

Q&A from Keep Families Together Webinar – June 5, 2019

BASIC CLARIFICATIONS

How do we get a copy of the webinar recording and slides?

<https://www.keep-families-together.org/events>

Can you share the Keep Families Together website address again?

www.Keep-Families-Together.org

And the social media hashtag is?

#keepfamiliestogether

Any materials in Spanish?

People can submit comments in Spanish now! The comments will be professionally translated and submitted to HUD. Other materials in Spanish are coming very soon! www.Keep-Families-Together.org

Can comments be submitted in Spanish?

To ensure that comments are counted, we are encouraging folks submitting comments in non-English languages to also include English translations as part of the submissions. Our Spanish commenting portal is up now! www.Keep-Families-Together.org

Guam is a US Territory

Please note that we misspoke on the webinar. Guam is a U.S. Territory and is not one of the signatories to the Compact of Free Association (COFA) (Marshall Islands, Palau, Micronesia).

In the Smith example, does Jane still currently have to provide some type of identification to the housing authority even if she is a noncontending ineligible noncitizen or be terminated for lack of i.d.?

Under the current HUD regulations, Jane who does not contend eligibility for the HCV program and declared so with the housing authority would not need to provide documentation regarding her immigration status.

Since RD is looking into something similar like HUD, will you guys do a webinar like this on RD once announced?

Yes. We will produce advocacy materials regarding the RD rule as well.

Where can we find the list of members of Congress who have expressed opposition?

<https://www.keep-families-together.org/congress>

Can congress take action to stop implementation?

Yes, members of Congress can submit letters to HUD opposing the rule. We have a sample letter for congressional members and other congressional resources here - <https://www.keep-families-together.org/congress>

WHAT PROGRAMS ARE AFFECTED BY THE HUD PROPOSED RULE?

If a disabled person is receiving assistance under Section 811, they will lose this assistance if they are living with family members who are ineligible and receiving some sort of Sec 214 assistance? Do I understand this correctly?

Section 811 housing for individuals experiencing disabilities is not one of the programs covered by the Section 214 statute. Therefore, those living in pure 811 housing (where 214 assistance is not involved) will not be affected by this rule. However, Section 811 units are often further subsidized by the project-based Section 8 program, which is a program covered by Section 214. Because of the presence of project-based Section 8, these units would be subject to Section 214's immigration status requirements and, therefore, to this proposed rule. Mixed status families in these 811 units could face terminations.

I know Sec 811 isn't covered, but are those individuals still liable to lose assistance if there is another member of the household who is ineligible and receiving Sec 214 benefits? For example if a household is receiving assistance from both programs?

(see answer above)

Right now, a number of non-Section 214 HUD programs do not have immigration requirements like CDBG, CoC, ESG, etc. what is the likelihood that these programs will no longer eligible to mixed status families?

We are not sure at this time what will happen to the other HUD programs you mentioned. Please keep in mind that any HUD program that is also funded by a Section 214 program, such as Section 8, would be affected by the rule. For example, the Section 8 Moderate Rehabilitation Single Room Occupancy program, which is a HUD homeless assistance program, would be affected by this rule.

Can mixed families still apply for other affordable housing programs that are not a part of public housing authorities? For example, if nonprofit organizations have affordable housing wait lists, are mixed status eligible to apply?

The proposed rule only covers the HUD programs listed in the rule. Private housing and state funded programs will not be affected by this rule. Importantly, there may be instances where a private or state program is partially funded by a HUD program (for example, project-based Section 8 assistance), which would then mean the program is subject to the restrictions of the proposed rule.

WHO IS IMPACTED BY THE HUD PROPOSED RULE?

How does this affect Self Petitioners for VAWA?

VAWA self-petitioners are eligible for Section 214 housing programs. They would be affected if they are living in mixed status families (where other members of the families are ineligible).

Is there a reason why someone under a U-visa would not be eligible but a T-visa holder would be?

Unfortunately, U-visa holders are not considered "eligible immigrants", under the Section 214 statute. However, T-visa holders are considered eligible immigrants. Trafficking survivors were made eligible by 22 U.S.C. 7105(b).

What about Special Immigrant Juvenile Status (SIJS) eligible kids living with USC family members?

Under the proposed rule, the family would not be eligible for assisted housing until/unless all members become eligible non-citizens or citizens

What about Legal Permanent Residents (LPRs) who are subject to the 5-year bar?

LPRs are not subject to a waiting period for HUD programs. This is because HUD determined that none of its programs meet the definition of "federal means-tested public benefits" as HHS defined the term. It's possible that this definition will be revisited in the future, but for now, no waiting period for LPRs or other eligible non-citizens.

CITIZENSHIP/IMMIGRATION DOCUMENTATION REQUIREMENTS

Under the proposed rule, would U.S. citizens age 62+ have to provide documentation?

Under the proposed rule, U.S. citizens (regardless of age) would have to provide documentation. According to the proposed rule, the forms of documentation that a U.S. citizen can use to show citizenship/nationality are: (i) A U.S. birth certificate; (ii) A naturalization certificate; (iii) A Consular Report of Birth Abroad (FS-240); (iv) A valid unexpired U.S. passport; (v) A certificate of citizenship; or (vi) Other appropriate documentation, as specified in HUD guidance.

So does a U.S. citizen age 62 years old or older have to provide documentation of their citizenship?

See above.

Are citizens 62+ exempt from documentation requirements?

See above.

Could you explain the difference between noncitizens under age 62 needing to be verified vs. noncitizens age 62+ having to provide documentation?

Under the proposed rule, noncitizens aged 62 years and older would be required to provide proof of eligible immigration status. Since their status would not be verified through SAVE, they would not need to provide a signed verification consent form.

Noncitizens younger than 62 years old would be required to provide proof of eligible immigration status, which must be verified through SAVE.

Ineligible noncitizens will no longer be able to "not contend" eligibility for the assistance based on their immigration status.

Non-citizens under 62 years old

The requirements for these applicants or recipients do not change under the proposed regulation. The biggest change is the elimination of the "do not contend" provision which means that ALL noncitizens younger than 62 must have an eligible status, which must be verified through the SAVE system.

These non-citizens must provide:

- (i) A signed declaration of eligible immigration status;
- (ii) One of the immigration documents referred to in 24 CFR § 5.510; and
- (iii) A signed verification consent form

Non-citizens 62 years and older

The proposed regulation newly requires these individuals to provide documentation of their immigration status.

They must provide:

- (i) A signed declaration of eligible immigration status;
- (ii) A proof of age document; and
- (iii) A document showing the individual's immigration status:
 - (i) A Form I-551, Permanent Resident Card;
 - (ii) Form I-94, Arrival/ Departure Record;
 - (iii) A foreign passport with I-551 stamp;
 - (iv) A notice of approval of status or action from DHS; or
 - (v) Other appropriate documentation specified by HUD.

Is a Social Security Card proof of US citizenship?

Under the proposed rule, the following forms of U.S. citizenship documentation would be acceptable:

- (i) A U.S. birth certificate;
- (ii) A naturalization certificate;
- (iii) A Consular Report of Birth Abroad (FS-240);
- (iv) A valid unexpired U.S. passport;
- (v) A certificate of citizenship; or
- (vi) Other appropriate documentation, as specified in HUD guidance.

DATA QUESTIONS

I heard from a housing authority here in Colorado that NAHRO is collecting information from its members on mixed families; is the state-by-state table that will be posted related to that, or is NAHRO's a separate effort?

No, the state table is from CBPP's analysis of HUD administrative data.

Are those administrative data publicly available?

Some are, for example, data on income and demographics of people in HUD-assisted housing are available in the HUD Picture of Subsidized Households dataset, which is available online. But other data are not -- in particular, the data on citizenship status are not.

Can someone re-share what HUD data CBPP used for its racial analysis?

HUD's administrative data, which is taken from the 50058/50059 forms.

Does CBPP have race and gender analysis of the impact?

Yes, some data were included in the webinar slides; if you are interested in additional data slices, please reach out to us.

Any data about the racial analysis would be great!

If you're looking for data slices beyond what we provided in the slides, please let us know.

On this data question-- is the ineligible non-citizen member more likely to be male or female? Do we know?

Two-thirds of the 32,000 ineligible noncitizens in mixed-status households are female, according to HUD administrative data.

You mentioned local data? Will that be shared?

It's posted on the Keep-Families-Together.org web site:

https://docs.wixstatic.com/ugd/d97bc4_c9d58b0ad9df40f6a4dc63924a65b1a4.pdf

Would you please share more specifics, citations and/or recommended resources re: the thousands of older adults or people with disabilities who will be impacted?

1.6 million seniors and 1.3 million non-seniors with disabilities are in households receiving federal rental assistance that will be affected by the proposed rule's new citizenship doc requirements.

INFORMAL HEARINGS/APPEALS

Can you extrapolate on the role of PHAs in the informal hearing during the appeal process after a denial/termination?

Details on the informal hearing process can be found in proposed regulation 5.514(f). It cross-references informal hearing procedures for specific programs, so details on the PHA's involvement can be found there (it varies by program).

HUD RULE'S IMPACT

To clarify, this rule would not "open up" more slots for eligible people, because if a family of 5 was only contending eligibility for 3 people, then the assistance now available for a new family would only be for 3 people, not for 5?

Yes, that's the basic idea.

Is increased cost because of the verification process?

HUD believes it will increase costs for several reasons. First, the incomes of mixed-status households tend to be higher than average (in part because new admissions tend to have lower incomes). So subsidy costs of new admissions would be higher than those of mixed-status households. In addition, assistance for mixed-status households is prorated, and HUD assumes that subsidies for new recipient households of the same size would therefore be higher because aid isn't prorated. HUD does not analyze the real administrative costs and burdens for housing providers that would result because of the rule.

TEMPORARY DEFERRAL OF TERMINATION

For temporary deferral, do they have to meet all three?

For temporary deferral of termination of assistance, a family will only be required to show one of the three options listed on the slide.

After the 18mo total deferral, if there's still no affordable housing available, the family will lose housing assistance regardless. Is that correct?

That is correct.

To confirm what I thought was said, many families are likely to qualify for a temporary deferral of termination due to lack of affordable housing, correct? So, this will buy families up to 18 months before the rule (if finalized) affects them?

That is correct.

If a tenant applies for temporary deferral, does that tenant still have to submit information to SAVE?

Temporary deferral of termination of assistance is for families that have been found to be ineligible. That is, they are receiving pro-rated assistance and aren't asserting that the status of ineligible members has changed. There is no need to verify the status of these ineligible family members (the family will need to leave housing or lose the partial subsidy after the temporary deferral).

SAVE VERIFICATION

Will you cover the risk that the SAVE verification program can be shared with ICE?

By statute, the information provided to the SAVE system for verification of their status cannot be used for civil immigration enforcement purposes.

Do you have the cite for that restriction on using SAVE info for immigration enforcement? Isn't there a provision in the proposed rule that says that HUD isn't responsible for what DHS does with the SAVE info?

42 U.S.C. 1320b-7 note (the notes section is codified law). Yes, there is an existing provision in the current regulations, that is also included in the proposed rule where HUD disclaims responsibility for DHS's use of the SAVE info at 24 C.F.R. 5.508(d)(3).

But what about at the appeal level and the hearings? Is there a risk that the information can or would be shared with ICE? I'm specifically thinking about any household member who might have a removal order or overstayed visa etc.

If a family member is undocumented, including a person who overstayed a visa, the person is ineligible (and under the proposed rule would not be eligible to reside in the housing) and should not have status verified through SAVE.

How long does immigration status verification take?

The verification process varies - USCIS claims that most statuses can be verified very quickly (3-5 seconds); some take days and sometimes it can take months to verify an individual's status; but if the person has submitted a declaration and documentation, the person should be able to receive assistance pending final verification.

WHEN WILL THIS RULE GO INTO EFFECT?

This could impact many schools and families - will this happen during the summer?

The short answer: we don't know for certain when the rule will be finalized and go into effect.

The long answer: the notice and comment period on the rule will end July 9. After the comment period closes, HUD will have to review and respond to the comments when it publishes the final rule. While there is not a hard and fast timeline on how quickly HUD will get through the comments, it is extremely unlikely that the rule will be finalized this summer. The proposed rule does not contain language on the period of time between the rule finalization and the effective date of the rule, so we will likely not know the effective date of the rule until the final rule has been published.

If this goes through, when would it take effect?

See above.

If the rule passes when might it be implemented?

See above.

Once comments are received by HUD, what is the expected turnaround time to have this rule implemented (unless there is a hold based on public outcry)?

See above.

WHAT TO TELL FAMILIES NOW?

Should we advise mixed status families to not apply at this time to affordable housing/public housing?

The HUD rule is only a proposal - mixed status families continue to be eligible for pro-rated assistance. Similarly, the proposed DHS rules on public charge have not been finalized. Individuals who have questions should consult with a local immigration attorney about their own situation. For updates on these issues and resources for community members, go to www.protectingimmigrantfamilies.org.

QUESTIONS RE: PHAS

Do we know how if finalized, this rule will affect MTW waivers?

This rule will likely have no impact on MTW waivers.

Current MTW public housing agencies can waive almost all regulatory and statutory requirements related to the administration of public housing and Section 8 vouchers promulgated under the U.S. Housing Act of 1937, with very limited exceptions. There are 39 public housing agencies participating in the initial MTW demonstration, many of which represent some of the largest housing agencies in the country (e.g. Chicago, Santa Clara County). The proposed rule amends the regulations implemented under Section 214 of the Housing and Community Development Act of 1980, but it covers all of the programs under the statute, 42 U.S.C. 1437, like public housing and Section 8. Therefore, our analysis is that MTW agencies could not seek a waiver of the rule.

We are receiving questions from advocates about consequences for non-compliance from PHA's or if they have an opt-out option? Have these been outlined?

The proposed rule does not include an opt-out option for PHAs and does not list consequences for PHA non-compliance.

