



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR-6124-P-01]

RIN 2501-AD89

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

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would make two changes to HUD's regulations implementing section 214 of the Housing and Community Development Act of 1980, as amended (Section 214). 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. The proposed rule would require the verification of the eligible immigration status of all recipients of assistance under a covered program who are under the age of 62. As a result, the proposed rule would make prorated assistance a temporary condition pending verification of eligible status, as opposed to under the current regulation where it could continue indefinitely. The proposed rule would also specify that individuals who are not in eligible immigration status may not serve as the leaseholder, even as part of a mixed family whose assistance is prorated based on the percentage of members with eligible status. HUD believes the amendments will bring its regulations into greater alignment with the wording and purpose of Section 214.

DATES: Comment Due Date: **[Insert date 60 days from date of publication in the Federal Register]**

ADDRESSES: Interested persons are invited to submit comments to the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410-0001. Communications should refer to the above docket number and title and should contain the information specified in the “Request for Comments” section. There are two methods for submitting public comments.

1. 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. Due to security measures at all Federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments by mail be submitted at least 2 weeks in advance of the public comment deadline.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://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 the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimiled Comments. Facsimiled (faxed) comments are not acceptable.

Public Inspection of Comments. All comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: John Gibbs, Senior Advisor, Office of the Secretary, Department of Housing and Urban Development, 451 7th Street, SW, Room 10282, Washington, DC 20410; telephone number (202) 402-4445 (this is not a toll-free number).

Individuals with hearing or speech impediments may access this number via TTY by calling the Federal Relay, during working hours, at

1 (800) 877-8339 (this is a toll-free number).

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, as amended (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 noncitizens. The Section 214 requirements apply to financial assistance provided under the following HUD programs (collectively referred to as Section 214 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 Housing Assistance programs, and the Housing Development Grant programs (with respect to low-income units only).¹

Section 214 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 stated 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 HUD regulations.³ However, Section 214 also contains several provisions to mitigate the potential impacts on the elderly and families. The Housing and Community Development Act of 1987⁴ (1987 HCD Act) amended Section 214 to exempt individuals 62 years of age or older from the immigration status verification requirements.⁵ 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 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.⁶ 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

¹ 42 U.S.C. 1436a(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 42 U.S.C. 1436a(d)(2).

³ 42 U.S.C. 1436a(a).

⁴ Public Law 100-242, enacted February 5, 1988.

⁵ 42 U.S.C. 1436a(d)(2).

⁶ 42 U.S.C. 1436a(c)(1)(A)

[eligible] members.”⁷ Section 214 also authorized the temporary deferral of termination of assistance for families receiving assistance on February 5, 1988, but who were ineligible for continued assistance on a prorated basis “to permit the orderly transition of the individual and any family members involved to other affordable housing.”⁸

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, 1995.⁹ The 1995 final rule promulgated virtually identical noncitizens’ regulations for the various HUD programs covered by Section 214. On March 27, 1996,¹⁰ HUD published a final rule eliminating the repetitiveness of these duplicative regulations by consolidating the noncitizens requirements in a new subpart E to 24 CFR part 5 (captioned “Restrictions on Assistance to Noncitizens”), where they continue to be codified at present.

The preamble to the March 20, 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, 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 March 20, 1995, final rule (June 19, 1995) as the relevant date for determining eligibility for preservation assistance.

⁷ *Id.*

⁸ 42 U.S.C. 1436a(c)(1)(B)(i).

⁹ 60 FR 14816.

¹⁰ 61 FR 13614.

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 status¹¹; or (2) elect not to contend eligible immigration status and, therefore, not submit documentation for verification.¹² Family members who declare themselves eligible must provide the original of a document designated by the Department of Homeland Security (DHS) as acceptable evidence of immigration status¹³ 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.¹⁴ Verification of the immigration status of the individual is provided through Systematic Alien Verification for Entitlements (SAVE), which is administered by DHS.¹⁵ SAVE verifies the immigration status information of noncitizens.

The 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.¹⁶ As noted, Section 214 provides for proration in the context of preservation assistance to mixed families grandfathered by the 1987 HCD Act. However, the amendments made by the 1987 HCD Act limited prorated continued assistance to families with a head of household or spouse in eligible immigration status. In contrast, HUD's current regulations do not require that the head of household or spouse have eligible immigration status in order for a mixed family to qualify for such assistance.

III. This Proposed Rule.

¹¹ § 5.508(c).

¹² § 5.508(e).

¹³ § 5.510.

¹⁴ § 5.508(d)(2).

¹⁵ In actuality, the regulations refer to the Immigration and Naturalization Service (INS), a predecessor agency to DHS.

¹⁶ § 5.516(a)(1)(iii).

This proposed rule would make two changes to the noncitizens regulations in 24 CFR part 5, subpart E. Several factors have prompted HUD to reconsider its noncitizens regulations. On April 10, 2018, President Trump issued Executive Order 13828, titled “*Reducing Poverty in America by Promoting Opportunity and Economic Mobility*.”¹⁷ Among other provisions, section 2(e) of the Executive order provides that agencies should “adopt policies to ensure that only eligible persons receive benefits and enforce all relevant laws providing that aliens who are not otherwise qualified and eligible may not receive benefits.” Further, consistent with the Administration’s regulatory reform efforts, 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 Executive Order 13828 and regulatory reform.¹⁸ The policy changes will bring HUD’s regulations into greater alignment with the requirements of Section 214 and make the administrative process for verification uniform. The proposed amendments are discussed below:

1. Verification of eligible immigration status. The first proposed amendment would require that the eligible immigration status of all recipients of assistance under a Section 214 covered program who are under the age of 62 be verified through SAVE.

¹⁷ The Executive order was subsequently published in the *Federal Register* on April 13, 2018 (83 FR 15942), and is available at: <https://www.gpo.gov/fdsys/pkg/FR-2018-04-13/pdf/2018-07874.pdf>.

¹⁸ This proposed rule was also prompted by the March 6, 2017, Presidential Memorandum directing “[t]he heads of all relevant executive departments and agencies “[to] issue new rules, regulations, or guidance (collectively, rules), as appropriate, to enforce laws relating to such grounds of inadmissibility and subsequent compliance.” Although the Presidential Memorandum is focused on the admissibility of aliens into the United States rather than programs of assistance, the proposed regulatory changes are consistent with the directives of the memorandum. See *Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits, Ensuring Enforcement of All Laws for Entry Into the United States, and Increasing Transparency Among Departments and Agencies of the Federal Government and for the American People*, 82 FR 16279 (April. 3, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-04-03/pdf/2017-06702.pdf>.

As noted, the regulations presently excuse individuals from submitting documentation if they do not contend to having eligible immigration status. This results in no actual determination of immigration status being made. The language of Section 214, however, contemplates that HUD assistance under a covered program will generally be contingent on verification of eligible immigration status. While Congress recognized that exceptions to this general verification requirement might be warranted in some cases, this statutory exception is narrowly tailored to individuals 62 years of age or older participating in Section 214 covered programs. In contrast, the “do not contend” provision of the regulation is more broadly applicable to all program participants. The proposed change will better conform HUD’s regulations to the statutory language of Section 214.

Under the proposed amendment to the rule, a current participant in a Section 214 covered program (with the exception of Section 235 assistance payments) who has not previously submitted evidence of eligible immigration status, will be required to do so at the first regular reexamination after the effective date of HUD’s final rule for this rulemaking. This typically occurs on an annual basis. For financial assistance in the form of Section 235 assistance payments, the mortgagor would be required to submit the required evidence in accordance with requirements imposed under the Section 235 Program. The proposed amendment to the rule would not change the timing of verification for new applicants to a Section 214 covered program.

2. Leaseholder eligibility. The second proposed regulatory amendment would specify that individuals who are not verified in an eligible immigration status may not serve as the head of household or spouse (i.e., the holder of the lease). As with the prior change, HUD believes this amendment better reflects the statutory requirements of Section 214. In addition, it will

better assure that the person who is legally obligated under the lease or other tenancy agreement has been through a uniform identity verification process that would better facilitate locating such person and bringing any necessary administrative or legal actions.

Under the current regulations, the “do not contend” provision facilitates the indefinite use by a mixed family of prorated assistance. Further, it is possible under the current regulations for the holder of the lease to be ineligible under the Section 214 covered program for which the mixed family is receiving assistance. 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 such time that it takes to verify eligible status. 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. At the time of enactment of Section 214, verification 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. Thus, prorated assistance should rarely be applicable and then of short duration. The “do not contend” provision is inconsistent with the statutory requirements insofar as it permits prorated assistance of unlimited duration.

Further, HUD no longer agrees that a leaseholder, the individual who is contractually bound to the landlord and who holds conditional ownership of the unit for the lease term, can be exempted from having verified eligible immigration status at the outset of the tenancy and

assistance. HUD believes that requiring the verified eligible immigration status of the head of household or spouse is more in keeping with the intent of Section 214 to limit eligibility to individuals with eligible immigration status, subject to limited exceptions, and consistent with HUD's existing treatment of leaseholders in its assisted housing programs.

3. Technical nonsubstantive changes. In addition to the two substantive amendments discussed above, HUD has taken the opportunity afforded by the proposed rule to make a few technical, nonsubstantive changes to the regulations to further conform to Section 214 statutory requirements. These amendments update terminology and correct formatting. For example, the proposed rule would replace outdated references to the Immigration and Naturalization Service (INS) to refer to DHS.

IV. 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 the order (although not an economically significant regulatory action under the 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.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street, SW, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay at 1(800) 877-8339 (this is a toll-free number).

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 amendments would not require the creation of new procedures or impose significant additional costs on responsible entities. Rather,

the requirements of the proposed rule could be satisfied using existing procedures. For example, the proposed rule would require that the eligible immigration status of all noncitizens be verified through SAVE. This requirement can be fulfilled by utilizing the existing verification procedures. Likewise, 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.

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 E—Restrictions on Assistance to Noncitizens

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

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

3. Amend paragraph (b) of § 5.504 by adding the definition of “DHS” in alphabetical order and removing the definitions of “INS” and “Mixed family” to read as follows:

§ 5.504 Definitions.

* * * * *

(b) * * *

DHS means the Department of Homeland Security.

* * * * *

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

§ 5.506 General provisions.

* * * * *

(b) Family eligibility for assistance. (1) A family shall not be 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 nonetheless be eligible for temporary deferral of termination of assistance as provided in §§ 5.516 and 5.518.

(3) A family whose head of household or spouse has eligible immigration status is eligible for prorated assistance under § 5.520, pending final determinations on the eligibility of other family members.

* * * * *

5. 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 appropriate documentation, such as:

- (i) A U.S. birth certificate;
- (ii) A naturalization certificate;
- (iii) A Consular Report of Birth Abroad (FS-240);
- (iv) A valid unexpired U.S. passport;
- (v) A certificate of citizenship; or
- (vi) Other appropriate documentation, as specified in HUD guidance.

(2) For noncitizens who are 62 years of age or older and were receiving assistance under a Section 214 covered program on September 30, 1996, or who will be 62 years of age or older

or applying for assistance on or after that date, the evidence consists of a proof of age document, as may be specified by HUD, and one of the following:

- (i) A Form I-551, Permanent Resident Card;
- (ii) Form I-94, Arrival/Departure Record;
- (iii) A foreign passport with I-551 stamp;
- (iv) A notice of approval of status or action from DHS; or
- (v) Other appropriate documentation specified by HUD.

(3) For all other noncitizens, the evidence consists of:

- (i) A signed declaration of eligible immigration status (see paragraph (c) of this section);
- (ii) One of the DHS documents referred to in § 5.510; and
- (iii) A signed verification consent form (see 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 he or she 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, (except certain noncitizens who are 62 years of age or older as described in paragraph (b)(2) of this section) must sign a verification consent form as follows:

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

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

(2) Notice of release of evidence by responsible entity. The verification consent form shall provide that evidence of eligible immigration 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:

(i) HUD, as required by HUD; and

(ii) DHS to verify the immigration status of the individual.

(3) Notice of release of evidence by HUD. The verification consent form shall also notify the individual of the possible release of evidence of eligible immigration status by HUD.

Evidence of eligible immigration status shall only be released to DHS for purposes of verifying the individual has 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. Notification of the requirement to submit evidence that the individual is a U.S. citizen, as defined in § 5.504(b), or that individual has eligible immigration status, as required by this section, shall be given by the responsible entity as follows:

(i) Applicant's notice. The notification shall be given to each applicant at the time of application for assistance.

(ii) Notice to tenants. The notification shall be given to each tenant who has not submitted evidence of eligible status as of **[insert effective date of final rule]** at the time of, and together with, the responsible entity's notice of regular reexamination of income.

(iii) Timing of mortgagor's notice. A mortgagor receiving Section 235 assistance must be provided the notification and any additional requirements imposed under the Section 235 Program.

(2) Form and content of notice. The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of evidence that the individual is a U.S. citizen, as defined in § 5.504(b), or has eligible immigration status;

(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 all appeals, if any, have been exhausted or, if appeals are 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 whose head of household or spouse has eligible immigration status, pending final determinations for other family members; and

(v) Inform tenant's how to obtain assistance under the preservation of families provisions of §§ 5.516 and 5.518.

(f) When evidence of eligible status is required to be submitted. The responsible entity shall require evidence of eligible status to be submitted at the times specified in this paragraph (f), subject to any extension granted in accordance with paragraph (g) of this section.

(1) Applicants. For applicants, responsible entities must ensure that evidence of eligible status 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. A tenant who has not submitted evidence of eligible status as of **[insert effective date of final rule]** is required to submit such evidence as follows:

(i) For financial assistance under a Section 214 covered program, with the exception of Section 235 assistance payments, the required evidence shall be submitted at the first regular reexamination after **[insert effective date of final rule]**, in accordance with program requirements.

(ii) For financial assistance in the form of Section 235 assistance payments, the mortgagor shall submit the required evidence in accordance with requirements imposed under the Section 235 Program.

(3) New occupants of assisted units. For any new occupant of an assisted unit (e.g., a new family member comes to reside in the assisted unit), the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) Changing participation in a HUD program. Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this subpart 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. For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any Section 214 covered program.

(g) Extensions of time to submit evidence of eligible status—(1) When extension must be granted. The responsible entity shall extend the time, provided in paragraph (f) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the required declaration described in paragraph (c) of this section certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of 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, shall not exceed 30 days. The additional time provided should be sufficient to allow the individual the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) Grant or denial of extension to be in writing. The responsible entity's decision to grant or deny an extension shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted (which shall not exceed 30 days). If the extension is denied, the notice shall explain the reasons for denial of the extension.

(h) Failure to submit evidence or to establish eligible status. If the family fails to submit required evidence of 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 establish eligible immigration status, the responsible entity shall 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.

§ 5.510 [Amended]

6. In § 5.510(b), remove the reference to “INS” and add in its place “DHS”.

7. Revise § 5.512 to read as follows:

§ 5.512 Verification of eligible immigration status.

(a) General. Except as described in § 5.514, no individual or family applying for assistance may receive such assistance prior to the verification of the eligibility of at least the head of household or spouse. Verification of eligibility consistent with § 5.514 occurs when the individual or family members have submitted documentation to the responsible entity in accordance with § 5.508.

(b) Initial verification—(1) Verification system. Verification of the immigration status of the person is conducted by the responsible entity through Systematic Alien Verification for Entitlements (SAVE), a DHS-administered system for the verification of immigration status. Initial verification in SAVE confirms immigration status using biographic information (first name, last name, and date of birth) and immigration numeric identifiers.

(2) Failure of initial verification to confirm eligible immigration status. If SAVE is not initially able to confirm immigration status, then additional verification must be performed.

(c) Additional verification. If the initial verification does not confirm eligible immigration status, or if initial verification confirms immigration status that is ineligible for

assistance under a Section 214 covered program, the responsible entity must request additional verification within 10 days of receiving the results of the initial verification. Additional verification is initiated when the responsible entity submits an s additional request to SAVE with optional additional information and/or a copy of the original document that the noncitizen had presented as acceptable evidence of their immigration status to SAVE.

(d) Failure to confirm eligible immigration status. If initial or additional verification does not confirm eligible immigration status, the responsible entity shall issue to the family the notice described in § 5.514(d), which describes the process for seeking record correction with DHS if he or she believes the verification response was due to inaccurate DHS records.

(e) Exemption from liability for DHS verification. The responsible entity shall not be liable for any action, delay, or failure of DHS in conducting initial or additional verification.

8. Amend § 5.514 as follows:

a. Revise paragraphs (b)(1), (c), and (d); and

b. In paragraphs (e), (f), and (h), remove the reference to “INS” everywhere it appears and add in its place “DHS”.

The revisions read as follows:

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

* * * * *

(b) Restrictions on delay, denial, reduction or termination of assistance--(1) Restrictions on reduction, denial or termination of assistance for applicants and tenants. Assistance to an applicant or tenant shall not be delayed, denied, reduced, or terminated, on the basis of ineligible immigration status of a family member, if:

(i) The SAVE verification of any immigration documents that were timely submitted has not been 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 in an eligible immigration status following the SAVE verification has moved from the assisted dwelling unit;

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

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

* * * * *

(c) Events causing denial or termination of assistance—(1) General. Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence that the individual is a U.S. citizen as defined in § 5.504(b) (i.e., the declaration), or has eligible immigration status, 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 that the individual is a U.S. citizen as defined in § 5.504(b), or has eligible immigration status, is timely submitted, but the SAVE verification does not verify eligible immigration status of a family member.

(2) Termination of assisted occupancy. For termination of assisted occupancy, see paragraph (i) of this section.

(d) Notice of denial or termination of assistance. The notice of denial or termination of assistance shall 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) 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; and

(3) That any family member may seek a record correction with DHS if they believe that SAVE was unable to verify their status due to incorrect immigration records.

* * * * *

9. 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 the conclusion of a records correction request. 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(a)).

(2) Availability of assistance—(i) For 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 National Housing Act or 1965 HUD Act covered program, depending upon the family's eligibility for such assistance. Continued assistance must be provided to a tenant 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 Housing covered programs. Temporary deferral of termination of assistance is available to families assisted under a Housing covered 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 or temporary deferral of termination of assistance). 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).

10. Amend § 5.518 as follows:

a. Revise the section heading and paragraphs (a), (b)(1), (b)(2) introductory text, and (b)(3); and

b. Remove paragraph (c) and redesignate paragraph (d) as new paragraph (c).

The revisions read as follows:

§ 5.518 Types of preservation assistance available to tenant families.

(a) Continued assistance. A tenant family may receive continued housing assistance if all the following conditions are met (a tenant family assisted under a Housing covered program must be provided continued assistance if the family meets the following conditions):

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

(2) The family's head of household or spouse has eligible immigration status as described in § 5.506; and

(3) The family does not include any person who does not have eligible immigration status other than the head of household, any 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.

(b) Temporary deferral of termination of assistance—(1) Eligibility for this type of assistance. If a tenant 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. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a

rent level that is unassisted; the term refers to 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.

(2) Housing covered programs: Conditions for granting temporary deferral of termination of assistance. The responsible entity shall grant a temporary deferral of termination of assistance to a family if the family is assisted under a Housing covered 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 deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period for deferrals shall 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 granted asylum under section 208 of that Act.

* * * * *

11. Revise § 5.520(a) to read as follows:

§ 5.520 Proration of assistance.

(a) Applicability. This section applies to a family whose head of household or spouse has eligible immigration status, pending final determinations for other family members.

* * * * *

12. Revise § 5.522 to read as follows:

§ 5.522 Prohibition of assistance to noncitizen students.

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)).

Dated: May 3, 2019.

Benjamin S. Carson, Sr.,
Secretary.

[FR-6124-P-01]

Billing Code: 4210-67

[FR Doc. 2019-09566 Filed: 5/9/2019 8:45 am; Publication Date: 5/10/2019]