



September 11, 2025

SUBMITTED ELECTRONICALLY
VIA EMAIL TO PRIVACY@HUD.GOV AND
VIA FEDERAL E-RULEMAKING PORTAL: <http://www.regulations.gov>

Attention: Privacy Office
Shalanda Capehard, Acting Chief Privacy Officer
The Executive Secretariat
U.S. Department of Housing and Urban Development
451 7th Street SW; Room 10139
Washington, DC 20410-0001

Re: U.S. Department of Housing and Urban Development Docket No. FR-7106-N-07,
Privacy Act of 1974; System of Records

To Whom It May Concern:

The Council of Large Public Housing Authorities (“CLPHA”) and Reno & Cavanaugh, PLLC (“Reno & Cavanaugh”) hereby submit comments regarding the U.S. Department of Housing and Urban Development (“HUD”) notice of intent to modify the Privacy Act System of Records titled “Freedom of Information Act (FOIA) Management System (FMS2)”, (the “FMS2 SORN”).

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 more than seventy 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 been working with our clients on housing issues for many years. Reno & Cavanaugh was founded in 1977, and over the past three decades the firm 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 years 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 still remains at the center of everything we do.

Among other things, the FMS2 SORN states that HUD intends to add date of birth, place of birth, and citizenship to the Categories of Records that HUD maintains about individuals in FMS2, which

may be subject to release pursuant to FOIA.¹ In the more than fifty years since implementation of the Privacy Act of 1974, we are unaware of any prior attempt by HUD to add such information to the FMS2. HUD's attempt to add these records is an unwarranted invasion of personal privacy that violates the Privacy Act and associated legal requirements and must be withdrawn.

First, the FMS2 SORN violates 5 U.S.C. § 552a(e)(4)(D) because it fails to explain the purpose for collecting and adding the new records to FMS2, much less how these records are related to the Routine Uses of Records.² It is impossible for the public to determine if the use of the records is compatible with the purpose for collection and disclosure because HUD failed to provide this critical information as required by law. HUD's attempt to add this new information to FMS2 should fail on this basis alone.

Significantly, the Privacy Act provides that only records pertaining to individual citizens of the United States or aliens lawfully admitted for permanent residence may be collected and disclosed by a federal agency. 5 U.S.C. § 552a(a)(2). Accordingly, HUD has no right to collect the date or place of birth nor the citizenship status of anyone other than U.S. citizens and aliens lawfully admitted for permanent residence.

Furthermore, even if HUD had the right to collect such information from non-citizens, it has no right to disclose any information in FMS2 to another federal agency, or instrumentality or government for civil or criminal law enforcement activity unless such activity is authorized by law. 5 U.S.C. § 552a(b)(7). We suspect that HUD desires to add birthdate, place of birth and citizenship status to FMS2 pursuant to Executive Order 14159, "Protecting the American People Against Invasion" dated January 20, 2025. Notably, Section 23(b) of Executive Order 14159 provides that it "shall be implemented consistent with applicable law and subject to the availability of appropriations." Executive Orders do not carry the weight of law, particularly when they conflict with settled law.

The applicable law with respect to citizenship status and federally assisted housing is Section 214 of the Housing and Community Development Act (the "HCD Act"), which has been the law for the past 45 years. 42 U.S.C. § 1436a. The HCD Act provides that declaration of immigration status and subsequent verification is only required for individuals who either receive or are applying for federal financial assistance. *See* 42 U.S.C. § 1436a(d). Therefore, there is no statutory obligation for persons who do not contend their immigration status and who do not receive federal financial assistance to provide declarations or submit documentation for verification. Any attempt to collect place of birth and citizenship information from all persons who reside in federally assisted housing regardless of whether they receive federal financial assistance directly contravenes current law. Accordingly, addition of such information to FMS2 would also violate current law.

The use of immigration records under the FMS2 SORN violates privacy interests. Applicants and current program participants consent to the use of their immigration status information for

¹ Additionally, HUD proposes to include an individual's designated representative as an authorized requester of information from FMS2, although "designated representative" is undefined.

² The Privacy Act of 1974, as amended, defines "routine use" as the "disclosure of a record [and], the use of such record for a purpose which is compatible with the purpose for which it was collected." 5 U.S.C. § 552a(a)(7).

eligibility verification purposes only. 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 FMS2 SORN, however, contemplates the further use of such immigration information beyond eligibility verification. This conflicts with the underlying statute's requirement that the individual's privacy be protected.

Additionally, the Privacy Act, 5 U.S.C. § 552(b), and HUD's FOIA regulations set forth several exemptions from disclosure of records, including personal privacy. 24 CFR § 15.107(b)(6) specifically states:

Exemption 6 (5 U.S.C. 552(b)(6)) protects information involving matters of personal privacy. This information may include personnel, medical, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Names, addresses, telephone numbers, and email addresses of persons residing in public or assisted housing or of borrowers in FHA-insured single family mortgage transactions generally will not be disclosed.

Individuals' birthdates, place of birth and citizenship status are precisely the types of information that would be exempt from disclosure pursuant to Exemption 6. Multiple courts have parsed what constitute "similar files" warranting protection from disclosure, including the Supreme Court regarding citizenship records, place of birth, and date of birth.

A proper analysis of the exemption must also take into account the fact that "personnel and medical files," the two benchmarks for measuring the term "similar files," are likely to contain much information about a particular individual that is not intimate. Information such as *place of birth*, *date of birth*, date of marriage, employment history, and comparable data is not normally regarded as highly personal, and yet respondent does not disagree that such information, if contained in a "personnel" or "medical" file, would be exempt from any disclosure that would constitute a clearly unwarranted invasion of personal privacy. The *passport information* here requested, if it exists, presumably would be found in files containing much of the same kind of information.³

HUD's intention to add date of birth, place of birth and citizenship status to the FMS2 must be withdrawn because it is an improper and illegal attempt to eviscerate the Privacy Act protections that safeguard individuals from unwarranted invasions of personal privacy. HUD's attempted use of an administrative process to disregard and do an end run around settled legal protections is deeply troubling. Additionally, HUD's FMS2 SORN is non-compliant with the Privacy Act itself because it fails to document the purpose for collecting and adding the new records to FMS2 and neglects to explain how the new records are related to the Routine Uses of Records, and must be withdrawn on this basis alone.

For the reasons set forth herein, CLPHA and Reno & Cavanaugh strongly oppose the contemplated modification and urge HUD to withdraw the FMS2 SORN, and refrain from adding date of birth,

³ U.S. Dept. of State v. Washington Post Co., 456 U.S. 595, 600-602 (1982) (emphasis added), remanded for further proceedings.

place of birth, and citizenship status to the Categories of Records in the FMS2. Thank you for the opportunity to comment. If you have any questions, please do not hesitate to contact us.