

Q&A on HUD Proposed Rule on Mixed-Status Families

On May 10, 2019, the Department of Housing and Urban Development (HUD) released a [proposed rule](#) titled “Housing and Community Development Act of 1980: Verification of Eligible Status.” The rule would significantly change HUD’s regulations by further restricting eligibility for federal housing assistance based on immigration status. The rule would also impose new documentation requirements for U.S. citizens and individuals 62 years old or older receiving or applying for housing assistance. If finalized, the proposed rule will effectively evict 25,000 immigrant families from their homes, including over 55,000 children who are eligible for housing assistance under federal law. Millions of citizens and the elderly could also lose their subsidies if they are not able to prove their citizenship and immigration status.



WHAT WOULD THE PROPOSED RULE DO?

The proposed rule prohibits “mixed-status” families from living in federally subsidized units that are subject to immigration status restrictions under Section 214 of the Housing and Community Development Act of 1980 (“Section 214”). Mixed-status families are households comprised of members who have eligible and ineligible immigration statuses as defined in Section 214. Currently, families with at least one U.S. citizen or eligible immigrant are permitted to live together in a subsidized housing unit. Mixed-status families receive housing assistance on a prorated basis—where the amount of the housing subsidy for the household is decreased to account for family members with ineligible immigration status. That is, the subsidy is based on the portion of eligible household members in the unit. **Existing laws ensure that only U.S. citizens and eligible immigrants can receive these housing subsidies.**

The proposed rule requires that every household member be a U.S. citizen or an eligible immigrant. However, if the head of the household’s immigration status has been verified, a temporary period of prorated assistance may be allowed while the status of other family members is being verified.

Furthermore, the rule would require that the status of all household members younger than 62 years old be verified through the Systematic Alien Verification for Entitlements (“SAVE”) system, which is operated by the Department of Homeland Security. The rule also makes changes to the citizenship and immigration verification requirements for U.S. citizens and noncitizens who are 62 years old or older, as detailed below.

The rule would apply to all households currently receiving Section 214 subsidies, as well as to anyone who may apply for these housing programs in the future.

WHICH AFFORDABLE HOUSING PROGRAMS ARE COVERED UNDER THE PROPOSED RULE?

The rule would apply to the following federal housing assistance programs:

- Public Housing
- Section 8 Housing Choice Vouchers

- Section 8 Project-Based Housing
- Section 235 Home Loan Program
- Section 236 Rental Assistance Program
- The Rent Supplement Program
- Housing Development Grant Programs (low-income units only)

WOULD THE RULE AFFECT OTHER FEDERAL HOUSING ASSISTANCE PROGRAMS?

While only the programs listed above are covered by the proposed rule, other federal, state, and local housing programs may be implicated where layers of subsidies that include one of the listed programs are used to make units affordable to very low-income families. For example, a mixed-status family living in a Low-Income Housing Tax Credit unit with Section 8 Housing Choice Voucher assistance would be affected by this proposed rule.

WHO IS AN “ELIGIBLE” IMMIGRANT?

Only U.S. citizens and individuals with one of the following immigrant statuses are eligible for federal subsidies under Section 214:

- U.S. Citizens and Nationals
- Lawful Permanent Residents (LPR)
- VAWA Self-Petitioners
- Asylees and Refugees
- Parolees
- Persons Granted Withholding of Removal/Deportation
- Victims of Trafficking
- Individuals residing in the U.S. under the Compacts of Free Association with the Marshall Islands, Micronesia, Palau and Guam
- Immigrants admitted for lawful temporary residence under the Immigration Reform and Control Act of 1986

WHO IS AN “INELIGIBLE” IMMIGRANT?

Other immigration categories not listed under the above “eligible” immigrant list are ineligible for housing assistance under Section 214. For example, ineligible immigrants include those who are in the U.S. on temporary employment or student visas, persons granted Temporary Protected Status, recipients of Deferred Action for Childhood Arrivals (DACA), or survivors of serious crimes granted U non-immigrant status.

AN “INELIGIBLE” IMMIGRANT IS NOT AN UNDOCUMENTED IMMIGRANT?

Being “ineligible” for housing subsidies is **not** equivalent to being undocumented. There are many immigrants with legal status who are ineligible for certain federally subsidized housing. A poignant example of ineligible immigrants are U-visa holders, who are crime victims that have suffered signif-

icant physical or mental abuse while in the U.S. and are assisting law enforcement and government officials in prosecuting those who perpetrated the criminal activities.

1. The family's head of household (leaseholder) must have an eligible immigration status under Section 214.
2. The ineligible family members in the household must be either: the spouse of the head of household, children of the spouse or head of household, or parents of the spouse or head of household. Other ineligible family members (such as aunts, uncles, cousins, etc.) would prevent a family from receiving continued assistance under the rule.

DOES THIS MEAN THAT IMMIGRANTS WHO ARE NOT ELIGIBLE FOR SECTION 214 HOUSING WOULD NOT BE AFFECTED BY THE RULE?

No. Any immigrant or U.S. citizen living as part of a mixed-status family would be harmed by this rule. A mixed-status family would be faced with the impossible choice of breaking up their families to ensure that some members still receive the assistance or forgoing the assistance to keep the family together and potentially facing homelessness.

HOW MUCH TIME WOULD MIXED-STATUS FAMILIES THAT CHOOSE TO STAY TOGETHER HAVE BEFORE THEY WOULD LOSE THEIR ASSISTANCE?

The proposed rule includes a "temporary deferral of termination of assistance" provision. Under this provision, mixed-status families can continue to receive prorated assistance if they can show that:

1. The family made reasonable efforts to find new affordable housing but were unsuccessful in their search, or
2. The vacancy rate for affordable housing is less than five percent in the area that they currently reside, or
3. The local jurisdiction's consolidated plan reports that the local housing market lacks sufficient affordable housing opportunities for families of the size and income level of the family seeking temporary deferral.

Families can receive a temporary deferral for an initial period of up to six months. The family may be able to get this time extended for two additional six-month periods, for a total of 18 months of temporarily deferred termination of assistance.

HOW WOULD THE RULE CHANGE CITIZENSHIP AND IMMIGRATION VERIFICATION REQUIREMENTS FOR EVERYONE?

Under current HUD regulations, only family members that are applying for housing assistance need to have their immigration status verified. Family members that would not qualify for assistance based on their immigration status can elect not to contend eligibility for the housing assistance, allowing the family to receive assistance on a prorated basis. The proposed rule would eliminate an individual's ability to elect not to contend their eligibility for the subsidy, and would require all household members under the age of 62 to submit verification of their immigration status through the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) system.

Under the proposed rule, **U.S. Citizens and Nationals**, who currently must only provide a signed declaration of U.S. citizenship or U.S. nationality, would also need to submit documentation of their citizenship status. Furthermore, **noncitizens who are 62 years old or older**, who currently are only

required to provide a signed declaration of eligible immigration status and a proof of age document, would also be required submit immigration documentation, although the documentation would not be verified through SAVE.

If these individuals are not able to produce the documentation in the required timeframes, then they risk losing their housing assistance.

WHAT IF EVERYONE IN THE HOUSEHOLD IS AN ELIGIBLE IMMIGRANT, BUT IT IS TAKING SOME TIME TO VERIFY THEIR IMMIGRATION STATUS?

The proposed rule allows for temporary prorated assistance to families once their head of household or leaseholder has established an eligible immigration status. However, this prorated assistance would only be available while the remaining household members establish that they have an eligible immigration status. If it is established that there are ineligible family members in the household, the family would no longer qualify for prorated assistance.

WOULD ANY MIXED-STATUS FAMILIES BE EXEMPTED FROM THIS RULE?

No mixed-status families will be exempted, under the proposed rule. However, certain families may qualify for continued assistance, where they will be able to continue to receive assistance on a prorated basis. To qualify for continued assistance, a mixed-status family must meet the following conditions:

1. The family must have been receiving assistance from a housing program covered by Section 214 on June 19, 1995.
2. The family's head of household (leaseholder) must have an eligible immigration status under Section 214.
3. The ineligible family members in the household must be either: the spouse of the head of household, children of the spouse or head of household, or parents of the spouse or head of household. Other ineligible family members (such as aunts, uncles, cousins, etc.) would prevent a family from receiving continued assistance under the rule.

HOW MANY FAMILIES WILL BE HARMED OR AFFECTED BY THIS RULE?

According to HUD data, approximately 25,000 mixed-status families across the country currently receiving assistance would be forced to decide between breaking up their families or forgoing their assistance. In these families, over 55,000 children who are eligible for the assistance will be harmed by this rule because their parents are ineligible immigrants.

Millions more immigrant families will be harmed by the fear and confusion created by this rule and related policies by the Trump Administration, as families decide not to seek or to leave lifeline housing subsidy programs for which they are eligible.

Additionally, this rule would affect nine million U.S. citizens currently receiving HUD assistance who have already attested, under penalty of perjury, that they are citizens as well as about 120,000 elderly immigrants who are receiving subsidies. If these individuals cannot provide the proper proof of citizenship or immigration status, then they risk losing their assistance and facing homelessness.

HOW WOULD THIS RULE AFFECT HOUSING PROVIDERS ADMINISTERING THESE ASSISTANCE PROGRAMS?

The rule would require housing providers to collect and verify documentation that was not previously required. Tens of thousands of public housing agencies and private property owners would need to collect documents “proving” the citizenship of millions of assisted residents, as well as the citizenship of future applicants for assistance. They would also need to collect status documentation from thousands of elderly immigrants. Additionally, housing authorities must create new policies to determine which families will receive continued assistance or temporary deferment of termination.

All of these new requirements would impose new and significant administrative costs and burdens for housing providers, which HUD does not account for in the rule. These costs could further deter housing providers from participating or continuing to participate in these programs, which would exacerbate the affordable housing crisis.

I AM WORRIED ABOUT WHETHER THE RULE APPLIES TO ME. SHOULD I GIVE UP MY HOUSING ASSISTANCE?

This is only a proposed rule. The agency will be accepting comments on it, and must respond to the comments before it can become final or effective. The final rule is not likely to go into effect for many months, and the proposed rule would offer the possibility of a temporary deferral of termination of assistance to give families time to transition to unsubsidized housing. Affordable housing is essential for families to thrive. If you have questions about your situation or whether you should remain in your housing, you can consult a housing attorney.

WHAT CAN I DO?

Fight back by submitting comments to HUD explaining why this rule would have a catastrophic impact on you, your family, friends, neighbors, tenants, and clients. The deadline to submit comments is **July 9, 2019**. Individuals can submit comments directly to HUD via NLIHC and NHLP’s campaign website, www.keep-families-together.org. The website’s resources page also includes comment templates that organizations can modify and adapt to submit on their own at www.regulations.gov (Docket ID: HUD-2019-0044).

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