IMMIGRATION REFORM LAW INSTITUTE

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451 7th Street SW., Room 4176
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OMB Control Number 2501-0014: Public Comment of the Immigration Reform Law Institute Regarding Restrictions on Assistance to Noncitizens

Dear Ms. Pollard:

The Immigration Reform Law Institute ("IRLI") submits the following public comment to the U.S. Department of Housing and Urban Development ("HUD") in response to the Agency's proposed collection of information for Applicant/Tenant's Consent to the Release of Information and the Authorization for the Release of Information/Privacy Act Notice, as published in the Federal Register on October 11, 2017. *See* ***60-Day Notice of Proposed Information Collection: Restrictions on Assistance to Noncitizens***, Docket No. FR-6004-N-10, 82 Fed. Reg. 47239-47240.

IRLI is a non-profit public interest law organization that exists to defend the rights of individual Americans and their local communities from the harms and challenges posed by mass migration to the United States, both lawful and unlawful. IRLI works to monitor and hold accountable federal, state, and local government officials who undermine, fail to respect, or fail to comply with our national immigration and citizenship laws. IRLI also provides expert immigration-related legal advice, training, and resources to public officials, the legal community, and the general public.

In its proposed collection of information, HUD seeks to reinstate the Agency's current approval to require a declaration of citizenship or eligible immigration status from individuals seeking certain housing assistance. IRLI supports this request and strongly urges HUD to continue to collect this vital information to ensure federal laws governing noncitizen eligibility for housing assistance is enforced.

Furthermore, IRLI recommends HUD take additional steps to ensure compliance with Congressional language and intent of these laws.

I. Background.

Two key laws control noncitizen eligibility for housing assistance: 1) Section 214 of the Housing and Community Development Act of 1980 as amended; and 2) Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). While there are some exceptions, as a result of these two laws, HUD is generally prohibited from providing financial assistance or public benefits to noncitizens or individuals without an eligible immigration status.

Section 214 of the Housing and Community Development Act of 1980

Section 214 of the Housing and Community Development Act of 1980 as amended governs noncitizen eligibility for housing assistance. Specifically, the Act prohibits aliens from receiving "financial assistance" for housing unless the alien is a U.S. resident and is:

> **(1)** an alien lawfully admitted for permanent residence as an immigrant . . . excluding, among others, alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country;
> **(2)** an alien who entered the United States prior to June 30, 1948, or such subsequent date as is enacted by law, has continuously maintained his or her residence in the United States since then, and is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General;
> **(3)** an alien who is lawfully present in the United States pursuant to an admission under section 207 of the Immigration and Nationality Act [] or pursuant to the granting of asylum (which has not been terminated) under section 208 of such Act;
> **(4)** an alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act;
> **(5)** an alien who is lawfully present in the United States as a result of the Attorney General's withholding deportation pursuant to section 241(b)(3) of the Immigration and Nationality Act;
> **(6)** an alien lawfully admitted for temporary or permanent residence under section 245A of the Immigration and Nationality Act; or
> **(7)** an alien who is lawfully resident in the United States and its territories and possessions under section 141 of the Compacts of Free Association between the Government of the United States and the Governments of the Marshall Islands, the Federated States of Micronesia and Palau . . . .[1]

[1] 42 U.S.C. § 1436a (2012) (citations omitted).

The housing programs administered under Section 214 include: Section 101 of the Housing and Urban Development Act of 1965; Sections 235 and 236 of the National Housing Act; and the United States Housing Act of 1937, which includes Section 8 housing assistance.

PRWORA

Enacted in 1996, PRWORA set eligibility criteria for noncitizens to obtain certain public benefits. Specifically, the Act limits the granting of "Federal public benefit[s]" to "qualified aliens." For purposes of HUD, the definition of "Federal public benefit" includes "public or assisted housing."[2] Excluded in this definition of are what are typically thought of as emergency benefits.

In excluding emergency benefits, PRWORA exempts programs, services, or assistance (e.g., short-term shelter), as determined by the Attorney General. [3] The Attorney General makes his or her "sole and unreviewable" determination of such programs, services, or assistance in consultation with appropriate agencies and departments that meet certain conditions,[4] including those "necessary for the protection of life or safety."[5]

Also critical to PRWORA is the term "qualified alien." Setting forth the classifications of aliens permitted to receive "Federal public benefits," Congress defined a "qualified alien" as:

> **(1)** an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act,
> **(2)** an alien who is granted asylum under section 208 of such Act
> **(3)** a refugee who is admitted to the United States under section 207 of such Act,
> **(4)** an alien who is paroled into the United States under section 212(d)(5) of such Act for a period of at least 1 year,
> **(5)** an alien whose deportation is being withheld under section 243(h) of such Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act,
> **(6)** an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act as in effect prior to April 1, 1980;[,] or
> **(7)** an alien who is a Cuban and Haitian entrant.[6]

While PRWORA's definition of "qualified alien" generally excludes illegal aliens and nonimmigrants, it does include certain aliens who have been battered or subjected to extreme cruelty, including victims of trafficking under the T-visa program.[7] The Victims of Trafficking and Violence Protection Act of 2000 also requires victims of a "severe form of trafficking" to be treated as a "qualified alien" (specifically, a refugee under Section 207 of the Immigration and

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[2] 8 U.S.C. § 1611 (2012).
[3] *Id.* § 1611(b)(1)(D).
[4] *Id.*
[5] *Id.*
[6] 8 U.S.C. § 1641(b) (2012) (citations omitted).
[7] *Id.* § 1641(c).

Nationality Act) for "Federal public benefits" purposes. Finally, any alien receiving a housing benefit on or before the date of enactment of PRWORA (August 22, 1996) is eligible for benefits even if the individual fails to meet the definition of "qualified alien."

II. IRLI supports HUD's request for a reinstatement of the current approval for the Agency to require a declaration of citizenship or eligible immigration status from individuals seeking certain housing assistance and makes recommendations for improving the Agency's administration of these programs in compliance with the law.

IRLI supports HUD's request for a reinstatement of the current approval for it to require a declaration of citizenship or eligible immigration status from individuals seeking certain housing assistance as a necessary first step in ensuring federal laws governing noncitizen eligibility for housing assistance is enforced. Failing to obtain such a declaration to confirm an individual meets applicable eligibility requirements prior to granting certain housing assistance would defy key requirements of PRWORA and Section 214 of the Housing and Community Development Act of 1980 as amended.

When it enacted PRWORA in 1996, Congress made clear its objective that aliens be self-sufficient and not dependent on taxpayer assistance. Indeed, lawmakers even dedicated an entire section of the Act to that very intention, titled, "Statements of national policy concerning welfare and immigration".[8] In that section, Congress declared, "**It continues to be the immigration policy of the United States that -- [] aliens within the Nation's borders not depend on public resources** to meet their needs, **but rather rely on** their own capabilities and the resources of their **families**, their **sponsors**, and private organizations. . . ."[9] Congress felt so strongly about this principle of self-sufficiency that it even called it "a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy."[10]

In light of Congress' clear intent to require aliens to be self-sufficient and not dependent upon taxpayers, more than simply lending its support to the status quo information collection, IRLI recommends HUD take additional steps to facilitate full compliance with the letter and the spirit of the laws governing noncitizen eligibility requirements. First, IRLI recommends HUD issue guidance clarifying which of its programs are considered "Federal public benefits" for purposes of PRWORA. Next, IRLI recommends HUD review the size and scope of non-Section 214 programs administered by "nonprofit charitable organizations." And finally, IRLI recommends HUD review the appropriateness of making some of its programs means-tested.

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[8] 8 U.S.C. § 1601 (2012).
[9] *Id.* § 1601(2) (emphasis added).
[10] *Id.* § 1601(5).

A. HUD should issue guidance clarifying which of its programs are considered "Federal public benefits" for purposes of PRWORA.

Until HUD issues guidance clarifying which of its programs are considered "Federal public benefits," benefits administering agencies lack clarity as to when they must verify immigration eligibility. For instance, a 2015 Congressional Research Service (CRS) Report found there to be significant ambiguity as to how PRWORA's requirements apply to HUD's homeless and other needs-based programs. The Report states, "[a]lthough PRWORA includes 'public or assisted housing' in the definition of federal public benefits, HUD has released few regulations interpreting PRWORA or its impact on alien eligibility for the housing programs administered by HUD."[11] The Report indicates that "HUD has not published guidance regarding the verification of immigration status for homeless programs that are not governed by Section 214 . . ."[12] or for its other "needs-based programs," making "it possible that nonqualified aliens may be receiving housing benefits, regardless of eligibility"[13] (CRS attributes this lack of Agency guidance to "an ongoing discussion" of how to classify these programs and which, if any, would be exempted by PRWORA's emergency exceptions for the protection of life or safety).[14]

An August 2017 HUD Office of Inspector General Memorandum likewise highlights the Agency's lack of guidance on PRWORA benefits. "HUD has not issued recent guidance or regulations implementing the PRWORA provisions," it reads.[15] The Inspector General Memorandum goes on to assert that "it is not clear whether homeless assistance grants are considered a Federal public benefit," and cites "a discord between 'housing assistance,' which is considered a Federal benefit and is limited to qualified aliens, and 'homeless assistance.'"[16]

IRLI therefore recommends HUD review its regulations and policies to ensure that all housing assistance programs that should be subject to citizenship and immigration eligibility criteria are properly administered in accordance with PRWORA to prevent nonqualified aliens from obtaining Federal public benefits. To the extent ambiguity exists due to PRWORA's emergency exceptions, IRLI encourages the Agency to engage in consultation with the Attorney General per 8 U.S.C. § 1611(b)(1)(D) to clarify program classifications.

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[11] MAGGIE MCCARTY & ALISON SISKIN, CONG. RESEARCH SERV., RL31753, IMMIGRATION: NONCITIZEN ELIGIBILITY FOR NEEDS-BASED HOUSING PROGRAMS 3 (2015).
[12] *Id.* at 8.
[13] *Id.* at 9.
[14] *Id.* at 3.
[15] CHRISTEEN THOMAS, U.S. DEP'T OF HOUS. & URBAN DEV. OFFICE OF INSPECTOR GEN., MEMORANDUM NO: 2017-CF-0801, HUD NEEDS TO CLARIFY WHETHER ILLEGAL-UNDOCUMENTED ALIENS ARE ELIGIBLE FOR ASSISTANCE UNDER THE HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS PROGRAM 3 (2017).
[16] *Id.* at 4.

B. HUD should review the size and scope of non-Section 214 programs administered by "nonprofit charitable organizations."

PRWORA exempts "nonprofit charitable organizations" from any requirement to "determine, verify, or otherwise require proof of eligibility" of any applicant for a "Federal public benefit" under the Act.[17] As a result, any HUD assistance under PRWORA (any non-Section 214 housing program/assistance) administered by a nonprofit charitable organization is not subject to PRWORA's noncitizen or alien eligibility verification requirements.

To provide transparency regarding the number of nonqualified aliens receiving "Federal public benefits," the types of "Federal public benefits" nonqualified aliens may be receiving, and the amount of taxpayer dollars spent on "Federal public benefits" to nonqualified aliens, IRLI recommends HUD undergo a review and assessment of the size and scope of PRWORA benefits administered by nonprofit charitable organizations.

C. HUD should review the appropriateness of making some of its programs means-tested.

No HUD program is considered to be a federal means-tested benefit (i.e., Medicaid, TANF, SSI, and Food Stamps). However, given Congress' clear objective in enacting PRWORA that aliens be self-sufficient, HUD should reconsider whether any of its programs would be more appropriately designated as a "Federal means-tested public benefit," which have stricter eligibility requirements for aliens than "Federal public benefits."[18] For instance, designating certain benefits as means-tested would create a "deeming" requirement, meaning that an alien's "sponsor's resources (and those of the sponsor's spouse) are used in calculating the financial eligibility of a qualified alien until the noncitizen becomes naturalized or has accumulated 40 quarters (10 years) of documented work."[19] It would also create a five-year waiting period before "qualified aliens" could receive benefits, further reducing the need for taxpayer assisted housing.[20]

Accordingly, the designation of certain HUD programs as means-tested would introduce stricter requirements on noncitizen eligibility that would further the Congressional agenda toward alien self-sufficiency and sponsor accountability.

III. Conclusion.

In conclusion, IRLI supports HUD's request for a reinstatement of the current approval for it to require a declaration of citizenship or eligible immigration status from individuals seeking

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[17] 8 U.S.C. § 1642(d) (2012).
[18] 8 U.S.C. § 1613 (2012).
[19] CONG. RESEARCH SERV., RL31753 at 3.
[20] *Id.*; *see also* 8 U.S.C. § 1613.

certain housing assistance. Moreover, IRLI makes several recommendations encouraging HUD to take steps to ensure the letter and spirit of noncitizen eligibility for public benefits laws are fulfilled: 1) IRLI recommends HUD issue guidance clarifying which of its programs are considered "Federal public benefits" for purposes of PRWORA; 2) IRLI recommends HUD review the size and scope of non-Section 214 programs administered by "nonprofit charitable organizations"; and 3) IRLI recommends HUD review the appropriateness of making some of its programs means-tested.

Respectfully submitted,

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