivors: U and T Visa Holders

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- U Visa holders are not among the categories of eligible immigrants listed in Section 214.
  - Advocates should examine whether a U Visa holder fits into any other category listed in Section 214, such as victims of trafficking.
- While not explicitly listed among Section 214's categories of eligible immigrants, qualified victims of trafficking, including T Visa holders, are eligible for HUD- and RD-subsidized housing.
  - This is because persons who have made a bona fide application for a T Visa are eligible for federal benefits (including subsidized housing) to the same extent as refugees, who are an eligible 214 category.

# VAWA Self-Petitioners

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- VAWA self-petitioners were made eligible to receive “federal public benefits” as part of the Immigration Reform & Immigrant Responsibility Act of 1996.
- However, VAWA self-petitioners were not among the categories of eligible immigrants listed in Section 214 of the Housing & Community Development Act.
- In 2003 Congress directed HUD and the Department of Homeland Security to work together to provide VAWA self-petitioner access to 214 housing programs

# VAWA Self-Petitioners (cont'd)

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- HUD issued a legal memo confirming that VAWA self-petitioners have “satisfactory immigrant status” when applying for Section 214 housing.
  - Housing providers must verify immigrant status by using the SAVE system
  - Documents to verify VAWA self-petitioner’s status
  - VAWA protections apply
- HUD PIH issued notice for public housing authorities on VAWA self-petitioner verification procedures.

# HUD List of VAWA Self-Petitioners

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- Victims with VAWA self-petition I-360 filed
  - Children included in VAWA self-petition
- VAWA cancellation of removal and VAWA suspension of deportation applicants
  - Victims' children are not included in these applications
  - Will only appear in SAVE system if have work authorization
- Victims with approved I-130 visa petitions filed by their abusive spouse or parent
  - Children included in I-130 visa application filed for victim



# SAVE Program

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- The SAVE Program provides immigration status information to authorized agencies providing federally funded benefits
- VAWA confidentiality: DHS does not place victims into SAVE until they receive work authorization
  - VAWA cases require housing provider to “Institute Additional Verification”
  - DHS conducts this additional verification in a VAWA confidentiality compliant manner
  - VAWA confidentiality protections apply to VAWA, Battered Spouse Waiver, T, and U visa, and abused Visa Holder Spouse work authorization applications

# How Housing Providers Are to Complete DHS -SAVE System Online

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- 1) Enter into SAVE the VAWA immigrant victim's:
  - Name + A# + Date of birth
- 2) System issues "Match" or "No Match" response
- 3) If "No Match" - Click "Institute Additional Verification"  
AND Enter in the note field either
  - "Verify VAWA Self-Petition" or "Verify I-130 Visa Petition" AND
  - Upload copy of the victim's DHS document:
    - I-360 VAWA self-petition
    - I-130 Family-based visa petition
    - I-797 Notice of Action: Used for receipt notice, prima facie determination, and approval notice

# Directions for the SAVE Program

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- The DHS response
  - 3-5 business days; and
  - No longer than a month
- DHS confirmation of VAWA self-petitioning status then the victim is --
  - *“Immediately eligible for housing and no evidence of battery or extreme cruelty shall be requested or collected”*

# Steps When DHS Verifies Approved I-130 Visa Petition

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- These are cases in which DHS will not have adjudicated battering or extreme cruelty as part of the DHS case
- Petitioner submitting the family-based visa petition must provide the housing provider evidence of
  - “battering or extreme cruelty”
  - DHS any credible evidence rules apply - 8 U.S.C. 1154(a)(1)(J)

# Definition “Battering or Extreme Cruelty”

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- Being the victim of any act or a threatened act of violence, including any forceful detention,
- Which results or threatens to result in physical or mental injury.
- Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor) or forced prostitution shall be considered acts of violence.
- Other abusive actions may also be acts of violence under this rule.
- Acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence. 8 C.F.R. §204.2(c)(1).

# Any Credible Evidence of Battery or Extreme Cruelty

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- Affidavits/Statements of the victim, witnesses, advocates
- Medical records
- Photographs of injuries
- Helpful but not required:
  - Police reports
  - Protection orders
  - Criminal court or family court records
- “Any Credible Evidence” standard allows victims the greatest flexibility to prove abuse in the safest way possible
  - Recognizes dangers of perpetrator controlled evidence
- Specific forms of evidence cannot be required
- Housing provider decides the credibility of the evidence

# VAWA and Immigrant Survivors

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- VAWA's housing protections apply to survivors regardless of immigration status
- VAWA does not supersede housing program eligibility requirements
- VAWA amendment clarifying that lease bifurcations and post-lease bifurcation rights apply to tenants AND residents

# Mixed Status Families

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- If at least ONE member of the household has eligible immigration status, then the family can receive **prorated** assistance.
- A minor can be the eligible household member
- The non-eligible family member certifies that they do not wish to contend eligibility and can still live in the assisted unit.



# Proration Formula

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- **Step 1.** Determine the amount of housing assistance the household would receive if all household members were eligible, using the income paid to all household members regardless of their immigration status.
- **Step 2.** Divide the number of household members who have established eligible immigration status by the total number of household members. The fraction looks like this:

$$\frac{\text{Eligible Household Members}}{\text{Total Number of Household Members}}$$

- **Step 3.** Multiply the amount in Step 1 by the fraction in Step 2. This amount is the "prorated housing assistance." The tenant household pays the rest of the contract rent plus utilities.

# Proration Example: The Smith Family

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Jane Smith, who is a U visa holder, lives with her two minor sons, who are both U.S. citizens. They applied for a Section 8 Housing Choice Voucher.

- For a 2 Bedroom Voucher, a PHA pays \$1300 in rental subsidy to a private landlord.
- 2 eligible household members  
3 total household members
- Subsidy =  $(2/3) \times \$1300 = \mathbf{\$867}$
- 4. If the total rent for the unit is \$1300, then the family will have to pay:  $\$1300 - \$867 = \mathbf{\$433}$

# Other Eligibility

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- State and local governments may have supplemental subsidies without immigration status restrictions that a family may use to obtain housing, or to fill the gap between prorated subsidy and the actual rental costs.

# Challenging Denials of HUD Housing

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- If an applicant's claimed immigration status is not verified through the USCIS, then:
  - Applicant must be notified of right to appeal the lack of verification.
  - Applicant can pursue an appeal through either the PHA or owner, or through USCIS.
  - Appeal to USCIS must be made in writing within 30 days of rejection
  - Applicant has right to hearing before an impartial individual.
  - Within 14 days of hearing, applicant must be given written decision.

# Challenging Denials of RD Housing

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- RD does not have method for appealing denials of assistance due to status.
- RD has not adopted proration formula.
- RD does not allow minors the right to establish eligibility to live in RD housing.

**These are discrepancies with Section 214 that must be challenged through litigation.**

# Documentation & Verification



<p><b>Section 8 Housing Choice Voucher Program</b></p> <p>Pre-Application for housing assistance</p>	 	<p>Complete and return to one of the regional agencies listed on the reverse of this form</p>	<p><i>For agency use only: Date/Time Stamp/ Control Number</i></p>
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Please print neatly in ink. All fields are required. Submit this form only. Incomplete, photocopied, e-mailed or faxed applications will not be accepted. If you are already on our Section 8 waiting list your record will be updated using the information that you provide below. Due to the volume of applications received, we will not verify the receipt of mailed applications. We cannot be responsible for material that is illegible or missing as a result of transmitting by fax or e-mail or lost/delayed through the mail.

## IMPORTANT!

One-third of all applications are dropped from the waiting list due to unreported address changes. Do not let this happen to you. Report any change of address in writing to one of the regional agencies listed on the reverse of this form.

### Head of Household Information

Social Security Number		Phone (include area code)		
First Name	Middle Name	Last Name		
Address		City/Town	State	Zip code
Shelter Name	Shelter Address	City/Town	State	Zip code

# HUD Social Security Number Requirements

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- HUD rules re: SSNs, 24 C.F.R. part 5, Subpart B
- For most HUD programs, every member of an applicant household **must** disclose their SSNs to be eligible for assistance. This requirement applies to:
  - Public Housing
  - Any program under Section 8 of the Housing Act of 1937
  - Section 202 Supportive Housing for the Elderly
  - Section 811 Supportive Housing for Persons with Disabilities;
  - Any program under 24 C.F.R. parts 215, 221, 236, or 290
  - Homeownership assistance

# HUD SSN requirements (cont'd)

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- To verify SSNs, an applicant must produce:
  - For public housing and vouchers
    - ✦ An original SSN card;
    - ✦ An original SSA-issued document containing the applicant's name and SSN; or
    - ✦ An original document issued by a federal, state, or local gov't agency containing the applicant's name and SSN
  - For HUD multifamily housing
    - ✦ SSN card or other documents showing SSN
- The housing provider transmits the applicant's name, SSN, and date of birth to HUD.
- HUD validates the SSN against the SSA's database.



# HUD SSN Requirements (cont'd)

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- The SSN disclosure requirements do **not** apply to applicants who do not contend eligible immigration status
  - 24 C.F.R. § 5.216; HUD Notice PIH 2012-10 (Feb. 14, 2012)
- A housing provider may **not** deny assistance to mixed families due to nondisclosure of an SSN by an individual who does not contend eligible status
  - HUD Notice PIH 2012-10 (Feb. 14, 2012)

# Rural Development SSN Requirements

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- Rural Development (RD) does not have authority to collect SSNs from applicants to its rental housing
- However, RD regulations insist that landlords collect SSNs from their residents.
- Still, RD Form 3560-8 states that RD will NOT deny eligibility to applicants who refuse to disclose SSNs
- As a result, advocacy will likely be needed in cases where RD landlords demand SSNs from applicants

# Does a Housing Provider Report Status to ICE?

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- **PHAs** that “know” that someone contending eligibility for Section 8 or Public Housing programs is in the country illegally must report that information to USCIS on a quarterly basis

# Defining “Know”

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- “KNOW” has a very narrow definition
  - A finding of fact or conclusion of law made by the PHA as part of a formal determination that is subject to administrative review on the applicant’s claim, AND the finding is supported by a determination by USCIS or the Executive Office of Immigration Review (EOIR), such as a Final Order of Deportation.
- Reporting is *not triggered by*:
  - An oral or written admission by the immigrant;
  - A worker’s suspicion, assumption, or firm conviction about the person’s immigration status;
  - A response from USCIS to a SAVE inquiry that fails to confirm an applicant’s immigration status or that shows an immigrant status that would make the applicant ineligible; or
  - A formal finding that the person is ineligible for a benefit.

# Emergency Shelter and Transitional Housing

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# Immigrants and Transitional Housing

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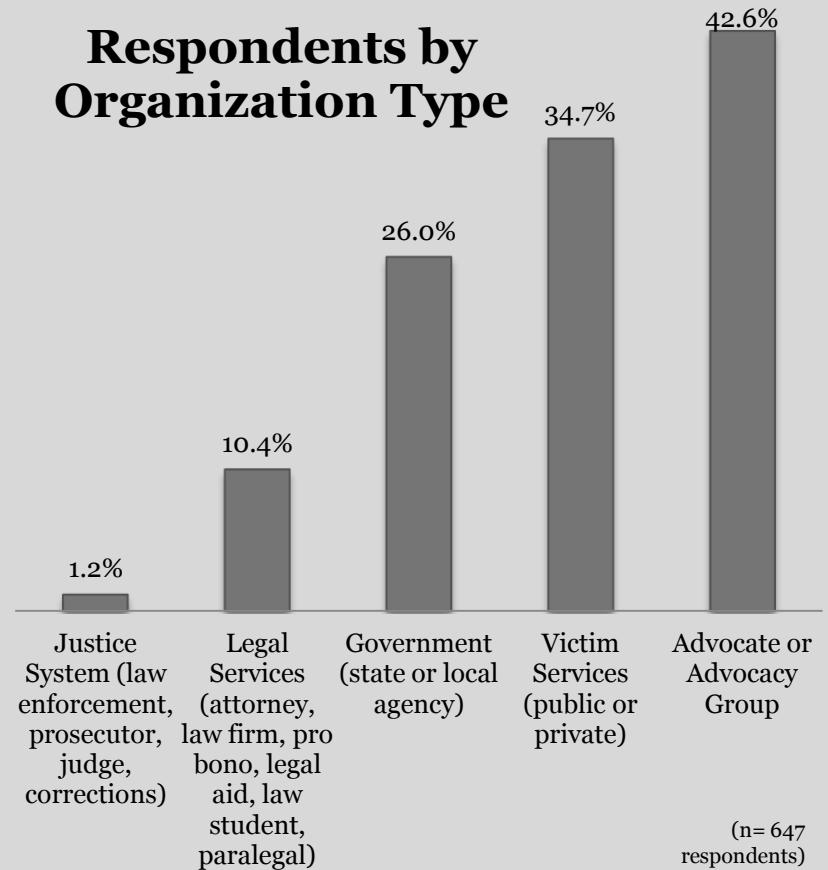
- Poll: Have you worked with an immigrant survivor turned away from transitional housing?
  - Yes
  - No
  - Not applicable
- Chat box question: What criteria are immigrant survivors being required to meet to be accepted into transitional housing programs?

# NIWAP's Survey

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- There were 647 agencies that participated as respondents in the survey including representatives from 50 states, the District of Columbia, and the Virgin Islands.
- Survey participants reported on 9,277 immigrant clients who have needed transitional housing and 12,678 who have been in emergency shelter

## Respondents by Organization Type



# NIWAP Research: Reasons Immigrant Victims Turned Away from Transitional Housing

<b>Primary Reasons Immigrant Domestic and Sexual Violence Victims Were Turned Away from Transitional Housing</b>		
	<b>Domestic Violence</b>	<b>Sexual Assault</b>
<b>Immigrant victim lacked the required documentation of immigration status</b>	34.4%	99.4%
<b>When documentation was required the program sought evidence of one of the following:</b>		
<b>Documentation related immigration status</b>	84.1%	99.4%
<b>Documentation of current employment or ability to work</b>	56.0%	98.9%
<b>An employment authorization document as proof of legal work authorization</b>	52.9%	98.9%
<b>Did not have a driver's license*</b>	45.0%	98.8%
<b>Program required documentation that the victim did not have</b>	33.2%	87.0%
<b>Immigrant applicant was undocumented</b>	25.6%	90.0%
<b>Immigrant victim did not meet the formal income requirements</b>	23.7%	85.8%
<b>The battered immigrant applicant failed to present government issued I.D.</b>	18.3%	86.1%
<b>They were told that the evidence presented of being self-sufficient was insufficient</b>	9.0%	85.7%
<b>They were not a victim of domestic violence</b>	n/a	85.6%
<b>They did not speak English</b>	2.9%	3.1%



# NIWAP Research: Immigrant Victim Transitional Housing Acceptance Rates

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Type of Crime	% Accepted	# Accepted	% Denied	# Denied
Domestic Violence	47.1%	1759	52.9%	1979
Sexual Assault	5.8%	29	94.2%	466
Human Trafficking	78.5%	146	21.5%	40
Abused/Abandoned/ Run Away Children	80.8%	51	19.2%	12

# No Immigrant Status Requirements

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- Undocumented immigrant survivors have a legal right to access shelter and transitional housing
- Open to all persons without regard to:
  - Immigrant status
  - Citizenship
  - Nationality
  - English language abilities

# No Immigrant Status Requirements

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- Benefits available to all immigrations include:
  - Short-term shelter or housing assistance, victim services counseling and intervention for:
    - ✦ Victims of:
      - Domestic violence
      - Sexual assault
      - Stalking
      - Dating violence
      - Human trafficking
      - Child abuse
      - Other abuse
    - ✦ Homeless
    - ✦ Runaway or homeless youth
    - ✦ Abandoned children

# Attorney General's List of Required Services

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- In-kind services provided at the community level
- Not based on the individual's income or resources
- Necessary to protect life or safety
- Programs covered by the Attorney General's order are open to all persons

# HUD Stated in 2001

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- Both emergency shelter and transitional housing are:
  - Necessary to protect life and safety
- Transitional housing is by its nature:
  - Short-term
  - A bridge toward permanent housing

# HUD/DOJ/HHS Letter

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- HUD, DOJ, and HHS confirmed in a joint letter that federally funded housing providers must not turn away individuals based on their immigration status from programs, services, or assistance necessary to protect life or safety
- Examples of such programs and services:
  - Short-term shelter or housing assistance
  - Crisis counseling or intervention programs
  - Medical and public health services necessary to protect life or safety

# 2016 HUD SNAPS Notice

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- These Emergency Solutions Grant (ESG) and Continuum of Care (CoC) funded programs have **no** immigrant restrictions
  - Street Outreach Services
  - Emergency Shelter
  - Safe Haven
  - Rapid Re-Housing
- Transitional housing that meets the in-kind, community level, and life or safety tests
  - No immigration restrictions
  - **Exception:** When there are rental assistance payments made for participant *because regulations require income test*; immigration restrictions

# Applies to Government Funded Programs

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- Federally funded under
  - Violence Against Women Act
  - Family Violence Prevention and Services Act
  - Victims of Crime Act
  - HUD-funded
    - ✦ Emergency Solutions
    - ✦ Continuum of Care Programs



# With Good Victim Advocacy --

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- Many/Most immigrant survivors can prove
  - They are on a path to self-sufficiency
  - They have resided in the jurisdiction
  - They are at risk of homelessness
  - Lack of active substance abuse
  - Lack of criminal history

# Evidence of Residency: Examples

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- Victim's statement
- Postmarked mail received at a residence in the jurisdiction
- School, health, court records with address
- Copies of police reports
- Letters from neighbors, shelter, victim advocate, social worker, faith based organization staff

# Evidence of Victimization or Homelessness: Examples

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- Victim's statement
- Police reports
- Medical or court records
- U-Visa/VAWA application
- Photographs, recordings of abuse
- Protection order
- Evidence of poor rental history/evictions

# Evidence of Self-Sufficiency

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- Evidence of employment
  - Documentation of income from employment
  - Tax ID number
  - Employer's statement court form
  - Letter from employer with photo attached
- Evidence of other income
  - Child support, benefits citizen/lawful permanent resident children receive
- Evidence that taking steps toward employment
  - Filed VAWA self-petition, U visa, taking ESL classes

# Other Anti-Discrimination Protections

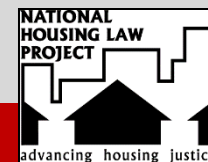
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- No discrimination based on:
  - Title VI/FVPSA- race, color, and national origin
  - Fair Housing Act-race, color, national origin, religion, sex, familial status, and disability
  - VAWA- race, color religion, national origin, sex, gender identity, sexual orientation, and disability
  - HUD Section 109- race, color, national origin, sex, and religion

# Materials

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- DOJ/HHS/HUD Joint Letter on Immigrant Access to Federally Funded Services Necessary to Protect Life or Safety (Aug. 5, 2016)
- HUD, SNAPS, The Personal Responsibility and Work Opportunity Act of 1996 and HUD's Homeless Assistance Programs (Aug. 16, 2016)
- HUD, Memo for Secretary Julian Castro from Tonya Robinson, Acting General Counsel re: Eligibility of Battered Noncitizen Self-Petitioners for Financial Assistance Under Section 214 of the Housing and Community Development Act of 1980 (Dec. 15, 2016)
- HUD, Notice PIH 2017-02 (HA), Violence Against Women Act (VAWA) Self-Petitioner Verification Procedures (Jan. 19, 2017)
- NHLP, Memo: HUD Housing Covered by Section 214
- NHLP, Federally Assisted Housing and Immigrant Eligibility (Feb. 2017) (See info packet)
- NIWAP, Brochure for Transitional Housing
- NIWAP, Fact Sheet: Immigrant Access to Emergency Shelter and Transitional Housing (Oct. 23, 2016)
- NIWAP, How to Advocate for Public and Assisted Housing for Your Battered Immigrant or Trafficking Survivor Client (Feb. 8, 2017)
- NIWAP & Legal Momentum, HUD Programs and Immigrant Eligibility, Chap. 16.2 (Feb. 8, 2017)



# Upcoming Webinars

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- HUD's Final Rule Implementing VAWA 2013
  - Wednesday, March 1, 2017, 2:00 – 3:30 ET
  - Register at <https://attendee.gotowebinar.com/register/5330210649911549955>
- HUD Developments Impacting the Housing Rights of Survivors (date/time TBD)

# For Technical Assistance, Training, and Resources

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