

Booklet 9

Immigrants and Housing

Words in *italics* appear in the
Glossary in the back of this book

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Eligibility

1. Do I have to be a U.S. citizen to apply for public and subsidized housing?

No, you do not have to be a United States citizen to apply for public or subsidized housing.

Lawful permanent residents and many other immigrants may apply for all types of government housing. You will not be eligible for certain federal programs, however, if your entire family is *undocumented*. In addition, for certain federal housing programs, if some but not all of your household members are citizens or have certain types of recognized immigration status, your portion of the rent will be higher than it otherwise would be. This may result in a rent that you cannot afford and make it unwise for you to apply for those programs. See **Questions 9 and 10**.

Some housing programs do not require information about immigration status or citizenship at all. Other programs are allowed to ask you about your citizenship or immigration status.

2. What housing programs take applications from immigrants?

There are no citizenship or immigration restrictions for **all state** housing programs in Massachusetts and for **some federal** programs.¹ If you are an immigrant—no matter what your immigration status is—you may apply to the following housing programs:

State housing programs

- State public housing for families
- State public housing for elders and people with disabilities
- Massachusetts Rental Voucher Program

- Alternative Housing Voucher Program
- State-funded multifamily housing²

Federal housing programs

- Some federal multifamily buildings³
- Housing Opportunities for Persons with AIDS (HOPWA)
- McKinney Homeless Programs
(except for the McKinney Section 8 moderate rehabilitation program)
- Shelter Plus Care
- Supportive Housing
- HOME Rental Assistance
- Low Income Housing Tax Credit properties
(unless there are other housing program rules for the property to which immigration restrictions may apply)

These are unrestricted housing programs. This means that whether you have legal immigration status or not, you can apply to these housing programs. You do not have to provide any documents about your immigration status.

3. What housing programs limit applications from immigrants?

Many **federal** housing programs limit applications based on what your immigration status is.⁴ These are the *restricted housing programs*. Depending on your immigration status, you may or may not be able to apply for the following **federal** housing programs:

- Federal public housing for families, elders and people with disabilities
- Section 8 Housing Choice Vouchers
- Section 8 moderate rehabilitation program
- Most federal multifamily buildings
- Federal First Time Homebuyer programs.

4. Who may apply to housing programs which limit applications?

Your family may apply to any **federal** housing program listed in **Question 3** as long as one member of your household is a *citizen* or *eligible noncitizen*, as follows:

Citizens

- A citizen born in the United States;
- A naturalized citizen;

Eligible Noncitizens

- A permanent resident;
- A *registry* immigrant (admitted for permanent residence by the U.S. Attorney General and eligible for citizenship);
- A *refugee* or an *asylee*;
- A *conditional entrant*;
- A *parolee*;
- A *withholding grantee*;
- A person granted 1986 *amnesty* status;
- A resident of the Marshall Islands, Micronesia, Palau, or Guam;
- A victim of trafficking or relatives of such a victim.⁵

Eligible noncitizens

If one member of your household is a citizen or fits into any of the *eligible noncitizen* categories above, your whole family can apply to all state and federal housing programs. This person does not have to be the head of household.⁶

If, however, no one in your household fits into any of these categories, you cannot apply for the federal housing programs listed in **Question 3**. Your family may still apply to the housing programs listed in **Question 2**.

Important: If you apply to a housing authority that has both state and federal housing programs and are not eligible for **federal** housing because of your **immigration** status, this should not affect your eligibility for **state** housing. In other words, you are eligible for state-funded housing. You should make sure, however, that you are still on the waiting list for any of the housing authority’s state-funded housing.

5. What if I will eventually have a “green card,” but I do not have one now?

Many people may eventually qualify for *lawful permanent resident* status (having a “green card”) because of a petition filed for them by relatives or family members. But they may have to wait for years to get a green card. Unless another household member falls into any of the *eligible noncitizen* categories discussed in **Question 4**, the person waiting for a green card is not eligible for the federal housing programs discussed in **Question 3**.

6. What if I have work authorization? Is this enough?

No. A number of people may qualify for work authorization due to their immigration status, but still not be considered *eligible noncitizens* for the federal housing programs discussed in **Question 3**. You need to see if you fit into one of the categories discussed in **Question 4**.

7. What if I am a victim of domestic violence?

If you or your children are victims of domestic violence and are not U.S. citizens, you may qualify under the Violence Against Women Act for certain special immigration protections. These protections are not, however, related to housing, and this law does not at this time automatically mean that you are eligible for federal housing programs. You must still show that you fit into one of the *eligible noncitizen* categories discussed in **Question 4**.

Important: Advocates are in the process of trying to change the Violence Against Women Act so that noncitizens covered by that law are eligible for

federal housing programs. If you are in this situation and you want to apply for a federal housing program, contact your local Legal Services program to check on the current status of the law.⁷

8. Can I apply for housing if some people in my family do not have immigration papers?

If some people in your household do not have immigration papers, but some are citizens or *eligible noncitizens* (see **Question 4**), then you have what is called a *mixed household*. For example, if you do not have legal immigration status but your child was born in the United States and is a U.S. citizen, you have a *mixed household*.⁸

If you are a *mixed household*, you can apply to any housing programs listed in **Questions 2** and **3**. But for the programs listed in **Question 3**, you will be eligible only for *pro-rated assistance*.

9. What is pro-rated assistance or pro-rated rent?

Pro-rated assistance (or *pro-rated rent*) for the programs listed in **Question 3** means that your housing assistance or subsidy and your rent will be based on the number of eligible family members, not on the total number of people in the household. That means your family's rent will be higher than for housing programs listed in **Question 2**.

For example, if you are a four-member Section 8 household that has two eligible members, the subsidy will be *pro-rated* by 50%.⁹ If the total rent is \$1,200, this is how it would work:

Total rent	\$1,200
Section 8 voucher worth	\$900

Your portion before pro-ration	\$300
Section 8 voucher worth	\$900
Housing authority pays 50%	\$450
You pay 50%	\$450
Your total payment for rent	\$750

Calculations for the federal public housing program are figured a little differently, but the general rule is the same: pro-rated rent is much higher and depends on what proportion of your household is eligible.¹⁰

10. If some, but not all, household members are eligible due to immigration status, should I still apply?

Often *pro-rated assistance* results in your rent not being affordable. Even if you are eligible to apply for a federal housing program, if you are affected by *pro-ration* at all, it is usually a better idea to pursue the non-restricted housing programs mentioned in **Question 2**. You will need to figure out what makes sense for you, based on your personal situation and how much your pro-rated rent will be. Ask the housing authority or subsidized landlord to explain how much you may end up paying in rent due to pro-ration.

If your rent is pro-rated and, at a later date, someone else in your household becomes eligible (for example, you finally get *lawful permanent resident* status), you should let the housing authority or subsidized landlord know this right away. It may result in a reduction or elimination of the pro-rated rent. If you are applying at a housing authority that runs both state-funded and federally funded public housing or rental assistance, and your pro-rated rent would not be affordable, you should not withdraw your application. You should ask if you can simply withdraw your application from the programs listed in **Question 3** but keep your application active for the programs listed in **Question 2**.

Immigration Status

11. Where should I go if I am not sure of my immigration status?

If you are not sure what your immigration status is or if you are having trouble getting documents to prove your immigration status, you should contact an attorney or an organization that is familiar with immigration issues and immigration authorities.¹¹

For assistance, you can contact the International Institute of Boston, which has a weekly Immigration Legal Clinic and provides legal consultation. For more about the Institute, go to: www.iiboston.org/legalservices.htm, call 617-695-9990, or see the **Directory** at the end of this booklet.

12. Does a housing authority or a subsidized landlord check my immigration status?

If you apply for housing programs listed in **Question 2**, then the housing authority or landlord should not check your immigration status.

If you apply for the federal housing programs in **Question 3**, the housing authority or subsidized landlord will need to check the immigration status of all members of your household who plan to live in the apartment.¹²

13. What if I know that I do not have eligible status, or I do not want my immigration status checked?

The federal housing authority or subsidized landlord will probably insist that you sign a form, sometimes called a *Section 214 Declaration*, for each household member claiming that he or she is either a *citizen* or an *eligible*

noncitizen.¹³ (A sample Declaration of Section 214 Status is included in the **Reference Materials** at the end of this booklet.) If you know that you or a household member does not have eligible status, you should NOT complete this form. **By signing this form, you are claiming to have a certain status, and you are agreeing that immigration authorities can check on your status.**

Instead of completing the Section 214 Declaration, you can provide a written statement that one or more household members are not claiming to have eligible status. Sometimes housing authorities or subsidized landlords may use a declaration form which allows you to indicate that you are either claiming citizenship status, *eligible noncitizen* status, or are not contending to have eligible status. This is sometimes known as a *Non-Contending Form*.¹⁴ See the sample Non-Contending Form in the **Reference Materials** at the end of this booklet.¹⁵ Once a Non-Contending Form is completed, the housing authority or subsidized landlord should not check on the immigration status of that person. Be warned, however, that if there is one or more ineligible household member, your rent will be *pro-rated*. See **Questions 9** and **10**.

14. What verifications can the housing authority or subsidized landlord require?

If you claim to be a citizen, the housing authority or subsidized landlord may request that you provide some proof of citizenship. This is not a federal requirement, but is permitted.¹⁶

If you are 62 years of age or older and an *eligible noncitizen* (see **Question 4**), all that you are required to provide is proof of your age and a sworn statement of eligible immigration status. You do not need to provide any other documents proving your immigration status.¹⁷

For all other *eligible noncitizens* in the household, you must provide documents from the *immigration authority* proving immigration status, as well as a form consenting to verification of your information by immigration authorities. A list of acceptable immigration status documents is included in the **Reference Materials** at the end of this booklet.¹⁸

The housing authority or subsidized landlord should give you a notice telling you when to provide any requested documents. If you need more time, you can request an extension of up to 30 more days.¹⁹

15. What happens once I have given the housing authority or subsidized landlord the papers they request?

Once you have submitted the immigration documents requested by the housing authority or subsidized landlord, they will then contact *immigration authorities* to conduct a computer check to verify *eligible noncitizen* status for any household members claiming that status.²⁰ The immigration authorities may verify that you are eligible, may determine that you are not eligible, or may require the housing authority or subsidized landlord to ask you to provide additional documents.²¹ Sometimes this takes awhile. In the meantime, the housing authority or subsidized owner should continue to process your application. As long as you have submitted the documents requested, your application should not be delayed or denied simply because it takes awhile to complete this process. If you have claimed that all household members are *citizens* or *eligible noncitizens*, you should get full housing assistance until there has been a final verification of your eligibility.²²

If the housing authority or subsidized landlord ultimately decides that one or more household members are not *eligible noncitizens* based on information they receive from immigration authorities, they must give you written notice of this. The notice must advise you of various rights that you have, including *appeal* rights and the right to *pro-rated assistance* if one or more household members are eligible.²³

16. Is there any appeal process?

If you think that you or a household member is an *eligible noncitizen* and the housing authority or subsidized landlord decided that you were not, you have the right to *appeal* this decision. You also have the right to appeal if you think the housing authority or subsidized landlord miscalculated what the *pro-rated rent* should be. Any appeal must be requested within 30 days of the notice from the housing authority or subsidized landlord.²⁴

If you are appealing the decision on eligibility status, you can appeal to the *immigration authority*. During this appeal, there should be no action by the housing authority and your application should not be delayed or denied.²⁵ You may also request an appeal from the housing authority or subsidized landlord, either instead of or after the appeal to the immigration authority.

For more information about an appeal to the housing authority, see **Booklet 7: Challenging a Denial of Housing**.

Important: If you are having trouble getting papers to prove your immigration status, talk to an attorney or organization familiar with immigration issues. See the **Directory** at the end of this booklet.

Applications and Immigration Status

17. Can I be reported or deported for applying to public or subsidized housing?

Federal law requires that under some circumstances government agencies report to the *immigration authority* people that they know to be unlawfully present in the United States. **This reporting requirement does not apply to its public and subsidized housing programs.**²⁶ Federally funded housing authorities do not have to report you to the immigration authority if you are applying for or live in public or subsidized housing. State-funded housing programs do not collect citizenship or immigration information; in any case, these programs should also be prohibited from distributing such information by laws protecting confidentiality.²⁷

The only situation where a housing program is required to report lack of lawful immigration status is if you state on an application for a federal housing program that you have eligible immigration status, are denied housing, you *appeal* your denial of housing, and during the course of this appeal you are found not to be lawfully present in this country.²⁸ See HUD's questions and answers on this issue at: www.hud.gov/offices/pih/publications/fedreg/section_404.cfm.

18. Will I be considered a “public charge” for applying to public housing?

No.²⁹ When someone who is an immigrant applies to become a legal resident in the United States, the *immigration authority* looks to whether that person will be able to support herself here or whether she is likely to need certain government cash benefits and become a *public charge*.³⁰ For example, if a person has received certain government cash benefits, such as Transitional

Assistance for Families with Dependent Children (TAFDC), the immigration authority may deny permanent residency because he or she is likely to become a *public charge*.

Government housing programs, however, are **not** considered a cash benefit and therefore should not be considered when the immigration authority is determining whether an immigrant is likely to be a *public charge*.

19. Can my request for legal immigration be affected if I do not accurately report my current immigration status on my housing application?

Yes. If you misrepresent your household's immigration status—for example, you say that a person is a *citizen* or an *eligible noncitizen* when you know that is not true—your housing application can be denied for false information. In addition, any request that you have for relief from immigration authorities—for example, a pending application for *lawful permanent resident* status—can also be denied. Therefore, it is best not to put anything on a housing application that is incorrect or untrue.

Because what your immigration status is can be very complicated, if you are not sure whether you may be eligible or not, you should say so. You should also provide the documents about why you think you may be eligible.

20. What should I put on the application about my income if I work but have not reported my income for taxes?

Most housing programs base the amount of rent on the household's income, and a family could be charged with fraud or evicted for failing to report income.

Undocumented immigrants can and should apply to the Internal Revenue Service for an Individual Taxpayer Identification Number (ITIN), an identification number for tax purposes that allows you to report income and

pay taxes without being deported. You can apply for an ITIN by filling out Form W7, found at: www.irs.gov (in the Searching Forms and Publications search box type in “W7”). You can also get this form by going to an IRS office, or by calling 800-TAX FORM to have a copy mailed to you (takes 7-15 days), or faxing in a request to 703-368-9694.

Ideally, if you are a family with *undocumented* members, you will have your ITIN numbers in place before applying to any public or subsidized housing programs.

21. Do I need to provide a social security number?

In general, housing programs can and do ask for social security numbers to check information on your application, such as your income. If you are an *undocumented immigrant* who is eligible for a housing program but does not have a social security number, the housing program should not insist on getting a social security number. Unfortunately, many do.

An undocumented immigrant should never provide a false social security or other government-issued identification number (such as the one assigned by the state for the purpose of other cash benefits, like welfare).

If you apply for **federal** housing programs and do not have a social security number, you can provide a written statement certifying that you have never been assigned a social security number, and that should be sufficient to allow the housing application to proceed.³¹

If you apply for **state** housing programs and do not have a social security number, there are no regulations about how to deal with this situation. This can be a real problem. If the housing authority or subsidized landlord will not accept an application without a social security number, you should state that you do not have a social security number and ask whether there are forms that you could use to verify your income that would be sufficient, such as pay stubs and bank account statements. If this does not work, it may be useful to call the Department of Housing and Community Development (if you are dealing with a housing authority) or MassHousing (if you are dealing with a private multifamily development) and ask to speak to a representative for that particular housing authority or landlord to troubleshoot the problem. Or, contact your local legal services office for assistance. For a list of Legal Services programs in Massachusetts see the **Directory** at the end of this book.

22. What can I do if I do not speak English well and I need help understanding housing authority papers?

The federal government refers to people who do not speak English well as people with limited English proficiency. Federal housing laws require that federally funded housing (public housing, Section 8 vouchers, and multifamily housing) must provide assistance to people with limited English skills so that they can have meaningful access to housing or other programs.³²

There is a rule, which is not yet final, about how housing programs are supposed to assist applicants who do not speak English.³³ It is most likely that housing authorities will have the responsibility to:

- Take reasonable steps to translate (both verbally and in writing) documents and meetings to help people apply for housing.
- Have an interpreter at important meetings like *conferences* and *hearings*.
- Translate important documents like leases, notices to quit, and notices of potential lease violations into languages spoken by a reasonably large percentage of housing authority residents.

In general, a housing authority should not tell you that its staff cannot see you if you do not provide your own translator. If no translator is immediately available, housing authority staff should arrange another time to see you when **they** can make a translator available.

Because larger housing authorities have more staff and financial resources and work with large numbers of people with limited English proficiency, they will have a greater obligation to provide language assistance than smaller housing authorities that have fewer resources. If you believe that a housing authority or other agency receiving federal funds is not complying with the law, you or your advocate can file a complaint with the federal Office of Civil Rights. This form is available in English and Spanish at: www.usdoj.gov/crt/cor/complaint.htm.

Immigration Issues for Subsidized Tenants

23. If I am a tenant in public or subsidized housing, can my family's immigration status become an issue after we have moved in?

Yes, but only if you live in one of the federal restricted programs listed in **Question 3** and there is some kind of change in terms of who is living with you or in the immigration status of members of your household.

If you live in an unrestricted program listed in **Question 2**, then any changes in your immigration status or who is living in your household should not affect your ability to continue living there. The only exception is if your housing authority tries to transfer you from an unrestricted program to a federal restricted program and no one in your family is a *citizen* or *eligible noncitizen*. See **Question 25** for more information.

If you live in a federal restricted program, the issue that could affect your tenancy could come up in a number of ways:

- You want to add a family member who is not in an eligible category.
- You lose a family member who was eligible.
- You claimed eligible status when you moved in, it was not verified by the time you moved in, then after you *leased up* it was determined that one or more members were not eligible.

- Also, in a few cases, federal housing authorities and subsidized landlords have been slow to check all current tenants to make sure someone in the household has eligible immigration status. You may be in a situation where your whole family is *undocumented* and you are still living in one of the programs listed in **Question 3**.

Typically, if there are any of these types of change in your immigration status and you live in a federal restricted housing program, one of three things can happen: your rent could change, you could be asked to move out, or you could get a deferral from a move. See **Question 26** for more details.

24. What happens if there is a change in my household?

If you live in a federal restricted program and you want to add a family member to your household, the housing authority or subsidized landlord will need to verify that the addition is a *citizen* or *eligible noncitizen*.

If the person you are adding to the household is a citizen or eligible noncitizen, then your rent may be adjusted to a lower amount. If the new person is not eligible, adding her to the household may result in a newly *pro-rated rent* which could increase the amount you pay. You should ask the housing authority or subsidized landlord about the potential change in your rent so that you can make an informed decision whether adding the individual to your household is advantageous or not.

If your household loses a family member who is a citizen or eligible noncitizen, that may also affect the amount of rent. Depending on whether or not anyone else in the house is a citizen or eligible noncitizen, losing the eligible household member may make your entire family ineligible for that federal housing program.

25. What if I am being transferred from state to federal public housing?

You should find out, before you are transferred, what kind of housing you will be transferred to. **In advance of the transfer**, you should ask the housing authority or subsidized landlord to let you know what impact the transfer

would have on you under immigration rules—for example, whether you are eligible for the new housing and what your rent would be. You should be permitted to refuse a transfer (and request that it only be to state-assisted housing) if it would result in your being ineligible for continued assistance or a dramatic increase in your rent.

26. What could happen if there is a change in my family's status?

If there is a change in your family's status or your housing authority wants to transfer you from state to federal housing, you could face the following:

- *Pro-rated assistance.* Depending on the change, and depending on whether you previously had a pro-rated rent, your rent could go either up or down. See **Question 9** for an explanation of *pro-rated rent*.
- *Temporary deferral of termination of assistance.* If the change or transfer means that there are now no eligible household members, you may be required to move. However, the housing authority or subsidized landlord can grant temporary deferral of termination of assistance for six months at a time, up to a maximum of 18 months (with an exception for those with pending *asylum* applications, discussed in **Question 27**). You may want this temporary deferral if you think you will find alternative housing or that some household members will become eligible before the 18 months are over. If the family remains beyond the 18-month period, it must then either have its rent *pro-rated* (if there is at least one eligible household member) or be terminated from assistance (if there are no eligible household members).³⁴
- You move out.

The housing authority or subsidized landlord is supposed to give you written notice of its decision regarding your immigration status, your rights, and certain options that you have. If you disagree with the decision that one or more household members are ineligible, or you dispute the amount of pro-rated rent, you may file an *appeal*; your assistance and right to stay in your apartment should remain unaffected during the appeal. See **Question 16**.

Before moving out, you should check with your housing authority or subsidized landlord to see if you can transfer to one of the housing programs listed in **Question 2** where there are no restrictions. You may also apply for such programs wherever there are openings.

27. What if I have applied for asylum or refugee status but do not have a final decision?

If you are already a federal public or subsidized housing tenant and have an application for *refugee* or *asylum* status pending, you can get *temporary deferral of termination of assistance* for an indefinite period of time until the *immigration authorities* make a final decision on the application.³⁵ Sometimes it takes years for these applications to be resolved. In the meantime, you are eligible for full housing assistance, and your assistance should not be *pro-rated*.

Reference Materials

28. Sample Declaration of Section 214 Status

NOTICE TO APPLICANTS AND TENANTS: In order to be eligible to receive the housing assistance sought, each applicant for, or recipient of, housing assistance must be lawfully within the United States. Please read the Declaration statement carefully, sign, and return it to the Housing Authority office. Please feel free to consult with an immigration lawyer or other immigration expert of your choice.

I, _____, certify, under penalty of perjury, that, to the best of my knowledge, I am lawfully within the United States because (*please check appropriate box*):

- G I am a citizen by birth, a naturalized citizen, or a national of the United States; or
- G I have eligible immigration status and I am 62 years of age or older (*attach proof of age*); or
- G I have eligible immigration status as checked below.
Attach INS document(s) evidencing eligible immigration status and signed verification consent form.
- Immigrant status under 101(a or 1010(a)(20) of the INA; or
 - Permanent residence under 249 of INA; or
 - Refugee, asylum, or conditional entry status under 207, 208, or 203 of the INA; or
 - Parole status under 212(d)(5) of the INA; or
 - Threat to life or freedom under 243(h) of the INA; or
 - Amnesty under 245A of the INA.

Signature

Date

PARENT/GUARDIAN must sign for family members under age 18. DO NOT sign child's name.

29. Sample Non-Contending Form

I, _____, certify, under the penalty of perjury,¹ that the persons listed below are members of my household. Each person listed below has elected not to contend that he or she has eligible immigration status:

First Name, Middle Initial(s), Last Name

Signature of Head of Household or Spouse

Date

Instructions

If one or more members of a family elect not to contend that they have eligible immigration status and the other members of the family establish their citizenship or eligible immigration status, the family may be considered for assistance despite the fact that no declaration or documentation of eligible immigration status is submitted by one or more members of the family.

The family, however, must identify the family member(s) who will elect not to contend that he or she has eligible immigration status. Type or print the names of the family members who elect not to contend that he or she has eligible immigration status below. Listed members do not sign below. However, the Head of Household or Spouse must sign and date the form in the space provided.

30. Acceptable Immigration Status Documents

According to HUD, the following are documents that you can give a housing authority or subsidized landlord to show what your immigration status is.

¹ **Warning:** 18 U.S.C. § 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

- **Form I-551, Alien Registration Receipt Card**
(for permanent resident aliens)
- **Form I-94, Arrival-Departure Record**
annotated with one of the following:
 - ◆ AAdmitted as a Refugee Pursuant to Section 207";
 - ◆ ASection 208" or AAsylum@
 - ◆ ASection 243(h)@ or ADeportation stayed by Attorney General@ or
 - ◆ "Paroled Pursuant to Section 212(d)(5) of the INA@
- **Form I-94, Arrival-Departure Record**
with no annotation and accompanied by one of the following:
 - ◆ A final court decision granting asylum (but only if no appeal is taken);
 - ◆ A letter from a Department of Homeland Security (DHS) asylum officer granting asylum (if application was filed on or after October 1, 1990) or a letter from a DHS district director granting asylum (if application filed was before October 1, 1990);
 - ◆ A court decision granting withholding of deportation; or
 - ◆ A letter from an asylum office granting withholding of deportation (if application was filed on or after October 1, 1990)
- **Form I-688, Temporary Resident Card**
annotated ASection 245A@ or ASection 210@
- **Form I-668B, Employment Authorization Card**
annotated AProvision of Law 274a.12(11)@ or AProvision of Law 274a.12@
- **A receipt** issued by the DHS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and that the applicant's entitlement to the document has been verified
- **Form I-151, Alien Registration Receipt Card**
- **Other acceptable evidence.** If other documents are determined by the DHS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the Federal Register.

This list is from *HUD Occupancy Handbook* 4350.3 REV-1 (May 2003), Chapter 3: Eligibility for Assistance and Occupancy.

Glossary

Many of these definitions were adapted from the National Immigration Law Center's *Guide to Immigrant Eligibility for Federal Programs*, 4th edition (June 2002). To order copies, contact NILC Publications at 213-639-3900, ext. 3, or visit: www.nilc.org.

Amnesty: The common term for the program that made it possible for two groups of *undocumented* people to apply for lawful immigration status. One group—general amnesty immigrants—consisted of people who lived in the United States without lawful status since before January 1, 1982. The other group—special agricultural workers—were immigrant farm workers who had performed agricultural work in the United States for at least 90 days between May 1, 1985, and May 1, 1986. The amnesty program, created by the Immigration Reform and Control Act of 1986, established a two-step process by which eligible immigrants could obtain, first, temporary status and then *lawful permanent resident* status.

Asylee: A person who has applied for and been granted *asylum*. In the United States, asylees may apply for *lawful permanent resident* status one year after being granted asylum.

Asylum: A lawful status permitting individuals to remain in the U.S. because they either have been persecuted, or have a well-founded fear that they would be persecuted, in their home country on account of race, nationality, religion, political opinion, or membership in a particular social group. Technically, an applicant for asylum in the United States must meet the same legal standard as a *refugee*. The difference is that an asylum applicant applies for this status while in the U.S., whereas a refugee is granted refugee status before arriving in the country. A person who has been granted asylum is an *asylee*.

Citizen of the U.S.: A person born or naturalized in the U.S.

Conditional entrant: An individual who was admitted to the U.S., under a provision of pre-1980 immigration law, because the individual was persecuted or feared persecution in his or her home country. Conditional entrant status was available only to nationals of communist or Middle Eastern countries.

Eligible noncitizen: An immigrant who belongs to a group that, under federal law, is allowed to apply to *restricted* federal housing programs. Allowable groups include *lawful permanent residents*, *refugees*, and *asylees*. For a complete list of eligible *noncitizens*, see **Question 4**. Only one household member must be a citizen or eligible *noncitizen* for the whole family to be able to apply.

General amnesty immigrant: An immigrant who had lived unlawfully in the United States since before January 1, 1982, who is allowed under the Immigration Reform and Control Act of 1986 to legalize his or her immigration status. See *Amnesty*.

Immigration authorities: The government agencies that handle immigration issues. The primary immigration authority used to be called INS, the Immigration and Naturalization Service. It has been reorganized, and most of its functions are now handled by U.S. Citizenship and Immigration Services, a bureau of the Department of Homeland Security. Many deportation cases, however, are started by the Department of Homeland Security's Bureau of Immigration and Customs and heard through another government agency, the Department of Justice.

Lawful permanent resident: An immigrant who has been granted a status that allows him or her to live and work permanently in the United States. Most lawful permanent residents can apply for naturalization to U.S. citizenship after living here for five years.

Mixed household: A household whose members have different immigration statuses and is applying to certain federal housing programs. Some members may be citizens, some may be *lawful permanent residents*, and some may have no immigration documentation. As long as one household member is a citizen or *eligible noncitizen* according to the federal rules, the mixed household can be accepted in *restricted* federal programs. For other federal programs and state programs, it does not matter whether the household is mixed or not.

Naturalization: The process by which immigrants become U.S. citizens. To be eligible to apply for naturalization, an individual must have lived in the U.S. as a *lawful permanent resident* for five years, or three years if married to a U.S. citizen, or one year for certain persons in the military and veterans.

Noncitizen: A person who either was not born in the United States or has not been *naturalized* to U.S. citizenship, or is not eligible for citizenship under special laws.

Non-contending form: A form on which a person indicates that he or she is not asserting to have *eligible noncitizen* status for *restricted* federal housing assistance programs.

Parole: The procedure which allows a *noncitizen* to come into the United States without granting him or her admission to the U.S. People who have been paroled into the U.S. for a period of at least one year are *eligible noncitizens* for federal housing programs, subject to certain exceptions.

Parolee: A *noncitizen* who has been granted *parole*.

Pro-rated assistance or rent or pro-ration: The process by which a *restricted* federal program calculates rent or subsidy for a *mixed household*. Federal restricted programs will allow *undocumented immigrants* to reside in an apartment, but will adjust the subsidy to cover only the *citizens* or *eligible noncitizens*. Generally, the calculation of the benefit amount is based on the proportion of eligible individuals to ineligible individuals. For example, for rental assistance, the pro-rated benefit for a family of four that includes three eligible members would be three-fourths of the subsidy that they would have received had all four family members been eligible. Therefore, a mixed household may pay more than the standard 30% of income for rent in many federal housing programs.

Public charge: A term used by *immigration authorities* to refer to a person who is considered primarily dependent on the government for subsistence, as demonstrated by either receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense. An immigrant who is found “likely at any time to become a public charge” can be denied admission to the U.S. or denied status as a *lawful permanent resident*. In very specific and rare circumstances, an immigrant who is found to have become a public charge may be removed from the United States.

Refugee: A refugee is a *noncitizen* given permission to come to the United States because he or she was persecuted, or has a well-founded fear of being persecuted, in his or her home country on account of race, nationality, religion, political opinion, or membership in a particular social group. Refugees are given this status before coming to the U.S., usually when they are temporarily located in a third country. A refugee is granted the right to live and work in the U.S. and, after a one-year period, may apply to become a *lawful permanent resident*.

Registry: A process whereby *lawful permanent resident* status may be granted to a *noncitizen* who has lived in the U.S. since before January 1, 1972, whether or not he or she is an *undocumented immigrant*. To be eligible for registry, the person must have maintained continuous residence in the U.S. However, some absences—even extended ones—will not break the continuity of residence, provided the person never intended to abandon his or her residence.

Restricted program: Any of the federal housing programs which must check the immigration status of eligible applicants and which require that one or more household members be *citizens* or *eligible noncitizens*.

Section 214 declaration: A declaration that a household member is either a *citizen* or *noncitizen* eligible for federal housing assistance under Section 214 of the Housing and Community Development Act of 1980. See 42 U.S.C. § 1436a; 24 C.F.R. Part 5, Subpart E.

Severe form of trafficking in persons: Trafficking in persons means, generally, running a business in which people or people’s labor or services are the main things being traded or sold. A “severe form” of this practice is one in which people are seriously exploited or abused. Severe forms of trafficking include forcing people to work as prostitutes (sex trafficking), making them do an unreasonable amount of work to pay off a debt, forcing them to believe that they would be harmed if they did not work under certain conditions, threatening to abuse any legal process, or slavery.

Temporary deferral of termination of assistance: An option for *mixed households* that are already in federal public or assisted housing. It can apply either where there are no eligible household members or where there is at least one ineligible household member and the family does not choose to have *pro-rated rent*. Temporary deferral is granted in six-month increments, and usually has a maximum period of 18 months. There is an unlimited deferral period, however, where the household has an application for *asylum* or *refugee* status which has not been finally determined.

Undocumented immigrant: A *noncitizen* who does not have lawful immigration status. Most undocumented immigrants either entered the United States without going through the required inspection process or were lawfully admitted but violated the terms of that status.

Victim of trafficking: An individual who has been subjected to a *severe form of trafficking in persons*. A victim of trafficking may obtain permission to remain in the U.S. and to work if the individual is in the U.S. as a result of trafficking, has not unreasonably refused to cooperate in any investigation of the trafficking (if 15 years or older), and if the individual would suffer extreme hardship involving unusual and severe harm if deported. Victims

of trafficking cannot be denied residence on public charge grounds and are eligible for housing assistance.

Withholding of removal: A status that prohibits *immigration authorities* from returning an individual to a country where his or her life or freedom would be endangered. This status is similar to, but separate from, *asylum*. People granted withholding may be deported to a third country if one will accept them, but they cannot be returned to their home country. People who are granted withholding may apply for, and be granted, permission to work.

Directory

Legal Assistance

These agencies provide information about how to obtain legal assistance. If you have an immigration issue, you should ask for an attorney with immigration experience. In addition to these resources, you should check with your local Legal Services program which you can find in the **Directory** in the back of this book.

American Immigration Lawyers Association..... 800-954-0254
918 F St., NW, Washington DC 20004
See on-line Immigration Lawyer Referral Service:
www.aila.org

Community Legal Services and Counseling Center 617-661-1010
One West St., Cambridge MA 02139

International Institute of Boston..... 617-695-9990
One Milk St., Boston MA 02109
www.iiboston.org/legalservices.htm

Massachusetts Bar Association.....617-338-0500
20 West St., Boston MA 02111
www.massbar.org/lawhelp/need_lawyer/

National Lawyers Guild617-227-7335
14 Beacon St., Room 407, Boston MA 02108

Immigration Advocacy Organizations

**Massachusetts Immigrant and Refugee
Advocacy Coalition (MIRA) 617-350-5480**
105 Chauncy St., 9th fl., Boston MA 02111
www.miracoalition.org

Endnotes

- ¹ *Weeks v. Waltham Housing Authority*, U.S. District Court, No. 76-402-F (August 2, 1977). See also G.L. c. 6A, § 16C.
- ² This includes 13A developments through MassHousing, the SHARP program (State Housing Assistance for Rental Production), and other multifamily state-funded subsidized housing. See **Booklet 1: Housing Programs in Massachusetts** for a list of state-funded multifamily housing programs.
- ³ This includes some federally funded multifamily housing developments subsidized under the 236, 202, 811, and all 221(d)(3) programs. See **Booklet 1: Housing Programs in Massachusetts** for more about these programs.
- ⁴ 42 U.S.C. § 1436a; 24 C.F.R. § 5.504; see generally *HUD Public Housing Occupancy Guidebook* (June 2003), Chapter 2, § 2.2; *HUD Housing Choice Voucher Program Guidebook* (Section 8), 7420.10G (2001), Chapter 5, § 5.2; *HUD Multifamily Occupancy Handbook* 4350.3 REV-1 (May, 2003), Chapter 3, § 3-12.
- ⁵ Relatives include spouses, children, parents, and minor siblings of child victims. 42 U.S.C. § 1436a(a) 1-7; 24 C.F.R. § 5.506(a); see also 67 Federal Register 65272-01 (October 23, 2002). Section 107 of the *Victims of Trafficking and Violence Prevention Act of 2000*, 114 Stat. 1464, Pub. L. No. 106-386 (October 28, 2000), codified at 22 U.S.C. § 7105. See also *Trafficking Victims Protection Reauthorization Act of 2003*, Pub. L. No. 108-193 (December 19, 2003).
- ⁶ *HUD Guidebook on Restrictions on Assistance to Noncitizens*, 7465.7G (Nov. 1995), is confusing on this point. The model certification form in Appendix E says the head of household must be a citizen or eligible immigrant, although the *Guidebook Q & A* states this is wrong and should be deleted. To see this section, go to: www.hudclips.org, click on Search or Browse All HUD Handbooks and Guidebooks under Shortcuts, click Search, enter 7465.7G in the Document Number box. See also HUD Memorandum to housing authorities dated March 11, 2004, from William O. Russell (hereinafter “Russell memo,” on file with Mass. Law Reform Institute (MLRI).
- ⁷ *Violence Against Women Act, self-petitioning process*: Immigration and Naturalization Act, §§ 204(a)(1)(A) & (B); 8 U.S.C. § 1154 (a)(1)(A) & (B); *Violence Against Women Act II: Victims of Trafficking & Violence Prevention Act of 2000*, 114 Stat. 1464, Pub. L. No. 106-386 (October 28, 2000). Go to: www.uscis.gov/graphics/howdoi/battered.htm, which explains the self-petitioning process.
- ⁸ 24 C.F.R. §§ 5.506(b)(2), 5.516, 5.518, 5.520; Russell memo.
- ⁹ 24 C.F.R. § 5.518, 5.520.
- ¹⁰ In federal public housing, there is no such thing as a subsidy. Instead, housing authorities are required to establish a “maximum rent” based on the value of the 95th percentile of the Total Tenant Payment for each federal public housing tenant. The methodology for this is complicated and changes each year. See *HUD Guidebook on Restrictions on Assistance to Noncitizens*, 7465.7G (Nov. 1995), §§ 11-5, 11-6, and Appendix H. Since federal public housing tenants have the right to choose between an income-based rent and a flat rent as a matter of law, this is even more complicated because *pro-rated rent* is calculated in one way using the housing authority’s flat rent formula and in a different way using an income-based rent. See Appendix III (*mixed household* flat rent worksheet) to HUD’s Family Report Form HUD-50058 Instruction

Booklet (June, 2004), at www.hud.gov/offices/pih/sysems/pic/50058/pubs/ib/form50058ib.pdf.

- ¹¹ The primary *immigration authority* used to be called INS, the Immigration and Naturalization Service. It has been reorganized, has many functions, and is now the U.S. Citizenship and Immigration Services, a bureau of the Department of Homeland Security. Many deportation cases, however, are heard through another authority or agency, the Department of Justice.
- ¹² 24 C.F.R. §§ 5.508-5.514.
- ¹³ See 42 U.S.C. § 1436a; 24 C.F.R. Part 5, Subpart E.
- ¹⁴ 24 C.F.R. § 5.508(e).
- ¹⁵ Another sample of such a form is found in *HUD Multifamily Occupancy Handbook* 4350.3 REV-1 (May 2003), Chapter 3, Exhibit 3-5.
- ¹⁶ 24 C.F.R. § 5.508(b)(1).
- ¹⁷ 24 C.F.R. § 5.508(b)(2).
- ¹⁸ This list is taken from *HUD Multifamily Occupancy Handbook* 4350.3 REV-1 (May 2003), Chapter 3, Figure 3-4. See also *HUD Public Housing Occupancy Guidebook*, Chapter 7, § 7-3.
- ¹⁹ 24 C.F.R. § 5.508(f-h).
- ²⁰ 24 C.F.R. § 5.512(c)(1). There is an extensive discussion about how the Systematic Alien Verification for Entitlements (SAVE) Program works in Appendix 2 of the *HUD Multifamily Occupancy Handbook* 4350.3 REV-1 (May 2003). This includes a list of codes that are used to indicate different immigration statuses on the SAVE report.
- ²¹ 24 C.F.R. § 5.512(c)(2), (d).
- ²² 24 C.F.R. § 5.514(b)(1).
- ²³ 24 C.F.R. § 5.514(d). Sample notices from a subsidized owner for tenants and applicants, as well as attached sheets for applicants or tenants to select options (*appeal* to *immigration authorities*, *appeal* to the subsidized owner, or request for *pro-ration* or other forms of relief) are found in *HUD Multifamily Occupancy Handbook* 4350.3 REV-1 (May 2003), Chapter 3, Exhibit 3-8 (tenant family), and Exhibit 3-9 (applicant family). Exhibits 3-10 and 3-11 include notices that subsidized owners can send after the *appeal* process if the final outcome of the appeal process is still adverse to the applicant or tenant. See also *HUD Multifamily Occupancy Handbook* 4350.3 REV-1 (May 2003), Chapter 4, § 4-31.
- ²⁴ 24 C.F.R. § 5.514(d)(4) and (5). For a discussion of the *hearing* process, see 24 C.F.R. § 5.514(f). A *pro-ration* decision which you think is inaccurate is a denial of full housing assistance.
- ²⁵ 24 C.F.R. § 5.512(c) and (d).
- ²⁶ 65 Federal Register 58301 (September 28, 2000).
- ²⁷ 760 C.M.R. § 8.04(2). See also G.L. c. 6A, § 16C.

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- ²⁸ A housing authority’s knowledge that a person is unlawfully present in the United States can be gained only during the housing authority’s *appeal* process, if an applicant appeals the denial of housing. 65 Federal Register 58301 (September 28, 2000).
- ²⁹ 64 Federal Register 28689, 28693 (March 26, 1999); HUD PIH Notice 99-28.
- ³⁰ *INS Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, published at 64 Federal Register 28689 (May 26, 1999).
- ³¹ 24 C.F.R. § 5.216(a)(2).
- ³² Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq.; 28 C.F.R. § 42.104(b)(2); Executive Order 13166 can be found at: www.lep.gov. For commonly asked questions on Executive Order 13166, go to: www.usdoj.gov/crt/cor/Pubs/lepqa.htm.
- ³³ This is a proposed rule. See 68 Federal Register 70968 (December 19, 2003).
- ³⁴ 42 U.S.C. § 1436a(c); 24 C.F.R. §§ 5.518(b) and 5.520. A third option, continued full assistance, was available prior to late November, 1996. This applied when the household was already in a covered program as of June 19, 1995, the head of household or spouse had eligible status, and the household did not have any ineligible members except for the spouse, children, or parents of the head of household or spouse. If a housing agency or subsidized owner granted this status prior to November 29, 1996, such households were “grandfathered” to continue to get full assistance. The option was eliminated, however, if the status was not granted by that date. See 24 C.F.R. § 5.518(a). If a family was found eligible for continued assistance but adds an ineligible new family member after November 29, 1996, the family is not eligible for continued assistance at the full level, but may receive *pro-rated assistance*. See *HUD Multifamily Occupancy Handbook* 4350.3 REV-1 (May 2003), Chapter 3, § 3-12.0.
- ³⁵ 42 U.S.C. § 1436a(c)(1)(B)(iii); 24 C.F.R. § 5.518(b)(3).