

Chapter 9

Immigrants and Housing

Legal Tactics: Finding Public and Subsidized Housing
Third Edition, 2009 Updated March, 2015

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There are many rules about which immigrants are eligible for the different public and subsidized housing programs in Massachusetts. Some programs can limit who can apply, and some programs do not. For families where some members are immigrants and some are citizens, there are additional rules to consider.

This section introduces you to the rules that affect immigrants who apply for public or subsidized housing. The section also gives information about whether an immigrant family will pay a higher rent once they are accepted into a housing program.

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.

If your entire family is *undocumented*, you will not be eligible for certain **federal** programs. 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?

In Massachusetts, **all state** housing programs and **some federal** programs do not have any citizenship or immigration status requirements.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

¹ *Weeks v. Waltham Housing Authority*, U.S. District Court, No. 76-402-F (Aug. 2, 1977). See also G.L. c. 6A, § 16C.

- Massachusetts Rental Voucher Program (MRVP)
- Alternative Housing Voucher Program (AHVP)
- 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 not *restricted programs*. This means that whether you have legal immigration status or not, you can apply to these programs. You do not have to provide any documents or information about your immigration status.

3. What housing programs limit applications from immigrants?

Many **federal** housing programs accept applications only from immigrants who have a particular immigration status.⁴ These are the *restricted programs*.

² This includes 13A developments through MassHousing, the SHARP program (State Housing Assistance for Rental Production), and other multifamily state-funded subsidized housing. See **Chapter 1: Housing Programs in Massachusetts** for a list of state-funded multifamily housing programs.

³ This includes federally funded multifamily housing developments subsidized under the 202 PAC, 202 PRAC, 202 (without Rent Supplement or Section 8), 811 PRAC, and 221(d)(3) programs. *HUD Multifamily Occupancy Handbook* 4350.3 REV-1, CHG-3 (June 2009), Chapter 3, § 1. See **Chapter 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, CHG-3 (June 2009), Chapter 3.

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 that 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 lawful 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 victim⁵

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 (Oct. 28, 2000), codified at 22 U.S.C. § 7105. See also

If one member of your household fits into any of the categories above, your whole family can apply to all of the federal *restricted 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**.

Many housing authorities offer both state and federal housing programs. You can still apply for state-funded housing at these housing authorities even if you are not eligible for **federally funded** housing because of your **immigration** status. You should make sure that you are on the waiting list only for the housing authority's **state-funded** housing.

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

You are not eligible for the federal housing programs discussed in **Question 3**. Once you are granted lawful permanent resident status, or a “green card,” you can apply for all of the housing programs. Until then, you can apply for the federal housing programs only if another household member is a *citizen* or falls into any of the *eligible noncitizen* categories discussed in **Question 4**.

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 and still not be considered *eligible noncitizens* for the

Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193 (Dec. 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. See www.hud.gov/offices/adm/hudclips/guidebooks/7465.7G/index.cfm. See also HUD Memorandum to housing authorities dated Mar. 11, 2004, from William O. Russell (hereinafter “Russell memo,” on file with Mass. Law Reform Institute (MLRI)).

federal housing programs discussed in **Question 3**. You must 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 (VAWA) for certain special immigration protections. These protections do not mean that you are automatically eligible for federal housing programs. You must still show that you fit into one of the *eligible noncitizen* categories discussed in **Question 4**.⁷

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

Yes. You can apply to any housing programs listed in **Questions 2 and 3** if at least one member of your household is a *citizen* or *eligible noncitizen*. See **Question 4**. Households that include people with both lawful and unlawful immigration status are called *mixed households*. For example, if you do not have a legal immigration status but your child was born in the United States and is a U.S. citizen, you have a *mixed household*.⁸

⁷ The Violence Against Women Act of 2005 created protections for victims of domestic violence who are applying to subsidized housing or who are being threatened with eviction. See generally *Violence Against Women Act of 2005*, Pub. L. No. 109-162, 119 Stat. 2960 (2005), Title VI. For more information about these changes, go to: www.nlchp.org. For more information about immigrant benefits for a battered spouse, see 8 U.S.C. § 1154 (a)(1)(A) & (B), and www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=b85c3e4d77d73210VgnVCM100000082ca60aRCRD&vgnnextchannel=b85c3e4d77d73210VgnVCM100000082ca60aRCRD.

⁸ 24 C.F.R. §§ 5.506(b)(2), 5.516, 5.518, 5.520; Russell memo.

If you have a *mixed household*, you will be eligible only for *pro-rated assistance* in the *restricted programs* listed in **Question 3**. This may mean the rent will be too high for you to afford. See **Questions 9** and **10**.

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

Pro-rated assistance (or *pro-rated rent*) means that the housing authority will base your housing assistance or subsidy on the number of *eligible* family members, not on the total number of people, in the household. You can live in a unit available through one of the programs listed in **Question 3**—however, your rent will be calculated as if your household included only *citizens and eligible noncitizens*. Therefore, your rent will be higher in the programs listed in **Question 3** than in the housing programs listed in **Question 2**.

For example, if you have four people in your household and only two of them are *citizens or eligible noncitizens*, the housing authority will give you a Section 8 subsidy as if you had a two-person household. The subsidy will be *pro-rated* by 50%.⁹ If in this example, the total rent is \$1,200, and the Section 8 voucher is worth no more than \$900, this is how it would work:

⁹

24 C.F.R. § 5.518, 5.520.

Calculation of voucher before pro-ration

Total rent to landlord	\$1,200	
Section 8 voucher worth		\$900
Your rent payment without pro-ration		\$300

Pro-ration of voucher

Section 8 voucher worth		\$900
Housing authority pays 50%		\$450
New pro-rated Section 8 voucher		\$450

Re-calculation of your rent with pro-ration

Total rent	\$1,200	
Pro-rated Section 8 voucher worth		\$450
Your rent payment with pro-ration		\$750

Calculations for the federal public housing programs are figured a little differently, but the general rule is the same: pro-rated rent is higher and the amount 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* means that the rents in *restricted programs* are too high to afford. Even if you are eligible to apply for a federal housing program, it is usually a better idea to pursue the unrestricted housing programs listed 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 rent you will be responsible to pay due to the pro-ration. If you are applying at a housing

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/systems/pic/50058/pubs/ib/form50058ib.pdf.

authority that runs both state-funded and federally funded housing programs, 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**.

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.

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 immigration attorney or an organization that is very familiar with immigration laws, issues, policies, and procedures.¹¹ If you are unsure of your immigration status, speak with an immigration attorney before contacting the *immigration authorities*.

For assistance, you can contact the International Institute of Boston, which has a weekly Immigration Legal Clinic and provides legal consultation. For more information about the International Institute, call 617-695-9990, or see the **Directory** at the end of this chapter.

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

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

You should apply only for a state housing program. See **Question 2**. If you apply for a federal housing program, 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 chapter.) If you know that someone in your household 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 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 chapter.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**.

¹³ See 42 U.S.C. § 1436a; 24 C.F.R. Part 5, Subpart E.

¹⁴ 24 C.F.R. § 5.508(e).

¹⁵ In multifamily housing, the standard form requires the applicant to fill out the declaration, where, at the bottom, there is a space to state that the applicant does not assert any immigration status. See *HUD Multifamily Occupancy Handbook* 4350.3 REV-1, CHG-3 (June 2009), Chapter 3, Exhibit 3-5.

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 the law allows it.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 one of the *immigration authorities* to prove eligible immigration status, as well as a form consenting to verification of your information by the *immigration authorities*. A list of acceptable documents you can use to prove immigration status is included in the **Reference Materials** at the end of this chapter.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 the

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, CHG-3 (June 2009), 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).

Department of Homeland Security (DHS), an *immigration authority*, to conduct a computer check to verify *eligible noncitizen* status for any household members claiming that status.²⁰ DHS 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 DHS may take some time to respond. 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 DHS, 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 are, or a household member is, an *eligible noncitizen* and the housing authority or subsidized landlord wrongly decided that you were not, you have the right to *appeal* this decision at the housing agency. You also have the right to appeal if you think the housing authority or subsidized landlord miscalculated what the *pro-rated rent* should be.

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, CHG-3 (June 2009). 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). A sample notice from a subsidized owner is found in *HUD Multifamily Occupancy Handbook* 4350.3 REV-1, CHG-3 (June 2009), Chapter 3, Exhibit 3-8, and Chapter 4.

Any appeal must be requested within 30 days of the notice from the housing authority or subsidized landlord.²⁴ During this appeal, there should be no action by the housing authority and your application should not be delayed or denied.²⁵ For more information about an appeal to the housing authority, see **Chapter 7: Challenging a Denial of Housing**.

You can also appeal directly to your local office of U.S. Citizenship and Immigration Services (USCIS), the federal agency that maintains records on immigration status. USCIS can correct and update your record.

- For USCIS Customer Service, go to:
www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=83c87d53b5a0e010VgnVCM1000000ecd190aRCRD&vgnnextchannel=2af29c7755cb9010VgnVCM100000045f3d6a1RCRD.

Important! Speak with an immigration attorney or organization familiar with immigration issues before visiting any USCIS office to ensure you avoid any possible immigration consequences. See the **Directory** at the end of this chapter for immigration legal service agencies.

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-rata* decision that you think is inaccurate is a denial of full housing assistance.

²⁵ 24 C.F.R. § 5.512(c) and (d).

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 Department of Homeland Security (DHS) 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

There is only one situation where a housing program is required to report lack of lawful immigration status: if you state on an application for a federal housing program that you have eligible immigration status, you 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 A housing program should report only “known,” not “suspected,” unlawfully present people. See HUD’s questions and answers on this issue at: www.hud.gov/offices/pih/publications/fedreg/section_404.cfm.

Be aware, however, that the U.S. Immigration and Customs Enforcement division of the Department of Homeland Security maintains a toll-free number to accept anonymous reports of immigration and customs violations.

²⁶ 65 Federal Register 58301 (Sept. 28, 2000).

²⁷ 760 C.M.R. § 8.04(2). See also G.L. c. 6A, § 16C.

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 (Sept. 28, 2000).

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

No.²⁹ Immigration authorities will not consider you a *public charge* for applying for or receiving public housing. A *public charge* is a person who will likely need the government financial support through cash assistance, such as Transitional Assistance for Families with Dependent Children (TAFDC), or through long-term institutionalized care, like nursing home care.³⁰ When determining whether an immigrant is likely to become a *public charge*, immigration authorities consider a number of factors, including age, health, financial status and education. They do not look at whether you have received public housing in making their decision.

Public charge decisions are very important. They can affect your ability to enter or return to the country as well as whether you can become a *lawful permanent resident*. The federal government does not make public charge decisions on every immigrant. For example, public charge is not an issue for refugees, asylees, or immigrants who apply for U.S. citizenship.

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

Yes. If you falsely claim to be a *citizen* or an *eligible noncitizen* on your housing application, the *immigration authorities* can deny your immigration application and can refuse to let you enter, return to, or become a legal resident of the United States. You will not only be denied housing benefits but you can also suffer severe immigration consequences. Therefore, it is best not to put anything on a housing application that is incorrect or untrue.

²⁹ 64 Federal Register 28676 (May 26, 1999); HUD PIH Notice 99-28 (July 15, 1999). See also U.S.C.I.S. Fact Sheet on Public Charge, available at www.uscis.gov/USCIS/New%20Structure/Press%20Releases/2009%20Press%20Releases/Oct%202009/public_charge_fact_%20sheet_11_06_09.pdf.

³⁰ *INS Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, published at 64 Federal Register 28689 (March 26, 1999).

There are many instances when an immigration status may not be clear. If your immigration status is complicated and you are not sure whether you are eligible for a government housing program, you can write that on your application. You should also provide documents that show why you think you might be eligible for the housing program.

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.

Immigrants who do not have a Social Security number 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, you or a member of your household will have an ITIN number 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. But housing programs cannot require you to have a Social Security number, and cannot deny an application for failure to include a Social Security number. Unfortunately, many do.

You should never provide someone else's or 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).

For **federal** housing programs, every member of the household must provide a Social Security number EXCEPT for those household members who do not claim to have eligible immigration statuses.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. The Department of Housing and Community Development (DHCD) requires adult household members in state assisted housing to provide Social Security numbers. However, DHCD has notified housing authorities, in its guidance to housing authorities, that an applicant does not need a Social Security number to be eligible for its programs.³² If an adult member of your household does not have a Social Security number, you should ask whether there are other forms, such as pay stubs and bank account statements, to use to verify identity or income.

You may also be told by a housing agency or owner that they need a Social Security number so that they can search for your criminal history, or Criminal Offender Record Information (CORI). See **Chapter 6: Tenant Screening**. It is true that recent revisions to CORI regulations permit Social Security numbers to be one of the sources of information used to help verify identity.³³ However, using Social Security numbers is not mandatory, and there are other sources of information that can be used to verify your identity. You should tell the housing agency or owner that no Social Security number has been assigned to you, that you understand that having a Social Security number is

³¹ 24 C.F.R. § 5.216(a)(2).

³² DHCD Public Housing Notice 2004-05 (June 29, 2004), states: “Although tenants are required by the lease to provide their Social Security number and to authorize use of their Social Security number by the housing authority for verification of income and assets through DOR’s [Department of Revenue] tax system, wage reporting, and bank match systems or similar means of verification, there is no requirement that applicants or tenants have a Social Security number to be eligible or housed.” **IMPORTANT:** This notice updated as Public Housing Notice 2008-12, on DHCD’s website at <http://www.mass.gov/Ehed/docs/dhcd/ph/publicnotices/08-12.pdf>. See section titled ***Social Security Number, especially:*** “There is no requirement that applicants or tenants have a social security number to be eligible for state housing. However, if he/she has a social security number, it must be provided.”

³³ 803 C.M.R. § 3.05(1) provides that agencies running CORI checks must obtain certain information required by the Criminal History Systems Board on its CORI request form; in addition, they may request the Social Security number of the person whose CORI is being sought. The regulation does not require disclosure of the Social Security number, or authorize denial for failure to provide it, where the person is not otherwise required to do so. See also 803 C.M.R. § 5.06(3)(a), which provides that a Social Security number may be one of the personal identifying characteristics used for requesting criminal records from other states, as authorized by federal law for most federally assisted housing. Here again, if the person has certified that no Social Security number is assigned, this should be sufficient, and other identifying information should be used to help with the criminal records check.

not necessary for you to be eligible for the program, that you are willing to certify that you have no Social Security number, and that you are willing to cooperate in providing other verifications.

If these strategies do not work, it may be useful to 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 application 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.³⁴ Housing agencies and subsidized owners 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 agency or subsidized owner should not tell you that its staff cannot see you if you do not provide your own translator. If no translator is immediately available, staff should arrange another time to see you when **they** can make a translator available.

Because larger housing agencies have more staff and financial resources and work with large numbers of people with limited English proficiency, they will

³⁴ 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. HUD has issued a draft notice of Limited English Proficiency requirements for HUD-assisted programs at 68 Federal Register 70968 (Dec. 19, 2003); it is not clear if or when HUD may issue a final notice. These items, as well as other very useful and practical materials, 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.

have a greater obligation to provide language assistance than smaller housing agencies that have fewer resources. If you believe that a housing agency or subsidized owner receiving federal funds is not complying with the law, you or your advocate can file a complaint with the federal Office of Civil Rights. The complaint form is available in English and Spanish at www.usdoj.gov/crt/cor/complaint.htm, or you can call (888) 848-5306 for assistance.

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 no one in your household is a *citizen* or *eligible noncitizen* 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*, or that the new addition does not contend to have eligible status. See **Question 13**.

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 new *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 know how adding the individual to your household will impact you financially.

If you lose a household member, and your new household no longer contains any *citizens* or *eligible noncitizens*, 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?

Before the transfer, you need to ask the housing authority or subsidized landlord some important questions. First, you need to know whether the new unit has any citizenship or immigration restrictions. See **Questions 2 and 3**. Second, you need to know whether your rent will change. You should ask the housing authority or subsidized landlord to explain how the transfer will affect your rent. If the transfer will make you ineligible for continued assistance or create a dramatic increase in your rent, you should be able to refuse the

transfer and limit any future transfers so that you remain in state-assisted housing.

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 postpone the end of the assistance by granting a temporary deferral of termination of assistance. The temporary deferral can last 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).³⁵
- 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-

³⁵ 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 Nov. 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 Nov. 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, CHG-3 (June 2009), Chapter 3.

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.³⁶ 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*.

³⁶

42 U.S.C. § 1436a(c)(1)(B)(iii); 24 C.F.R. § 5.518(b)(3).

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*):

- ☐ I am a citizen by birth, a naturalized citizen, or a national of the United States; or
- ☐ I have eligible immigration status and I am 62 years of age or older (*attach proof of age*); or
- ☐ 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,³⁷ 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

First Name, Middle Initial(s), Last Name

First Name, Middle Initial(s), Last Name

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.

³⁷ **Perjury:** 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.

30. Acceptable Documents to Prove Immigration Status

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

- **Form I-551**, Alien Registration Receipt Card (“green card”) (for permanent resident aliens)
- **Form I-94**, Arrival-Departure Record annotated with one of the following:
 - ☐ *“Admitted as a Refugee Pursuant to Section 207”*
 - ☐ *“Section 208” or “Asylum”*
 - ☐ *“Section 243(h)” or “Deportation stayed by Attorney General”*
 - ☐ *“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 Section 245A or Section 210
- **Form I-668B**, Employment Authorization Card annotated Provision of Law 274a.12(11) or Provision 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, CHG-3 (June 2009), 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 allowed certain immigrants who did not have a lawful immigration status to become lawful permanent residents. 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 federal *restricted 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 matters, specifically, the Department of Homeland Security (DHS), the State Department, and the Department of Justice. 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 DHS.

(1) **DHS** is responsible for the approval of all immigrant and nonimmigrant petitions, the authorization of permission to work in the U.S., the issuance of extensions of stay, and change or adjustment of an applicant's status while the applicant is in the U.S. It is also responsible for enforcing federal immigration laws, customs laws, and air security laws. It has several divisions that specifically deal with immigrants, including U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Patrol (CBP). USCIS processes and decides on petitions and applications of potential immigrants. CBP is responsible for securing and facilitating travel into the U.S. ICE is responsible for enforcing immigration laws.

(2) The **State Department**, which includes embassies and consulates abroad, issues U.S. visas to citizens of foreign countries who want to enter the United States. A U.S. visa allows you to travel to a port of entry, airport or land border crossing and request permission of the CBP to enter the U.S.

(3) The **Executive Office for Immigration Review**, a division of the Department of Justice, is the court that decides on immigration cases and determines whether an immigrant will be allowed to remain in the U.S. or be removed to another country.

Lawful permanent resident (LPR): 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. An LPR is commonly known as a person who has a green card.

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 financial support, 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.

American Immigration Lawyers Association 202-507-7600
1331 G Street NW, Washington DC 20005-3142
See online Immigration Lawyer Referral Service:
www.aila.org

Berkshire Immigrant Center .413-445-4881
First Baptist Church, 88 South Street, Pittsfield, MA 01201
<http://berkshireic.com>

Catholic Charities 617-451-7979
75 Kneeland St, 8th fl., Boston, MA 02111
www.ccab.org

Catholic Social Services 508-674-4681
1600 Bay Street, Fall River, MA 02724
www.ccsdioc.org

Centro Presente 617-629-4731
17 Innerbelt Rd., Somerville MA 02143
www.cpresente.org

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

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

Irish Immigration Center .617-542-7654
59 Temple Place, Suite 1010, Boston, MA 02111
www.iicenter.org

Massachusetts Bar Association 617-338-0500

20 West St., Boston MA 02111
www.massbar.org

National Lawyers Guild	617-227-7335
14 Beacon St., Room 407, Boston MA 02108	
www.nlgmass.org	

Political Asylum/Immigration Representation Project	617-742-9296
254 Friend St, 5 th fl., Boston, MA 02114	
www.pairproject.org	

Victim Rights Law Center	617-399-6720
18 Tremont St, Suite 220, Boston, MA 02108	
www.victimrights.org	

Immigration Advocacy

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

Endnotes
