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April 17, 2026

Office of General Counsel
Regulations Division
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Re: Docket No. FR–6524-P-01
Housing and Community Development Act of 1980:
Verification of Eligible Status

To Whom It May Concern:

The Council of Large Public Housing Authorities ("CLPHA") and Reno & Cavanaugh, PLLC ("Reno & Cavanaugh") are pleased to submit comments regarding HUD's proposed rule titled "Housing and Community Development Act of 1980: Verification of Eligible Status" (the "Proposed Rule"), which proposes to make sweeping changes to eligibility for HUD assisted housing, particularly with respect to families whose members have different immigration status ("mixed-status families").

CLPHA is a non-profit organization that works to preserve and improve public and affordable housing through advocacy, research, policy analysis, and public education. Our membership of eighty-five large public housing authorities ("PHAs") own and manage nearly half of the nation's public housing program, administer more than a quarter of the Housing Choice Voucher program, and operate a wide array of other housing programs. They collectively serve over one million low-income households.

Reno & Cavanaugh has represented hundreds of PHAs throughout the country and has worked with its clients on housing issues for many years. Founded in 1977, Reno & Cavanaugh has developed a national practice that encompasses the entire real estate, affordable housing, and community development industry. Although our practice has expanded significantly over the past nearly five decades to include a broad range of legal and legislative advocacy services, Reno & Cavanaugh's original goal of providing quality legal services dedicated to improving housing and communities remains at the center of everything we do.

We are strongly opposed to the Proposed Rule because it is contrary to current law and public policy, misrepresents Congressional intent with respect to treatment of mixed-status families, imposes significant and unfunded administrative burdens on PHAs, and severely underestimates the negative impact the Proposed Rule would have on communities.

As a general matter, the Proposed Rule directly conflicts with the shared mission of HUD, CLPHA, and PHAs across the country of providing safe and affordable housing to those in greatest need. The Proposed Rule seeks to eliminate all mixed-status families in HUD-assisted housing. A mixed-status family is a household where one or more members lack eligible immigration status to qualify for HUD financial assistance. Long-standing, established law permits mixed-status families to reside in HUD assisted housing, and prorates rental assistance to such families to ensure that only those members with eligible immigration status receive rental assistance. Ineligible household members do not receive HUD assistance and instead pay their portion of the rent unassisted, often at market rates.

The Proposed Rule, by requiring every member of the household to have eligible immigration status, regardless of whether such member receives HUD rental assistance, would eliminate future and remove current mixed-status families from HUD assisted housing. If adopted, the Proposed Rule would force such mixed-status families to make one of two untenable choices: (1) leave HUD-assisted housing altogether to avoid eviction, or (2) separate and remove members lacking eligible immigration status from the household to allow those with eligible immigration status to remain in HUD assisted housing. According to HUD's own September 30, 2025, Regulatory Impact Analysis of the Proposed Rule ("HUD's Impact Analysis"), HUD relies upon the expectation that mixed-status families' "fear of the family being separated would prompt the departure of most mixed families."[1] In other words, the federal agency tasked with housing the most vulnerable families favors self-eviction. With respect to the second option to break up families, HUD acknowledges the numerous benefits of maintaining intact households, especially for families with children, and that nearly 80,000 household members would face this impossible choice under the Proposed Rule.[2] Nevertheless, HUD implausibly predicts that breaking up households is "not likely" to occur,[3] and ignores the negative effects of family separation.

The fear and uncertainty caused by the Proposed Rule, even at this preliminary stage, strikes at the heart of communities. CLPHA believes the stability provided by affordable housing is the critical first element of many important and interconnected social determinants that shape life outcomes and contribute to the success of all communities. Housing stability is a keystone of individuals' and families' abilities to achieve academically, secure and maintain employment, and achieve regular access to needed health services regardless of immigration status. HUD acknowledges that "a household would probably suffer a worse outcome by trying to adapt to the new rules than by leaving together."[4] We oppose such action, which creates fear and imposes unconscionable decisions on the communities CLPHA members serve. The Proposed Rule would also impose significant and unfunded administrative and financial burdens on PHAs, particularly during the first year of implementation, diverting already-limited resources away from the core mission of providing safe, decent, and affordable housing to those most in need.

[1] HUD's Impact Analysis, Appx. A, § 11 at 43.
[2] Id. § 11.2 at 46-48.
[3] Id. at 48.
[4] Id.

Many mixed status households are also multigenerational and include elderly and disabled family members whose primary caretaker may be forced to exit the home, causing further disruption and jeopardizing the care of these individuals.

Furthermore, research shows that housing stability significantly impacts children's school performance and long-term outcomes, such as graduation rates and post-secondary activities. HUD's Impact Analysis makes it clear that children, many of whom are U.S. citizens, will be disproportionately impacted by the Proposed Rule.[5] The Impact Analysis also shows that 73% of mixed status households are comprised of eligible children and ineligible adults; HUD estimates that roughly 36,000 children are likely to exit housing assistance if this rule were to be enacted.[6] HUD's acknowledgement on the one hand that growing up in intact households is important to a child's economic mobility and the child's cognitive, behavioral, physical, and mental health, and its recognition on the other hand that the Proposed Rule is a rule whose acknowledged purpose is to induce departure through fear is proof positive that the Proposed Rule directly contradicts HUD's own mission, is arbitrary and capricious, and should therefore be withdrawn immediately.

Below are our detailed comments in opposition to the Proposed Rule. Additionally, Attachment 1 includes comments on specific provisions of the Proposed Rule.

I. The Proposed Rule is Not Supported by Law.

We note that HUD fails to articulate valid legal justifications for the significant changes in policy and interpretation contained in the Proposed Rule, in violation of the Administrative Procedure Act ("APA").[7] Instead, HUD merely asserts that its proposals are grounded on what it "believes", or claims without evidence that its proposals "more closely align", "better conform" with or "better implement" the provisions of Section 214 of the Housing and Community Development Act (the "HCD Act"). Without valid legal justifications, HUD's assertions are unsubstantiated claims and do not carry the force of law.

HUD cites Executive Order 14218, "Ending Taxpayer Subsidization of Open Borders" ("Executive Order 14218") and the current administration's rulemaking reform efforts that are also based on Executive Orders[8] as justifications for the Proposed Rule. However, neither Executive Order 14218 nor any other Executive Orders have the force of law. All such executive orders are subservient to existing law and provide that they "shall be implemented consistent with applicable law…" "[R]ote incorporation of executive orders … does not constitute 'reasoned decision making'" as required by the APA.[9] Given that Section 214 of the HCD Act directly conflicts with numerous provisions of the Proposed Rule, HUD lacks the legal grounds to implement the proposed changes.

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[5] Id., Table A2. "Potential Range of Effects of Proposed Rule Depending Upon Reaction of Household Members" at 47.
[6] HUD's Impact Analysis, Appx. A, § 11.2 at 47.
[7] 5 U.S.C. §§ 551-559.
[8] Executive Order 14192, "Unleashing Prosperity Through Deregulation," 90 FR 9065 (Feb. 6, 2025); and Executive Order 14219, "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative," 90 FR 10583 (Feb. 25, 2025).
[9] *Martin Luther King, Jr. Cnty. v. Turner*, 785 F.Supp.3d 863, 889-90 (W.D. Wash. 2025).

Furthermore, the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*,[10] which overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.* and the principal that agency interpretations of statutes are entitled to deference,[11] directly undercuts and weakens HUD's arguments that its interpretations of the HCD Act are appropriate and more accurate. Notably, "the fact that an agency's actions were undertaken to fulfill a presidential directive does not exempt them from arbitrary-and-capricious review,"[12] nor does it confer legitimacy. When changing its position, an agency must provide a heightened justification where "its new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account. . . . It would be arbitrary or capricious to ignore such matters."[13] The Proposed Rule meets none of these standards.

a. <u>The Proposed Rule Directly Conflicts with the Statute and the Legislative History.</u>

Under the HCD Act, only those individuals who either receive or are applying for financial assistance are required to declare and verify immigration status.[14] The HCD Act contemplates that mixed-status families will reside in assisted units, providing that no individual or family shall receive financial assistance prior to the affirmative establishment and verification of eligibility of "at least the individual or one family member," but contains no language requiring all family members to have eligible status.[15] Accordingly, persons who do not contend their immigration status and who do not receive financial assistance are statutorily exempt from providing declarations or submitting documentation for verification. Therefore, the new requirement under the Proposed Rule that all household members declare and verify status regardless of whether financial assistance is actually or will be received directly contravenes existing law.

Further, the Proposed Rule's requirement that persons aged 62 years and older submit at least one document for evaluation via the U.S. Citizenship and Immigration Services' Systematic Alien Verification for Entitlements Program ("SAVE") exceeds statutory obligations. The HCD Act expressly provides that persons aged 62 years and older who receive financial assistance are subject to a different verification process than younger persons. Specifically, persons aged 62+ need only verify their eligible status by submitting certain documentation for review only.[16] HUD does not have the authority to eliminate this statutory option. Additional complications arise from SAVE falsely returning results that mistakenly indicate that individuals are in violation, when in reality they have eligible status. Moreover, SAVE was only recently programmed to verify citizens,[17] and we understand that it is not set up to process the records of U.S. citizens. It therefore cannot deliver reliable verification information.

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[10] 603 U.S. 369 (2024).
[11] 467 U.S. 837 (1984).
[12] *Kingdom v. Trump*, No. 25-cv-691, 2025 WL 1568238, at *10 (D.D.C. June 3, 2025) (collecting cases); *see also R.I. Coal. Against Domestic Violence v. Bondi*, No. 25-279, 2025 WL 2271867, at *8 (D.R.I. Aug. 8, 2025); *Louisiana v. Biden*, 622 F. Supp. 3d 267, 295 (W.D. La. 2022).
[13] *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009); *see also* 5 U.S.C. § 706(2)(A).
[14] 42 U.S.C. § 1436a(d).
[15] 42 U.S.C. § 1436a(i)(1).
[16] 42 U.S.C. § 1436a(d)(1)(A).
[17] HUD's Impact Analysis, § 1 at 3.

The Proposed Rule's limitation of prorated assistance for mixed-status families except during the limited timeframe in which the families' eligibility is "pending final verification" is unauthorized by Section 214 of the HCD Act. Section 214 explicitly provides for prorated assistance to families where the eligibility of at least one family member has been affirmatively established, and the ineligibility of at least one family member has not been affirmatively established.[18] Additionally, the provision of Section 214 requiring termination of an eligible individual for permitting an ineligible individual to reside in the assisted unit does not apply if the ineligibility of the ineligible person at issue was considered in calculating prorated assistance.[19] In other words, mixed-status families receiving prorated assistance cannot be terminated simply because ineligible individuals reside in the unit. Further, Section 214 does not place any time limit on prorated assistance for mixed-status families, and therefore does not support HUD's interpretation of an individual whose ineligibility "has not been affirmatively established" to mean an individual whose eligibility is "pending final verification." Clearly, the Proposed Rule, which would eliminate all mixed-status families and which would otherwise break up families unless they are receiving assistance under Section 214 on June 19, 1995, directly contradicts existing law.

Beyond the statutory text, the legislative history confirms that the Proposed Rule grossly misinterprets the HDC Act. Significantly, this is not the first time that HUD misinterpreted the statute. Congress intervened in 1988 when it amended the HCD Act, and explicitly called out HUD's incorrect interpretation of the Act noting that it was including changes to address HUD's errors.[20] Specifically, Congress noted that imposing the same documentation and verification standards on citizens and non-citizens alike is unduly burdensome and inappropriate.[21] Congress also exempted persons aged 62+ from having to provide documentation establishing immigration or nationality status, and confirmed that certification alone was sufficient.[22] The legislative history also notes that "the modifications are intended to clarify the original intent of Congress that families in which at least one person is eligible are not disqualified and *that the rules not be applied retroactively*."[23]

b. The Proposed Rule Cannot be Applied Retrospectively.

There is a long-standing presumption against rules with retroactive effect, particularly legislative rules that implement statutory provisions. The underlying statute does not provide for retroactive application and when HUD implemented the original regulations in 1995, it did so prospectively. It took HUD seven years to implement the original Section 214 regulations following its determination that Section 214 was "too complex … to be self-implementing as of the date of enactment of the 1987 Act."[24] Furthermore, the legislative history confirms that HUD intended for the law to apply only prospectively, and noted that "every [non-citizen] ... presently living in a

[18] 42 U.S.C. § 1436a(b)(2).
[19] 42 U.S.C. § 1436a(d)(6).
[20] H.R. REP. 100-122(I), 1987 U.S.C.C.A.N. 3317, 3365-66 (1987).
[21] Id.
[22] Id.
[23] Id. (emphasis added).
[24] 60 FR 14816 (Mar. 20, 1995).

federally-assisted housing project would continue to qualify for assistance."[25] After 38 years of only prospective application of Section 214 coupled with countervailing legislative history, it is unreasonable for HUD to now insist on retroactive application via the Proposed Rule.

c. ***The Proposed Rule Implicates Privacy Rights Concerns.***

The use of immigration records under the Proposed Rule arguably violates privacy interests. Applicants and current program participants consent to the use of their immigration status information for eligibility verification purposes. Under 42 U.S.C. § 1436a(d)(3)(B), when such immigration status information is provided, the individual's privacy shall be protected "to the maximum degree possible." The proposed revisions to Section 5.506(d) specifically include a novel disclaimer of any responsibility "for the further use or transmission of the evidence" of eligible immigration status. This directly conflicts with the underlying statute's requirement that the individual's privacy be protected, potentially exposing PHAs and private landlords to criminal and civil liability for violating those privacy rights.

d. ***The Proposed Rule Violates the Fair Housing Act.***

The Proposed Rule violates the Fair Housing Act on at least two fronts: it discriminates on the basis of national origin, and it violates HUD's affirmative obligation to further fair housing. Because the Proposed Rule lacks proper legal authority and HUD has failed to provide a legitimate basis for the rule, housing providers forced to implement its illegal policies risk disparate impact lawsuits brought by aggrieved tenants and applicants. Pursuant to the Supreme Court's decision in *Texas Department of Housing and Community Affairs, et al., v. Inclusive Communities Project, Inc.*[26] and related litigation, citizenship- or immigration-based policies have an illegal and disparate impact on protected classes absent clearly-articulated substantial, legitimate, and non-discriminatory interests. HUD's proposed rescission of its disparate impact rule would eliminate the national standard that protects against housing policies disproportionately harming protected classes — even without proof of intentional discrimination.[27] Without a replacement framework, PHAs, developers, and housing providers would face inconsistent legal standards across jurisdictions and heightened litigation risk.

As discussed in detail in these comments, HUD has failed to articulate any legitimate non-discriminatory bases for the Proposed Rule. Forcing housing providers to defend HUD's illegitimate policy changes would siphon limited financial and administrative resources away from the vital mission of providing affordable housing to needy and otherwise eligible individuals and families. Likewise, the Proposed Rule's discriminatory effect violates the mandate that HUD administer its programs and activities in a manner that "affirmatively" furthers fair housing.[28]

[25] H.R. REP. 100-122(I), at 3366; *see also* at 3425.
[26] 576 U.S. 519 (2015).
[27] 91 FR 1475 (Jan 14, 2026).
[28] 42 U.S.C. § 3608(e)(5).

II. The Proposed Rule is Not Supported by Public Policy.

a. *It is the Intent of Congress to Continue Prorated Rental Assistance to Mixed-Status Families.*

Section 214 of the HCD Act prohibits HUD from making "financial assistance" (not "assistance" generally as HUD claims) available to ineligible non-citizens, and affirmatively provides for proration of financial assistance in mixed-status families.[29] Given that during the statute's 46 years of existence it has been amended 8 times (most recently in 2016) and protections for mixed-status families persist, Congress clearly intends for mixed-status families to continue to receive prorated assistance. This was reaffirmed by the 1988 amendments, where Congress explicitly modified the HCD Act "to clarify the original intent of Congress that families in which at least one person is eligible are not disqualified and that the rules not be applied retroactively."[30] HUD does not have the authority to override the intent of Congress.

b. *The Proposed Rule Would Unduly Frustrate PHA Operations and HUD Programs.*

The Proposed Rule directly conflicts with HUD's mission to provide decent, safe, and affordable housing to those communities in most need of such housing by imposing significant administrative and financial burdens on PHAs, thereby further taxing their already limited administrative and financial resources.

HUD claims, without proof, that the Proposed Rule would have a "minimal impact" on small owners, mortgagees, and PHAs, and will not impose significant additional costs on responsible entities. To the contrary, the Proposed Rule will have a significant impact on PHAs. This is particularly true during the first year of implementation, when PHAs will need to develop policies and procedures for the new verification process as well as the related exemption/waiver processes. Additionally, because the Proposed Rule requires that all members of current households living in Section 214 covered housing who have not previously provided immigration status information do so at the first regular reexamination after the rule goes into effect, the first year of implementation is expected to trigger the most terminations and evictions based on ineligible immigration status. Increased terminations and evictions, in turn, will further burden PHAs in the form of additional administrative work in processing such terminations, legal fees and court costs associated with the eviction process, and the additional administrative and financial burden of readying the now vacant units for re-leasing.

Not only would the Proposed Rule significantly increase burdens on housing providers, it would also frustrate HUD's ongoing initiative to attract more private landlords willing to participate in the Housing Choice Voucher program. The Proposed Rule risks exacerbating the very issues that contribute to a shortage of landlords willing to participate, and would further contribute to the

[29] *See* 42 U.S.C. §§ 1436a(b) and (i)(1).
[30] H.R. REP. 100-122(I), 1987 U.S.C.C.A.N. § at 3365-66.

shortage of available decent, safe and sanitary affordable housing options, as documented by HUD.[31]

c. ***The Proposed Rule Would Cause Significant Negative Economic Impacts Nationwide.***

HUD's Impact Analysis correctly concludes that the Proposed Rule is a "significant regulatory action," yet it inexplicably claims that the Proposed Rule is not economically significant despite estimating upfront costs for responsible entities, tenants, and applicants to range from $17-$33 million.[32] The projected impact on the communities served by CLPHA member PHAs should not be underestimated. For the tens of thousands of mixed-status families facing termination under the Proposed Rule, affordable private-market alternatives are largely unavailable, particularly in high-cost metropolitan areas. Eviction from assisted housing will not prompt an orderly transition; it will drive families into homelessness. The projected impact on communities should not be underestimated, including the cost of increasing numbers of homeless individuals who will stress communities. HUD's own economic Impact Analysis, which tends to understate costs and impacts, admits that costs associated with homelessness range from $20,000 to $50,000 per person per year.[33]

HUD also estimates that elimination of mixed-status families will cost the Federal government an additional $167-$218 million per year, which would require a significant increase to HUD's budget by $311-$385 million to offset losses and provide subsidies to the replacement households.[34] HUD also admits that its ability to obtain higher budget amounts to address the vastly higher needs is likely limited, which would effectively lead to severe decreases in the number of households able to be served, and/or an overall decrease in the quality of housing across the board.

Finally, HUD also acknowledges that certain states with higher concentrations of non-citizens (New York, California, and Texas) are likely to bear the brunt of the costs of these policies. In comments submitted by the Housing Authority of the City of Los Angeles to the Proposed Rule, for example, the housing authority reported an estimated additional administrative cost between $17,808,850 and $26,508,850 for its public housing programs and $7,042,306 for its Section 8 programs. HUD has made no allowances for such disproportionate regional impacts. Taken together, the cumulative economic burden on families, housing authorities, state and local governments, and the Federal budget confirms that the Proposed Rule is far more costly than HUD's Impact Analysis acknowledges, and that HUD's characterization of the rule as not "economically significant" is not credible.

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[31] A Pilot Study of Landlord Acceptance of Housing Choice Vouchers, U.S. Dep't of Hous. & Urb. Dev. Off. of Policy Dev. & Rsch. (Sept. 20, 2018), https://www.huduser.gov/portal/pilot-study-landlord-acceptance-hcv.html.
[32] HUD's Impact Analysis, § 6.3 at 33.
[33] Id., § 7.2 at 35.
[34] Id., § 8 at 36 and §§ 5.4.1-.2 at 17-19.

Thank you for the opportunity to comment on the Proposed Rule. We would also like to take the opportunity to adopt and endorse the comments submitted by our PHA members opposing the Proposed Rule and thank HUD for its consideration of all such comments.

If you have any questions, please do not hesitate to contact us.

Sincerely,

La Shelle Dozier	Stephen I. Holmquist	Iyen A. Acosta
Chief Executive Officer	Member	Member
CLPHA	Reno & Cavanaugh, PLLC	Reno & Cavanaugh, PLLC

Attachment 1: Comments on Specific Proposed Rule Provisions

Part 5, Subpart B

§ 5.216 Disclosure and verification of Social Security and Employer Identification Numbers.

§ 5.216(a) General. The Proposed Rule removes language making this section inapplicable to individuals who do not contend eligible immigration status pursuant to the HUD's proposed removal of the "do not contend" provision in existing § 5.518(e). Removal of the "do not contend" provision is discussed in more detail below.

§ 5.216(e)(1)(i) – The Proposed Rule removes language from existing § 5.516(e)(1) exempting persons aged 62 or older as of January 31, 2010 from submitting Social Security numbers for verification, in direct conflict with the HCD Act, which limits the eligibility evidence noncitizens aged 62 or older must provide to declarations in writing. *See* 42 U.S.C. §§ 1436a(d)(1)(A), 1436a(d)(2). The Proposed Rule must be set aside because it violates the statutory provisions.

Part 5, Subpart E

§ 5.504 Definitions.

Adds a new definition termed "Preservation assistance" to § 5.504(b), which defines types of assistance under the HDC Act, including prorated continued assistance and temporary deferral of termination of assistance, available to eligible families pursuant to HUD's revised provisions in § 5.516 Availability of preservation assistance to tenant families, and § 5.518 Types of preservation assistance available to tenant families. Concerns regarding the Proposed Rule's retroactive application and changes to § 5.516 (improper removal of proration of assistance as a type of preservation assistance) and § 5.518 (requiring all household members to have eligible immigration status for receipt of continued assistance) are discussed in more detail below in their respective sections.

§ 5.506 General Provisions.

§ 5.506(b)(1) Family eligibility for assistance. HUD's requirement that every member of the family must be eligible for assistance, with two exceptions (grandfathering of only those families in residence as of June 19, 1995, or permitting temporary proration of assistance while final determinations of status are pending) conflicts with the HCD Act that permits prorated assistance for mixed-status families. *See* 42 U.S.C. § 1436a(b)(2). The Proposed Rule must be set aside because it violates the statutory provisions.

§ 5.506(b)(2) – Continued Assistance only applies under the Proposed Rule if the family was receiving assistance as of June 29, 1995, the date the original regulations were first published. However, by treating the date of the implementing regulations as a "safe harbor", HUD is effectively imposing new legislative rule requirements retroactively against current leaseholders who are lawfully housed and abiding by their leases, an apparent violation of the Administrative

Procedures Act (APA). HUD's retroactive application of its Proposed Rule violates long-standing legal principles and presumptions that such rules must be applied prospectively only, if at all.

§ 5.506(b)(3) – The Proposed Rule improperly provides that a family with at least one member with eligible immigration status may receive prorated assistance only until final determinations are reached about the eligibility of other family members. This conflicts with the HCD Act that provides for prorated assistance to mixed-status families so long as a single family member has eligible status and the ineligibility of other family members has not been affirmatively established, and places no time limit on such prorated assistance. *See* 42 U.S.C. §§ 1436a(b)(2), 1436a(d). The Proposed Rule must be set aside because it violates the statutory provisions.

§ 5.508 Submission of evidence of citizenship or eligible immigration status.

§ 5.508(a) General. The Proposed Rule removes the ability for one or more family members to elect not to contend whether they have eligible immigration status. However, the HCD Act provides for mixed-status families and proration of assistance for such families, *see* 42 U.S.C. § 1436a(b)(2), and does not require that each family member affirmatively prove their eligibility to provide assistance to the family, *see* 42 U.S.C. § 1436a(d).

§ 5.508(b) Evidence of citizenship or eligible immigration status. The Proposed Rule provides that all family members, regardless of age or whether they are actually receiving financial assistance, must submit evidence of citizenship and a declaration of eligibility. The HCD Act, however, requires only those persons who actually receive or apply for financial assistance to submit declarations and verification materials. *See* 42 U.S.C. § 1436a(d). The Proposed Rule must be set aside because it violates the statutory provisions.

§ 5.508(b)(2) – Under the Proposed Rule, noncitizens aged 62 or older who were receiving assistance as of September 30, 1996 or who applied for assistance after that date, must provide proof of age and proof of eligible immigration status. However, the HCD Act does not require this age group to provide documentation. *See* 42 U.S.C. §§ 1436a(d)(1)(A), 1436a(d)(2). The Proposed Rule would also require such documentation of eligibility status to be verified via SAVE, but the HCD Act provides that only documentation submitted by noncitizens under 62 years old will be reviewed by the INS (the precursor to DHS) through an automated system. *See* 42 U.S.C. § 1436a(d)(3).

§ 5.508(c) Declaration.

§ 5.508(c)(1) – The Proposed Rule removes references to family members who do not contend that they have eligible immigration status, which contradicts the HCD Act that allows for mixed-status families and only requires declarations from individuals who claim eligible immigration status and seek to obtain federal financial housing assistance. *See* 42 U.S.C. §§ 1436a(b)(2), 1436a(d). The Proposed Rule must be set aside because it violates the statutory provisions.

§ 5.508(c)(1)(ii) – The Proposed Rule exceeds the statutory requirements and improperly requires citizenship declarations on behalf of a child to be signed by an adult who resides in the assisted dwelling unit and is responsible for the child. The HCD Act only requires that an adult must sign

on behalf of a child. *See* 42 U.S.C. § 1436a(d)(1)(A). The Proposed Rule would place minors whose parents are divorced or who live with non-custodial family members at a disadvantage and constitutes an additional, unnecessary burden.

§ 5.508(d) Verification consent form.

§ 5.508(d)(1) Who signs. The Proposed Rule exceeds the statutory requirement that only individuals who receive or are applying for financial assistance must execute forms related to that assistance, *see* 42 U.S.C. § 1436a(d), by requiring all family members to sign the verification forms even if they receive no financial assistance. Furthermore, the Proposed Rule improperly requires all family members, regardless of age, to execute verification consent forms, which directly conflicts with the statutory provision exempting U.S. citizens and nationals, and noncitizens 62 years of age or older, from verification by the INS. *See* 42 U.S.C. § 1436a(d)(3). The Proposed Rule must be set aside because it violates the statutory provisions.

§ 5.508(d)(1)(ii) Who signs. Similar to the objections raised regarding the proposed citizenship declarations set forth at 5.502(c)(1)(ii), the Proposed Rule improperly requires verification forms executed on behalf of a child to be signed by an adult who resides in the assisted dwelling unit and is responsible for the child. The HCD Act, however, only requires that an adult must sign on behalf of a child. *See* 42 U.S.C. § 1436a(d)(1)(A). The Proposed Rule would place minors whose parents are divorced or who live with non-custodial family members at a disadvantage, constitutes an additional, unnecessary burden, and must be set aside.

§ 5.508(d)(2) Notice of use and release of evidence by responsible entity. The Proposed Rule provides that the verification consent form shall include a provision advising individuals that evidence of immigration status may be released to (i) HUD and (ii) DHS to verify immigration status "without responsibility for the further use or transmission of the evidence by the entity receiving it", which conflicts with the underlying statute's requirement that the individual's privacy shall be protected "to the maximum degree possible." *See* 42 U.S.C. § 1436a(d)(3)(B). The Proposed Rule also improperly puts the onus on responsible entities to verify evidence of U.S. citizenship although PHAs and their staff are not immigration experts.

§ 5.508(d)(3) Notice of release of evidence of eligible immigration status by HUD. The Proposed Rule also requires that the verification consent form advise individuals that HUD may also release evidence of eligible immigration status to DHS for verification and to unspecified parties. Furthermore, HUD disclaims any responsibility for the further use or transmission of the evidence or other unspecified information by DHS. These provisions also conflict with the statutory requirement that the individual's privacy shall be protected "to the maximum degree possible." *See* 42 U.S.C. § 1436a(d)(3)(B).

The Proposed Rule would improperly delete § 5.508(e), which clarifies that mixed-status families may be eligible for assistance although one or more family members may not have declared their status or submitted documentation for verification. The deletion ignores that the HCD Act explicitly provides for prorated assistance for mixed-status families and only requires declarations from individuals who claim eligible immigration status and seek to obtain federal financial housing assistance. *See* 42 U.S.C. §§ 1436a(b)(2) and (d). The regulatory provision must be restored.

§ 5.508(e) Notification of requirements of Section 214. [formerly § 5.508(f)]

§ 5.508(e)(1) When notice is to be issued. The Proposed Rule would impose a number of administratively burdensome notice provisions on housing providers, including having to provide notice of the requirement to provide evidence of citizenship status to each applicant at the time of application, and to each tenant who has not submitted evidence of eligible status as of the date of the final rule at the next regular re-examination of income. As previously discussed, the Proposed Rule would improperly require all applicants and family members to receive such notices regardless of whether such individuals are applying for or actually receive financial assistance, which exceeds HUD's statutory authority under 42 U.S.C. § 1436a(d). Additionally, this proposed regulation conflicts with the statutory provision giving housing providers discretion whether to require declared U.S. citizens to provide documentation to verify such declaration. *See* 42 U.S.C. § 1436a(d)(1)(A). The Proposed Rule must be set aside because it violates the statutory provisions.

§ 5.508(e)(2) Form and content of notice. The Proposed Rule would impose additional administratively burdensome specifications by requiring the notice to, among other things, describe the type of evidence of citizenship that must be submitted and the time period for such submissions, and also state that assistance will be denied or terminated upon a final determination of ineligibility after all appeals, if any, have been exhausted or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. The Proposed Rule is also impermissibly vague because it fails to specify the appeals time period.

§ 5.508(e)(2)(iv) – Requiring a statement in the notice that assistance may only be prorated to a family whose head of household or spouse has eligible immigration status while final determinations of all other family members is pending incorrectly overstates HUD's authority under the statute. The HCD Act not only provides for proration of assistance for mixed-status families, *see* 42 U.S.C. § 1436a(b), which the Proposed Rule improperly attempts to ignore and invalidate, but it also provides that only those family members who are receiving or applying for financial assistance are required to submit to the verification procedures, *see* 42 U.S.C. § 1436a(d).

§ 5.508(e)(2)(vi) – Requiring a statement in the notice advising individuals that the responsible entities are required to inform DHS immediately whenever personnel determine that any member of the household is present in the U.S. in violation of the Immigration and Nationality Act (the "INA"), and requiring responsible entities to meet their reporting requirement by complying with Interagency Notices providing guidance for compliance with PRWORA Section 404 exceeds HUD's authority. Nothing in Section 214 of the HCD Act requires housing providers to notify DHS upon making an ineligibility determination.[35] Additionally, the 2000 Interagency Notice referenced in the Proposed Rule provides that housing providers' reporting requirement under PRWORA arises only when a separate finding by DHS confirms that an eligibility is not lawfully present in the United States.[36] PHAs and their staff are not immigration experts and should not be

[35] *See Nat'l R.R. Passenger Corp. v. Nat'l Ass'n of R.R. Passengers*, 414 U.S. 453, 458 (1974) ("[W]hen legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies.").

[36] Responsibility of Certain Entities To Notify the Immigration and Naturalization Service of Any Alien Who the Entity "Knows" Is Not Lawfully Present in the United States, 65 Fed. Reg. 58,302 (Sept. 28, 2000).

tasked with making determinations regarding whether individuals' presence in the U.S. is indeed in violation of the INA.

§ 5.508(f) When evidence of eligible status is required to be submitted. [formerly § 5.508(g)]

§ 5.508(f)(1) Applicants. The Proposed Rule neglects to include the word "financial" before "assistance," even though the HCD Act only requires submission of evidence of eligible status if the applicant is applying for "*financial* assistance." 42 U.S.C. § 1436a(d) (emphasis added).

§ 5.508(f)(2)(i) Tenants. The Proposed Rule would require tenants in mixed-status families, regardless of whether they receive financial assistance under a covered program, to submit evidence of citizenship or eligible immigration status within 90 days of the effective date of the final rule "in accordance with program requirements". As noted previously, the Proposed Rule exceeds HUD's statutory authority by requiring evidence of eligibility regardless of whether the occupant is receiving federal financial assistance, *see* 42 U.S.C. §1436a(d), and conflicts with legislative history indicating that Congress did not intend for Section 214's implementing regulations to apply retroactively, *see* H.R. REP. 100-122(I), 1987 U.S.C.C.A.N. § at 3365-66.

§ 5.508(f)(2)(ii) Tenants. The Proposed Rule would require all tenants, regardless of age, who receive financial assistance under a covered program to submit evidence of citizenship or eligible status at the next annual or interim reexamination of income and household composition "in accordance with program requirements". As noted previously, this exceeds HUD's authority under Section 214 of the HCD Act, which exempts persons aged 62 or older from submitting documentary evidence of citizenship, *see* 42 U.S.C. § 1436a(d)(1)(A), and represents an improper retroactive application.

§ 5.508(f)(3) New family members of assisted units. Once again, the Proposed Rule exceeds HUD's statutory authority by requiring all new occupants to submit evidence of citizenship or eligible status regardless of whether the occupant is applying for financial assistance. *See* 42 U.S.C. § 1436a(d).

§ 5.508(f)(4) Changing participation in a HUD program. Evidence of eligible status is only required to be submitted for those persons who receive or are applying for financial assistance. *See* 42 U.S.C. § 1436a(d). The Proposed Rule overreaches by attempting to apply to all families, and therefore must be set aside.

§ 5.508(f)(5) One-time evidence requirement for continuous occupancy and changes in status during occupancy. Contrary to the Proposed Rule provisions, only those family members who are receiving or applying for financial assistance must submit evidence of eligible status. *See* 42 U.S.C. § 1436a(d). Furthermore, the Proposed Rule exceeds HUD's statutory authority by requiring each family member to submit evidence of citizenship, despite that the HCD Act permits U.S. citizens and nationals to submit declarations without also submitting verification documentation, and exempts persons aged 62 and above from submitting documentation of their eligibility status. *See* 42 U.S.C. §§ 1436a(d)(1)(A), 1436a(d)(2).

§ 5.508(g) Extensions of time to submit evidence of citizenship or eligible status. The Proposed Rule improperly requires documentation of citizenship status, which exceeds the requirements of the HDC Act and removes housing providers' statutory discretion to choose whether to require such documentation. *See* 42 U.S.C. § 1436a(d)(1)(A).

§ 5.508(g)(1) When extensions must be granted. Although the statute provides for an unconditional 30-day extension, *see* 42 U.S.C. § 1436a(d)(4)(A), the Proposed Rule imposes significant burdens and would require the family member to certify that supportive evidence is "temporarily unavailable", additional time is needed, and "prompt and diligent efforts will be undertaken to obtain the evidence." HUD should be blocked from imposing additional administrative burdens, particularly those that exceed the statutory mandates.

§ 5.508(g)(3) Grant of denial of extension to be in writing. The Proposed Rule imposes significant burdens on housing providers to document whether an extension request is granted or denied, including explaining the reasons for any denial. No additional funding is proposed or will be made available by HUD to offset the costs of the proposed enhanced notice requirements, leading to imposition of additional burdens on housing providers.

§ 5.510 Documentation of citizenship and eligible immigration status. The Proposed Rule improperly requires documentation of citizenship status, which exceeds the requirements of the HDC Act. *See* 42 U.S.C. § 1436a(d)(1)(A).

§ 5.510(b) Documentation of U.S. citizenship. The Proposed Rule would add a new paragraph to section § 5.510 detailing the acceptable documentation required for secondary verification of U.S. citizenship. However, this exceeds the statutory requirements that state that U.S. citizens need only declare citizenship to be eligible, and removes housing providers' statutory discretion to choose whether to require documentation of citizenship. *See* 42 U.S.C. § 1436a(d)(1)(A).

§ 5.512 Verification of citizenship and eligible immigration status. The Proposed Rule improperly requires documentation and verification of citizenship status, which exceeds the requirements of the HDC Act. *See* 42 U.S.C. § 1436a(d)(1)(A).

§ 5.512(c) Primary verification of U.S. citizenship or eligible immigration status.

§ 5.512(c)(1) Verification system. The Proposed Rule exceeds HUD's statutory authority by requiring verification of U.S. citizenship via DHS's SAVE system. *See* 42 U.S.C. §§ 1436a(d)(1)(A), 1436a(d)(3). Additionally, although the statute exempts persons aged 62 years old and older from verification with the INS, the proposed rule erroneously requires that these individuals' status be verified with DHS's SAVE system. *See* 42 U.S.C. §§ 1436a(d)(1)(A), 1436a(d)(3). The Proposed Rule would put many elderly persons at risk of loss of housing in those cases where verification documents are unavailable due to a lack of birth records, or loss of original records due to circumstances outside of the elders' control, such as natural disasters or prior homelessness.

§ 5.512(c)(2) Failure of primary verification to confirm U.S. citizenship or eligible immigration status. The Proposed Rule exceeds HUD's statutory authority by requiring verification of U.S. citizenship. *See* 42 U.S.C. § 1436a(d)(1)(A).

§ 5.512(d)(1) Secondary verification. The Proposed Rule is administratively burdensome and would require housing providers to provide particularized information via written notice to individuals who fail primary verification, including notification of the results of primary notification, the need for secondary verification, the individual's ability to pursue record corrections with any agency that issued or maintained records or documents relevant to the determination, and a description of acceptable documentation for secondary verification and applicable deadlines to submit such materials.

§ 5.512(d)(2) Secondary verification. The Proposed Rule exceeds HUD's statutory authority by requiring verification of U.S. citizenship, *see* 42 U.S.C. § 1436a(d)(1)(A), and, furthermore, is administratively burdensome and would require housing providers to notify affected individuals of the reason(s) and need for secondary verification, identify the acceptable documentation required for such verification, and possibly request additional verification via SAVE.

§ 5.512(d)(3) Secondary verification. For secondary verification of eligible immigration status, the Proposed Rule would require housing providers to request additional verification of receipt of the initial verification through SAVE within 30 days of notification of the results of primary verification, which is vague and administratively burdensome.

§ 5.512(e) Failure to confirm eligible immigration status. The Proposed Rule imposes additional burdens on housing providers by requiring notification to the family if initial verification fails, and describing the process to seek record correction with DHS. The Proposed Rule does not specify how much time the family shall receive to fix the errors, although such circumstances likely are out of their ability to control. We expect HUD's Proposed Rule, if fully implemented, would further tax an already delay- and error-prone SAVE system to the detriment of lawfully assisted mixed-status families.

§ 5.514 Delay, denial, reduction or termination of assistance.

§ 5.514(b) Restrictions on delay, denial, reduction or termination of assistance.

§ 5.514(b)(1) – The Proposed Rule would improperly remove pendency of the DHS appeals process from the list of reasons why HUD may not delay, deny, reduce or terminate assistance on the basis of lack of U.S citizenship or U.S. nationality, or ineligible immigration status of a family member, in direct contravention of the statute. *See* 42 U.S.C § 1436a(d)(4)(B)(ii).

§ 5.514(b)(1)(v) – The Proposed Rule would improperly remove the reference to assistance for mixed families from the subsection, which disregards the statutorily provided protections for mixed-status families. *See* 42 U.S.C. § 1436a(b)(2).

§ 5.514(c)(1) Events causing denial or termination of assistance – General.

§ 5.514(c)(1)(ii) – The Proposed Rule would deny assistance to an applicant or terminate assistance to a tenant if SAVE does not verify eligible status of a family member. There are a number of problems with this provision. First, applicants or tenants who do not receive or who do not apply for financial assistance are not subject to verification requirements under the statute. *See* 42 U.S.C §1436a(d). Furthermore, the proposal conflicts with the provisions of § 5.512(d) in the Proposed Rule that specify additional verification requirements and affected individuals' ability to seek DHS record corrections. Furthermore, the HCD Act specifies that assistance may not be terminated while SAVE verification is still pending. *See* 42 U.S.C § 1436a(d)(4)(B)(ii).

§ 5.514(d) Notice of denial or termination of assistance. The Proposed Rule imposes additional unfunded burdens by requiring housing providers to provide a brief explanation of the reasons for denial or termination of assistance, notify tenants of the criteria and procedures for obtaining relief under the preservation of families provisions at proposed §§ 5.516 and 5.518, and notify the family of their ability to seek records corrections with any agencies that issued or maintains verification documents.

§ 5.516 Availability of preservation assistance to tenant families.

§ 5.516(a)(1) General. The Proposed Rule would improperly remove prorated assistance for mixed families as one of the available types of preservation assistance, in violation of the statute. *See* 42 U.S.C. § 1436a(b)(2).

§ 5.516(a)(2)(i) Availability of assistance – For the Section 236 program. Appears to contain a typo: Should the reference to the 1965 HUD Act actually be to the 1987 Act?

§ 5.516(b) Assistance available to other families in occupancy. HUD improperly attempts to limit temporary deferral of termination of assistance to only those impacted families if they received assistance under a covered Section 214 program on June 19, 1995, the date the original regulations were implemented. However, this amounts to an improper retroactive application of the Proposed Rule. Furthermore, as discussed above, the proposed restrictions exceed the statutory provisions. *See* 42 U.S.C. § 1436a(b)(2).

§ 5.516(c) Section 8 covered programs: Discretion afforded to provide certain family preservation assistance –

§ 5.516(c)(1) Project owners. HUD claims, without support, that it has the discretion to determine under what circumstances families are to be provided one of two statutory forms of assistance to preserve families (either proration of financial assistance to avoid family division, or deferral of termination of assistance to permit an orderly transition to other affordable housing within 18 months), despite the fact that Section 214 of the HCD Act clearly articulates the requirements for such preservation assistance. *See* 42 U.S.C. § 1436a(c)(1). The Proposed Rule must be set aside because it violates the statutory provisions.

§ 5.518 Types of preservation assistance to tenant families.

§ 5.518(a) Continued Assistance.

§ 5.518(a)(1)(i) – HUD proposes to restrict continued financial assistance to only those families who were receiving assistance on June 19, 1995, the date the original regulations were implemented, which would improperly and unnecessarily impose retroactive restrictions on tenants who are complying with the HCD Act and their leasehold requirements.

§ 5.518(a)(1)(ii) – HUD improperly seeks to restrict continued financial assistance to only those families whose head of household or spouse has eligible immigration status. However the HCD Act provides that a single family member with eligible status, including a child, is sufficient to constitute a family that is eligible for prorated financial assistance. *See* 42 U.S.C. § 1436a(b)(2).

§ 5.518(a)(1)(iii) – HUD improperly seeks to exceed the statutory requirements by requiring that all family members must have eligible immigration status in order to qualify for continued assistance, however the statute provides that a single member, even if only a child, is sufficient to qualify the family for assistance. *See* 42 U.S.C. § 1436a(b)(2).

§ 5.518(b) Temporary deferral of termination of assistance. Both the statute and the Proposed Rule ignore the practical realities that mixed-status families will face while attempting to accomplish an "orderly transition" to other affordable housing, particularly because the Proposed Rule would remove the most basic definition of other affordable housing, which is currently defined as unassisted, non-substandard, of appropriate size for the family, and with rent not exceeding what the family currently pays plus 25% more, including utilities. Given the limited supply of affordable housing that would meet HUD's definition, particularly in high-cost metropolitan areas, and the large number of impacted families and individuals, which HUD admits would likely exceed 108,000 individuals, forced evictions of impacted families would cause a crisis of homelessness. *See* HUD's Impact Analysis at page 8.

§ 5.520 Proration of assistance.

§ 5.520(a) Applicability. The Proposed Rule time-limits prorated assistance for mixed-status families with at least one eligible family member to only be available "pending final verification" of the other family members. This proposed regulation is unauthorized by the HCD Act, which definitively provides for prorated assistance to mixed-status families and places no time limit on such prorated assistance. *See* 42 U.S.C. § 1436a(b)(2). The Proposed Rule must be set aside because it violates the statutory provisions.

§ 5.522 Prohibition of assistance to noncitizen students.

§ 5.522(b) Family of noncitizen students. The Proposed Rule removes language making clear that the prohibition on providing assistance to a noncitizen student does not extend to the noncitizen student's citizen spouse and their children, in conflict with the statutory provision for prorated assistance to mixed-status families. *See* 42 U.S.C. § 1436a(b)(2).