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July 9, 2019

Office of General Counsel
Rules Docket Clerk
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0001

Re: Docket No. FR-6124-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 to HUD’s proposed rule titled “Housing and Community Development Act of 1980: Verification of Eligible Status” (the “Proposed Rule”).

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 in the country.

Reno & Cavanaugh represents more than one hundred PHAs throughout the country. 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. Though 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.

We are vehemently opposed to the Proposed Rule as it is contrary to current law and public policy.

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 most need in our communities. 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 member does not have eligible immigration status to receive HUD assistance. Under current law, rental assistance to such mixed-status families is prorated to ensure that only those members with eligible immigration status receive the rental assistance. The ineligible household members do not receive such HUD assistance, instead paying their portion of the rent unassisted, often at market rates.

The Proposed Rule seeks to eliminate mixed-status families by requiring every member of the household, regardless of whether such member receives HUD rental assistance, to have eligible immigration status. In application, the Proposed Rule would leave such mixed-status families two untenable options: (1) leave HUD-assisted housing altogether to avoid eviction or (2) separate those members without eligible immigration status from the household to allow those with eligible immigration status to remain in HUD-assisted housing. According to HUD’s own April 15, 2019, Regulatory Impact Analysis of the Proposed Rule (“HUD’s Impact Analysis”), “HUD expects that fear of the family being separated would lead to prompt evacuation by most mixed households.” HUD’s Impact Analysis at page 7. HUD further notes that the second option of breaking up the household is “a ruthless one” and as such “is unlikely to occur.” HUD’s Impact Analysis at 16.

The fear and uncertainty caused by the Proposed Rule, even in this preliminary stage, strikes at the heart of our 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 our communities. Housing stability acts as a keystone of individuals’ and families’ abilities to achieve academically, secure and maintain employment, and achieve regular access to needed health services. It is telling that HUD acknowledges that “a household would probably suffer a worse outcome by trying to adapt to the new rules than by leaving.” HUD’s Impact Analysis at page 9. We oppose such action by HUD when its clear purpose is to create fear and force ruthless decisions on our communities.

Furthermore, research has shown that housing stability has a significant impact on children’s school performance and long-term outcomes, such as graduation rates and post-secondary activities. PHAs are actively exploring how they can align with and add value to local approaches that aim to improve educational outcomes. HUD’s Impact Analysis makes it clear that children will be disproportionately impacted by the Proposed Rule. HUD’s acknowledgement on the one hand that growing up in intact households is important to a child’s economic mobility and their cognitive, behavioral, physical, and mental health, *see* HUD’s Impact Analysis at page 9, and its acknowledgement on the other hand that the Proposed Rule is a ruthless one whose goal is to instill fear is proof positive that the Proposed Rule directly contradicts HUD’s own mission and should therefore be withdrawn immediately.

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

I. The Proposed Rule is Not Supported by Law.

As a preliminary matter, we note that HUD fails to articulate valid legal justifications for the significant changes in policy and interpretation contained in the Proposed Rule. Instead, HUD asserts that such proposals are grounded on what HUD “believes” or because HUD “no longer agrees” with certain long-held policies, or else HUD asserts without evidence that its proposals are “more in keeping with” or “better reflects” the provisions of Section 214 of the Housing and Community Development Act (the “HCD Act”). Without a valid legal justification, HUD’s assertions are merely unsubstantiated claims and do not carry the force of law. Further, HUD cites Executive Order 13828, “Reducing Poverty in America by Promoting Opportunity and Economic Mobility” (“Executive Order 13828”) and a Presidential Memorandum of March 6, 2017, “Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits...” (“Presidential Memo 03-06-17”) as justifications for the Proposed Rule. Notwithstanding that neither Executive Order 13828 nor Presidential Memo 03-06-17 have the force of law, both do provide that they “shall be implemented consistent with applicable law...” 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.

a. The Proposed Rule Directly Conflicts with Provisions of 42 U.S.C. § 1436a.

Under the HCD Act, declaration of immigration status and subsequent verification is only required for individuals who either receive or are applying for financial assistance. *See* 42 U.S.C. § 1436a(d). Therefore, persons who do not contend their immigration status and who do not receive financial assistance do not have a statutory obligation to provide declarations or submit documentation for verification. Therefore, the 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 current law.

Further, the requirement under the Proposed Rule 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 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 to HUD for HUD review only. *See* 42 U.S.C. § 1436a(d)(1)(A).

In cases where financial assistance to an individual is to be terminated (following completion of the applicable hearing process), Section 214 authorizes continued assistance to avoid “division of the family,” provided the head of household or spouse has eligible immigration status. *See* 42 U.S.C. § 1436a(c)(1)(A). Under current law, “family” means the head of household, any spouse, any parents of the household head or the spouse, and also any children of the household head or spouse. 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, therefore directly contradicts existing law.

Restricting leaseholder status to only verified individuals who may serve as the head of household or spouse via the Proposed Rule also directly conflicts with existing law, since no such restriction currently exists. Further, current law specifically recognizes that a child of the head of household or spouse constitutes a family unit that is eligible for financial assistance.

b. *The Proposed Rule Cannot be Applied Retrospectively.*

There is a long-standing presumption against rules with retroactive effect, particularly with regard to 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. Furthermore, it took HUD seven years to implement the original Section 214 regulations. The preamble to the final rule states that HUD determined Section 214 was “too complex ... to be self-implementing as of the date of enactment of the 1987 Act.” After 32 years of only prospective application of Section 214, 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 Rule, however, contemplates the further use of such immigration information beyond eligibility verification. The preamble to the Proposed Rule explains that limiting tenancy to only those with verified eligible immigration status “would better facilitate locating such person and bringing any necessary administrative or legal actions.” Further, the proposed revisions to Section 5.508(d) specifically disclaims any responsibility “for the further use or transmission of the evidence” of eligible immigration status. This conflicts with the underlying statute’s requirement that the individual’s privacy be protected, potentially exposing PHAs and private landlords to 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 *Texas Department of Housing and Community Affairs, et al., v. Inclusive Communities Project, Inc.*, 576 U.S. ___, 135 S.Ct. 2507 (2015) decision 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. As discussed in detail in these comments, HUD has failed to articulate any legitimate non-discriminatory basis 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. 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 prohibits HUD from making “financial assistance” (not just “assistance” as HUD claims) available to ineligible non-citizens, and affirmatively provides for proration of financial assistance in mixed-status families. See 42 U.S.C. §§ 1436a(b) & (i)(1). Given that during the statute’s 39 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.

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 significant impact on PHAs. This is particularly true for 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, as the Proposed Rule requires that all members of current households living in Section 214 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 have 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 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 shortage of available decent, safe and sanitary affordable housing options, as documented by HUD (<https://www.huduser.gov/portal/pilot-study-landlord-acceptance-hcv.html>).

c. The Proposed Rule Will Have Significant Economic Impact Across the Country.

HUD's Impact Analysis correctly concludes that the Proposed Rule is a "significant regulatory action," however it inexplicably claims it is not economically significant. 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 the costs and impacts, admits that costs associated with homelessness range from \$20,000 to \$50,000 per person per year. HUD also estimates that elimination of mixed-status families will cost the Federal government an additional \$179-210 million per year, which would require a significant increase in HUD's budget by \$193-227 million to provide subsidies to the replacement households. HUD also admits that its ability to obtain higher budget amounts for these needs is likely limited, leading to decreases in the number of households able to be served, 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 published on July 3, 2019, the Housing Authority of the City of Los Angeles, for example, reported an estimated additional administrative cost between \$24,330,656 and \$49,343,006 for its public housing programs and \$2,265,364 for its Section 8 programs. HUD has made no allowances for such disproportionate regional impacts.

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 PHAs 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,



Sunia Zatterman
Executive Director
CLPHA



Stephen I. Holmquist
Member
Reno & Cavanaugh, PLLC

Attachment 1

Part 5, Subsection E – Comments on Specific Rule Provisions

§ 5.504 Definitions.

Removes the definition of “Mixed family” from § 5.504(b). HUD must restore this definition because the HCD Act specifically provides for and anticipates provision of financial assistance to mixed-status families. *See* 42 U.S.C. § 1436a(b).

§ 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). 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 whose head of household has eligible immigration status is eligible for prorated assistance but only until final determinations are reached about the eligibility of other family members. This conflicts with the HCD Act that provides for prorated assistance so long as a single family member has eligible status. *See* 42 U.S.C. §§ 1436a(b)(2) and (d).

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

§ 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).

§ 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 provides that collection of documentation from this age group is optional. (*See* 42 U.S.C. § 1436a(d)(1)(A)) It is unclear from the Proposed Rule whether such documentation of citizenship status will be

verified via SAVE, however the HCD Act provides that such documentation, if collected, should only be reviewed by HUD. *See* 42 U.S.C. § 1436a(d)(1)(A).

§ 5.508(c)(1)(ii) Declaration. 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. (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) – 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 (42 U.S.C. § 1436a(d)) by requiring all family members to sign the verification forms even if they receive no financial assistance. The Proposed Rule must be ignored and set aside.

§ 5.508(d)(1)(ii) – 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. (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 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))

§ 5.508(d)(3) Notice of release of evidence 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 unspecified parties], and 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 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))

§ 5.508(e) Notification of requirements of Section 214

§ 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).

§ 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)(v) – Contains a typo that requires correction: “Inform tenant show [sic] to obtain assistance under the preservation of families provisions of §§ 5.516 and 5.518.”

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

§ 5.508(f)(1) Applicants. Insert the word “financial” before “assistance” to clarify and conform to the statute, which only requires submission of evidence of eligible status if the applicant is applying for financial assistance. *See* 42 U.S.C. §1436a(d).

§ 5.508(f)(3) New occupants of assisted housing. Once again, the Proposed Rule exceeds HUD's statutory authority by requiring all new occupants to submit evidence of citizenship regardless of whether the occupant is receiving 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 for continuous 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))

§ 5.508(g) Extensions of time to submit evidence of eligible status

§ 5.508(g)(1) Extensions of time to submit evidence of eligible status. Although the statute provides for an unconditional 30-day extension, 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.

§ 5.512 Verification of eligible immigration status.

§ 5.512(a) General. The Proposed Rule exceeds HUD’s statutory authority by requiring at least the head of household or spouse to verify eligibility before financial assistance is received, whereas the HCD Act requires that only one family member need be eligible to receive financial assistance. *See* 42 U.S.C. §1436a(b).

§ 5.512(b) Initial verification. Although the statute restricts the review of the verification documentation of persons aged 62 years or older to only HUD, the proposed rule erroneously requires the use of DHS’s SAVE system. (*See* 42 U.S.C. §1436a(d)(1)(A)) 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.

§ 5.512(c) Additional verification. The Proposed Rule is administratively burdensome and would require housing providers to request additional verification within 10 days of receipt of the initial verification from SAVE, and requires submission of an additional request to SAVE with unspecified “optional additional information”.

§ 5.512(d) 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(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, however 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(c)(i) and (d) in the Proposed Rule that specify additional verification requirements and affected individuals' ability to seek DHS record corrections. Furthermore, per § 5.14(b)(1)(i) of the Proposed Rule, assistance may not be terminated while SAVE verification is still pending.

§ 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 and also notify tenants of the criteria and procedures for obtaining relief under the preservation of families provisions, and that any family member may seek record corrections with DHS.

§ 5.516 Availability of preservation assistance to tenant families.

§ 5.516(a)(1)(ii) appears to contain a typo: the citation should be to § 5.18(b) instead of (a).

§ 5.516(a)(2)(ii) 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 and furthermore the proposed restrictions exceed the statutory provisions.

§ 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.

§ 5.518 Types of preservation assistance to tenant families.

§ 5.518(a) Continued Assistance.

§ 5.518(a)(1) – 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)(2) – 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)(3) – 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 ineligible families will face while attempting to accomplish an “orderly transition” to other affordable housing, particularly because such other affordable housing is defined as unassisted, non-substandard, of appropriate size for the family and the rent cannot exceed 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 urban 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 7.