

HOUSING JUSTICE

National Housing Law Project

Newsletter January 2010

Overview: Immigration Status and Federally Assisted Housing

This article provides an overview of the immigration restrictions that apply to federally assisted housing. The article first discusses which federal housing programs have immigration restrictions. For those programs that have immigration restrictions, the article explains which categories of immigrants are considered eligible.

What Type of Housing Is at Issue?

The first step to determining which immigration restrictions apply to federally assisted housing is to find out the type or types of funding in the building. Federal programs include housing funded by the Department of Housing and Urban Development (HUD), housing in rural areas funded by Rural Development (RD), and housing funded by the Low-Income Housing Tax Credit program (LIHTC). Some buildings have more than one source of funding, and different funding may apply to different units in the same building. Not all affordable housing has immigration restrictions.

To know which rules apply, you have to know what type or types of funding are in each housing unit. NHLP can assist advocates in determining what type of funding is at issue. Once you know the type of housing, you need to determine if it is covered by any immigrant restrictions.

HUD Housing Covered by Section 214

One major set of immigrant restrictions applies to certain housing funded by HUD. They are re-

ferred to as Section 214 restrictions, because they were adopted as Section 214 of the Housing and Community Development Act of 1980, 42 U.S.C. § 1436a. Section 214 generally applies to those HUD programs that provide financial assistance to or on behalf of tenants or homebuyers pursuant to the United States Housing Act of 1937. The following HUD programs are restricted by Section 214:

- Public Housing
- Housing Choice Vouchers
- Section 8 Project-Based housing
- Section 236 Housing
- Section 235 Homeownership housing
- Housing Development Grants
- Section 23 Leased Housing Assistance Program

HUD Housing Not Covered by Section 214

HUD programs that are *not* subject to the Section 214 immigrant restrictions include, but are not limited to, Indian Housing, Community Development Block Grant, HOME, Housing Opportunities for Persons with AIDS, Section 202, Section 811, Section 221(d)(3), Section 221(d)(5), McKinney-Vento Act, Rental Rehabilitation, and HOPE 2. However, if housing funded under these programs also has Section 8 or funds from another covered program, the units assisted by these programs are covered by Section 214.

RD-Funded Housing

Some, but not all, housing funded by RD is

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covered by immigrant restrictions. Those restrictions come from two main sources: RD statutory and regulatory restrictions and application of the HUD Section 214 requirements to certain RD programs. Only the following RHS programs are restricted: Section 514 and 516 Farm Labor Housing programs, Section 502 home loan program, and Section 504 rehabilitation loan and grant program. The RD Voucher Program is also covered by the restrictions. There are no current restrictions on the Section 515 Rural Rental Housing Program, the Rural Housing Preservation Grants, or the Section 538 Multi-family Loan Guarantees.

Low-Income Housing Tax Credit Program

Under the federal Low Income Housing Tax Credit (LIHTC) program, private investors are allowed to take a credit against their federal income taxes because they have invested money in the building. None of the tax credit units have immigrant restrictions. Note, however, that LIHTC projects frequently house residents with Housing Choice Vouchers and that some LIHTC projects have project-based Section 8. LIHTC units receiving any form of Section 8 or voucher assistance are subject to the Section 214 restrictions.

Eligible Immigrants Under Section 214

Citizens and immigrants are eligible for HUD-funded housing covered by Section 214 if they are residents of the United States and fall within one of the categories set out in 42 U.S.C. § 1436a and 24 C.F.R. § 5.506. In general, the following persons are qualified for admission:

- U.S. citizens.
- Persons lawfully admitted for permanent residence.
- Persons granted refugee or asylum status because of persecution, or fear of persecution, on account of race, nationality, religion, political opinion, or membership in a particular social group.

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Stories Sought Regarding Battered Immigrants' Access to Housing

The Women's Rights Division of Human Rights Watch (HRW) and Legal Momentum are working to identify immigrant victims of domestic violence and sexual assault who have faced barriers to accessing federal housing programs. HRW is beginning research for a report on this topic and is currently seeking information and referrals to immigrant women who may be willing to speak about their experiences (their identities would be protected in the report).

HRW aims to document the way in which women's lives have been affected by barriers to federally assisted housing created by administrative policy gaps and statutory exclusions. In particular, HRW will examine HUD's failure to issue guidance to public housing agencies (PHAs) recognizing the housing eligibility of women seeking immigration relief under VAWA. Lack of access to federally assisted housing is one of the largest obstacles standing between immigrant women and their families and a life free from violence. HRW wants to examine how immigrant women who have survived domestic violence or sexual assault are affected by inability to access housing.

HRW would appreciate referrals to women who have obtained immigration relief either under VAWA or through the U visa and who have encountered impediments to accessing federally assisted housing. This could include women who have been excluded from housing as well as those in mixed-status families who are seeking to stay in federally assisted housing and have their subsidy prorated. HRW has funding to travel for most of the interviews and can arrange for translation. HRW will protect the identity of the women interviewed by using pseudonyms and withholding details as necessary. All interviews will be conducted by researchers with training in interviewing survivors of gender-based violence.

HRW would also appreciate hearing from those who have encountered this issue while working on behalf of clients.

To assist in this project, contact Meghan Rhoad at rhoadm@hrw.org (212) 216-1224. ■

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- Persons granted “parole status” by the U.S. Attorney General for emergent or public interest reasons. Parole is a procedure which allows a noncitizen to come into the United States without being granted official admission status.
- Persons granted withholding of deportation or removal. These persons are lawfully present because the U.S. Attorney General has withheld deportation/removal because of a threat to life or freedom in their country of origin.
- Persons granted temporary residence under the general amnesty provisions of the Immigration Reform and Control Act of 1986 based on having resided in the U.S. since before January 1, 1982.
- Persons qualifying as victims of trafficking because they have been subject to a severe form of trafficking in persons such as sex trafficking, involuntary servitude, debt bondage, peonage, or slavery.

Ineligible Immigrants Under Section 214

Section 214 prohibits housing assistance to visitors, tourists, diplomats, and students, as well as any immigrants not falling within the specified categories.

There is an argument that under some circumstances battered spouses and other victims of domestic violence may be eligible under Section 214 even if they do not fall within one of the above categories, although HUD has not yet approved this analysis. The Professional Responsibility and Work Opportunity Reconciliation Act (PRWORA) provides at 8 U.S.C. § 1641(c) that certain abused immigrants are considered “qualified” persons. Under Section 431(a) of PRWORA, persons in this category would be eligible for “public or assisted

housing.” While PRWORA does not directly modify provisions of Section 214 that do not include this category of eligibility, some advocates have argued that abused immigrants should be considered eligible for housing covered by Section 214.

In a report accompanying fiscal year 2003 federal appropriations legislation, Congress directed HUD and the Department of Justice to reconcile Section 214 with other federal laws that have expanded categories of eligible immigrants—namely, battered immigrants, Cuban immigrants and Haitian immigrants. However, HUD has not acted on the direction contained in the 2003 report.

Households with Mixed Immigration Status

To qualify for admission to HUD housing covered by Section 214, at least one household member must have eligible immigration status as defined in Section 214. The eligible member does not need to be the head of household and can be a minor child. Households with no eligible members are not permitted to move into covered housing.

A household that has at least one eligible household member, as well as other ineligible household members, is called a “mixed” household. Mixed households are permitted to live in housing covered by the Section 214 restrictions. However, the amount of assistance they receive will be prorated. The rent will be adjusted based on the number of household members, the total household income, the number of eligible members of the household and the type of rent subsidy in the covered unit.

Conclusion

In determining a client’s eligibility for a particular federally subsidized unit, it is crucial to identify the type of housing at issue and the client’s immigration status. Even if the client does not have qualifying immigration status, she may still apply for the housing if at least one member of her household is eligible. However, the household’s rental assistance will be prorated. ■

Statistic of the Month

In fiscal year 2005, 8,300 VAWA self-petitions were filed, 8,300 were approved (including previously pending files), and 2,205 were denied.

Department of Homeland Security

HUD Issues Final Rule on Disclosure of Social Security Numbers

In NHLP's December Newsletter for LAV Grantees, we reported on HUD's proposed final rule regarding the requirement that applicants and participants in federally assisted housing disclose their Social Security Numbers (SSN). On December 29, 2009, HUD issued its final rule on the matter. The rule would require each member of every applicant or participant household to produce both a valid SSN card and independent documentation containing corroborative data. The stated purpose of the rule is to reduce overpayments by requiring public and assisted housing operators to use HUD's Enterprise Income Verification (EIV) system to verify employment and income of program participants.

Importantly, household members who do not assert eligible immigration status for participation in federal housing programs will *not* be required to provide their SSN.

Final Changes to Rule

The final rule made two minor changes to the SSN disclosure requirements set forth in the October 15 proposed rule. First, the final rule slightly modifies the proposed rule's language regarding participants age 62 or older as of January 31, 2010, whose initial determination of eligibility began before that date. Such participants need not disclose a SSN even if they have not previously disclosed a valid SSN. The final rule clarifies that such participants need not produce an SSN even if they move to a different HUD-assisted property from the one in which they were initially living.

Second, the rule clarified that household members under age 6 who have been assigned SSNs must disclose them. If a household member under age 6 does not have an SSN, the household will have an additional 90 days to comply.

Mixed Immigration Status Households

Current regulations allow households com-

posed of family members with both eligible and ineligible immigration status to receive prorated housing assistance based on the proportion of eligible and ineligible members. The final rule states that the new regulations requiring SSNs from all family members are "inapplicable to individuals who do not contend eligible immigration status." Thus, mixed immigration status households can continue to receive prorated assistance. HUD issued a Federal Register notice on January 27, 2010, clarifying that the current regulations regarding mixed status households will remain in place and will not be affected by the new SSN rule.

Conclusion

With a few exceptions, all applicants for assisted housing and participants therein will soon be required to provide their SSNs to the operating entity. It is critical to note, however, that the SSN requirements do not apply to household members who do not assert eligible immigration status for participation in federal housing programs. ■

For technical assistance or requests for trainings or materials, please contact:

Navneet Grewal, ngrewal@nhlp.org,
Meliah Schultzman, mschultzman@nhlp.org,
National Housing Law Project
614 Grand Ave. Suite 320
Oakland, CA 94610.
Phone: (510)251-9400
www.nhlp.org

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