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

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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

Although ESG, HOME, and FEMA assistance programs are not covered by the immigration restrictions under Section 214, these programs are restricted by the immigration requirements under PRWORA.

¹ 42 U.S.C. §1436a.

² 8 U.S.C. §§ 1611–1646.

The CDBG program is not covered by Section 214, and HUD has not taken a position as to whether the CDBG program is covered by PRWORA.³

PRWORA prohibits individuals who are not “qualified” individuals from being eligible for benefits (“qualified” individuals include legal permanent residents, refugees, asylees, and others).⁴ However, 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. In addition, PRWORA contains an exception that allows nonprofit charitable organizations to provide assistance to individuals without verifying their citizenship or immigration status. This includes organizations that are subgrantees. (For more details on this provision see pg. 4 of this memo).

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 ● Non-cash disaster relief ● Programs necessary for the protection of life and safety ● Programs administered by nonprofit charitable organizations
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 ● Programs necessary for the protection of life and safety ● Programs administered by nonprofit charitable organizations

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)⁵ and title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).⁶

⁴ 8 U.S.C. §§ 1611(a), 1641(b).

⁵ 42 U.S.C. §1436a.

⁶ 8 U.S.C. §§ 1611–1646.

Section 214 restricts immigrant access to a set of enumerated HUD programs,⁷ only allowing “qualified” individuals to access these programs.⁸ HUD has promulgated regulations and issued guidance on implementing Section 214 in covered HUD programs.⁹ While there is pending rulemaking that would eliminate the ability of mixed status families to receive assistance in Section 214 covered programs,¹⁰ for the most part the delineation on who qualifies for Section 214 HUD covered programs is relatively clear and established. Since ESG, CDBG, HOME, and FEMA assistance are not enumerated programs under Section 214, they are not subject to the immigration restrictions under Section 214.

In contrast, PRWORA covers a much broader pool of federal benefits programs (including ESG, HOME, and FEMA assistance), and for the most part, agencies have not implemented nor issued guidance on PRWORA. For example, the housing programs covered by Section 214 would also be covered by PRWORA, but HUD has not issued guidance or rules on the overlap of these immigration restrictions, and has instead instructed housing providers to refrain from implementing PRWORA’s restrictions in Section 214 covered programs.¹¹

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 covered benefits programs.¹²

A. Covered Programs

⁷ 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.

⁸ 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).

⁹ See, e.g. 24 C.F.R. §§ 5.500–5.528; HUD Guidebook 7465.7G, Restrictions on Assistance to Non-Citizens.

¹⁰ 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).

¹¹ Department of Housing & Urban Development, Revised Restrictions on Assistance to Noncitizens, 61 Fed. Reg. 60535, 60537 (Nov. 29, 1996).

¹² 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).

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.¹³

Most agencies have not issued clear guidance as to which of their programs are covered by PRWORA. The Department of Justice (DOJ) provided a little more clarification as to which programs constitute a federal public benefit, but the guidance does not identify any specific federal programs by name.¹⁴ In this guidance DOJ parsed out three factors to consider in trying to determine whether a program is a covered federal public benefit:

1. Is the benefit provided by an agency of the United States or with appropriated funds of the United States?
2. Is the benefit provided to an “individual, household, or family eligibility unit”?
3. Does the benefit fall under one of the enumerated categories listed in the act (e.g. welfare, health, public or assisted housing, etc.)?

The guidance indicates that all three of these questions must be answered as a “yes” to count as a covered federal benefit: “if you provide generally available services such as fire or ambulance services [e.g. non-enumerated services], or do not provide benefits to an ‘individual, household, or family eligibility unit,’ or do not provide benefits through an ‘agency of the United States’ or with ‘appropriated funds of the United States,’ **the definition does not apply.**”¹⁵ However, the guidance recommends that agencies “consult with the federal agency or department that oversees your program to confirm that the benefit constitutes a federal public benefit covered by the Act,” for benefits that meet the first two requirements and are “similar” to the ones expressly enumerated under PRWORA.¹⁶

Additionally, it is important to note that in the limited guidance HUD has issued on PRWORA, it 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.¹⁷

¹³ 8 U.S.C. §1611(c).

¹⁴ 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, 61361-61362 (Nov. 17, 1997).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 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>.

While PRWORA covers a broad swath of federal public benefits, there are some limited but important exceptions that allow non-qualified individuals to access programs that would otherwise be covered by PRWORA.

B. Exceptions

There are three exceptions to the immigration restrictions under PRWORA that 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;
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.”¹⁸

HUD, in partnership with HHS and DOJ, issued guidance elaborating on this exception in a [joint letter](#) issued by the agencies in 2016.¹⁹ 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.”²⁰ 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.²¹

¹⁸ 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>.

¹⁹ *Id.*

²⁰ *Id.* at 1.

²¹ 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.

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 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.”²² Unfortunately the letter does not elaborate further on this issue.

The Federal Emergency Management Agency (FEMA) has issued an [FAQ](#) that addresses non-qualified individuals’ access to assistance from FEMA. Although the FAQ does not make reference 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. Such assistance includes Crisis Counseling and Disaster Legal Services, and other short-term, non-cash assistance. Additionally, the FAQ clarifies that households with non-qualified individuals can receive cash assistance if an eligible adult **or eligible minor child** in that household applies for assistance. In these cases “no information regarding [the non-qualified individual’s] status will be gathered.”

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.²³ This means that nonprofits are not required to inquire about or verify an applicant’s immigration status, effectively allowing them to provide assistance 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.²⁴ 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

²² Department of Housing & Urban Development, *supra* note 15, at 3.

²³ 8 U.S.C. § 1642(d).

²⁴ 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).

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.”²⁵

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.²⁶

IV. PRWORA Interactions with Specific Programs

A. Programs Covered by Section 214

In a 1996 interim rule, HUD acknowledged that PRWORA would impact HUD programs covered by Section 214, and indicated that “HUD and other responsible agencies are developing regulations to implement the changes made by the Welfare Reform Act [PRWORA].”²⁷ However, in the same interim rule stated that “[r]esponsible entities should not implement the Welfare Reform Act [PRWORA] provisions until the issuance of these implementing regulations.”²⁸ HUD has yet to promulgate regulations implementing PRWORA in programs covered by Section 214, and so the immigration restrictions of PRWORA cannot be applied to these programs.

B. 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 1980.²⁹ The program is covered by the immigration provisions in PRWORA, but as discussed above,³⁰ 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

²⁵ *Id.*

²⁶ *Id.*

²⁷ Department of Housing & Urban Development, Revised Restrictions on Assistance to Noncitizens, 61 Fed. Reg. 60535, 60537 (Nov. 29, 1996).

²⁸ *Id.*

²⁹ 42 U.S.C. §1436a(b).

³⁰ See *supra* section III.B.1 at pg. 4-5.

directly addressed by HUD, the guidance provided by DOJ (discussed above on pages 2-3) may be helpful in determining whether it is a restricted benefit under PRWORA.

C. 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 1980.³¹ HUD has not released guidance on the effect of PRWORA on CDBG, so the CDBG program does not currently have specific immigration status restrictions. Given the nature of assistance provided by CDBG and HUD's guidance on similar programs (ESG and HOME), it is possible that HUD could find CDBG to be a program covered by PRWORA. However, if HUD were to find that PRWORA applies to CDBG, many of its services would not be within the scope of programs covered by PRWORA (for example the repair of streets, parks, or public buildings), would fall under the exemption for 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.

D. 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 1980.³² 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. This question from the HOME Q&A is currently the only information publicly available on HOME and PRWORA. Furthermore, the exact authorship of the Q&A is not indicated. Given the lack of clear guidance on this program, it cannot be said with absolute certainty as to which HOME services are restricted by PRWORA. However, the same exemptions for programs necessary for life and safety and nonprofit charitable organizations would still apply.

E. 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 1980.³³ As discussed above, FEMA has issued an [FAQ](#) that addresses non-qualified individuals' access to assistance from FEMA. Although the FAQ does not make reference to PRWORA by name, it follows PRWORA's guidelines, and notes that while non-qualified individuals cannot receive cash assistance from FEMA, they are eligible for non-cash assistance. Additionally, the FAQ clarifies that 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."

³¹ 42 U.S.C. §1436a(b).

³² *Id.*

³³ *Id.*