

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1840 (Arambula)
Version: April 18, 2024
Hearing Date: July 2, 2024
Fiscal: Yes
Urgency: No
ID

SUBJECT

California Dream for All Program: eligibility

DIGEST

This bill specifies that an otherwise eligible applicant for the California Dream for All Program may not be disqualified based solely on their immigration status, and clarifies that the California Dream for All program is a state law within the meaning of specified federal law.

EXECUTIVE SUMMARY

Homeownership is an essential tool for the creation and generation of wealth for Californian families. Yet, in recent years, housing in California has become so expensive that homeownership is now out of reach for many Californians, and particularly for Californians who are low income or are members of underserved communities. To help make homeownership attainable for low- and moderate-income first-time and first-generation homebuyers, the Legislature created the California Dream for All Program. The Program provides prospective homebuyers with shared appreciation loans to cover 20% of the purchase price or up to \$120,000 to cover the down payment or closing costs. The program has been a resounding success. However, there has been a lack of clarity about whether those without immigration status qualify for the program. This bill specifies that no applicant who otherwise qualifies for a California Dream for All Program loan may be disqualified solely on the basis of their immigration status, and that the program falls within an exception in a federal law that prohibits the provision of state public benefits to individuals without immigration status. This bill also creates a subaccount within the California Dream for All Fund for specified purposes. AB 1840 is sponsored by the Coalition for Humane Immigrant Rights, and is supported by numerous other immigrants' rights organizations, pro-housing organizations, the California Faculty Association, the City of Alameda, and ACLU California Action. The Committee has received no timely opposition. This bill passed the Senate Housing Committee by a vote of 7 to 3.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Establishes the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and specifies that certain immigrants shall not be eligible for any state or local public benefit, except as provided.
 - a) Defines “state or local public benefit” to mean the following:
 - i. any grant, contract, loan, professional license, or commercial license provided by an agency or state or local government or by appropriated funds of a State or local government; and
 - ii. any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.
 - b) Provides specified state or local public benefits that are exempt from the prohibition in (1). (8 U.S.C. § 1621.)
- 2) Specifies that a state may provide that undocumented immigrants who are not lawfully present in the United States are eligible for a state or local public benefit for which the individual would otherwise be ineligible under this Act only through the enactment of a state law after August 22, 1996, that affirmatively provides for that eligibility. (8 U.S.C. § 1621(d).)

Existing state law:

- 1) Establishes the California Dream for All Program under the California Housing Finance Agency (CalHFA) to provide shared appreciation loans to qualified, low- and moderate-income first-time homebuyers. (Health & Saf. Code § 51523.)
- 2) Requires CalHFA to adopt policies, rules, and regulations to achieve all of the following:
 - a. provide assistance to meaningfully expand access to homeownership;
 - b. expand opportunities for California households to accumulate wealth for themselves and their families, including ensuring that design of the loan product is not an unreasonable impediment to homeowner wealth creation;
 - c. maximize the number of households assisted over time by exploring and implementing methods for selling subordinate second mortgages to generate additional funding for the program;

- d. establish a revolving, shared appreciation first-time homebuyer program with the goal of eventually providing up to \$1 billion per year for first-time homebuyers;
 - e. provide assistance only in conjunction with CalHFA first mortgage loan financing. Funds available under this program shall also be available for interest rate buydowns, in conjunction with a shared appreciation loan, and for closing cost assistance;
 - f. deposit all repayments into the fund for ongoing use in the program;
 - g. maintain sustainability for CalHFA without significantly adversely affecting its borrowing capacity or ability to meet other affordable housing or agency needs; and
 - h. provide adequate consumer protection and consumer disclosure protections. (Health & Saf. Code § 51523.)
- 3) Establishes the California Dream for All Fund in the State Treasury and requires all moneys in the Fund to be continuously appropriated to CalHFA. Specifies that any interest earned from investments made from these funds shall be deposited in the Fund. (Health & Saf. Code § 51524.)
 - 4) Requires CalHFA to submit a report to the Legislature by January 10, 2023, and annually thereafter, providing details about the program's implementation, including about the number of loans made and the characteristics of the borrowers. (Health & Saf. Code § 51526.)

This bill:

- 1) Provides that an applicant who meets all other requirements for a shared appreciation loan under the California Dream for All Program, including requirements imposed by the Federal National Mortgage Association or other loan servicer, may not be disqualified solely on the basis of their immigration status.
- 2) Specifies that the Legislature finds and declares that the California Dream for All Program is a state law within the meaning of the exception in (2), above, at subdivision (d) of Section 1621 of Title 8 of the United States Code.
- 3) Establishes in the California Dream for All Fund a Subaccount, into which only funds appropriated by the Legislature from the General Fund or other state fund may be deposited. Specifies that all funds appropriated by the Legislature to the Subaccount shall be available for expenditure for the California Dream for All Program and for defraying the administrative costs of the agency.

COMMENTS

1. Author's Statement

According to the author:

The social and economic benefits of homeownership should be available to everyone. As such, the California Dream for all program should be available to all. Homeownership is a fundamental tool for wealth building, as it fosters financial stability and provides a tangible investment in one's future. When undocumented individuals are excluded from such programs, they miss out on a crucial method of securing financial security and personal stability for themselves and their families. Limiting access to homeownership assistance programs perpetuates inequality and excludes residents of California from obtaining a significant wealth building opportunity. Expanding access to homeownership is not only important to personal prosperity but also fosters economic stability and promotes a robust local economy. Ensuring universal access by all qualified borrowers to the California Dream for All Program will contribute to the overall success and vitality of California.

2. Homeownership is essential for wealth creation yet also exceedingly out of reach for many Californians

Homeownership has long been considered an essential part of the creation and generation of wealth for Californian families. It provides greater stability and lower housing costs over time, and allows families to accrue wealth through the relatively reliable increase in value that homes usually experience. Scholarship also typically has identified racial gaps in homeownership as a major factor in the racial disparity in generational wealth.

Yet, in recent years, housing in California has become so expensive that homeownership is now out of reach for the vast majority of Californians. The price of homes has increased so significantly that only the wealthiest of prospective buyers can afford to purchase. In mid-2022, the median price of a single-family home in California set an astounding record high of \$898,980.¹ This represented a ten percent increase in the price of homes over the previous year, and the priciest housing market in the nation. Such a median price would require an annual income of more than double the state's median household income. Accordingly, it should be no surprise that homeownership rates in California are the second lowest in the country, at 56 percent from 2016 to 2020.²

¹ Ryan Lillis, "Unaffordable: California home prices break yet another record. How do we compare to US?" The Sacramento Bee (Jun. 29, 2022), available at <https://www.sacbee.com/news/california/article262865873.html>.

² Marisol Cuellar Mejia et al, "Homeownership Trends in California," Public Policy Institute of California (Jun. 14, 2022), available at <https://www.pplic.org/blog/homeownership-trends-in-california/>.

The high costs of homeownership disproportionately affect people of color, who have lower rates of homeownership than white Californians.³

Immigrants may face a number of unique additional barriers to homeownership, such as a lack of credit history in the United States if they have not lived in the United States long, discrimination in housing accommodations, and insecure immigration status. Research has shown that homeownership increases the more years an immigrant has lived in the United States, as only 16% of Latino immigrant households who had lived in the United States for less than five years own a home, while 61% of those who had lived in the United States for 21 years or more do.⁴ In addition, the eligibility requirements for various loan programs require that the borrower have certain immigration statuses to qualify. In order to obtain a conforming conventional mortgage loan, as in one that conforms to the guidelines set by a Government-Sponsored Enterprise (GSE) like Fannie Mae, a borrower must be a United States Citizen, a Lawful Permanent Resident, or a person lawfully present in the United States.⁵ In order to receive mortgage loans insured by the Federal Housing Administration (FHA), a borrower must be: a United States Citizen; a Lawful Permanent Resident; an asylee or refugee; a citizen of a freely associated state; an employee under a work visa; or an immigrant, such as one with a grant of Deferred Action Against Childhood Arrivals (DACA), who has work authorization in the United States.⁶ Given these barriers and eligibility requirements, many immigrants rely on non-traditional financing options, or utilize a type of mortgage called an ITIN mortgage that tends to have higher down payment requirements and significantly higher mortgage rates than conforming mortgages.⁷ Others are simply locked out of homeownership. It is estimated that only 28% of undocumented individuals in the United States are homeowners.⁸

3. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996

In 1996, President Bill Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). (Pub. L. 104-193, 104th Cong. 1996.)

³ California Housing Finance Agency, Underserved Communities (accessed Jun. 21, 2024), available at <https://www.calhfa.ca.gov/community/index.htm>.

⁴ Sharon Cornelissen, "Overcoming barriers to immigrant homeownership in the US," Joint Center for Housing Studies (Jul. 25, 2023), available at <https://www.jchs.harvard.edu/blog/overcoming-barriers-immigrant-homeownership-us>.

⁵ Fannie Mae, B2-2-02, Non-U.S. Citizen Borrower Eligibility Requirements (07/28/2015), available at <https://selling-guide.fanniemae.com/sel/b2-2-02/non-us-citizen-borrower-eligibility-requirements>.

⁶ U.S. Dept. of Housing & Urban Development, Mortgagee Letter 2021-12: Eligibility Requirements for Certain Non-Permanent Resident Borrowers (May 28, 2021), <https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-12hsgml.pdf>.

⁷ Molly Grace, "Getting a mortgage as a non-resident of the US: what immigrant homebuyers should know," Business Insider (Jul. 17, 2023), available at <https://www.businessinsider.com/personal-finance/buy-house-as-immigrant-without-permanent-legal-status>.

⁸ Migration Policy Institute, Profile of the Unauthorized Population: United States (2019), available at <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US>.

PRWORA substantially reformed the welfare system, including how immigrants may qualify for public benefits. It limited many immigrants' eligibility for public benefits to those who were considered a qualified immigrant, which included only those of certain immigration statuses. For federal means-tested public benefits, PRWORA limited such benefits to qualified immigrants who had resided in the United States for at least five years.

In addition, PRWORA put into place the provisions relevant to this bill. Those provisions make any immigrant who is not a qualified immigrant under the statute, a nonimmigrant under immigration law, or an immigrant who has been temporarily paroled into the United States for urgent humanitarian reasons or significant public benefit, ineligible for state or local public benefits, with specified exceptions. (8 U.S.C. § 1621.) PRWORA provided that a state or local public benefit for the purposes of its prohibition includes: any grant, contract, loan, professional license, or commercial license; any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit. (8 U.S.C. § 1621(c).) However, PWRORA included an important caveat to its prohibition: a state may provide that an immigrant without lawful status in the United States is eligible for a State or local public benefit through enactment of a state law that affirmatively provides for such eligibility. (8 U.S.C. § 1621(d).)

4. The California Dream for All Program

In 2021, as part of the budget process, the Legislature directed the California Treasurer, in consultation with the California Housing Finance Agency (CalHFA), the California Department of Housing and Community Development, and others, to develop a framework by July 2022 for the California Dream for All Program to make homeownership more affordable to low- and moderate-income Californians. (AB 140 (Committee on the Budget), Ch. 111, Stats. 2021.) In June 2022, the State Treasurer published the requisite report regarding the California Dream for All Program, proposing a shared appreciation loan to provide qualifying Californians with down payment assistance. The program was officially created through SB 197 (Committee on the Budget and Fiscal Review, Ch. 70, Stats. 2022). A shared appreciation loan through the program is a subordinate mortgage loan to cover up to 20%, or at most \$150,000, for the down payment or closing costs on the sale. The homeowner does not begin to repay this loan until they have sold the home. (Health & Saf. Code § 51522(d).) Upon selling or refinancing the home, the homeowner must repay the loan amount and the corresponding portion of the appreciation in the value of the home, instead of a set mortgage rate per year like typical mortgages. In order to be eligible for the shared appreciation loan, all borrowers must be a first-time homebuyer, one borrower must be

a first-generation homebuyer, and the borrowers must meet specified maximum income requirements.⁹

The California Dream for All program was wildly successful in its first round of applications. The program had initially been appropriated \$300 million, from which the program would assist about 2,300 homebuyers. All available loans were reserved within two weeks of the program's launch.¹⁰ With those funds, 2,183 new homeowners were assisted with their purchase, 55% of whom belonged to communities of color.¹¹

5. AB 1840 ensures that Californians can access the California Dream for All Program regardless of immigration status

AB 1840 specifies that an applicant for a shared appreciation loan under the California Dream for All program who otherwise meets the requirements for the program may not be disqualified solely based on the applicant's immigration status. An applicant would still need to meet all program requirements, including any requirements imposed by a mortgage servicer or the FHA. The author asserts that these changes are necessary because of concerns that they have heard from undocumented community members that immigration status requirements are unclear. The handbook for the California Dream for All program states that borrower eligibility is limited to "either a citizen or other National of the United States, or a "qualified alien as defined in 8 U.S.C. § 1641." However, the author asserts that they have received conflicting information from CalHFA. It should also be noted that the statute creating the California Dream for All Program does not mention a specific requirement relating to an applicant's immigration status.

AB 1840 further specifies that the program is a state law within the meaning of the exception in the PWRORA for state laws that explicitly provide public benefits eligibility to immigrants without lawful status. In so doing, it is specifying in law that the exception in PWRORA applies, such that the state may provide loans under the California Dream for All Program without running afoul of PWRORA's prohibition on a state providing an undocumented individual public benefits. As loans are specifically mentioned in PRWORA's definition of a public benefit, the California Dream for All Program's shared appreciation loan would otherwise fall within PWRORA's prohibition.

There has been some litigation around PRWORA and other state laws that provide benefits to undocumented individuals. In *Martinez v. Regents of University of California*,

⁹ California Housing Finance Agency, "California Dream For All Shared Appreciation Loan," (accessed Jun. 20, 2024), available at <https://www.calhfa.ca.gov/dream/index.htm>.

¹⁰ Karen Garcia, "California has already run out of cash to help first-time home buyers. Here's what happened," The LA Times (Apr. 8, 2023), available at <https://www.latimes.com/california/story/2023-04-08/california-has-already-run-out-of-cash-to-help-first-time-home-buyers-heres-what-happened>.

¹¹ California Housing Finance Agency, *supra* note 3.

out-of-state students of the University of California challenged California's law providing undocumented individuals with in-state tuition when they have attended California high schools and met other requirements. (*Martinez v. Regents of University of California*, (2010) 50 Cal. 4th 1277.) The California Supreme Court determined that the law complied with PRWORA's exception because it was enacted after PRWORA, and stated in numerous provisions that it applies to persons without lawful immigration status. (*Id.*, 1294.) In another case, *In Re Garcia*, the California Supreme Court found that an undocumented applicant for admission to the State Bar as a licensed attorney was not precluded from being admitted because Business and Professions Code Section 6064 explicitly allowed undocumented individuals to be admitted to the State Bar. (*In re Garcia*, (2014) 58 Cal. 4th 440.) While the power to regulate immigration is exclusively a federal power, any question of preemption raised by AB 2584 can be easily dispensed with because PRWORA's exemption expressly permits AB 2584's provisions. (*Martinez*, 50 Cal. at 1298.)

SUPPORT

Coalition for Humane Immigrant Rights (sponsor)
ACLU California Action
California Faculty Association
California Housing Partnership
California Immigrant Policy Center
City of Alameda
Livable California
Oasis Legal Services
PICO California
Western Center on Law and Poverty

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 717 (Villapudua, 2023) requires the California Dream for All Program's borrower education program to include information on revocable living trusts and revocable transfer on death deeds, along with changes to other provisions of law. AB 717 is on the inactive file on the Senate Floor.

SB 197 (Committee on the Budget and Fiscal Review, Ch. 70, Stats. 2022) created the California Dream for All Program to provide a shared appreciation loan to low- or moderate-income first-time and first-generation homebuyers for assistance with the down payment and closing costs of a home purchase.

AB 140 (Committee on the Budget, Ch. 111, Stats. 2021) directed the California Treasurer, in consultation with CalHFA, the California Department of Housing and Community Development, and others, to develop a framework by July 2022 for the California Dream for All Program to make homeownership more affordable to low- and moderate-income Californians.

PRIOR VOTES:

Senate Housing Committee (Ayes 7, Noes 3)

Assembly Floor (Ayes 56, Noes 15)

Assembly Appropriations Committee (Ayes 11, Noes 4)

Assembly Housing and Community Development Committee (Ayes 6, Noes 2)
