

# Housing Access for Immigrant Households

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**D**uring its tenure, the Trump Administration used several federal agencies, including HUD, to sow distrust among immigrant communities and prohibit low-income immigrant families from accessing safe, decent, and affordable housing. Due to the efforts of advocates nationwide, the Biden Administration took swift action beginning in January 2021 to expand access to housing for immigrant households. The Biden Administration reversed the previous Administration’s harmful changes to the “public charge” rule and withdrew the proposed changes to the “mixed status” rule.

As of March 2021, immigrant families’ access to housing benefits is no longer at risk by harms created under the Trump Administration. Specifically, the “public charge” rule, which evaluates whether an individual applying for seeking admission into the U.S., applying for a green card, or an extension of their non-immigrant status is likely to rely on the government for assistance if they obtain lawful permanent residence, has been amended to clarify that housing assistance – such as assistance through public housing, Housing Choice Vouchers, and Project-Based Rental Assistance, among other programs – is not considered in an individuals’ application for permanent residency. In other words, these housing benefits are not considered in the “public charge” test.

Additionally, the Biden Administration withdrew the previous Administration’s proposed changes to Section 214, also called the “mixed status” rule. “Mixed-status” families are those consisting of some members who are U.S. citizens or have green cards and other members that are undocumented. The withdrawal of the “mixed status” rule means that “mixed status” families can pursue the housing assistance they are eligible for without fear of being the family being separated or evicted.

NLIHC opposes policies that deter eligible immigrant families from seeking housing benefits or proposals that force immigrant families currently receiving housing benefits to forego that assistance or face eviction.

## IMMIGRATION STATUS ELIGIBILITY IN FEDERALLY SUBSIDIZED HOUSING

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) and title IV of the “Personal Responsibility and Work Opportunity Reconciliation Act of 1996” (PRWORA). Tenants of Public Housing and Section 8 programs must meet immigration status eligibility requirements established under Section 214 of the “Housing and Community Development Act”. Only some immigrants eligible for this federal housing assistance would also potentially be subject to the “public charge” test: parolees, immigrants granted withholding of removal, and those lawfully admitted pursuant to Section 141 of the Compacts of Free Association with the Marshall Islands, the Federated States of Micronesia, and Palau (COFA). Since family members’ use of benefits is not counted against an applicant, individuals subject to public charge living in a mixed-status immigrant household can continue living with family members receiving housing assistance without harming their own immigration case.

Residents of certain federally subsidized units are subject to immigration status restrictions under Section 214 of the “Housing and Community Development Act of 1980” (Section 214). HUD programs under Section 214 include public housing, Section 8 Housing Choice Vouchers, Section 8 Project-Based Rental Assistance (PBRA), Section 235 Home Loan Program, Section 236 Rental Assistance Program, and the Rent Supplement Program. Section 214 also

governs the Section 542 Rural Development Voucher program, Section 502 Guaranteed Rural Housing Loans, the Section 504 Home Repair program, and Section 521 Rental Assistance for the Section 515 and Section 514/516 programs operated by the U.S. Department of Agriculture's (USDA's) Rural Housing Service (RHS).

Under Section 214, individuals with the following immigration status are eligible for federal housing assistance programs: U.S. citizens and nationals, lawful permanent residents (people with "green cards"), "Violence Against Women Act" (VAWA) self-petitioners, asylees and refugees, parolees, persons granted withholding of removal, victims of trafficking, individuals residing in the U.S. under COFA, and immigrants admitted for lawful temporary residence under the "Immigration Reform and Control Act of 1986." Being ineligible for housing assistance is not equivalent to being undocumented. Immigrants with student visas, Temporary Protected Status, U nonimmigrant status, and other statuses are also not eligible for federal housing subsidies.

## CHANGES TO THE DEFINITION OF "PUBLIC CHARGE"

### Background

The "public charge" test is a long-standing component of U.S. immigration policy used to determine if an individual is likely to depend on government benefits as their main source of support. If someone is deemed likely to become a "public charge," the federal government can deny admission to the U.S. or deny an application for lawful permanent resident status (a "green card"). Permanent residents applying to become U.S. citizens are not subject to the public charge test. The current policy under the May 26, 1999, *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds* defined "public charge" as a noncitizen who is "primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense."

When making public charge determinations, immigration officials look at the use of federal, state, or tribal cash assistance, such as Temporary Assistance for Needy Families (TANF) and Supplemental Security Income (SSI), in addition to the individual's circumstances, including age, income, education and skills, health, family size, and support from friends or family in the U.S. All these factors are considered as part of the public charge test so that positive factors can help overcome negative factors.

Decisions about applications for admission or lawful permanent resident status inside the U.S. are made by the U.S. Citizenship and Immigration Services (USCIS) within the Department of Homeland Security (DHS); applications for admission or green cards outside the U.S. at embassies or consular offices abroad are reviewed by the Department of State. Each agency has its own regulations, but the Administration has worked to align the policies. Refugees, asylees, survivors of trafficking and other serious crimes, certain people who have been paroled into the U.S., self-petitioners under the "Violence Against Women Act (VAWA)," special immigrant juveniles, and several other categories of noncitizens are exempt from the public charge rule.

### Now Vacated: Trump "Public Charge" Rule

The Trump Administration proposed expanding the list of benefits considered as part of the public charge test, which would make it easier for immigration officials to deny entry or permanent resident status to low-income immigrants because they use, or might in the future use, vital health, nutrition (specifically, the Supplemental Nutrition Assistance Program, SNAP), or housing assistance programs (specifically, public housing, Housing Choice Vouchers, and Project-Based Rental Assistance (PBRA) While the Trump Administration sought to implement its rule on "Inadmissibility on Public Charge Grounds" (Public Charge Rule) in October 2018, advocates pushed back, and submitted more than 266,000 public comments during the 60-day comment period. The final rule was set to go into effect on October 15, 2019, but several courts blocked

the rule from implementation until the lawsuits were settled. Additionally, state, county, and city governments joined nonprofits and individuals in suing the Trump Administration in a total of nine cases. Three courts ordered national injunctions, preventing DHS from implementing the rule until a final decision were made. These orders were eventually lifted by the Supreme Court and USCIS began implementing the rule on February 24, 2020, for a short period of time.

President Joe Biden signed three Executive Orders (EOs) on immigration reform on February 2, 2021, setting into motion changes to reverse the previous Administration's harmful public charge rule. [Executive Order 14012](#) "[Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans](#)" directed agencies to develop strategies that promote integration, inclusion, and citizenship. On March 9, 2021, the Supreme Court agreed to dismiss litigation on the previous Administration's Public Charge Rule at the request of the Biden Administration. Immediately, the Department of Homeland Security [announced](#) it would no longer implement the 2019 Trump public charge rule. DHS [released the final rule](#) vacating the harmful public charge rule amendments on March 15, 2021. DHS announced in a [statement](#) that it and USCIS will follow the policy in the [1999 Interim Field Guidance](#), the policy that was in place before the 2019 rule. Under this policy, DHS will not consider a person's receipt of Medicaid, public housing, or Supplemental Nutrition Assistance Program (SNAP) benefits as part of the public charge inadmissibility determination.

### **Protecting Immigrant Families**

Led by the National Immigration Law Center and the Center for Law and Social Policy, the [Protecting Immigrant Families \(PIF\) Coalition](#) organized opposition to the Public Charge Rule and has worked to ensure that immigrant communities facing attacks by the Trump Administration know their rights.

Once the harmful 2019 public charge rule was removed, PIF advocated for a public charge policy

that prevents abuses like those under the Trump Administration and secures access to programs that help immigrant families live healthy and fulfilling lives. On April 25, 2022, [NLIHC and the PIF coalition submitted a comment on the Biden Administration's public charge proposal signed by 1,070 organizations](#). Importantly, the comment's signatories included a diverse set of national organizations and organizations from every state and Washington, D.C., signaling to the Administration that they could count on a broad base of support in communicating the final public charge regulation to immigrant communities.

PIF consistently kept advocates updated with the latest research on the impacts of the Public Charge Rule, updates on litigation, fact sheets and "Know Your Rights!" messages for community members, and guidance and additional resources for immigration lawyers. PIF members were involved in legal battles against the Trump Administration's changes to the Public Charge Rule over the last four years and were leaders during the public comment campaign.

DHS [issued a final rule](#) on the "public charge" regulation on September 8, 2022, adding critical protections to immigrant families' access to social safety net programs, including housing. The final rule clarifies that several health and social services are not considered in a public charge determination. The final rule took effect on December 23, 2022.

## **MIXED-STATUS FAMILIES IN FEDERALLY SUBSIDIZED HOUSING**

### **Background**

Families with at least one U.S. citizen or eligible immigrant are allowed to live in a HUD-subsidized housing unit. These families are referred to as "mixed-status" and receive prorated assistance so that the subsidy amount is decreased to only cover family members with eligible immigration status. Family members applying for assistance must have their immigration status verified; ineligible family members can choose not to contend eligibility, which allows the family to receive prorated assistance. Noncitizens 62 years old or older are

only required to provide a signed declaration of eligible immigration status and a document proving their age.

Housing programs within the USDA's Rural Housing Service (RHS) do not prorate assistance for mixed-status families. The agency attempted in 2004 to implement Section 214 for all residents of Sections 515 and 514/516 housing, but the proposed regulation failed to properly follow the law. The 2004 rule ignored the full list of eligible immigration statuses listed in Section 214, required all residents of Sections 515 and 514/516 units be citizens or legal permanent residents even if they were not receiving rental assistance, and did not allow for proration. After advocacy organizations threatened the agency with litigation, RHS indefinitely postponed the rule with respect to the Section 515 program but failed to widely publish this change. Given the inconsistent guidance, some owners enforce the requirements of the 2004 rule and others do not.

### **Now Withdrawn: Trump Administration's Proposed Mixed-Status Families Rule**

On May 10, 2019, HUD released a proposed rule that would have further restricted eligibility for federal housing assistance based on immigration status by prohibiting mixed-status families from living in subsidized units subject to Section 214. The rule would have forced impacted households to choose between separating as a family to keep their subsidy or face eviction and potentially homelessness. According to HUD's own analysis, the proposed rule would have effectively evicted 25,000 immigrant families from their homes, including 55,000 children eligible for housing assistance. In fact, two-thirds of people in mixed-status families were already U.S. citizens, most of them children, at the time HUD released its proposal.

The final rule was never published under the Trump Administration. On April 2, 2021, the Biden Administration published a notice in the *Federal Register* announcing its intention to withdraw the Trump Administration's proposed rule.

The Trump Administration pursued a similar mixed-status families rule within USDA's RHS. The proposed rule, "Implementation of the Multi-Family Housing U.S. Citizenship Requirements," aimed to prohibit mixed-immigration status families from receiving housing assistance from some RHS programs covered by Section 214 of the "Housing and Community Development Act of 1980." This included the Rural Development (RD) voucher program (Section 521) and rental assistance for the Section 515 and Section 514/516 programs. The proposed RHS rule would have led to families splitting up, forgoing assistance, or being evicted from their homes. The rule was never published in the *Federal Register* under the Trump Administration and was withdrawn by the Biden Administration.

### **Keep Families Together Campaign**

In response to the proposed Mixed-Status rule, NLIHC, the National Housing Law Project (NHLP), and other partners launched the Keep Families Together campaign to mobilize opposition. During the public comment period, individuals and organizations submitted over 30,450 comments; the previous time a HUD proposal garnered significant public attention resulted in just over 1,000 public comments. An NHLP analysis of these comments found that more than 95% of the comments opposed the rule. An archived summary of actions taken during the Trump Administration can be found on the Keep Families Together website at [www.keep-families-together.org](http://www.keep-families-together.org)

### **FORECAST FOR 2023**

The withdrawal of these harmful rules were due in part to the efforts of advocates and litigation partners in recent years. Legislative opportunities exist to expand resources to immigrant families and combat the chilling effects from the previous Administration's anti-immigrant regulations.

In the 117<sup>th</sup> Congress, Representatives Pramila Jayapal (D-WA) and Tony Cárdenas (D-CA) introduced H.R. 5227, "Lifting Immigrant Families Through Benefits Access Restoration Act of 2021," or the "LIFT the BAR Act." Senator Mazie Hirono (D-HI) introduced a companion



bill in the Senate, [S.4311](#), with lead cosponsors including Senators Cory Booker (D-NJ), Patty Murray (D-WA), Patrick Leahy (D-VT), Ed Markey (D-MA), Elizabeth Warren (D-MA), Bernie Sanders (I-VT), Sherrod Brown (D-OH), Alex Padilla (D-CA), and Kirsten Gillibrand (D-NY). The “LIFT the BAR Act” would restore access to public programs for lawfully present immigrants by removing the five-year waiting period and other restrictions to accessing federal public benefits. The “bar” represents harmful barriers created by the “Personal Responsibility and Work Opportunity Reconciliation Act of 1996” (PRWORA). PRWORA created an arbitrary five-year waiting period for immigrants to access vital healthcare and social service programs, including Medicaid, the Children’s Health Insurance Program (CHIP), the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), and certain housing assistance programs, including public housing, Housing Choice Vouchers, Section 8 Project-Based Rental Assistance, and some rural housing programs. These barriers stoked fear and confusion among immigrants and their families, reducing participation in essential social safety net programs. NLIHC supports the LIFT the BAR Act, and signed a [national letter](#) led by PIF in support of the bill.

NLIHC will work to reintroduce and enact the LIFT the BAR Act in the 118th Congress.

## HOW ADVOCATES CAN TAKE ACTION

**Advocates should speak to lawmakers with the message that:**

- Blaming struggling families will not fix the long waitlist for housing assistance or the affordable housing crisis. Congress should instead make significant new investments in affordable housing resources to ensure that every family, regardless of immigration status, who is eligible for HUD assistance has access to one of the most basic of human rights: a safe, accessible, and affordable place to call home.

- The previous Administration’s rules have directly impacted thousands of immigrant families’ access to housing and have had a chilling effect on children’s ability to receive essential health, food, and housing federal assistance. This country is already facing an affordable housing crisis and limiting access for more people will only exacerbate the problem.
- Human needs do not change based on immigration status. It is simply impractical, dangerous, and inhumane to only allow citizens to access critical, lifesaving benefits such as housing assistance. Members of Congress should work to restrict or halt the implementation of these harmful rules.
- Ensuring mixed-status families and immigrant families have access to affordable, secure, and safe housing will allow these families to safely isolate and prevent contracting the coronavirus.

### Urge legislators to:

- Adequately address the needs of low-income immigrant families.
- Work to pass essential immigration reform legislation such as the “LIFT the Bar Act”.

### Urge DHS/HUD/RHS to:

- Align HUD and RHS policy when addressing mixed-status families to limit confusion.
- Issue clear guidance and resources to community members on the policy changes to limit the chilling effect these rules have had on families pursuing public benefits.

## FOR MORE INFORMATION

National Housing Law Projects’ “Immigration Requirements: Other Assistance Programs for Housing and Homelessness (ESG, CDBG, HOME, FEMA, CRF, and ERAP): <https://bit.ly/3Vis9ma>.

DHS’s (formerly Immigration and Naturalization Service) 1999 “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds” final rule: <http://bit.ly/3vizXYy>.

The Trump Administration’s DHS “Inadmissibility on Public Charge Ground” Final Rule: <https://bit.ly/38zU9K6>.

The Biden Administration’s DHS “Public Charge Ground of Inadmissibility” Final Rule: <https://public-inspection.federalregister.gov/2022-18867.pdf>.

The Trump Administration’s HUD “Housing and Community Development Act of 1980: Verification of Eligible Status” Proposed Rule: <https://bit.ly/2YGfu07>.

A summary of the Trump Administration’s USDA proposal, “Implementation of the Multi-Family Housing Citizenship Requirements,” was in the 2020 Spring Regulatory Agenda at: <https://bit.ly/3jZ2FbC>.

Executive Order “Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans”: <http://bit.ly/3rkGdfW>.

Keep Families Together campaign: <https://www.keep-families-together.org/>.

National Housing Law Project: <https://www.nhlp.org/initiatives/immigrant-rights/>.

Protecting Immigrant Families campaign: <https://pifcoalition.org/>.