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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR-6524-P-01]

RIN 2501-AE16

Housing and Community Development Act of 1980: Verification of Eligible Status

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: Section 214 of the Housing and Community Development Act of 1980, as amended (“Section 214”), prohibits the Secretary of HUD from making financial assistance available to persons other than United States citizens or certain categories of eligible noncitizens in HUD’s public and specified assisted housing programs. This proposed rule would revise HUD’s Section 214 implementing regulations to require the verification of U.S. citizenship or the eligible immigration status of all applicants and recipients of assistance under a covered program regardless of age. The proposed rule would also make prorated assistance a temporary condition pending verification of eligible status of all family members, where permitted by statute, as opposed to under HUD’s current regulations where prorated assistance could continue indefinitely. These amendments would bring HUD’s regulations into greater alignment with the wording and purpose of Section 214 and align with the current Administration’s priorities and regulatory reform efforts.

DATES: *Comments are due by: [Insert date 60 days from date of publication in the Federal Register].*

ADDRESSES: There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Electronic Submission of Comments. Comments may be submitted electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages

commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through www.regulations.gov can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that website to submit comments electronically.

2. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

Note: To receive consideration as a public comment, comments must be submitted through one of the two methods specified above.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying during regular business hours at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

In accordance with 5 U.S.C. 553(b)(4), a summary of this proposed rule may be found at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Multifamily Housing programs: Jennifer Larson, Director, Office of Multifamily Asset Management and Portfolio Oversight, Office of Multifamily Housing Programs, Department of Housing and Urban Development, 451 7th Street, SW, Room 6162, Washington, DC 20410; telephone number (202) 402-7769 (this is not a toll-free number).

Public Housing and Voucher programs: Todd Thomas, Acting Deputy Assistant Secretary, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 4204, Washington, DC 20410; telephone number (202) 731-1442 (this is not a toll-free number).

HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit
<https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:

I. Section 214 of the Housing and Community Development Act of 1980

Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) (“Section 214”) prohibits HUD from making certain financial assistance available to persons other than United States citizens or specified categories of eligible aliens. The Section 214 requirements apply to financial assistance provided under the following HUD programs (collectively referred to in this preamble as “Section 214 covered programs” or “covered programs”):

1. Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);
2. Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program);
3. Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program); and

4. The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) which covers: HUD's Public Housing programs, the Section 8 rental assistance programs, and the Housing Development Grant programs (with respect to low-income units only).¹

Section 214(d)(2) states that the "Secretary [of HUD] may not provide ... assistance for the benefit of ... [an] individual before documentation [of eligible immigration status] is presented and verified."² This is consistent with the statute's goal of ensuring that HUD's limited financial resources be used to aid families lawfully present in the United States, encompassing U.S. citizens and nationals, as well as noncitizens with eligible immigration status as set forth in Section 214(a). However, Section 214 also contains several provisions to mitigate the potential impacts on the elderly and families. The Housing and Community Development Act of 1987³ ("1987 HCD Act") amended Section 214 to apply certain status verification requirements to individuals younger than 62 years of age.⁴ The 1987 HCD Act also amended Section 214 to authorize "preservation assistance" to prevent the separation of families already receiving assistance on "the date of enactment of the" 1987 HCD Act (i.e., February 5, 1988). Specifically, Section 214(c)(1)(A) authorizes the continuation of assistance to such a family if "necessary to avoid the division of the family" and the head of household or spouse has eligible immigration status.⁵ Assistance to such families, however, "may be provided only on a prorated basis, under which the amount of financial assistance is based on the percentage of the total number of [eligible] members."⁶ Section 214(c)(1)(B) also authorized the temporary deferral of termination of assistance for families receiving assistance on February 5, 1988, but who were ineligible for

¹ Section 214(b). Additional limitations on noncitizen eligibility are also found in the Personal Responsibility and Work Opportunity Act of 1996, 8 U.S.C. 1611(b)(1)(E).

² Section 214(i)(2) and HUD's regulations at 24 CFR 5.512(b) provide that a PHA may provide assistance before affirmatively verifying eligibility. This discretion is not permanent and PHAs are obligated to complete verification of all members of the family except citizens and persons with eligible immigration status who are 62 years of age or older.

³ Public Law 100-242, enacted February 5, 1988, <https://www.congress.gov/100/statute/STATUTE-101/STATUTE-101-Pg1815.pdf>.

⁴ Section 214(d)(2).

⁵ Section 214(c)(1)(A).

⁶ *Id.*

continued assistance on a prorated basis “to permit the orderly transition of the individual and any family members involved to other affordable housing.”⁷

II. HUD’s Regulations Implementing Section 214

HUD’s original regulations implementing Section 214 were promulgated by final rule published on March 20, 1995, with an effective date of June 19, 1995 (“the 1995 final rule”).⁸ The 1995 final rule created virtually identical noncitizens regulations for the various HUD programs covered by Section 214. On March 27, 1996,⁹ HUD published a final rule that streamlined these regulations by consolidating requirements in a new subpart E to 24 CFR part 5 (titled “Restrictions on Assistance to Noncitizens”), which is still codified and in effect. HUD has amended 24 CFR part 5, subpart E, several times through rulemaking to incorporate and implement statutory changes¹⁰ and to make conforming amendments as part of cross-cutting rulemakings that revised regulations for Section 214 covered programs, among other regulations.¹¹

The preamble to the 1995 final rule stated that, for purposes of eligibility for preservation assistance, HUD considered the effective date of the final rule as the pivotal date rather than the date of enactment of the statute. As noted above, the amendments to Section 214 made by the 1987 HCD Act condition a family’s eligibility for preservation assistance on the family’s receipt of assistance on the date of the statute’s enactment. HUD explained in the preamble to the 1995 final rule that it had determined the provisions of Section 214 too “complex to be determined self-implementing as of the date of enactment of the 1987 HCD Act (February 5, 1988).” Thus, HUD’s regulations use the effective date of the final rule (June 19, 1995) as the relevant date for determining eligibility for preservation assistance.

⁷ Section 214(c)(1)(B)(i).

⁸ 60 FR 14816.

⁹ 61 FR 13614.

¹⁰ 61 FR 60535, Nov. 29, 1996; 64 FR 25726, May 12, 1999; 67 FR 65272, Oct. 23, 2002.

¹¹ 63 FR 23826, April 30, 1998; 81 FR 12354, Mar. 8, 2016; 88 FR 9600, Feb. 14, 2023; 89 FR 38224, May 7, 2024.

HUD's current regulations require that each family member applying for assistance under a Section 214 covered program either: (1) submit a declaration declaring that he or she is a U.S. citizen, as defined in 24 CFR 5.504(b), or a noncitizen with eligible immigration status;¹² or (2) elect not to contend eligible immigration status and, therefore, not submit documentation for verification.¹³ Notably, HUD's current regulations do not require verification of citizenship for persons declaring to be U.S. citizens, whereas persons declaring eligible immigration status must submit evidence, including documentation, for verification purposes.¹⁴ Family members who declare themselves eligible noncitizens must provide the original of a document designated by the Department of Homeland Security ("DHS")¹⁵ as acceptable evidence of immigration status¹⁶ and consent to transmittal of a copy of the document and the information contained on the document to DHS to verify whether the individual has eligible immigration status.¹⁷ Verification of the immigration status of the individual can be completed by utilizing Systematic Alien Verification for Entitlements ("SAVE"). SAVE is an online service administered by U.S. Citizenship and Immigration Services (USCIS) within the Department of Homeland Security (DHS), that allows registered federal, state, and local government agencies to verify immigration status and U.S. citizenship of applicants seeking benefits, licenses, and for other authorized purposes.¹⁸

Section 214 directly speaks to proration of assistance in two circumstances: (1) When at least one family member has verified eligibility, the eligibility for other family members has not

¹² 24 CFR 5.508(c).

¹³ 24 CFR 5.508(e).

¹⁴ However, HUD assumes that, for the purposes of the preamble discussion as well as the Regulatory Impact Analysis, there are relatively few noncitizens who falsely declare citizenship under its current rules because individuals who are not eligible citizens or noncitizens have the opportunity to elect "do not contend."

¹⁵ HUD's regulations refer to the Immigration and Naturalization Service (INS), a predecessor agency to DHS; INS was disbanded on March 1, 2003, and its "constituent parts contributed to 3 new federal agencies serving under the newly-formed Department of Homeland Security," Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS). OVERVIEW OF INS HISTORY, USCIS HISTORY OFFICE AND LIBRARY, 11 (2012), <https://www.uscis.gov/sites/default/files/document/fact-sheets/INSHistory.pdf>.

¹⁶ 24 CFR 5.510.

¹⁷ 24 CFR 5.508(d)(2).

¹⁸ <https://www.uscis.gov/save>.

been affirmatively established, and no family member has been established as ineligible; and (2) as prorated continued assistance, which is a form of preservation assistance and is explained in more detail later in this preamble.¹⁹ Both types of prorated assistance, as implemented in HUD’s existing regulations, follow the applicable calculation methods laid out in 24 CFR 5.520.

For the first type of prorated assistance: HUD’s current regulations require that financial assistance made available to a “mixed family” be prorated, based on the number of individuals in the family for whom eligibility has been affirmatively established.²⁰ Under HUD’s current regulations, “mixed family” means a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status. 24 CFR 5.504(b). Under existing § 5.516(a)(1)(iii), this type of prorated assistance must be provided to mixed families if they so request.

The second type of prorated assistance applies in limited circumstances. Section 214(c)(1)(A) provides for proration of preservation assistance for families that were receiving assistance under a Section 214 covered program on February 5, 1988; with a head of household or spouse who is a citizen or national of the United States or in eligible immigration status; and without any family member who does not have eligible immigration status other than the head of household, the head of household’s spouse, the parents of either the head of household or spouse, and any children of the head of household or spouse. Existing § 5.518(a)(1) implements these statutory requirements for prorated continued assistance.²¹ Prorated continued assistance is one of two options for preservation assistance under Section 214; the other is temporary deferral of termination of assistance.²²

III. This Proposed Rule

¹⁹ 42 U.S.C. 1436a(b)(2) and (c)(1)(A).

²⁰ 24 CFR 5.516(a)(1)(iii).

²¹ 42 U.S.C. 1436a(c)(1)(A); 24 CFR 5.518(a)(1).

²² 42 U.S.C. 1436a(c)(1)(B); 24 CFR 5.518(b).

Several factors have prompted HUD to reconsider its noncitizen regulations. This proposed rule would bring HUD’s Section 214 implementing regulations into greater alignment with the wording and purpose of Section 214 by revising HUD’s regulations to require the verification of U.S. citizenship or the eligible immigration status of all applicants and recipients of assistance under a covered program regardless of age, and to make prorated assistance a temporary condition pending verification of eligible status of all family members, where permitted by statute. These amendments would also align with the current Administration’s priorities and regulatory reform efforts. Further, on February 19, 2025, the President issued Executive Order 14218, “*Ending Taxpayer Subsidization of Open Borders*” (“EO 14218”).²³ Among other provisions, section 2(a) of EO 14218 directs the head of each Department or agency, including HUD, to enhance eligibility verification systems, to the maximum extent possible, to ensure that taxpayer-funded benefits exclude any ineligible alien.

Additionally, consistent with the current Administration’s regulatory reform efforts,²⁴ HUD has undertaken a comprehensive review of its regulations to reduce unnecessary regulatory burdens, enhance the effectiveness of those regulations that are necessary, and promote principles underlying the rule of law, including ensuring the conformity of regulations with statutory mandates. HUD believes the proposed regulatory amendments are consistent with the principles of EO 14218 and the current Administration’s regulatory reform efforts.²⁵ The policy changes will bring HUD’s regulations into greater alignment with the requirements of Section 214 and make the administrative process for verification more uniform for citizens and eligible noncitizens.

²³ Executive Order 14218 was published in the *Federal Register* at 90 FR 10581 on February 25, 2025.

²⁴ See, e.g., Executive Order 14192 of January 31, 2025 (“*Unleashing Prosperity Through Deregulation*”), published in the *Federal Register* at 90 FR 9065 on February 6, 2025; and Executive Order 14219 of February 19, 2025 (“*Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative*”), published in the *Federal Register* at 90 FR 10583 on February 25, 2025.

²⁵ Section 2(a)(i) of Executive Order 14218 provides, “(a) . . . [T]o ensure, to the maximum extent permitted by law, that no taxpayer-funded benefits go to unqualified aliens, the head of each executive department or agency (agency) shall: (i) identify all federally funded programs administered by the agency that currently permit illegal aliens to obtain any cash or non-cash public benefit, and, consistent with applicable law, take all appropriate actions to align such programs with the purposes of this order and the requirements of applicable Federal law”

HUD acknowledges that this rulemaking would adversely affect some tenants and applicants for Section 214 covered programs, especially mixed families and ineligible aliens, as well as responsible entities. The most significant effect of this rulemaking would be to transfer assistance from mixed status families to fully eligible households. However, HUD believes that this cost is adequately offset by the reallocation of HUD funds to the intended recipients. Additionally, as explained in the Regulatory Flexibility Act and Paperwork Reduction Act sections of this preamble, HUD believes that the impact on responsible entities would be low. Therefore, HUD has determined that this proposed rule balances the interests of affected parties and responsible entities while improving compliance with statutory obligations and aligning with policy goals.

This rule is proposing the following changes to HUD's regulations in 24 CFR 5.216 and 24 CFR part 5, subpart E:

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

HUD's existing regulations at 24 CFR 5.216 require all applicants and participants to disclose their Social Security Numbers (SSNs) or Employer Identification Numbers except for those who do not contend eligible immigration status. As explained earlier in this preamble, this proposed rule would remove the "do not contend" provision in existing § 5.518(e). HUD is therefore proposing to remove the phrase "except that this section is inapplicable to individuals who do not contend eligible immigration status under subpart E of this part (see § 5.508)" in § 5.216(a) because this qualifying language would no longer be necessary.

HUD's existing regulations at 24 CFR 5.216(e) also exclude participants in HUD housing programs age 62 or older as of January 31, 2010, from submitting certain information including SSNs. Through this proposed rule, HUD is proposing to revise the phrase "except those age 62 or older as of January 31, 2010," from 24 CFR 5.216(e)(1)(i) because this proposed rule would require all applicants and tenants in Section 214 covered programs to submit evidence of U.S. citizenship or eligible immigration status regardless of age. To further effectuate these proposed

changes, HUD is proposing to remove language referring to the January 31, 2010, date in § 5.216(e)(1)(i) and replace it with language providing that each participant whose initial determination of eligibility was begun before the effective date of a future final rule for this rulemaking must submit the information described in the next paragraph, (e)(1)(ii), including a SSN. This applies if the participant meets one of the conditions in existing paragraphs (e)(1)(i)(A)-(C): the participant has not previously disclosed an SSN, has previously disclosed a SSN that HUD or the Social Security Administration found invalid, or has been issued a new SSN.

Together, the result of these changes would affect all participants 62 years of age or older as of January 31, 2010, and all participants who had previously elected to not contend eligible immigration status, who have not yet provided a valid SSN. Following the effective date of the final rule for this rulemaking, these individuals must provide a valid SSN for U.S. citizenship or, as applicable, eligible immigration status verification. These changes would also effectuate other proposed changes in § 5.512(c) of this rulemaking that would require use of a SSN, and/or other information, to conduct verification through SAVE.

§ 5.504(b): Definitions.

To replace outdated terminology, HUD is proposing to remove the definition of “INS” in § 5.504(b) and add a definition of “DHS,” which would mean the Department of Homeland Security.

Because HUD is proposing changes through this rulemaking throughout 24 CFR part 5, subpart E, to remove references to the outdated or nonexistent programs under Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program) and Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program), HUD is proposing to remove the definition of “Housing covered programs” and simply replace instances of this term throughout 24 CFR part 5, subpart E, with “the Section 236 Program.”

Section 214(c) uses the phrase “preservation of families” when describing two specific types of assistance that are available to eligible families in limited circumstances.²⁶ Section 214(c) provides that a responsible entity²⁷ or applicable Secretary shall take one of two actions if, following completion of the applicable hearing process, financial assistance for any individual receiving such assistance on February 5, 1988, is to be terminated. The first statutory option is the continued provision of financial assistance as prorated assistance, if necessary to avoid the division of a family in which the head of household or spouse is a citizen of the United States, a national of the United States, or an individual with eligible immigration status. HUD’s regulations describe this as “continued assistance.” See 24 CFR 5.516(a)(1)(i) and 5.518(a). The second statutory option is to defer the termination of financial assistance, if necessary to permit the orderly transition of the individual and any family members involved to other affordable housing. In accordance with statutory requirements, HUD’s regulations describe this as “temporary deferral of termination of assistance.” See 24 CFR 5.516(a)(1)(ii) and 5.518(b). HUD’s current regulations use the term “preservation assistance” as an umbrella term that includes these types of assistance. See 24 CFR 5.516 and 5.518. Therefore, HUD is proposing a new definition for “preservation assistance,” which would be defined to mean types of assistance under Section 214, including prorated continued assistance and temporary deferral of termination of assistance, available to eligible families pursuant to the requirements in §§ 5.516 and 5.518, which implement statutory requirements for these specific types of assistance. HUD is proposing to remove the third type of preservation assistance in HUD’s existing regulations, “prorated assistance,” see 24 CFR 5.516(a)(1)(iii), through this proposed rule. For more information, see the sections later in this preamble discussing §§ 5.516, 5.518, and 5.520.

HUD is also proposing changes to the definition of “responsible entity” to remove outdated references to the Section 235 Program under the National Housing Act and to add

²⁶ 42 U.S.C. 1436a(c).

²⁷ The phrase “responsible entity” as used in this preamble refers to a PHA or owner, depending on the Section 214 covered program, see existing and proposed 24 CFR 5.504(b).

language clarifying that the responsible entities for the Section 236 Program are mortgagors or project (or housing) owners (if uninsured) and, for the project-based Section 8 Program, are project or housing owners. Related to this change, HUD is proposing to remove the second sentence from the definition of “tenant,”²⁸ which pertains to the Section 235 Program.

Finally, throughout HUD’s regulations there is language referring to the required evidence of eligible status under § 5.508, such as “evidence of eligible immigration status” or “evidence of citizenship or eligible immigration status,” but existing § 5.504(b) defines the term “evidence of citizenship or eligible status” without the word “immigration.” HUD is proposing technical edits throughout 24 CFR part 5, subpart E, to standardize language so it reflects the defined phrase in HUD’s existing regulations, “evidence of citizenship or eligible status.”

§ 5.506(b): Family eligibility for assistance.

HUD is proposing changes to regulatory requirements regarding which families may receive which types of assistance to better implement statutory requirements and add clarifying details. At proposed 24 CFR 5.506(b)(1), this rule would provide that, to be eligible for assistance, every family member residing in the unit must have eligible status as described in paragraph (a), unless the family meets the conditions in paragraphs (b)(2) or (3) of that section, which aligns with statutory requirements and exceptions.

HUD would like to clarify that as used in proposed § 5.506(b)(1) of this rule, “every member of the family” does not include live-in aides and foster adults or foster children, consistent with HUD’s rulemaking implementing sections 102, 103, and 104 of the Housing Opportunity and Modernization Act of 2016 (HOTMA 2016 final rule). See 88 FR 9600.

Existing 24 CFR 5.506(b)(2) provides that a mixed family may be eligible for one of the types of preservation assistance provided in 24 CFR 5.516 and 5.518 (which discuss types of preservation assistance such as prorated continued assistance), and that a family without any

²⁸ The sentence states, “For purposes of this subpart E, the term ‘tenant’ will also be used to include a homebuyer, where appropriate.”

eligible members and receiving assistance on June 19, 1995, may be eligible for temporary deferral of termination of assistance under §§ 5.516 and 5.518. Existing § 5.506(b)(2) captures the second type of prorated assistance and both forms of preservation assistance, discussed elsewhere in this preamble. HUD is proposing to revise this paragraph to restructure the sentence to more closely align with the statutory language of Section 214. Revised § 5.508(b)(2) would provide that despite the ineligibility of one or more family members, a family that was receiving assistance under a Section 214 covered program on June 19, 1995, may be eligible for continued assistance under §§ 5.516 and 5.518.²⁹ If the family does not qualify for continued assistance, then temporary deferral of termination of assistance under proposed §§ 5.516 and 5.518 may be an option for that family. (As explained in existing and proposed § 5.518(b), continued assistance under § 5.518 must be prorated in accordance with § 5.520.)

HUD is proposing a new § 5.506(b)(3) that would capture the type of prorated assistance discussed earlier in this preamble where at least one family member has verified citizenship or eligible immigration status and the remaining family members' verification is pending. Section 5.506(b)(3) would provide that a family with at least one family member of any age who has U.S. citizenship, U.S. nationality, or eligible immigration status is eligible for prorated assistance under § 5.520 pending final verification of the eligibility of other family members. This proposed change more closely aligns HUD's regulations with the statutory language of Section 214, which does not use the phrase "mixed families" but instead states that if "at least one member of a family" has affirmatively established eligibility under the program and Section 214, and the ineligibility of one or more family members has not been affirmatively established under Section 214, any financial assistance made available must be prorated based on the number of eligible family members. Prorated assistance under this proposed paragraph would be temporary while

²⁹ HUD notes that while this limited set of mixed families may continue to receive prorated assistance under the existing preservation assistance provision, under other elements of this proposed rule family members who cannot provide documentation of any eligible status may be subject to reporting by PHAs, in compliance with PRWORA, and owners (depending on determinations made by the PHA or owner about whether a member of a household is ineligible for assistance because the individual is present in the U.S. in violation of the Immigration and Nationality Act).

verification of eligible status is ongoing for outstanding members of the family. At the time of enactment of Section 214, verification of eligible immigration status was a manual, paper-driven process that could take days or even weeks to complete. Prorated assistance struck a balance with timely permitting assistance but providing an incentive to cooperate in timely completion. Today, verification through SAVE is almost instantaneous in most instances.³⁰ Similarly, this proposed rule at § 5.512(c) would require responsible entities to verify citizenship and immigration status through SAVE or, in cases where secondary verification is needed, see proposed § 5.512(c)(2) and (d), through review of submitted documents and, as specified in HUD guidance, by instituting secondary verification in SAVE. Thus, prorated assistance should rarely be applicable and then of short duration.³¹ However, this proposed rule would not prevent assistance from being provided, as applicable under HUD’s regulations, before secondary verification or informal hearing proceedings have concluded, see 24 CFR 5.512 and 5.514.

§ 5.508 Submission of evidence for verification of eligible immigration status.

HUD is proposing several substantive changes to 24 CFR 5.508, as well as technical changes for consistency with changes discussed in other sections in this preamble.

§ 5.508(b)(1): Evidence of citizenship.

Under HUD’s current regulations at 24 CFR 5.508(b)(1), U.S. citizens and U.S. nationals must submit a signed declaration of U.S. citizenship or U.S. nationality to the responsible entity and the responsible entity may—but is not required to—request additional documentation for these individuals. In this proposed rule, HUD is proposing revisions to § 5.508(b)(1) to require persons who declare themselves to have U.S. citizenship or U.S. nationality to provide a signed declaration, as is the case under HUD’s existing regulation, and, newly, a verification consent form. HUD is proposing elsewhere in this rulemaking that responsible entities will verify U.S. citizenship and/or immigration status through submission of biographic information (first name,

³⁰ <https://www.uscis.gov/save/about-save/save-verification-response-time>.

³¹ This does not apply to prorated assistance provided to families eligible for continued assistance as preservation assistance. See 24 CFR 5.516 and 5.518.

last name, and date of birth) and an approved government-issued numeric identifier, including a Social Security number, to SAVE (see proposed § 5.512(c)).³² Because of this change, HUD is proposing in § 5.508(b)(1) to require persons declaring U.S. citizenship or U.S. nationality to provide a verification consent form as described in proposed § 5.508(d) to consent to responsible entities' submission of information to SAVE³³ and, in instances of cases which may require secondary verification, to collect and review documentation.

HUD is proposing to remove the existing language in § 5.508(b)(1) permitting responsible entities to request documentation to verify a citizenship declaration during an individual's initial submission of evidence. Under this proposed rule, documentation for citizenship verification purposes would be required for purposes of secondary verification of U.S. citizenship, see proposed § 5.512(c)(2) and (d)(2).

§ 5.508(b)(2) and (3): Evidence of eligible immigration status.

HUD's regulations currently require that responsible entities verify the eligible immigration status of all noncitizen recipients of assistance under a Section 214 covered program who are under the age of 62 beginning with these recipients' submission of evidence pursuant to 24 CFR 5.508(b)(2) and (3). This rulemaking proposes to require all noncitizens, regardless of age, in Section 214 covered programs to submit evidence of citizenship or eligible status by removing existing paragraph (b)(2) and redesignation of existing paragraph (b)(3) as (b)(2) and revising it to state that all noncitizens must provide the evidence documents specified therein. These changes help effectuate the goal of this proposed rulemaking to ensure that only U.S. citizens or nationals and eligible noncitizens under Section 214 and other relevant legal authorities benefit from HUD federal financial assistance.

§ 5.508(c) and (d): Declaration and verification consent form.

³² For more information on U.S. citizenship and SAVE, see <https://www.uscis.gov/save/about-save/about-save>.

³³ User agencies must execute a Memorandum of Agreement with DHS/USCIS and register to use the SAVE program in order to receive point in time immigration status and U.S. citizenship information for benefit applicants. HUD as the User-Agency provides access to PHAs and owners to use SAVE.

HUD's existing regulations at § 5.508(c) require only individuals who contend to have eligible status to submit a declaration to the responsible entity. Similarly, § 5.508(d)(1) currently provides that each noncitizen who declares eligible immigration status, except certain noncitizens who are 62 years or older as described in paragraph (b)(1) of that section, must sign a verification consent form. Since HUD is proposing to remove the option for individuals to not contend that they have U.S. citizenship or eligible immigration status (see the next section in this preamble), HUD is proposing in § 5.508(c) that each family member, regardless of age, must submit a written declaration that the person is a U.S. citizen or a noncitizen with eligible immigration status as set forth in HUD's regulations.

HUD is further proposing, in § 5.508(d)(1), that each family member regardless of age, must sign a verification consent form.³⁴ Under proposed § 5.508(d)(2), this form must provide notice that responsible entities will collect and review evidence of citizenship or eligible status for verification purposes and that responsible entities may release this evidence to HUD, as required by HUD, and to DHS for purposes of verifying U.S. citizenship or eligible immigration status. Proposed § 5.508(d)(3) would provide similar notice, but about the possible release of evidence of U.S. citizenship and eligible immigration status by HUD to DHS only for verification purposes. The requirement to sign the verification consent form would include all noncitizens in Section 214 covered programs, regardless of age, in conformity with proposed changes to § 5.508(b)(2) that would require all noncitizens in Section 214 covered programs, regardless of age, to submit evidence documents for verification purposes. As explained earlier in this preamble, “each family member” would not include live-in aides and foster adults or foster children consistent with HUD's HOTMA 2016 final rule. See 88 FR 9600.

Existing § 5.508(e): The “do not contend” provision.

³⁴ HUD notes that it does not propose to adopt a specific consent form for use by Responsible Entities. Owners and PHAs will remain responsible for creating the declaration and consent forms, consistent with current HUD procedures. The content of these consent forms must be consistent with 24 CFR 5.508(d)(2) and (3).

The language of Section 214 contemplates that HUD assistance under a covered program will generally be contingent on verification of eligible status of applicants and tenants. However, the “do not contend” provision in 24 CFR 5.508(e) does not align with the statute. Section 214 does not provide any option for a family member to not contend eligible status. Section 5.508(e) in HUD’s existing regulations excuses individuals from submitting documentation if they do not contend to have eligible immigration status. This results in no actual determination of immigration status being made. HUD is therefore proposing to remove the option in § 5.508(e) for persons to elect “do not contend” to have eligible status of any kind (citizenship, nationality, or immigration status). This proposed change will better conform HUD’s regulations to the statutory language of Section 214: the proposed change would ensure that the eligibility of all individuals in a Section 214 covered program has been verified with the support of SAVE.

Additionally, the “do not contend” provision in 24 CFR 5.508(e) facilitates the indefinite use of prorated assistance by a mixed family. Upon reconsideration of its implementing regulations for Section 214, HUD believes that Section 214 requires that no financial assistance be provided to, or on behalf of, an individual if his or her eligible status has not been verified, except for the time that it takes to verify that individual’s eligible status.³⁵ In this respect, Section 214 generally provides that “with respect to a family, the term ‘eligibility’ means the eligibility of each family member.” HUD believes that an individual without verified eligible status living in a mixed household receiving long-term prorated assistance is benefiting from HUD financial assistance in a way that is prohibited by Section 214. As explained earlier in this preamble, see the section discussing § 5.506(b), verification was previously a manual, paper-driven process that took considerable time, but contemporary verification through SAVE is almost instantaneous in most instances.³⁶ Thus, prorated assistance should rarely be applicable and then

³⁵ This does not apply to prorated assistance provided to families eligible for continued assistance as preservation assistance. See 24 CFR 5.516 and 5.518.

³⁶ <https://www.uscis.gov/save/about-save/save-verification-response-time>.

of short duration,³⁷ unless, for example, secondary verification or an informal hearing process is ongoing. The “do not contend” provision is inconsistent with the statutory requirements insofar as it permits prorated assistance of unlimited duration. Because HUD is proposing to remove existing § 5.508(e) and not replace it with other text, HUD is also proposing to redesignate existing § 5.508(f)-(i) as paragraphs (e)-(h). § 5.508(e): Notification of requirements of Section 214.

Proposed § 5.508(e) (currently § 5.508(f)) concerns the notification that responsible entities must provide to applicants and tenants for Section 214 covered programs concerning requirements under Section 214 and HUD’s implementing regulations.

As stated earlier in this preamble, HUD’s regulations currently do not require individuals to submit evidence to verify a declaration of citizenship; a responsible entity may, at its discretion, request such evidence. However, HUD is proposing through this rulemaking to require applicants and tenants to submit evidence of U.S. citizenship to responsible entities with any declaration of U.S. citizenship. Additionally, as stated earlier in this preamble, because of the existing “do not contend” provision, some persons in HUD housing assisted by Section 214 covered programs have not submitted evidence of citizenship or eligible status; HUD is proposing to remove the “do not contend” provision, existing § 5.508(e).

Because of these proposed changes, proposed § 5.508(e)(1)(ii) would require responsible entities to provide notification of Section 214 requirements to certain tenants no later than 30 days after the effective date of HUD’s final rule for this rulemaking. This would apply to tenants that have not submitted evidence of citizenship or eligible status as of the effective date of HUD’s final rule for this rulemaking, including tenants who have previously elected they do not contend to have eligible status.

³⁷ This does not apply to prorated assistance provided to families eligible for continued assistance as preservation assistance. See 24 CFR 5.516 and 5.518.

HUD is also proposing a new paragraph (e)(2)(iv) in § 5.508 that would require the notification provided by responsible entities to applicants and tenants to include a statement that assistance may be prorated based on the calculations provided in § 5.520 to a family with at least one family member of any age who has U.S. citizenship, U.S. nationality, or eligible status pending final verification of the status of other family members, or to families eligible for continued assistance pursuant to § 5.516 and § 5.518. This clarifies the two ways assistance may be prorated under Section 214 and HUD’s implementing regulations for applicants and tenants receiving the required notification.

Public Housing Authorities (PHAs) have certain reporting requirements laid out in an Interagency Notice providing guidance for compliance with Personal Responsibility Work Opportunity Reconciliation Act of 1996 (PRWORA) section 404; this Interagency Notice was published on September 28, 2000. See 65 FR 58301 (“2000 Interagency Notice”). In the preamble to HUD’s May 12, 1999, final rule 24 CFR part 5, subpart E, titled “Revised Restrictions on Assistance to Noncitizens,” 64 FR 25726, HUD explicitly stated that the rule did not implement the provisions of PRWORA which concern immigration and that such required changes would be the subject of future rulemaking. Subsequent revisions to subpart E, however, did not codify PHAs’ reporting requirement which was later clarified in the 2000 Interagency Notice. Additionally, HUD has determined that owners should align with PHAs on this PRWORA reporting requirement. Therefore, HUD is proposing, through this rulemaking, to add a new § 5.508(e)(2)(vi) providing that PHAs or owners, as applicable, may meet reporting requirements by conforming with applicable *Federal Register* Notices, including Interagency Notices (such as the 2000 Interagency Notice at 65 FR 58301), regarding compliance with section 404 of PRWORA. Proposed § 5.508(d)(4) would require the verification consent form to notify individuals that public housing agencies (PHAs) or owners, as applicable, must inform DHS immediately whenever personnel determine that any member of a household is present in the U.S. in violation of the Immigration and Nationality Act. The proposed revision in this rule

would affirm this longstanding reporting requirement under PRWORA, ensuring applicants and existing households have notice of PHAs' obligation to comply with section 404 of PRWORA, and provide individuals with notice of this obligation on PHAs. HUD is also proposing through this rulemaking to extend this requirement to owners to create more uniform program requirements.

Finally, HUD is proposing to reorganize what is currently paragraph (f)(2)(iii), and is paragraph (e)(2)(iii) in this proposed rule, by moving the last sentence—which requires the notification to include information for tenants on how to obtain assistance under §§ 5.516 and 5.518—to a new paragraph (e)(2)(v).

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

Proposed § 5.508(f) (currently § 5.508(g)) concerns when applicants and tenants must submit evidence of citizenship or eligible status. Because of changes described elsewhere in this preamble, HUD is proposing in § 5.508(f)(2)(i) that tenants in mixed families and in a Section 214 covered program who have not previously submitted evidence of citizenship or eligible status would be required to do so within 90 days of the effective date of HUD's final rule for this rulemaking, in accordance with program requirements. This change would further the goal of this proposed rulemaking to ensure that only U.S. citizens or nationals and eligible noncitizens under Section 214 and other relevant legal authorities benefit from HUD federal financial assistance.

Under proposed § 5.508(f)(2)(ii), all other tenants in a Section 214 covered program who have not previously submitted evidence of citizenship or eligible status would be required to do so at the next annual or interim reexamination of income and household composition after the effective date of a final rule for this rulemaking, in accordance with program requirements. This proposed rule would not change the timing of verification for new applicants to a Section 214 covered program, see proposed § 5.508(f)(1).

Existing § 5.508(g)(3), which corresponds to § 5.508(f)(3) in this proposed rule, speaks to when new occupants of assisted units must submit required evidence and requires submission at the first interim or regular reexamination following the person’s occupancy. Upon reconsideration, HUD has determined that the term “occupant” here means new family members. Only family members would come to reside in an assisted unit as contemplated by existing § 5.508(g)(3). Live-in aides and foster adults or children are not considered an “occupant” for purposes of existing § 5.503(g)(3), nor are live-in aides or foster adults or children considered family members for purposes of assistance, consistent with HUD’s rulemaking implementing sections 102, 103, and 104 of the Housing Opportunity and Modernization Act of 2016 (HOTMA 2016 final rule). See 24 CFR 5.603; 88 FR 9600. Therefore, HUD proposes to revise the language in proposed § 5.508(f)(3) to read “new family member” instead of “new occupant.” New family members are treated similar to new applicants, so HUD proposes further revisions that would require new family members to submit required evidence under § 5.508(b) at the same time that an applicant must under proposed § 5.508(f)(1) (existing § 5.508(g)(1)): not later than the date the responsible entity anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur.

Finally, under proposed § 5.508(f)(5), HUD is proposing clarifying language that families must submit required evidence under § 5.508(b) for a family member only one time in accordance with § 5.508(f) during continuously assisted occupancy under any Section 214 program. HUD is also proposing new language to clarify that if a family member’s citizenship or immigration status changes during occupancy, the family is required to immediately notify and submit evidence of the new citizenship or eligible status to the responsible HUD affiliate, grantee, or entity.

§ 5.508(g): Extensions of time to submit evidence of citizenship or eligible status.

Proposed § 5.508(g) (currently § 5.508(h)) governs extensions of time periods under proposed § 5.508(f) (currently § 5.508(g)). HUD is proposing technical changes to paragraph (g)

to align it with changes discussed elsewhere in this preamble, and to add language clarifying that, regardless of how many individual family members may be granted an extension, the total extension of time granted to a family altogether is limited to 30 days. For mixed families, this would mean that under proposed § 5.508(f)(2)(i), which provides that tenants in mixed families must provide evidence required under § 5.508(b) within 90 days of the effective date of a future final rule for this rulemaking, and this proposed extension provision, individual family members must submit the required evidence under § 5.508(b) no later than 120 days after the effective date of a future final rule for this rulemaking if any extensions are granted.

§ 5.510 Documents of citizenship and eligible immigration status.

Existing § 5.510 requires responsible entities to request and review original or certified copies of documents evidencing citizenship and eligible immigration status in accordance with 24 CFR part 5, subpart E. It requires responsible entities to maintain photocopies of documents and return original or certified copies of documents to families, and describes what constitutes acceptable documentation for evidence of eligible immigration status.

Because this rulemaking would require persons declaring to be U.S. citizens or nationals to submit documentation for secondary verification purposes under proposed § 5.512(d), HUD is proposing to add a new paragraph (b) that describes acceptable documentation for evidence of U.S. citizenship and U.S. nationality. These would include a U.S. birth certificate, a naturalization certificate, a consular report of birth abroad (FS-240), a valid unexpired U.S. passport, a certificate of citizenship, or other appropriate documentation that HUD may specify in guidance. As stated elsewhere in this preamble, primary verification would be done by responsible entities through the SAVE program under proposed § 5.512(c)(1). Documentation described in § 5.510 would become relevant in situations where primary verification does not confirm U.S. citizenship, U.S. nationality, or immigration status and secondary verification is needed under proposed § 5.512(c)(2) and (d).

HUD is proposing to redesignate existing § 5.510(b) as proposed § 5.510(c), and to replace an extraneous cross reference in this paragraph to § 5.506(a) with a cross reference to Section 214. Existing § 5.510(b) refers to “categories mentioned in § 5.506(a),” but § 5.506(a) does not list categories of eligible immigration status; it provides a further cross reference to Section 214’s categories. Therefore, HUD is proposing in 5.510(c) to, as § 5.506(a) does, directly refer to “the categories [of eligible immigration status] set forth in Section 214 (42 U.S.C. 1436a(a)).”

HUD is also proposing to replace the phrase “acceptable evidence” with “acceptable documentation” in certain instances in proposed § 5.510. This clarifies that a document alone is not necessarily sufficient to provide evidence of U.S. citizenship, U.S. nationality, or eligible immigration status under HUD’s regulations. For example, under proposed § 5.508(b)(2), evidence for noncitizens also consists of a signed declaration and signed verification consent form in addition to documentation. Corresponding edits have been made throughout HUD’s proposed regulations.

§ 5.512 Verification of citizenship and eligible immigration status.

HUD is proposing substantive changes to 24 CFR 5.512 discussed in this section of the preamble, as well as technical changes for consistency with changes discussed in other sections in this preamble. HUD is proposing changes to § 5.512 to remove outdated procedures and information related to INS verification procedures and replace them with procedures where responsible entities (PHAs and owners) would primarily use the DHS/USCIS administered SAVE program.

HUD’s existing regulations use the terms “primary verification” and “secondary verification” to describe HUD verification procedures that rely on outdated INS processes. HUD is retaining the terms “primary verification” and “secondary verification” in this proposed rule but uses them to refer to HUD’s proposed verification procedures as outlined in this proposed rulemaking.

Finally, as explained in more detail below, some proposed HUD verification procedures apply for both categories of 1) U.S. citizenship, including U.S. nationality, and 2) eligible immigration status, and some verification procedures are specific to one of these categories depending on which of these categories an individual is declaring for eligible status.

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

Under this proposed rule, “primary verification” would be the first step in HUD’s verification procedure and would involve responsible entities’ use of the DHS/USCIS administered SAVE program. Following responsible entities’ receipt of evidence that individuals must submit under proposed § 5.508(b), proposed § 5.512(c)(1) would require responsible entities to submit biographic information (first name, last name, and date of birth) and approved government-issued identifiers, including a Social Security Number, to SAVE for verification of citizenship or immigration status.³⁸ The procedure under proposed § 5.512(c)(1) relies on SAVE’s automated response system and “verifies User Agency-provided information against DHS-accessed records, including immigration and U.S. citizenship records.”³⁹ Proposed § 5.512(c)(1) is applicable for both categories of U.S. citizenship, including U.S. nationality, and eligible immigration status. The automated response from SAVE would indicate whether the individual is a U.S. citizen or U.S. national or not, or the individual’s immigration status. The responsible entity would use this automated response to determine the results for HUD’s primary verification procedure (some eligible status regardless of category is confirmed, or no eligible status is confirmed). If eligible status is confirmed through this primary verification procedure, the verification process concludes and the individual’s status is verified as eligible for Section 214 eligibility purposes.

³⁸ The USCIS SAVE User Reference Guide is at <https://www.uscis.gov/save/current-user-agencies/guidance/save-user-reference-guide>.

³⁹ <https://www.uscis.gov/save/current-user-agencies/guidance/save-user-reference-guide/8-case-creation>. HUD as the User-Agency provides access to PHAs and owners to use SAVE.

Section 214(d)(4)(A)(i) provides, among other things, that if required documentation is presented but not verified, the applicable Secretary must provide a reasonable opportunity not to exceed thirty days to submit further evidence indicating a satisfactory immigration status. HUD’s existing regulations specify that if primary verification does not confirm eligible status of any kind, responsible entities must perform “secondary verification.” HUD is proposing to maintain this two-step structure for HUD’s verification procedure under this proposed rule. Proposed § 5.512(c)(2) states that if SAVE does not initially confirm U.S. citizenship, U.S. nationality, or eligible immigration status or confirms a status that is ineligible, the responsible entity must perform secondary verification pursuant to § 5.512(d).

§ 5.512(d): Secondary verification.

Proposed § 5.512(d) describes HUD’s proposed secondary verification procedures. Under this proposed rule, whenever primary verification fails to confirm eligible status, secondary verification would be necessary as a second step in HUD’s proposed verification procedure. This requirement would apply regardless of the category of status at issue.

§ 5.512(d)(1): Notice following primary verification.

Under this proposed rule, to begin secondary verification procedure, a responsible entity would need to provide notice of the results of primary verification and include other information in this notice. Proposed § 5.512(d)(1) describes HUD’s proposed notice requirements and would apply regardless of the category of status at issue (citizenship, including nationality, versus eligible immigration status). Proposed § 5.512(d)(1) would require responsible entities to provide notice to individuals that must:

- Be in writing;
- Inform the person of the results of primary verification for their case and describe the need for secondary verification;

- Identify whether any acceptable documentation under § 5.510(b) and/or additional information is needed for secondary verification, and include notice of any requested deadlines; and
- Notify the person of the ability to pursue at any point in the verification process a records correction with any agency that issued or maintains records and original or certified copies of documents relevant to verification.

Applicants and tenants will not be inputting information into SAVE or reviewing SAVE's responses; responsible entities will be doing this instead. HUD has thus determined that providing notice to individuals between the primary and secondary verification steps would help ensure that responsible entities *and* individuals know what further documents and information are needed and why. Additionally, in circumstances involving verification of immigration status, the responsible entity must submit an additional verification request to SAVE within 30 days of the results of primary verification under proposed § 5.512(d)(3); therefore, the notice should note whether this circumstance applies and the date by which an individual should submit needed documents and information to the responsible entity.

Additionally, providing information on how to correct documents and records between HUD's primary and secondary verification processes helps ensure that secondary verification proceeds using the most accurate and updated documents and information. This would help prevent further delays or inaccurate results related to verification of citizenship or immigration status.

§ 5.512(d)(2): Secondary verification of U.S. citizenship and U.S. nationality.

Proposed § 5.512(d)(2) specifies procedures for secondary verification of U.S. citizenship, including U.S. nationality. As explained earlier in this rulemaking, an individual declaring U.S. citizenship or U.S. nationality would not need to provide documentation with the submission of evidence required under proposed § 5.508(b)(1); documentation is not necessarily needed to complete primary verification under this proposed rule, because responsible entities

would simply enter information into SAVE and receive an automated response. However, if the automated SAVE response does not confirm U.S. citizenship or produces a result that an individual disagrees with or is otherwise problematic, further information would be needed to continue review of a person's citizenship or nationality. Therefore, HUD is proposing in § 5.512(d)(2)(i) to require individuals contending U.S. citizenship or U.S. nationality to provide acceptable documentation as described in proposed § 5.510, and any needed additional information not in a document format, at the secondary verification step of HUD's verification procedure.

Currently, SAVE has limitations on the types of documents and information it can review,⁴⁰ and certain information and documentation that could be provided by individuals as evidence of U.S. citizenship or U.S. nationality are not currently usable in SAVE or by the SAVE program. For example, at the time of the writing of this proposed rule, SAVE cannot review or process birth certificates or U.S. passports, but can review or process naturalization and citizenship certificates. Therefore, two avenues are needed at the secondary verification step for cases involving U.S. citizenship or U.S. nationality: one that accounts for documents SAVE can review and process, and one that accounts for documents SAVE cannot review and process at this time. Additionally, SAVE is an evolving program with an evolving system which may be able to utilize certain information or documents in the future, so HUD is seeking to provide enough flexibility in its regulations to account for changes in SAVE's capabilities.

HUD is proposing in § 5.512(d)(2)(ii) to require responsible entities to review additional information and acceptable documentation provided by individuals. This review, in conjunction with guidance that HUD would issue, would assist the responsible entity with determining which avenue it must take depending on the acceptable documentation as defined by HUD in § 5.510(b) and other information an individual provides related to U.S. citizenship or U.S. nationality. In

⁴⁰ *Id.*; see also <https://www.uscis.gov/save/current-user-agencies/guidance/save-user-reference-guide/9-case-response/92-additional-verification>.

cases where SAVE cannot review or process the documentation an individual provides, such as a birth certificate from a U.S. state or a valid unexpired U.S. passport, the responsible entity would review the document to confirm it is authentic and an original or a certified copy. The responsible entity would use the result of this review to complete HUD’s verification procedure and make a Section 214 eligibility determination.

In cases where SAVE can review or process the document an individual provides, proposed § 5.512(d)(2)(iii) would be applicable. Proposed § 5.512(d)(2)(iii) states that the responsible entity must, if applicable as specified in HUD guidance, request additional verification through the SAVE program. “Additional verification” describes a SAVE-specific procedure that utilizes various approaches such as manual processes, manual record searches, and electronic processes, including resubmission with new information and documents.⁴¹ The result of the SAVE-specific additional verification process would indicate whether the individual is a U.S. citizen or U.S. national or not. The responsible entity would use this result to conclude HUD’s verification procedure and a Section 214 eligibility determination.

HUD intends the use of the phrase “as applicable as specified in HUD guidance” in proposed § 5.512(d)(2)(iii) to capture SAVE’s evolving capabilities: If in the future SAVE becomes capable of processing certain citizenship and nationality documents that it currently cannot process, HUD would update its guidance for responsible entities accordingly. This guidance may provide information on how to proceed depending on the documentation and information received by responsible entities from individuals declaring U.S. citizenship or U.S. nationality, when to request additional verification through the SAVE program, and what responsible entities should do in situations where secondary verification fails.

Because of the limitations with the SAVE program and the potential need for manual record searches, which may take significant time, HUD is not proposing to require a time by

⁴¹ <https://www.uscis.gov/save/current-user-agencies/guidance/save-user-reference-guide/8-case-creation>; see also <https://www.uscis.gov/save/current-user-agencies/guidance/save-user-reference-guide/9-case-response/92-additional-verification>.

which a responsible entity must submit the request for additional verification of U.S. citizenship status through the SAVE program. This differs from HUD’s proposed regulations for secondary verification of eligible immigration status, as explained in the next section of this preamble.

§ 5.512(d)(3): Secondary verification of eligible immigration status.

HUD’s existing regulations at 24 CFR 5.512(d) speak to secondary verification of eligible immigration status and require a manual search of DHS records. The responsible entity must request secondary verification within 10 days of receiving the results of primary verification, and secondary verification is initiated when the responsible entity forwards photocopies of the original documents required for the immigration status declared by an individual. HUD is proposing to remove these outdated regulations and replace them with provisions that incorporate the DHS/USCIS-administered SAVE program. HUD’s regulations would continue to use the term “secondary verification” to describe this step in HUD’s proposed verification procedure, and proposed § 5.512(d)(3) would speak to secondary verification of eligible immigration status. SAVE’s capabilities include review of immigration documents and information such as government-issued numeric identifiers. Therefore, for secondary verification of eligible immigration status, HUD is proposing that the responsible entity must request additional verification in the SAVE program within thirty (30) days of notification of the results of primary verification.

HUD is proposing to require a thirty-day deadline for responsible entities to request additional verification through SAVE because Section 214(d)(4)(A)(i) specifies that individuals have thirty (30) days to provide evidence indicating a satisfactory immigration status if initial submission and review of evidence does not verify eligible immigration status. HUD does not propose this same deadline for responsible entities’ requests for additional verification of U.S. citizenship or U.S. nationality under proposed § 5.512(d)(2) for the reasons described earlier in this preamble.

Again, “additional verification” describes a SAVE-specific procedure that utilizes various approaches such as manual processes, manual record searches, and electronic processes, including resubmission with new information and documents.⁴² The result of the SAVE-specific additional verification process would indicate the person’s immigration status. The responsible entity would use this to conclude HUD’s verification procedure and make a Section 214 eligibility determination.

§ 5.512(e): Failure to confirm citizenship or eligible immigration status.

As is the case under HUD’s existing 24 CFR 5.512(d)(3) for eligible immigration status, proposed § 5.512(e) states that if primary and secondary verification do not confirm U.S. citizenship or eligible immigration status or confirm an ineligible immigration status, the responsible entity must provide the notice of denial or termination of assistance under § 5.514(d). As explained later in this preamble, HUD is proposing to remove § 5.514(e) regarding appeals to the INS; therefore, HUD seeks to clarify in proposed § 5.512(e) that the notice of denial or termination must specify that individuals may seek a records correction with any agency that issued documents or maintains records relevant to the individual’s verification of eligible status. The notice must also specify that individuals would be able to contest failed verifications of citizenship to HUD under the informal hearing process under proposed § 5.514(e). Informal hearings are currently in HUD’s regulations at existing § 5.514(f) but are the subject of proposed changes in this rulemaking.

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

HUD is proposing substantive changes to § 5.514 as explained in this section of the preamble, and technical changes throughout § 5.514 to update terminology and for consistency with changes discussed elsewhere in this preamble.

§ 5.514(c): Events causing denial or termination of assistance.

⁴² <https://www.uscis.gov/save/current-user-agencies/guidance/save-user-reference-guide/8-case-creation>; see also <https://www.uscis.gov/save/current-user-agencies/guidance/save-user-reference-guide/9-case-response/92-additional-verification>.

As discussed previously in this preamble, HUD is proposing to require persons who declare U.S. citizenship to submit, , a signed declaration and verification consent form, see proposed § 5.508(b); and, for secondary verification, to require these persons to submit documentation and to have responsible entities review those documents and, in some cases, institute secondary verification in SAVE. See proposed 24 CFR 5.512(d)(2). As discussed later in this preamble, HUD is proposing to remove the outdated INS appeal provision under § 5.514(e). Therefore, HUD is proposing to revise existing § 5.514(c)(1)(ii). Proposed paragraphs (c)(1)(ii) would permit denial or termination of assistance when evidence of U.S. citizenship or eligible immigration status is timely submitted, but HUD has determined that following primary and secondary verification the individual seeking benefits has not been able to have their status as a U.S. citizenship or eligible immigration status of a family member verified. In those situations, HUD may determine that denial or termination of assistance would be appropriate only if a family does not pursue informal hearing rights under proposed § 5.514(f), or the family pursues an informal hearing but the decision is against the family.

HUD is also proposing to remove the existing last sentence of § 5.514(c)(1)(iii) and replace it with new language. Paragraph (c)(1)(iii) provides that a responsible entity must deny or terminate an applicant or tenant's assistance if the responsible entity determines that a family member has knowingly permitted a person ineligible for assistance to permanently reside in the family member's assisted unit, and termination must be for at least 2 years. The last sentence of paragraph (c)(1)(iii) exempts application of this provision if the ineligible person was considered in calculating any prorated assistance for the family, which is possible under HUD's current "do not contend" provision in existing § 5.508(e). Because HUD is proposing through this rulemaking to remove the "do not contend" provision, the last sentence of § 5.514(c)(1)(iii) is not necessary. However, to account for families that were receiving assistance under a Section 214 covered program on February 5, 1988, who may be eligible for preservation assistance,

HUD is proposing to add a new last sentence to § 5.514(c)(1)(iii) stating, “This provision does not apply to families eligible for continued assistance pursuant to § 5.516 and § 5.518.”

Existing § 5.514(e): Appeal to the INS.

HUD’s existing regulations under 24 CFR 5.514(e) provide families with thirty (30) days to appeal to the INS when secondary verification fails to confirm eligible immigration status. This provision is outdated, reflects procedures that existed before the SAVE program was utilized by HUD, and does not account for U.S. citizenship verification. As stated previously in this preamble, at the time of enactment of Section 214, verification of eligible immigration status was a manual, paper-driven process that could take days or even weeks to complete. This is reflected in existing § 5.514(e), which requires, among other things, submission of paper copies of INS documents such as the form G-845S, which is no longer in use. SAVE’s results are often instantaneous and are driven by electronic and automated processes. SAVE does not offer an appeal process, and the SAVE program does not issue or maintain immigration documents and records, but secondary verification permits users to address issues with initial SAVE responses. Additionally, individuals may seek a records correction with any agency that issued or maintains a record or document relevant to a person’s verification at any time during SAVE’s processes (see proposed §§ 5.512(d)(1) and 5.514(d)(4)). To remove outdated procedures and align with how responsible entities would use the contemporary SAVE program, HUD is proposing to remove § 5.514(e) (and to redesignate existing paragraphs (f) through (i) as paragraphs (e) through (h)) and direct responsible entities to the secondary verification procedure as outlined in this rulemaking.

This proposed change would further streamline HUD’s verification process. Proposed §§ 5.512(d)(1) (regarding a new notice that responsible entities would provide to individuals after primary verification fails) and 5.514(d)(4), which would amend existing notice requirements for the notice of denial or termination of assistance, would require responsible entities to notify individuals that a person may correct, at any time during verification, a record

with any agency that issued or maintains records and/or documents relevant to a person's verification of U.S. citizenship or eligible immigration status. If persons do correct their documents after primary verification fails, secondary verification under proposed § 5.512(d)(2) or (3) would proceed using corrected or updated information and documentation. This would address record or document inaccuracies and other issues earlier in the verification process, compared to HUD's existing regulations which permit appeals to the INS only after secondary verification fails. If record corrections are needed but do not occur prior to secondary verification, an individual that receives a notice of denial of assistance may seek a records correction and then submit a new application for assistance with corrected records and documentation. This aligns with the goal of this rulemaking to ensure that assistance only goes to individuals in a verified status while permitting the flexibility needed to address errors with records and documents.

§ 5.514(e): Informal hearing.

Existing § 5.514(f) provides that a family may request that the responsible entity provide a hearing within 30 days of receiving the notice required under § 5.514(d). Again, HUD's existing regulations speak to outdated INS appeal procedures and only speak to verification of eligible immigration status. As explained earlier in this preamble, HUD is proposing through this rulemaking to require: persons declaring to be U.S. citizens to submit evidence under § 5.508(b)(1) for primary verification through the SAVE program; to require those persons to submit additional documentation for secondary verification purposes under § 5.512(d)(2); and for responsible entities to review that documentation for U.S. citizenship secondary verification purposes under § 5.512(d)(2). HUD is therefore proposing to update § 5.514(f)(1) to incorporate verification of U.S. citizenship. Proposed § 5.514(f)(1) provides that, for cases involving U.S. citizenship verification and cases involving eligible immigration status verification, a family may request that a responsible entity provide an informal hearing within 30 days of the family receiving notice under § 5.514(d) regarding denial or termination of assistance. Further, because

HUD is proposing to remove existing § 5.514(e) regarding INS appeals, HUD is proposing to remove the language in existing § 5.514(f)(1) permitting requests for an informal hearing to be made “in lieu of request of appeal to the INS.” The effect of these changes would be that a family may request an informal hearing upon receipt of the notice under § 5.514(d), which, under this proposed rule, a responsible entity would provide to a family only after the conclusion of all secondary verification procedures under § 5.512(d). The notice under § 5.514(d) would also remind individuals that they may seek records corrections with agencies that issued or maintain documents and records at this time; doing so would not preclude them from requesting a formal hearing. This would further streamline HUD’s verification process and provide for informal hearings after thorough use of administrative means to address inaccuracies or concerns that arise during primary and secondary verification.

Proposed § 5.514(g) (based on existing § 5.514(h)) contains minor changes to require responsible entities, as applicable, to retain photocopies of original, certified copies, and corrected U.S. citizenship and immigration status records and documents under the document retention requirements in existing § 5.514(h), and removes existing paragraphs (h)(6) and (7), which refer to INS appeals and the final INS determination resulting from that appeal.

§ 5.516 Availability of preservation assistance to tenant families.

HUD is proposing to remove paragraph (a)(1)(iii) in § 5.516, which provides for prorated assistance under § 5.520 as preservation assistance for mixed families who request prorated assistance, because proration of assistance at the end of the temporary deferral period would no longer be an option under this proposed rule. For consistency, HUD is proposing to remove language throughout 24 CFR part 5, subpart E, that referred to this type of prorated assistance as preservation assistance for mixed families.

HUD is also proposing to make technical changes throughout § 5.516 to update terminology and for consistency with changes discussed elsewhere in this preamble.

§ 5.518 Types of preservation assistance available to tenant families.

HUD is proposing changes to § 5.518 that would conform this section to changes made throughout the rest of this proposed rule. For example, proposed § 5.518(a) would provide that a mixed family may receive prorated continued assistance if all the conditions in paragraphs (a)(1)(i)-(iii) are met, and a mixed family assisted under the Section 236 program must be provided prorated continued assistance if the family meets specific conditions. Paragraph (a)(ii) already provides that one of the conditions is that the family's head of household or spouse has eligible immigration status as described in § 5.506. HUD is proposing to clarify this language by stating that the family's head of household or spouse must be "a U.S. citizen, a national of the United States, or [have] eligible immigration status as described in § 5.506," which aligns with the statutory language of Section 214.⁴³

HUD is also proposing to remove the last sentence of § 5.518(b)(1), which defines the phrase "other affordable housing" as meaning housing that is not substandard, that is of appropriate size for the family, and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent. This meaning applies in the context of the transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted. This language is not in the statute and would effectively preclude families eligible for temporary deferral from finding other affordable housing as defined in existing § 5.518(b)(1), based on the average Total Tenant Payment for Section 8 project-based rental assistance residents for part of 2024.⁴⁴

HUD is proposing to add a new paragraph (b)(6) to § 5.518 that would clarify that the assistance a family would receive while benefiting from temporary deferral of termination of

⁴³ Section 11 of the RIA accompanying this rulemaking discusses the impacts of this rulemaking on mixed families, including families with eligible children, families with eligible parents, and households with ineligible adults who are not parents but eligible immediate family members. Section 11.1 of the RIA discusses the estimated availability and impact of preservation assistance for mixed families in more detail, and section 11.2 of the RIA discusses the potential range of effects of this rulemaking on mixed families depending on which family members are eligible for assistance (parents versus children, etc.) and the choices made by household members in response to the rulemaking's requirements.

⁴⁴ See *TTP Distribution % section here:* https://www.hud.gov/sites/default/files/Housing/documents/Tenant_Characteristics_Rpt12312024.pdf. The majority (57.97%) of Section 8 PBRA families pay less than \$350 per month in rent.

assistance would be prorated in accordance with the methodology in § 5.520. HUD's current regulations specify that assistance shall be prorated for continued assistance but are silent as to the assistance a family receives during temporary deferral of termination of assistance. This proposed change addresses this inadvertent omission, is consistent with Section 214, and creates consistency between the forms of preservation assistance under this proposed rule.

HUD is also proposing to remove existing § 5.518(c) (and redesignate existing paragraph (d) as (c)), which provides mixed families with the option to request prorated assistance following the end of the temporary deferral period, because this type of prorated assistance would no longer be an option under this proposed rule.

§ 5.520 Proration of assistance.

HUD is proposing to revise § 5.520(a)(1) to provide that prorated assistance under § 5.520 applies to families with at least one family member who has U.S. citizenship, U.S. nationality, or eligible immigration status pending final verification, including any secondary verification or informal hearing procedures under §§ 5.512(d) and 5.514(e), of the status of other family members. This change more closely aligns HUD's regulations with the statute and conforms with other changes HUD is proposing. HUD is also proposing to revise § 5.520(a)(2). Under Section 214 as amended, continued assistance for eligible families must be prorated based on the percentage of the total number of members of the family that are eligible for that assistance under a covered housing program and Section 214.⁴⁵ The proposed language for § 5.520(a)(2) would clarify this requirement by stating that continued assistance under § 5.518 must be prorated.

HUD is further proposing technical changes throughout § 5.520 to update terminology and for consistency with changes discussed elsewhere in this preamble. Specifically, HUD is

⁴⁵ As explained in an interim final rule published by HUD on November 29, 1996, 61 FR 60535, this requirement stems from amendments made to Section 214 by the Use of Assisted Housing by Aliens Act of 1996 (Title V, Subtitle E of the Illegal Immigration Reform and Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009, approved September 30, 1996).

proposing to revise paragraph (a) to specify that the proration methodology in § 5.520 applies to “preservation assistance,” meaning both continued assistance and temporary deferral of termination of assistance. This change would be consistent with changes made to § 5.518, discussed earlier in this preamble. HUD is also proposing to revise paragraph (b) to discuss only the method of proration for the Section 236 program, and to remove the outdated paragraphs related to other Housing programs that are no longer in effect. HUD is also proposing to add a parenthetical to proposed § 5.520(b)(2)(ii) to clarify that the housing assistance payment discussed in that paragraph is equal to the unit’s gross rent minus the family’s total tenant payment, pursuant to 24 CFR 5.628.

§ 5.522 Prohibition of assistance to noncitizen students.

Section 5.522(a) prohibits the application of continued assistance or temporary deferral of termination of assistance under §§ 5.516 and 5.518 to persons determined to be a noncitizen student under the statutory text of Section 214. HUD is proposing to remove the second sentence of existing § 5.522(a) and to remove § 5.522(b)(2), which provide, respectively, that a family of a noncitizen student may be eligible for prorated assistance under § 5.522(b), and that the prohibition in paragraph (a) does not extend to the citizen spouse of the noncitizen student and their children. HUD is proposing to retain the other language in paragraphs (a) and (b), which contains the prohibition and its extension to noncitizen spouses of the noncitizen student and children accompanying or following to join the student. These proposed changes more closely align HUD’s regulations with the statutory text of Section 214.

Technical changes.

HUD is proposing some technical changes to the regulations to further conform to Section 214 statutory requirements. For example, HUD is proposing to remove references to programs that are no longer in effect. There are no remaining Rent Supplement contracts under Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), so HUD is proposing to remove paragraph (a)(3) from 24 CFR 5.500, which applies HUD’s regulations that

restrict Federal financial assistance for noncitizens to the Rent Supplement Program, and to remove language throughout 24 CFR part 5, subpart E, that references rent supplements under this program. Section 401(d) of the 1987 HCD Act terminated HUD's authority to provide insurance or assistance payments to mortgagees under Section 235 of the National Housing Act (12 U.S.C. 1715z), so HUD is proposing to remove paragraph (a)(1) from 24 CFR 5.500 and to remove language throughout 24 CFR part 5, subpart E, that references the Section 235 Program. Any existing Section 235 Program mortgages will be governed by the requirements in place at the time HUD endorsed the contract for insurance or made the commitment to provide assistance payments.⁴⁶ Finally, HUD is also proposing to remove language throughout 24 CFR part 5, subpart E, that references rental assistance payments related to Section 236 projects as there are no longer any such payments under the Section 236 program.

Further, HUD is proposing to add "U.S. citizen" or "citizenship" throughout 24 CFR part 5, subpart E where HUD's regulations discuss submission of required "evidence for eligible status" or "eligible immigration status," because HUD is proposing through this rulemaking to require submission of a signed verification consent form—in addition to the already-required signed declaration—from individuals declaring to have U.S. citizenship or U.S. nationality under proposed § 5.508(b)(1); and to require submission of acceptable documentation evidence of U.S. citizenship or U.S. nationality as described in proposed § 5.510(b) for secondary verification under proposed § 5.512(d). For example, see proposed § 5.508(f)-(g), which describe requirements related to timing for when applicants and tenants must provide required evidence of citizenship or eligible immigration status.

Relatedly, this proposed rule permits persons undergoing citizenship verification processes to request an informal hearing under proposed § 5.514(e)(1); therefore, provisions

⁴⁶ See 80 FR 18095 (Apr. 3, 2015) ("To the extent that any Section 235 mortgages remain in existence, or second mortgages for the recapture of subsidy payment pursuant to HUD's regulations governing the Section 235 Program (which was reserved by regulatory streamlining in 1995), the removal of these regulations does not affect the requirements for transactions entered into when Section 235 Program regulations were in effect.").

speaking to the informal hearing process through 24 CFR part 5, subpart E, are proposed to be updated to include reference to U.S. citizenship.

Finally, HUD is proposing to add clarifying language to its regulations providing that prorated assistance to an applicant or tenant under § 5.520 is only permissible “pending final verification, including any procedures under §§ 5.512(d) and 5.514(e),” on the eligibility of family members. This clarifies the statutory requirement that prorated assistance that is not continued assistance must only be provided when at least one family member’s U.S. citizenship or eligible immigration status has been verified and no other family member’s ineligibility has been affirmatively established.

IV. Severability

HUD seeks input from the public on whether and how the provisions of the proposed rule would operate independently of each other in the event that this rule or any portion of this rule is ultimately declared invalid or stayed by a court as to a particular program. After consideration of the comments, HUD intends at the final rule stage to articulate its opinion regarding the interoperability and severability of these provisions.

V. Findings and Certifications

Regulatory Review – Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This rule was determined to be a “significant regulatory action” as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action under section 3(f)(1) of the Executive Order). HUD has prepared a cost benefit analysis that addresses the costs and benefits of the proposed rule. The cost analysis is part of the docket file for this rule.

Executive Order 14192, Regulatory Costs

Executive Order 14192, “Unleashing Prosperity Through Deregulation,” was issued on January 31, 2025. Section 3(c) of Executive Order 14192 requires that any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations. This rule is an immigration-related rule that is expressly exempt from the requirements of Executive Order 14192.

Environmental Impact

The proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed regulatory amendments to HUD’s noncitizen requirements will have only a minimal impact on small housing project owners, small mortgagees, and small housing agencies. The majority of PHAs and project (housing) owners have few mixed families, if any. In 2024, the share of PHAs where 95 percent or more of their

assisted households are non-mixed is 92 percent. The share is even higher for housing owners—97 percent of owners have mixed families representing less than five percent of their assisted households. At this time, HUD is unable to provide an accurate estimate of small PBRA owners because we do not always know whether there is a corporate structure behind an individual owner.

Further, the proposed amendments would require primary verification of citizenship and eligible immigration status through the same process: Inputting information into SAVE for an automated response. A responsible entity's collection and review of appropriate documentation for U.S. citizenship or U.S. nationality would be limited to instances of secondary verification. As explained elsewhere in this preamble and in the Regulatory Impact Analysis for this proposed rule, the burden on existing tenants, families, future applicants, and responsible entities is estimated to be low, even where existing individuals have not submitted any documentation for verification purposes. Some of the proposed requirements could also be satisfied using existing procedures. For example, the proposed rule would require that the eligible immigration status of all noncitizens in Section 214 covered programs, regardless of age, be verified through responsible entities utilizing the DHS/USCIS SAVE program. The extension of this requirement to individuals 62 years of age and older can be fulfilled by utilizing existing verification procedures. Furthermore, although the proposed rule would revise eligibility for prorated assistance, current methods would be used to calculate the prorated assistance provided to an eligible family.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt state law within the meaning of the Executive order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose a Federal mandate on any State, local, or tribal government, or on the private sector, within the meaning of UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (“PRA”), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The information collection requirements contained in this proposed rule have been approved by OMB under the Paperwork Reduction Act and assigned OMB control number 2577-0295.

HUD’s current regulations do not require submission of any documentation for citizenship verification purposes, unlike eligible immigration status where HUD’s regulations require submission of documentation for eligible status verification. This proposed rule would change HUD’s regulations to require each family member in tenant families who have not yet submitted evidence of citizenship or eligible immigration status, and applicants who are declaring they have U.S. citizenship, to submit evidence in accordance with §§ 5.508 and 5.512 to responsible entities (mortgagors, project or housing owners, and PHAs). While this may

impose some burden on existing tenants in HUD housing who have previously elected the “do not contend” provision, have submitted no documentation to date, have documentation proving their eligibility, and wish to continue to receive HUD assistance, the number of these existing tenants is low and the related burdens are thus relatively low, for tenants, families, and responsible entities.⁴⁷ Nor does HUD anticipate this proposed requirement to impose significant burden for existing tenants and future applicants under Section 8 and Public Housing covered programs who have previously declared or declare either citizenship or eligible immigration status.⁴⁸ PHAs already typically receive a birth certificate, passport, or some other identity verification document for deductions, program eligibility, and other purposes. Under this proposed rule, responsible entities would also be required to collect and review citizenship evidence documents submitted by all applicants and tenants declaring to be U.S. citizens, and to review those documents to verify U.S. citizenship. Again, for Section 8 and Public Housing covered programs, responsible entities generally already receive and review this documentation for eligibility determinations and other purposes. As explained in the Regulatory Impact Analysis for this rulemaking, an estimated 99% of existing tenants who are U.S. citizens or U.S. nationals have been verified by PHAs (and owners). Finally, this proposed rule would require that notification of Section 214 requirements, verification consent forms, notification of any failures to confirm primary verification, and notification of any denials or terminations of assistance be provided to applicants and tenants declaring to be U.S. citizens and noncitizens, as applicable.

The burden of the information collections in this proposed rule is estimated as follows:

Tabulation of One-Time Reporting Burden for Existing Residents						
Information collection	Number of respondents*	Frequency of response	Burden hour per response	Total burden hours	Hourly cost per response	Total Cost

⁴⁷ The Regulatory Impact Analysis for this proposed rule estimates this number of affected tenants to be 730.

⁴⁸ The Regulatory Impact Analysis for this proposed rule estimates that 1.05 percent of existing tenants with eligible status have not provided documentation for another purpose which could be used to verify this status.

Section 8 Housing Choice Vouchers	11,990	1	1.25	14,988	\$52	\$779,350
Public Housing	3,380	1	1.25	4,225	\$52	\$219,700
Section 8 Project-Based Rental Assistance	4,230	1	1.25	5,228	\$52	\$294,950
Section 236	7	1	1.25	9	\$52	\$455
Totals	19,600	1	1.25	24,509	\$52	\$1,274,455

* We assume that 1.05% of the average 714,000 (three-year average, 2022-2024) annual newly admitted tenants would previously not have provided proof of citizenship, naturalization, or eligible immigration status for another purpose. New admissions include all members of non-mixed families and selected members from mixed families (members with eligible immigration status and members with pending verification status).

1.05% was computed as the average of HUD administrative data on the share of members of non-mixed families with pending verification status and findings from Rothschild, Novey, and Hanmer (2025) on the share of U.S. citizens without documentary proof of citizenship. See RIA for detailed discussion.

Data is from HUD's Public & Indian Housing Information Center (PIC) and the Tenant Rental Assistance Certification System (TRACS).

Tabulation of Annual Reporting Burden for New Admissions						
Information collection	Number of respondents*	Frequency of response**	Burden hour per response	Total burden hours	Hourly cost per response	Total Cost
Section 8 Housing Choice Vouchers	4,245	1	1.25	5,306	\$52	\$275,925
Public Housing	1,230	1	1.25	1,538	\$52	\$79,950
Section 8 Project-Based Rental Assistance	2,000	1	1.25	2,500	\$52	\$130,000
Section 236	15	1	1.25	19	\$52	\$975
Totals	7,500	1	1.25	9,363	\$52	\$486,850

* We assume that 1.05% of the average 714,000 (three-year average, 2022-2024) annual newly admitted tenants would previously not have had to provide proof of citizenship, naturalization, or eligible immigration status for another purpose. New admissions include all members of non-mixed families and selected members from mixed families (members with eligible immigration status and members with pending verification status).

1.05% was computed as the average of HUD administrative data on the share of members of non-mixed families with pending verification status and findings from Rothschild, Novey, and Hanmer (2025) on the share of U.S. citizens without documentary proof of citizenship. See RIA for detailed discussion.

** New tenants that are citizens or have permanent eligible immigration status must submit this documentation only once.

Data is from HUD's Public & Indian Housing Information Center (PIC) and the Tenant Rental Assistance Certification System (TRACS).

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts,

Grant programs-housing and community development, Individuals with disabilities,

Intergovernmental relations, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 5, subpart E as follows:

PART 5 – GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109-115, 119 Stat. 2936; Sec. 607, Pub. L. 109-162, 119 Stat. 3051 (42 U.S.C. 14043e *et seq.*); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.

Subpart B—Disclosure and Verification of Social Security Numbers and Employer

Identification Numbers; Procedures for Obtaining Income Information

2. The authority citation for subpart B continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3543, 3544, and 11901 *et seq.*

3. Revise § 5.216(a) and the introductory text of paragraph (e)(1)(i) to read as follows:

§ 5.216 Disclosure and verification of Social Security and Employer Identification

Numbers.

- (a) *General.* The requirements of this section apply to applicants and participants as described in this section.

* * * * *

(e) * * *

(1) * * *

(i) Each participant whose initial determination of eligibility was begun before [insert **effective date of final rule**], must submit the information described in paragraph (e)(1)(ii) of this section, if the participant has:

* * * *

Subpart E—Restrictions on Assistance to Noncitizens

4. The authority citation for subpart E continues to read as follows:

Authority: 42 U.S.C. 1436a and 3535(d).

5. Revise § 5.500(a) and (b)(2) to read as follows:

§ 5.500 Applicability.

(a) *Covered programs/assistance.* This subpart E implements Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 prohibits HUD from making financial assistance available to persons who are not in eligible status with respect to citizenship or noncitizen immigration status. This subpart E is applicable to financial assistance provided under:

(1) Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program); and

(2) The United States Housing Act of 1937 (42 U.S. C. 1437 *et seq.*) which covers:

(i) HUD's Public Housing Programs;

(ii) The Section 8 Housing Assistance Programs; and

(iii) The Housing Development Grant Programs (with respect to low income units only).

(b) * * *

(2) The provisions of this subpart E apply to Public Housing Agencies (PHAs) and project (or housing) owners. The term “responsible entity” is used in this subpart E to refer collectively to these entities and is further defined in § 5.504.

6. Amend paragraph § 5.504(b) by

a. Adding the definition of “DHS” in alphabetical order;

- b. Removing the definitions of “Housing covered programs” and “INS”;
- c. Adding the definition of “Preservation assistance” in alphabetical order; and
- d. Revising the definitions of “Responsible entity” and “Tenant.”

The addition and revisions read as follows:

§ 5.504 Definitions.

* * * *

(b) * *

DHS means the Department of Homeland Security.

* * * *

Preservation assistance means types of assistance under Section 214, including prorated continued assistance and temporary deferral of termination of assistance, available to eligible families pursuant to the requirements in §§ 5.516 and 5.518.

* * * *

Responsible entity means the person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status. The entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status under the various covered programs is as follows:

- (1) For the Section 236 program, mortgagors or project (or housing) owners (if uninsured).
- (2) For Public Housing, the Section 8 Rental Voucher, and the Section 8 Moderate Rehabilitation programs, the PHA administering the program under an ACC with HUD.
- (3) For the Section 8 project based rental assistance program, project (or housing) owners.

* * * *

Tenant and *tenant family* mean an individual or a family renting or occupying an assisted dwelling unit.

7. Revise § 5.506(b) to read as follows:

§ 5.506 General provisions.

* * * *

(b) Family eligibility for assistance.

(1) A family is not eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section, or unless the family meets the conditions set forth in either paragraph (b)(2) or (3) of this section.

(2) Despite the ineligibility of one or more family members, a family that was receiving assistance under a Section 214 covered program on June 19, 1995, may be eligible for continued assistance as provided in §§ 5.516 and 5.518. If the family does not qualify for continued assistance, it may be eligible for temporary deferral of termination of assistance as provided in §§ 5.516 and 5.518.

(3) A family with at least one family member of any age who has U.S. citizenship, U.S. nationality, or eligible immigration status is eligible for prorated assistance under § 5.520 pending final verification, including any procedures under §§ 5.512(d) and 5.514(e), on the eligibility of other family members.

* * * *

8. Revise § 5.508 to read as follows:

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

(a) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission, to the responsible entity, of the documents described in paragraphs (b), (c), and (d) of this section, as applicable, for each family member.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the responsible entity:

(1) For U.S. citizens as defined in § 5.504(b) the evidence consists of a signed declaration as described in paragraph (c) of this section of U.S. citizenship or U.S. nationality, and a signed verification consent form as described in paragraph (d) of this section.

(2) For all noncitizens, regardless of age, the evidence consists of:

(i) A signed declaration of eligible immigration status as described in paragraph (c) of this section;

(ii) Acceptable documentation of eligible immigration status as described in § 5.510; and

(iii) A signed verification consent form as described in paragraph (d) of this section.

(c) *Declaration.* (1) Each family member, regardless of age, must submit to the responsible entity a written declaration, signed under penalty of perjury, by which the family member declares the family member is a U.S. citizen as defined in § 5.504(b) or a noncitizen with eligible immigration status set forth in § 5.506(a)(2).

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child as defined in § 5.504(b), the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) The written declaration may be incorporated as part of the application for housing assistance or may constitute a separate document.

(d) *Verification consent form*—(1) *Who signs.* Each family member, regardless of age, must sign a verification consent form as follows:

(i) For each adult, the form must be signed by the adult.

(ii) For each child as defined in § 5.504(b), the form must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) *Notice of use and release of evidence by responsible entity.* The verification consent form must provide that:

(i) Evidence of citizenship or eligible status will be reviewed by the responsible entity for verification purposes; and

(ii) Evidence of U.S. citizenship or eligible status may be released by the responsible entity, without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

- (A) HUD, as required by HUD; and
- (B) DHS to verify the U.S. citizenship or immigration status of the individual.

(3) *Notice of release of evidence of U.S. citizenship or eligible immigration status by HUD.* The verification consent form must also notify the individual of the possible release of evidence of U.S. citizenship or eligible immigration status by HUD. Evidence of U.S. citizenship or eligible immigration status must only be released to DHS for purposes of verifying the individual has U.S. citizenship or eligible immigration status for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by DHS.

(e) *Notification of requirements of Section 214—(1) When notice is to be issued.* The responsible entity must give notification of the requirement to submit evidence of citizenship or eligible status as required by this section as follows:

(i) *Applicant's notice.* The responsible entity must give the notification to each applicant at the time of application for assistance.

(ii) *Notice to tenants.* The responsible entity must give the notification to each tenant who has not submitted evidence of citizenship or eligible status as of **[insert effective date of final rule]** no later than **[insert 30 days after effective date of final rule]**.

(2) *Form and content of notice.* The notice must:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of evidence of citizenship or eligible status as required by this section;

(ii) Describe the type of evidence that must be submitted, and state the time period in which that evidence must be submitted (see paragraph (f) of this section concerning when evidence must be submitted);

(iii) State that assistance will be denied or terminated, as appropriate, upon a final determination of ineligibility after primary and secondary verification, as applicable, and any informal hearing has concluded (see §§ 5.512(d) and 5.514(e)) or, if an informal hearing is not pursued, at a time to be specified in accordance with HUD requirements;

(iv) State that assistance may be prorated, pursuant to § 5.520, to a family with at least one family member of any age who has U.S. citizenship, U.S. nationality, or eligible immigration status pending final verification, including any procedures under §§ 5.512(d) and 5.514(e), for other family members, or to families eligible for continued assistance pursuant to § 5.516 and § 5.518;

(v) Inform tenants how to obtain assistance under the preservation of families provisions of §§ 5.516 and 5.518; and

(vi) Notify the individual that the PHA or owner, as applicable, must inform DHS immediately whenever personnel determine that any member of a household is present in the U.S. in violation of the Immigration and Nationality Act. The PHA or owner may meet the reporting requirement by conforming with applicable *Federal Register* notices, including Interagency Notices, providing guidance for compliance with PRWORA section 404.

(f) *When evidence of citizenship or eligible status is required to be submitted.* The responsible entity must require evidence of citizenship or eligible immigration status required under § 5.508(b) to be submitted at the times specified in this paragraph, subject to any extension granted in accordance with paragraph (g) of this section.

(1) *Applicants.* For applicants, responsible entities must ensure that evidence of citizenship or eligible status required under § 5.508(b) is submitted not later than the date the responsible entity anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 5.512(a)).

(2) *Tenants.*

(i) Tenants in mixed families receiving financial assistance under a Section 214 covered program who have not submitted evidence of citizenship or eligible immigration status required under § 5.508(b) as of [insert effective date of final rule] are required to submit such evidence within 90 days of [insert effective date of final rule], in accordance with program requirements.

(ii) All other tenants receiving financial assistance under a Section 214 covered program who have not submitted evidence of citizenship or eligible immigration status required under § 5.508(b) as of [insert effective date of final rule] are required to submit such evidence at the next annual or interim reexamination of income and household composition after [insert effective date of final rule], in accordance with program requirements.

(3) *New family members of assisted units.* For any new family member that comes to reside in an assisted unit, the required evidence under § 5.508(b) must be submitted not later than the date the responsible entity anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 5.512(a)).

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of citizenship or eligible status is required to be submitted in accordance with the requirements of this subpart E unless the family already has submitted the evidence to the responsible entity for a Section 214 covered program.

(5) *One-time evidence requirement for continuous occupancy and changes in status during occupancy.* For each family member, the family is required to submit evidence of citizenship or eligible status required under paragraph (b) of this section only one time in accordance with paragraph (f) of this section during continuously assisted occupancy under any Section 214 covered program. If a family member's citizenship or immigration status changes during occupancy, the family is required to immediately notify and submit evidence of the new citizenship or eligible status to the responsible entity.

(g) *Extensions of time to submit evidence of citizenship or eligible status—(1) When extension must be granted.* The responsible entity must extend the time, provided in paragraph

(f) of this section, to submit evidence of citizenship or eligible immigration status required under § 5.508(b) if the family member:

- (i) Submits the required declaration and verification consent forms described in paragraphs (c) and (d) of this section certifying that any person for whom required evidence has not been submitted is U.S. citizen or a noncitizen with eligible immigration status; and
- (ii) Certifies that the evidence needed to support a claim of citizenship or eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Thirty-day extension period.* Any extension of time, if granted, may not exceed 30 days. The additional time provided should be sufficient to allow any family member the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed must be based on the circumstances of the individual case. The total extension of time granted by the responsible entity to a family must be limited to 30 days.

(3) *Grant or denial of extension to be in writing.* The responsible entity must issue its decision to grant or deny an extension to the family by written notice. If the extension is granted, the notice must specify the extension period granted (which is limited to a total of 30 days). If the extension is denied, the notice must explain the reasons for denial of the extension.

(h) *Failure to submit evidence of citizenship or eligible immigration status or to verify eligible immigration status.* If the family fails to submit required evidence of citizenship or eligible status within the time period specified in the notice, or any extension granted in accordance with paragraph (g) of this section, or if the evidence is timely submitted but fails to verify citizenship or eligible immigration status, the responsible entity must proceed to deny or terminate assistance or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 5.514, 5.516, and 5.518.

9. Revise § 5.510 to read as follows:

§ 5.510 Documents of citizenship and eligible immigration status.

(a) *General.* A responsible entity must request and review original or certified copies of documents of citizenship and eligible immigration status in accordance with this subpart. The responsible entity must retain photocopies of the documents for its own records and return the original or certified copies of documents to the family.

(b) *Acceptable documentation of U.S. citizenship.* Acceptable documentation of U.S. citizenship is required only for purposes of secondary verification under § 5.512(d) and includes the original or a certified copy of:

- (1) A U.S. birth certificate;
- (2) A naturalization certificate;
- (3) A Consular Report of Birth Abroad (FS-240);
- (4) A valid unexpired U.S. passport;
- (5) A certificate of citizenship; or
- (6) Other acceptable documentation, as specified in HUD guidance.

(c) *Acceptable documentation of eligible immigration status.* Acceptable documentation of eligible immigration status is the original or a certified copy of a document designated by DHS as acceptable evidence of immigration status in one of the categories set forth in Section 214 (see 42 U.S.C. 1436a(a)) for the specific immigration status claimed by the individual.

10. Revise § 5.512 to read as follows:

§ 5.512 Verification of citizenship and eligible immigration status.

(a) *General.* Except as described in paragraph (b) of this section and § 5.514, no individual or family applying for assistance may receive such assistance prior to the verification of the eligibility of at least the individual or one family member. Verification of eligibility consistent with § 5.514 occurs when the individual or family members have submitted evidence to the responsible entity in accordance with § 5.508, and this section as applicable.

(b) *PHA election to provide assistance before verification.* A PHA that is a responsible entity under this subpart E may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member.

(c) *Primary verification of U.S. citizenship or eligible immigration status —*

(1) *Verification system.* Primary verification of the U.S. citizenship, U.S. nationality, or eligible immigration status of the person is conducted by the responsible entity through Systematic Alien Verification for Entitlements (SAVE), a DHS-administered program for the verification of U.S. citizenship and immigration status. Primary verification in SAVE confirms U.S. citizenship or immigration status using biographic information (first name, last name, and date of birth) and a government-issued numeric identifier permitted by SAVE.

(2) *Failure of primary verification to confirm U.S. citizenship or eligible immigration status.* If SAVE is not initially able to confirm U.S. citizenship, U.S. nationality, or eligible immigration status for the person, then the responsible entity must conduct secondary verification in accordance with paragraph (d) of this section.

(d) *Secondary verification.*

(1) The responsible entity must provide notice to the person of the opportunity to provide additional information, and acceptable documentation as described in § 5.510, for purposes of secondary verification. The responsible entity's notice must:

- (i) Be in writing;
- (ii) Notify the person of the results of primary verification and describe the need for secondary verification;
- (iii) Identify whether, and describe the reasons why, acceptable documentation under § 5.510(b) and/or additional information is needed for secondary verification, including information on applicable dates under paragraph (d)(3) of this section; and

(iv) Notify the person of the ability to pursue at any point in the verification process a records correction with any agency that issued or maintains records and original or certified copies of documents relevant to verification.

(2) For secondary verification of U.S. citizenship and U.S. nationality:

(i) The person must provide acceptable documentation as described in § 5.510(b) and any information described as necessary for secondary verification in the notice provided by the responsible entity to the individual pursuant to paragraph (d)(1) of this section;

(ii) The responsible entity must then review any acceptable documentation and additional information provided by the person; and

(iii) If applicable as specified in HUD guidance, the responsible entity must request additional verification through the SAVE program.

(3) For secondary verification of eligible immigration status, the responsible entity must request additional verification through the SAVE program within 30 days of notification of the results of primary verification.

(e) *Failure to confirm U.S. citizenship or immigration status.* If primary and secondary verification do not confirm U.S. citizenship, U.S. nationality, or eligible immigration status, or confirm immigration status that is ineligible for assistance under a Section 214 covered program, the responsible entity must issue to the family the notice described in § 5.514(d), which includes notification of the ability to pursue a records correction with any agency that issued or maintains records and original or certified copies of documents relevant to verification, and the right to request an informal hearing with the responsible entity in accordance with § 5.514(e) (see § 5.514(d)(4) and (5)).

(f) *Exemption from liability for DHS verification.* The responsible entity is not liable for any action, delay, or failure of DHS in conducting DHS verification procedures.

11. Amend § 5.514 as follows:

a. Remove “INS” everywhere it appears and add “DHS” in its place;

- b. Revise paragraphs (a), (b), (c)(1), and (d);
- c. Remove paragraph (e) and redesignate paragraphs (f) through (i) as paragraphs (e) through (h) respectively;
- d. Revise redesignated paragraph (e)(1);
- e. In redesignated paragraph (e)(2)(ii), remove the reference to “paragraph (f)(3)(i)” and add, in its place, “paragraph (e)(2)(i)”;
 - f. Revise redesignated paragraphs (e)(2)(iii) introductory text, (e)(2)(iii)(C), and (g); and
 - g. In the introductory text of redesignated paragraph (h)(1), remove the phrase “Under Housing covered programs” and add, in its place, the phrase “Under the Section 236 program”.

The additions and revisions read as follows:

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

- (a) Assistance to a family may not be delayed, denied, reduced or terminated because of the immigration status or pending citizenship verification of a family member except as provided in this section.
- (b) *Restrictions on delay, denial, reduction, or termination of assistance*—
 - (1) *Restrictions on delay, denial, reduction, or termination of assistance for applicants and tenants.* Assistance to an applicant or tenant may not be delayed, denied, reduced, or terminated, on the basis of lack of U.S. citizenship, lack of U.S. nationality, or ineligible immigration status of a family member, if:
 - (i) The applicable verification process under § 5.512, including secondary verification under § 5.512(d), has been timely instituted but has not yet completed;
 - (ii) The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;
 - (iii) The family member who is determined not to be a U.S. citizen, a U.S. national, or in an eligible immigration status following the SAVE verification has moved from the assisted dwelling unit;

(iv) Assistance for a mixed family is prorated in accordance with § 5.520 pending final verification, including any procedures under §§ 5.512(d) and 5.514(e), on the eligibility of family members;

(v) Assistance is continued in accordance with §§ 5.516 and 5.518; or

(vi) Deferral of termination of assistance is granted in accordance with §§ 5.516 and 5.518.

(2) *Restrictions on delay, denial, reduction, or termination of assistance pending fair hearing for tenants.* In addition to the factors listed in paragraph (b)(1) of this section, assistance to a tenant cannot be delayed, denied, reduced, or terminated until the completion of the informal hearing process described in paragraph (e) of this section.

(c) *Events causing denial or termination of assistance*—(1) *General.* The responsible entity must deny assistance to an applicant and must terminate a tenant's assistance in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship or eligible status as required by § 5.508 is not submitted by the date specified in § 5.508(f) or by the expiration of any extension granted in accordance with § 5.508(g); or

(ii) Evidence of citizenship or eligible status as required by § 5.508 or § 5.512 is timely submitted, but primary and secondary verification do not verify U.S. citizenship, U.S nationality, or eligible immigration status of a family member; and

(A) The family does not pursue informal hearing rights as provided in this section; or
(B) The family does pursue informal hearing rights, but the final hearing decision is decided against the family member.

(iii) The responsible entity determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the public or assisted housing unit of the family member. Such termination must be for a period of not less

than 24 months. This provision does not apply to families eligible for continued assistance pursuant to §§ 5.516 and 5.518.

* * * *

(d) The notice of denial or termination of assistance must advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That the family may be eligible for proration of assistance as provided under § 5.520 pending final verification, including any procedures under §§ 5.512(d) and 5.514(e), on the eligibility of other family members;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families in §§ 5.516 and 5.518;

(4) That the family has the ability to pursue at any point in the verification process a records correction with any agency that issued or maintains records and original or certified copies of documents relevant to verification;

(5) That the family has a right to request an informal hearing with the responsible entity as provided in § 5.514(e); and

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of procedures under § 5.512, but assistance may be delayed during the pendency of the informal hearing process as provided in § 5.514(e).

(e) * * *

(1) *When request for hearing is to be made.* For U.S. citizenship verification and eligible immigration status verification by responsible entities, the family may request that the responsible entity provide a hearing. This request must be made within 30 days of receipt of the notice described paragraph (d) of this section.

(2) * * *

(iii) *Families under the Section 236 Program and applicants for assistance under all covered programs.* For all families under the Section 236 program (applicants as well as tenants already receiving assistance) and for applicants for assistance under all covered programs, the procedures for the informal hearing before the responsible entity are as follows: * * *

(C) *Presentation of evidence and arguments in support of eligible status.* The family must be provided the opportunity to present evidence and arguments in support of U.S. citizenship or eligible immigration status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

* * * *

(g) *Retention of documents.* The responsible entity must retain, for a minimum of 5 years, the following documents that may have been submitted to the responsible entity by the family, or provided to the responsible entity as part of the verification process, including primary verification under § 5.512(d), or the informal hearing process under this section:

- (1) The application for financial assistance;
- (2) The form completed by the family for income reexamination;
- (3) Photocopies of any original or certified copies of documents (front and back),

including original or certified copies of DHS and citizenship documents, and corrected records and documents;

- (4) The signed verification consent form;
- (5) The DHS or responsible entity verification results;
- (6) The request for an informal hearing, if any; and
- (7) The final informal hearing decision.

* * * *

12. Revise § 5.516 to read as follows:

§ 5.516 Availability of preservation assistance to tenant families.

(a) *Assistance available for tenant families*—(1) *General*. Preservation assistance may be available to tenant families, in accordance with this section and following completion of the verification and informal hearing procedures provided in §§ 5.512 and 5.514. There are two types of preservation assistance:

- (i) Continued assistance (see § 5.518(a)); and
- (ii) Temporary deferral of termination of assistance (see § 5.518(b)).

(2) *Availability of assistance*—(i) *For the Section 236 Program*. One of the two types of assistance described in paragraph (a)(1) of this section may be available to tenant families assisted under the Section 236 Program or a 1965 HUD Act covered program, depending upon the family's eligibility for such assistance. Continued assistance must be provided to a mixed family that meets the conditions for eligibility for continued assistance.

(ii) *For Section 8 or Public Housing covered programs*: One of the two types of assistance described in paragraph (a)(1) of this section may be available to tenant families assisted under a Section 8 or Public Housing covered program.

(b) *Assistance available to other families in occupancy*. Temporary deferral of termination of assistance may be available to families receiving assistance under a Section 214 covered program on June 19, 1995, and who have no members with eligible immigration status, as set forth in paragraphs (b)(1) and (2) of this section.

(1) *For the Section 236 Program*. Temporary deferral of termination of assistance is available to families assisted under the Section 236 program.

(2) *For Section 8 or Public Housing covered programs*. The responsible entity may make temporary deferral of termination of assistance to families assisted under a Section 8 or Public Housing covered program.

(c) *Section 8 covered programs: Discretion afforded to provide certain family preservation assistance*—(1) *Project owners*. With respect to assistance under a Section 8 Act covered program administered by a project owner, HUD has the discretion to determine under

what circumstances families are to be provided one of the two statutory forms of assistance for preservation of the family (continued assistance or temporary deferral of assistance). HUD is exercising its discretion by specifying the standards in this section under which a project owner must provide one of these two types of assistance to a family.

(2) *PHAs*. The PHA, rather than HUD, has the discretion to determine the circumstances under which a family will be offered one of the two statutory forms of assistance (continued assistance, see § 5.518(a), or temporary deferral of termination of assistance, see § 5.518(b)). The PHA must establish its own policy and criteria to follow in making its decision. In establishing the criteria for granting continued assistance or temporary deferral of termination of assistance, the PHA must incorporate the statutory criteria, which are set forth in § 5.518(a) and (b).

13. Amend § 5.518 as follows:

- a. Revise the section heading and paragraphs (a), (b)(1), and (b)(2) introductory text;
- b. Remove paragraph (b)(2)(iii);
- c. Revise paragraphs (b)(3), (b)(5)(i)(A), and (b)(5)(ii)(A);
- d. Add paragraph (b)(6); and
- e. Remove paragraph (c) and redesignate paragraph (d) as paragraph (c).

The revisions and addition read as follows:

§ 5.518 Types of preservation assistance available to tenant families.

(a) *Continued assistance*. (1) A mixed family may receive prorated continued housing assistance if all the following conditions are met (a mixed family assisted under the Section 236 program must be provided prorated continued assistance if the family meets the following conditions):

(i) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(ii) The family's head of household or spouse is a U.S. citizen, a national of the United States, or has eligible immigration status as described in § 5.506; and

(iii) The only individuals in the family without eligible status are the head of household or spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse. An individual without eligible status means a person that is neither a U.S. citizen or national nor a person that has eligible immigration status.

(2) *Proration of continued assistance.* Continued assistance for eligible families under paragraph (a) of this section must be prorated as described in § 5.520.

(b) *Temporary deferral of termination of assistance—*(1) *Eligibility for this type of assistance.* If a mixed family does not qualify for continued assistance, the family may be eligible for temporary deferral of termination of assistance, if necessary, to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing.

(2) *Section 236 Program: Conditions for granting temporary deferral of termination of assistance.* The responsible entity must grant a temporary deferral of termination of assistance to a family if the family is assisted under the Section 236 program and one of the following conditions is met:

* * * *

(3) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the initial deferral period may not exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period for deferrals may not exceed a period of eighteen months. These time periods do not apply to a family that includes an individual admitted as a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act.

* * * *

(5) * * *

(i) * * *

(A) For the Section 236 Program: Make a determination that one of the two conditions specified in paragraph (b)(2)(i) and (ii) of this section continues to be met (note: affordable housing will be determined to be available if the vacancy rate is five percent or greater), and the owner's knowledge and the tenant's evidence indicate that other affordable housing is available; or

* * * * *

(ii) * * *

(A) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceeds the maximum deferral period), because a determination was made that other affordable housing is not available. This time period does not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act; or

* * * * *

(6) *Proration of assistance during temporary deferral of termination of assistance.*

Assistance for eligible families under paragraph (b) of this section must be prorated as described in § 5.520.

* * * * *

14. Amend § 5.520 as follows:

a. Revise paragraphs (a) and (b); and

b. In paragraph (c)(1)(ii), remove the reference to "section 5.613(a)" and add, in its place, a reference to "§ 5.628".

The revisions to read as follows:

§ 5.520 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family with at least one family member who has U.S. citizenship, U.S. nationality, or eligible immigration status pending final verification, including any procedures under §§ 5.512(d) and 5.514(e), for other family members, or to a mixed family eligible for preservation assistance under §§ 5.516 and 5.518.

* * * *

(b) *Method of prorating assistance for the Section 236 Program.*—(1) *Proration under Section 236 Program without the benefit of additional assistance.* If the household participates in the Section 236 Program without the benefit of any additional assistance, the household's rent must be increased above the rent the household would otherwise pay by an amount equal to the difference between the market rate rent for the unit and the rent the household would otherwise pay multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household.

(2) *Proration under Section 236 Program with the benefit of additional assistance.* If the household participates in the Section 236 Program with the benefit of additional assistance under the Section 8 programs, the household's rent must be increased above the rent the household would otherwise pay by:

(i) An amount equal to the difference between the market rate rent for the unit and the basic rent for the unit multiplied by a fraction, the denominator of which is the number of people in the household, and the numerator of which is the number of ineligible persons in the household, plus;

(ii) An amount equal to the housing assistance payment (the unit's gross rent minus the family's total tenant payment, see 24 CFR 5.628) the household would otherwise be entitled to multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household.

* * * *

15. Revise § 5.522 to read as follows:

§ 5.522 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§ 5.516 and 5.518 permitting continued assistance or temporary deferral of termination of assistance for certain families do not apply to any person who is determined to be a noncitizen student as in Section 214(c)(2)(A) (42 U.S.C. 1436a(c)(2)(A)).

(b) *Family of noncitizen students.* The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section extends to the noncitizen spouse of the noncitizen student and minor children accompanying the student or following to join the student.

Scott Turner,

Secretary

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