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Immigration Requirements: Other Assistance Programs for Housing and Homelessness (ESG, CDBG, HOME, FEMA, CRF, and ERAP)

I. Synopsis

There are two main sources of immigration status restrictions on eligibility for federal housing and homelessness programs: Section 214 of the Housing and Community Development Act of 1980 (Section 214)¹ and title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).²

Section 214's immigration restrictions cover most of the federally assisted housing programs, meaning that the other assistance provided by ESG, HOME, FEMA, CRF, and ERAP are not subject to Section 214.

PRWORA prohibits individuals who are not "qualified" individuals from being eligible for "federal public benefits" ("qualified" individuals include lawful permanent residents, refugees, asylees, and others).³ PRWORA's application depends on the type of assistance offered and whether a federal agency responsible for a program designates it as a "federal public benefit" foreclosed to not-qualified immigrants. However, many federal agencies, including HUD, have not specified which of their programs provide federal public benefits. Until they do so, state and local agencies that administer the programs are not obligated to verify the immigration status of people who apply for them.

There are also several important exceptions to this immigration limitation. There are no immigration restrictions imposed on assistance that is short-term, non-cash emergency disaster assistance or when it is an in-kind service necessary to protect life or safety as long as no individuals or household income qualification is required. As well, where the assistance is provided by a charitable non-profit organization, including subgrantees, those organizations are not required to verify that an individual is "qualified" under PRWORA.

When applying these rules and exceptions to these assistance programs, some aspects of the ESG, HOME, and FEMA programs may be restricted by the immigration requirements under PRWORA. However, the type of assistance provided by CDBG, CRF, and ERAP are short-term, non-cash emergency disaster assistance and therefore not subject to PRWORA's immigration restrictions.

¹ 42 U.S.C. §1436a.

² 8 U.S.C. §§ 1611–1646.

³ 8 U.S.C. §§ 1611(a), 1641(b).

Thus, undocumented and other non-qualified immigrants can access certain kinds of services (see table below) funded by these programs, under a number of enumerated exceptions.

Program	Assistance Not Restricted by Immigration Status
ESG	<ul style="list-style-type: none"> ● Street Outreach Services ● Emergency Shelter ● Safe Haven ● Rapid Re-Housing ● Transitional housing owned by the grant recipient or subrecipient ● Non-cash disaster relief ● Programs necessary for the protection of life and safety ● Programs administered by nonprofit charitable organizations
CDBG	<ul style="list-style-type: none"> ● No specific immigration restrictions limiting allowable assistance
HOME	<ul style="list-style-type: none"> ● Non-cash disaster relief ● Programs necessary for the protection of life and safety ● Programs administered by nonprofit charitable organizations

FEMA Assistance	<ul style="list-style-type: none"> ● Non-cash disaster relief, including crisis counseling and disaster legal services, and other short-term, non-cash assistance ● other non-monetary, in-kind emergency disaster relief programs. These include medical care, shelter, food and water. ● Programs necessary for the protection of life and safety ● Programs administered by nonprofit charitable organizations ● Households with non-qualified individuals can receive cash assistance if an eligible adult or eligible minor child in that household applies for assistance
CRF, including ERAP	<ul style="list-style-type: none"> ● No specific immigration restrictions limiting allowable assistance

II. Introduction

There are two main sources of immigration status restrictions on eligibility for federal housing and homelessness programs: Section 214 of the Housing and Community Development Act of 1980 (Section 214)⁴ and title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).⁵

Section 214 restricts immigrant access to a set of enumerated HUD housing programs,⁶ only allowing certain non-citizens to receive assistance under these housing programs, while allowing “mixed-status” families to live together in the housing with pro-rated assistance.⁷ HUD has promulgated regulations

⁴ 42 U.S.C. §1436a.

⁵ 8 U.S.C. §§ 1611–1646.

⁶ 42 U.S.C. §1436a(b). HUD programs covered by Section 214: Public Housing; All Section 8 housing assistance (including Vouchers and Project-based Section 8); Section 236 Housing, with or without Supplements (low-income units only); Rent Supplement Housing; Section 235 Homeownership housing; Housing Development Grants (HoDAG) (low-income units only); Section 23 Leased Housing Assistance Program.

⁷ 42 U.S.C. §1436a(a). Eligible Non-Citizens under Section 214: U.S. Nationals; Lawful Permanent Residents (LPR); VAWA Self-Petitioners; Asylees; Refugees; Parolees; Persons Granted Withholding of Removal/Deportation; Certain Victims of Trafficking; Individuals who entered under the Compacts of Free Association with the Marshall Islands, Micronesia, and Palau; Immigrants admitted for lawful temporary residence prior to January 1, 1982. Furthermore, HUD has stated that VAWA self-petitioners can access Section 214 covered programs. See Memorandum from Tonya Robinson, HUD Acting General Counsel, to Julian Castro, HUD Secretary 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).

and issued guidance on implementing Section 214 in covered HUD programs.⁸ While there is pending rulemaking that would eliminate the ability of mixed status families to reside in or receive assistance in Section 214 covered programs,⁹ who qualifies for Section 214 HUD covered programs is clear. Because ESG, CDBG, HOME, CRF, ERAP, and FEMA assistance are not enumerated programs under Section 214, they are not subject to the immigration restrictions under Section 214.

PRWORA covers a potentially broader pool of federal benefits programs but there are important exceptions that permits undocumented immigrants and immigrants without eligible status under PRWORA to still receive help. HUD has also instructed housing providers administering Section 214 covered programs not to implement the restrictions provided under PRWORA.¹⁰

Below is a breakdown of the immigration restrictions under PRWORA, followed by an analysis of what this means for specific federal benefits programs.

III. Immigration Restrictions Under PRWORA

PRWORA prohibits individuals that are not “qualified” from being eligible for certain federal public benefits programs.¹¹

A. Federal Public Benefits

Unlike Section 214, PRWORA does not have an enumerated list of covered programs. Instead it has a broad edict covering “federal public benefits” which the act defines as:

- (A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and
- (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.¹²

⁸ See, e.g. 24 C.F.R. §§ 5.500–5.528; HUD Guidebook 7465.7G, Restrictions on Assistance to Non-Citizens.

⁹ Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20,589 (proposed May 10, 2019) (to be codified at 24 C.F.R. part 5).

¹⁰ Department of Housing & Urban Development, Revised Restrictions on Assistance to Noncitizens, 61 Fed. Reg. 60535, 60537 (Nov. 29, 1996).

¹¹ 8 U.S.C. §§ 1611(a), 1641(b). While there is overlap of “qualified” status under PRWORA and Section 214, the lists are not identical. Under PRWORA, “qualified” status includes: Legal Permanent Residents; Refugees; Asylees; individuals paroled into the U.S. for a period of at least one year; individuals whose deportation is being withheld on the basis of prospective persecution; individuals granted conditional entry pursuant to INA § 203(a)(7) as in effect prior to April 1, 1980; and Cuban/Haitian entrants (as defined by P.L. 96-422).

¹² 8 U.S.C. §1611(c).

PRWORA's primary targets are regular, on-going cash assistance programs such as those funded under the Temporary Assistance for Needy Families (TANF) block grant and Supplemental Security Income (SSI) as well as programs having a significant impact on the federal budget such as Medicaid and food stamps (now the Supplemental Nutrition Assistance Program or SNAP). Because state and local emergency housing and utility assistance programs are very different in scope, duration, federal budgetary impact, and rationale from the on-going cash assistance and major federal programs that were Congress's focus, PRWORA does not deny non-qualified immigrants' access to such aid.

It has been left to federal agency guidance to determine which programs if any under their jurisdiction are federal public benefit programs. In the absence of such federal guidance, or another law restricting access to benefits, state and local governments should assume that such services are not subject to PRWORA's restrictions.

The most definitive guidance on the application of PWRORA to various assistance programs comes from the U.S. Department of Health and Human Services ("HHS") and reflects government-wide policy. Because of HHS's expertise, its incorporation of other agencies' input during the rulemaking process, and because HHS was understood to be providing the authoritative interpretation for the U.S. Government, no other agency made any attempt to publish a comparable exegesis on the pertinent provisions of PRWORA, although as necessary some did publish lists of their own programs that did or did not meet the definitions as HHS had interpreted them. HHS rules instruct that any short-term emergency disaster relief program should be judged based on whether a program's predominate means of delivering assistance is in-kind; if it is, providing cash to a minority of recipients where in-kind aid is not feasible should not alter the fundamental character of the program.¹³

For its part, HUD has issued limited guidance on the application on PRWORA. What limited guidance HUD has issued on PRWORA has specifically found that non-qualified individuals are ineligible for assistance in the form of rental assistance payments made directly to individuals based on the individual's income.¹⁴

Detailed below, there are important exceptions in PWRORA that allow immigrants regardless of status access to some programs.

B. Exceptions

Even if a program has been determined to be a federal public benefit under PRWORA, three key exceptions are relevant for housing and homelessness assistance programs:

1. Programs necessary for the protection of life and safety;
2. Short-term, non-cash, in-kind emergency disaster relief;

¹³ See Office of the Sec'y, HHS, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Public Benefit", 63 Fed. Reg. 41,658, 41,660 (Aug. 4, 1998) (excluding from the definition of a "federal public benefit" programs that do not predominately rely upon individual or household eligibility determinations even when they do provide some benefits in that manner.

¹⁴ Department of Housing & Urban Development, Fact Sheet: The Personal Responsibility and Work Opportunity Act of 1996 and HUD's Homeless Assistance Programs (Aug. 16, 2016), <https://files.hudexchange.info/resources/documents/PRWORA-Fact-Sheet.pdf>.

3. Nonprofit Charitable Organizations Exception.

1. Programs necessary for the protection of life and safety

This exception applies to programs that: “(i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient’s income or resources; and (iii) are necessary for the protection of life or safety.”¹⁵

HUD, in partnership with HHS and DOJ, issued guidance elaborating on this exception in a [joint letter](#) issued by the agencies in 2016.¹⁶ The letter emphasizes that “immigration status is not a bar to providing certain services necessary to protect life or safety, such as emergency shelter, short-term housing assistance including transitional housing, crisis counseling, and intervention programs.”¹⁷ It highlights the 2001 guidance issued by the Attorney General that specifies the types of programs that are exempt, although the 2001 guidance does not name any specific federal benefits programs.¹⁸

While the joint letter from HUD does not specifically name any HUD programs exempted from PRWORA, HUD issued a [fact sheet](#) on the day the letter was released that specifies exempted activities under the Emergency Solutions Grant (ESG) and Continuum of Care (CoC) programs. The PRWORA-exempted activities are:

- Street Outreach Services
- Emergency Shelter
- Safe Haven
- Rapid Re-Housing
- Transitional Housing, **but ONLY** “when the recipient or subrecipient owns or leases the building used to provide transitional housing.” Transitional housing provided in the form

¹⁵ Department of Housing & Urban Development, Department of Health and Human Services, and Department of Justice, *Joint Letter Regarding Immigrant Access to Housing and Services* (Aug. 5, 2016), at 3, <https://files.hudexchange.info/resources/documents/HUD-HHS-DOJ-Letter-Regarding-Immigrant-Access-to-Housing-and-Services.pdf>.

¹⁶ *Id.*

¹⁷ *Id.* at 1.

¹⁸ Attorney General Order No. 2353-2001, 66 Fed. Reg. 3616 (Jan. 16, 2001). Specifically:

- (a) 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; or treatment of mental illness or substance abuse;
- (b) Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children;
- (c) Programs, services or assistance to help individuals during periods of heat, cold, or other adverse weather conditions;
- (d) Soup kitchens, community food banks, senior nutrition programs such as meals on wheels, and other such community nutritional services for persons requiring special assistance;
- (e) Medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability, or substance abuse assistance necessary to protect life or safety;
- (f) Activities designed to protect the life or safety of workers, children and youths, or community residents; and
- (g) Any other programs, services, or assistance necessary for the protection of life or safety.

of rental assistance based on the applicant's income **is NOT an exempted activity** under these programs.

2. Short-term, non-cash, in-kind emergency disaster relief

The joint letter from HUD highlights the fact that under PRWORA “short-term, noncash, in-kind emergency disaster relief is available regardless of an individual's immigration status.”¹⁹

The Federal Emergency Management Agency (FEMA) has also issued an [FAQ](#) that addresses non-qualified individuals' access to assistance from FEMA, which provides some clues as to what “short-term, noncash, in-kind emergency disaster relief” may include. Although the FAQ does not make references to PRWORA, it follows PRWORA's guidelines, and notes that while non-qualified individuals cannot receive cash assistance from FEMA, they may be eligible for non-cash assistance. It goes on to define such assistance to include Crisis Counseling and Disaster Legal Services, and other short-term, non-cash disaster assistance, such as shelter, food, water, and medical care.

3. Nonprofit Charitable Organizations Exception

While PRWORA affirmatively requires federal benefits granting agencies to verify an applicant's immigration status, the statute exempts nonprofit charitable organizations from this verification requirement, including subgrantees.²⁰ This means that nonprofits are not required to inquire about or verify an applicant's immigration status, thus allowing them to provide aid to non-qualified individuals.

The interim guidance issued by DOJ offers some clarification on what is required to qualify for the nonprofit charitable organization exemption.²¹ For starters, an organization must be both a “nonprofit” and “charitable.” An organization is a “nonprofit” if “it is organized and operated for purposes other than making gains or profits for the organization, its members or its shareholders, and is precluded from distributing any gains or profits to its members or shareholders.” To qualify as charitable, the nonprofit must be “organized and operated for charitable purposes,” and charitable is to be interpreted “in its generally accepted legal sense as developed by judicial decision.”²²

The DOJ guidance affirmatively states that ***a nonprofit charitable organization cannot be penalized for providing benefits to non-qualified individuals if it chooses not to verify status***, so long as there are no other competing requirements to do so (for example Section 214) and the individual has not already been deemed a non-qualified individual by a non-exempt entity.²³

¹⁹ Department of Housing & Urban Development, *supra* note 15, at 3.

²⁰ 8 U.S.C. § 1642(d).

²¹ Department of Justice, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344, 61345-61346 (Nov. 17, 1997).

²² *Id.*

²³ *Id.*

IV. PRWORA Interactions with Specific Programs

A. Emergency Solutions Grants (ESG)

The ESG program is not subject to the immigration restrictions in Section 214 of the Housing and Community Development Act of 1980.²⁴ The program is covered by the immigration provisions in PRWORA, but as discussed above,²⁵ many of its services are exempted benefits under PRWORA. Individuals can access the following ESG services regardless of their immigration status:

- Street Outreach Services
- Emergency Shelter
- Safe Haven
- Rapid Re-Housing
- Transitional housing owned by the grant recipient or subrecipient

Transitional housing that utilizes rental assistance payments to individuals **is restricted under** PRWORA, and cannot be used unless the individual is a qualified individual. For other services not directly addressed by HUD, the HHS guidance may be helpful in determining whether it is a restricted benefit under PRWORA.

B. Community Development Block Grants (CDBG)

The CDBG program is not subject to the immigration restrictions in Section 214 of the Housing and Community Development Act of 1980.²⁶ The CDBG program also does not have specific immigration status restrictions subject to PRWORA. CDBG services fall outside of the type of programs subject to PRWORA, as those services include the repair of streets, parks, or public buildings, are programs necessary for life and safety (for example funds used to create or renovate homeless shelters), or be effectively exempt because they are administered by a nonprofit charitable organization that is not required to verify immigration status for eligibility.

C. The HOME Investment Partnership Program (HOME)

HOME is not subject to the immigration restrictions in Section 214 of the Housing and Community Development Act of 1980.²⁷ A [2004 HOME Q&A](#) posted on HUD's website states "HOME is considered a Federal public benefit under PRWORA." The Q&A indicated that HUD would elaborate further on this issue in a HOMEfires they had drafted, but that HOMEfires was never published. However, applying the PRWORA exceptions, HOME assistance that is non-cash disaster relief, necessary for the protection of life and safety, and or administered by a nonprofit charitable organization is available to undocumented immigrants and immigrants without eligible status.

²⁴ 42 U.S.C. §1436a(b).

²⁵ See *supra* section III.B.1 at pg. 4-5.

²⁶ 42 U.S.C. §1436a(b).

²⁷ *Id.*

D. Relief Provided by the Federal Emergency Management Agency (FEMA)

Assistance provided by FEMA is not subject to the immigration restrictions in Section 214 of the Housing and Community Development Act of 1980.²⁸ As discussed above, FEMA has issued an [FAQ](#) that addresses non-qualified individuals' access to assistance from FEMA. Although it does not specifically reference PRWORA limitations, the FAQ notes that while non-qualified individuals cannot receive cash assistance from FEMA, they are eligible for non-cash assistance such as crisis counseling, disaster legal services, and other short-term non-cash emergency assistance. All individuals, regardless of status, affected by a major disaster may also be eligible for other non-monetary, in-kind emergency disaster relief programs, including medical care, shelter, food, and water. Charitable non-profit agencies can also help regardless of immigration status. Finally, households can receive cash assistance if an eligible adult or minor child in that household applies for assistance. In these cases, "no information regarding [the non-qualified individual's] status will be gathered."

E. Coronavirus Relief Fund (CRF), including the Emergency Rental Assistance Program (ERAP)

CRF and a new program established under this funding stream, ERAP, are not subject to the immigration restrictions of Section 214 of the Housing and Community Development Act of 1980.²⁹ The laws establishing CRF and ERAP also have no specific immigration restrictions. Treasury has not issued guidance or otherwise imposed restrictions based on immigration status in CRF or ERAP; state and local governments therefore should assume that services funded under CRF, including ERAP are not restricted. A recent district court decision found that the City of Phoenix's attempt to exclude "not qualified" immigrants from its CRF funded rental assistance was preempted by PRWORA. Even if such assistance were subject to PRWORA's restrictions, it would be exempt as "short-term, non-cash, in-kind emergency disaster relief."³⁰

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Poder in Action v. City of Phoenix*, No. CV-20-01429-PHX-DWL, 2020 WL 7245072 at *4, *7 (D. Az. Dec. 9, 2020).