

1 **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

2
3 **24 CFR Part 5**

4
5 **[Docket No. FR-6524-P-01]**

6
7 **RIN 2501-AD89**

8
9 **Housing and Community Development Act of 1980: Verification of Eligible Status**

10 **AGENCY:** Office of the Secretary, HUD.

11 **ACTION:** Proposed rule.

12 **SUMMARY:** Section 214 of the Housing and Community Development Act of 1980, as
13 amended (“Section 214”) prohibit the Secretary of HUD from making financial assistance
14 available to persons other than United States citizens or certain categories of eligible noncitizens
15 in HUD’s public and specified assisted housing programs. This proposed rule would revise
16 HUD’s Section 214 implementing regulations to require the verification of U.S. citizenship or
17 the eligible immigration status of all applicants and recipients of assistance under a covered
18 program who are under the age of 62. The proposed rule would also make prorated assistance a
19 temporary condition pending verification of eligible status of family members, where permitted
20 by statute, as opposed to under HUD’s current regulations where prorated assistance could
21 continue indefinitely. HUD believes the amendments would bring its regulations into greater
22 alignment with the wording and purpose of Section 214 and align with the current
23 Administration’s priorities and regulatory reform efforts.

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

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

1 **1. Electronic Submission of Comments.** Comments may be submitted electronically
2 through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages
3 commenters to submit comments electronically. Electronic submission of comments allows the
4 commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD,
5 and enables HUD to make comments immediately available to the public. Comments submitted
6 electronically through www.regulations.gov can be viewed by other commenters and interested
7 members of the public. Commenters should follow the instructions provided on that website to
8 submit comments electronically.

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

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

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

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

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

3 **FOR FURTHER INFORMATION CONTACT:**

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

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

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

16 **SUPPLEMENTARY INFORMATION:**

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

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

24 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 Section 214 authorizes PHAs to elect not to affirmatively establish and verify eligibility before providing financial assistance.⁴ However, Section 214 also contains several provisions to mitigate the potential impacts on the elderly and families. The Housing and Community Development Act of 1987⁵ (1987 HCD Act) amended Section 214 to exempt individuals 62 years of age or older from the immigration status verification requirements.⁶ 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

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 42 U.S.C. 1436a(i)(2)(A).

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

⁶ 42 U.S.C. 1436a(d)(2).

to such a family if “necessary to avoid the division of the family” and the head of household or spouse has eligible immigration status, among other requirements.⁷ 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.”⁸ 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.”⁹ Section 214 provides for proration in a second instance, when the eligibility of at least one family member has been affirmatively established and the ineligibility of one or more family members has not been affirmatively established.¹⁰

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”).¹¹ The 1995 final rule created virtually identical noncitizens regulations for the various HUD programs covered by Section 214. On March 27, 1996,¹² 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 changes¹³ and to make conforming amendments as part of cross-cutting

⁷ 42 U.S.C. 1436a(c)(1)(A).

⁸ *Id.*

⁹ 42 U.S.C. 1436a(c)(1)(B)(i).

¹⁰ 1436a(b)(2) and (c)(1)(A).

¹¹ 60 FR 14816.

¹² 61 FR 13614.

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

1 rulemakings that revised regulations for Section 214 covered programs, among other
 2 regulations.¹⁴

3 The preamble to the 1995 final rule stated that, for purposes of eligibility for preservation
 4 assistance, HUD considered the effective date of the final rule as the pivotal date rather than the
 5 date of enactment of the statute. As noted above, the amendments to Section 214 made by the
 6 1987 HCD Act condition a family's eligibility for preservation assistance on the family's receipt
 7 of assistance on the date of the statute's enactment. HUD explained in the preamble to the 1995
 8 final rule that it had determined the provisions of Section 214 too "complex to be determined
 9 self-implementing as of the date of enactment of the 1987 HCD Act (February 5, 1988)." Thus,
 10 HUD's regulations use the effective date of the March 20, 1995, final rule (June 19, 1995) as the
 11 relevant date for determining eligibility for preservation assistance.

12 HUD's current regulations require that each family member applying for assistance under
 13 a Section 214 covered program either: (1) submit a declaration declaring that he or she is a U.S.
 14 citizen, as defined in 24 CFR 5.504(b), or a noncitizen with eligible immigration status;¹⁵ or (2)
 15 elect not to contend eligible immigration status and, therefore, not submit documentation for
 16 verification.¹⁶ Family members who declare themselves eligible noncitizens must provide the
 17 original of a document designated by the Department of Homeland Security ("DHS")¹⁷ as
 18 acceptable evidence of immigration status¹⁸ and consent to transmittal of a copy of the document
 19 and the information contained on the document to DHS to verify whether the individual has

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

¹⁵ 24 CFR 5.508(c).

¹⁶ 24 CFR 5.508(e).

¹⁷ 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/factsheets/INSHistory.pdf>.

¹⁸ 24 CFR 5.510.

1 eligible immigration status.¹⁹ Verification of the immigration status of the individual is provided
2 through Systematic Alien Verification for Entitlements (“SAVE”), which is administered by
3 DHS.²⁰

4 HUD’s current regulations require that any financial assistance made available to a
5 “mixed family” be prorated, based on the number of individuals in the family for whom
6 eligibility has been affirmatively established.²¹ Under HUD’s current regulations, “mixed
7 family” means a family whose members include those with citizenship or eligible immigration
8 status, and those without citizenship or eligible immigration status. 24 CFR 5.504(b). As noted,
9 ~~Section 214 provides for proration in the context of preservation assistance to mixed families~~
10 ~~grandfathered by the 1987 HCD Act. However, the amendments made to Section 214 by the~~
11 ~~1987 HCD Act limited prorated continued assistance to families with a head of household or~~
12 ~~spouse in eligible immigration status. In contrast, HUD’s current regulations do not require that~~
13 ~~the head of household or spouse have eligible immigration status for a mixed family to qualify~~
14 ~~for such assistance.~~ As discussed above, Section 214 provides for prorated assistance in two
15 circumstances: (1) in the context of preservation assistance to mixed families grandfathered by
16 the 1987 HCD Act and (2) when the eligibility of at least one family member has been
17 affirmatively established and the ineligibility of one or more family members has not been
18 affirmatively established.²² HUD’s current regulations implementing preservation assistance
19 under instance one complies with Section 214. HUD’s current regulations implementing prorated
20 assistance when at least one family member’s eligibility has been affirmatively established
21 allows for indefinite proration. However, Section 214 does not contemplate indefinite prorated
22 assistance for families that are ineligible for prorated continued assistance.

¹⁹ 24 CFR 5.508(d)(2).

²⁰ <https://www.uscis.gov/save>.

²¹ 24 CFR 5.516(a)(1)(iii).

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

1 **III. This Proposed Rule**

2 Several factors have prompted HUD to reconsider its noncitizens regulations. On April
3 10, 2018, President Trump issued Executive Order (EO) 13828, titled “*Reducing Poverty in*
4 *America by Promoting Opportunity and Economic Mobility*.”²³ Among other provisions, section
5 2(e) of EO 13828 provides that agencies should “adopt policies to ensure that only eligible
6 persons receive benefits and enforce all relevant laws providing that aliens who are not otherwise
7 qualified and eligible may not receive benefits.” EO 13828 was revoked by EO 14018 on
8 February 24, 2021, but it was reinstated when EO 14018 was revoked on January 20, 2025.
9 Further, on February 19, 2025, the President issued Executive Order 14218, “*Ending Taxpayer*
10 *Subsidization of Open Borders*” (“EO 14218”).²⁴ Among other provisions, section 2(a) of EO
11 14218 directs the head of each Department or agency, including HUD, to enhance eligibility
12 verification systems, to the maximum extent possible, to ensure that taxpayer-funded benefits
13 exclude any ineligible alien. Additionally, consistent with the current Administration’s
14 regulatory reform efforts,²⁵ HUD has undertaken a comprehensive review of its regulations to
15 reduce unnecessary regulatory burdens, enhance the effectiveness of those regulations that are
16 necessary, and promote principles underlying the rule of law, including ensuring the conformity
17 of regulations with statutory mandates. HUD believes the proposed regulatory amendments are
18 consistent with the principles of EOs 13828 and 14218 and the current Administration’s
19 regulatory reform efforts.²⁶ The policy changes will bring HUD’s regulations into greater

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

²⁴ Executive Order 14218 was published in the *Federal Register* at 90 FR 10581 on February 25, 2025.

²⁵ 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.

²⁶ 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

alignment with the requirements of Section 214 and make the administrative process for verification more uniform for citizens and eligible noncitizens.

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

§ 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 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 with "the Section 236 Program."

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 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,"²⁷ which pertains to the Section 235 Program.

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"

²⁷ The sentence states, "For purposes of this subpart E, the terms 'tenant' and 'tenant family' will also be used to include a homebuyer, where appropriate."

1 As discussed in the section titled “Changing ‘mixed family’ to ‘tenant family’” in this
2 preamble, HUD is also proposing to remove the definition of “mixed family” and to revise the
3 first sentence of the definition of “tenant” to include tenant families.

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

10 *§ 5.506(b): Family eligibility for assistance.*

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

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

20 Existing 24 CFR 5.506(b)(2) provides that a mixed family may be eligible for one of the
21 types of assistance provided in 24 CFR 5.516 and 5.518 (which discuss types of preservation
22 assistance such as continued prorated assistance), and that a family without any eligible members
23 and receiving assistance on June 19, 1995, may be eligible for temporary deferral of termination
24 of assistance under §§ 5.516 and 5.518. HUD is proposing to revise this paragraph to remove the

1 reference to “mixed family” and restructure the sentence to more closely align with the statutory
2 language of Section 214. Revised § 5.508(b)(2) would provide that despite the ineligibility of
3 one or more family members, a family that was receiving assistance under a Section 214 covered
4 program on June 19, 1995, may be eligible for continued assistance under §§ 5.516 and 5.518. If
5 the family does not qualify for continued assistance, then temporary deferral of termination of
6 assistance under proposed §§ 5.516 and 5.518 may be an option for that family.

7 HUD is proposing a new § 5.506(b)(3) that would provide that a family with at least one
8 family member who has U.S. citizenship, U.S. nationality, or eligible immigration status is
9 eligible for prorated assistance under § 5.520 pending final verification of the eligibility of other
10 family members. This proposed change more closely aligns HUD’s regulations with the statutory
11 language of Section 214, which provides that if “at least one member of a family” has
12 affirmatively established eligibility under the program and Section 214, and the ineligibility of
13 one or more family members has not been affirmatively established under Section 214, any
14 financial assistance made available must be prorated based on the number of eligible family
15 members.

16 *§ 5.508: Submission of evidence for verification of eligible immigration status.*

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

19 § 5.508(b)(1): Evidence of citizenship.

20 Under HUD’s current regulations at 24 CFR 5.508(b)(1), responsible entities may—but
21 are not required to—request additional documentation for individuals who submit a declaration
22 of U.S. citizenship or U.S. nationality. In this proposed rule, HUD is proposing revisions to
23 § 5.508(b)(1) to require persons who declare themselves to have U.S. citizenship or U.S.
24 nationality to provide appropriate documentation such as a U.S. birth certificate, naturalization

1 certificate, or other document. Citizenship for U.S.-born citizens is not verified through SAVE;
2 HUD is also proposing that verification of citizenship occur through responsible entities' review
3 of evidence documents submitted by applicants and tenants (see proposed § 5.512(c)).²⁸ Because
4 of these changes, HUD is further proposing to require persons declaring U.S. citizenship to
5 provide a verification consent form as described in proposed § 5.508(d) to consent to responsible
6 entities' review of submitted documents.

7 § 5.508(b)(2) and (3): Evidence of eligible immigration status.

8 HUD's regulations currently require that the eligible immigration status of all noncitizen
9 recipients of assistance under a Section 214 covered program who are under the age of 62 be
10 verified through submission of evidence pursuant to 24 CFR 5.508(b)(2) and (3), and this
11 rulemaking clarifies that this verification will occur through DHS's SAVE service.

12 § 5.508(c) and (d): Declaration and verification consent form.

13 HUD's existing regulations at § 5.508(c) require only individuals who contend to have
14 eligible status to submit a declaration to the responsible entity. Similarly, § 5.508(d)(1) currently
15 provides that each noncitizen who declares eligible immigration status, except certain
16 noncitizens who are 62 years or older as described in paragraph (b)(1) of that section, must sign a
17 verification consent form. Since HUD is proposing to remove the option for individuals to not
18 contend that they have citizenship or eligible status (see the next section in this preamble), HUD
19 is proposing in § 5.508(c) that each family member, regardless of age, must submit a written
20 declaration that the person is a U.S. citizen or a noncitizen with eligible immigration status as set
21 forth in HUD's regulations. HUD is further proposing, in § 5.508(d), that each family member
22 regardless of age, except certain noncitizens who are 62 years of age or older as described in
23 paragraph (b)(2) of proposed § 5.508, must sign a verification consent form to allow responsible

²⁸ For more information on U.S. citizenship and SAVE, see <https://www.uscis.gov/save/about-save/about-save>.

1 entities to review evidence of citizenship or to release evidence of eligible immigration status to
2 HUD, as required by HUD, and to DHS for purposes of verifying eligible immigration status. As
3 explained earlier in this preamble, “each family member” would not include live-in aides and
4 foster adults or foster children consistent with HUD’s HOTMA 2016 final rule. 88 FR 9600.

5 HUD is also proposing a new paragraph (d)(4) in § 5.508. PHAs have certain reporting
6 requirements laid out in an Interagency Notice providing guidance for compliance with Personal
7 Responsibility Work Opportunity Reconciliation Act of 1996 (PRWORA) section 404; this
8 Interagency Notice was published on September 28, 2000. 65 FR 58301 (“Interagency Notice”).
9 In the preamble to HUD’s May 12, 1999, final rule 24 CFR part 5, subpart E, titled “Revised
10 Restrictions on Assistance to Noncitizens,” 64 FR 25726, HUD explicitly stated that the rule did
11 not implement the provisions of PRWORA which concern immigration and that such required
12 changes would be the subject of future rulemaking. Subsequent revisions to subpart E, however,
13 did not codify PHAs’ reporting requirement which was later clarified in the Interagency Notice.
14 HUD is proposing, through this rulemaking, to add a new § 5.508(d)(4) providing that PHAs
15 may meet reporting requirements by conforming with that Interagency Notice. Proposed
16 § 5.508(d)(4) would require the verification consent form to notify individuals that public
17 housing authorities (PHAs) must inform the local USCIS office immediately whenever personnel
18 responsible for the certification or recertification of households determine that any member of a
19 household is ineligible to receive assistance because the member is present in the U.S. in
20 violation of the Immigration and Nationality Act. The proposed revision in this rule would affirm
21 this longstanding reporting requirement under the Interagency Notice and PRWORA, ensuring
22 applicants and existing households have notice of PHAs’ obligation to comply with section 404
23 of PRWORA, and provide individuals with notice of this obligation on PHAs.

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

1 The language of Section 214 contemplates that HUD assistance under a covered program
2 will generally be contingent on verification of eligible status of applicants and tenants. While
3 Congress recognized that exceptions to this general verification requirement might be warranted
4 in some cases, this statutory exception is narrowly tailored to individuals 62 years of age or older
5 participating in Section 214 covered programs. In contrast, the “do not contend” provision in 24
6 CFR 5.508(e) is more broadly applicable to all program participants. Section 5.508(e) in HUD’s
7 existing regulations excuses individuals from submitting documentation if they do not contend to
8 have eligible immigration status. This results in no actual determination of immigration status
9 being made. HUD is therefore proposing to remove the option in § 5.508(e) for persons to elect
10 “do not contend” to have eligible status of any kind (citizenship, nationality, or immigration
11 status). This proposed change will better conform HUD’s regulations to the statutory language of
12 Section 214.

13 Additionally, the “do not contend” provision in 24 CFR 5.508(e) facilitates the indefinite
14 use of prorated assistance by a mixed family. Upon reconsideration of its implementing
15 regulations for Section 214, HUD believes that Section 214 requires that no financial assistance
16 be provided to, or on behalf of, an individual if his or her eligible status has not been verified,
17 except for the time that it takes to verify that individual’s eligible status. In this respect, Section
18 214 generally provides that “with respect to a family, the term ‘eligibility’ means the eligibility
19 of each family member.” HUD believes that an individual without verified eligible status living
20 in a mixed household receiving long-term prorated assistance is benefiting from HUD financial
21 assistance in a way that is prohibited by Section 214. At the time of enactment of Section 214,
22 verification was a manual, paper-driven process that could take days or even weeks to complete.
23 Prorated assistance struck a balance with quickly providing assistance while also providing an
24 incentive to individuals to cooperate in completing the determination of eligibility as quickly as

1 possible. Today, verification through SAVE is almost instantaneous in most instances. Thus,
2 prorated assistance should rarely be applicable and then of short duration. The “do not contend”
3 provision is inconsistent with the statutory requirements insofar as it permits prorated assistance
4 of unlimited duration. Because HUD is proposing to remove existing § 5.508(e) and not replace
5 it with other text, HUD is also proposing to redesignate existing § 5.508(f)-(i) as paragraphs (e)-
6 (h).

7 § 5.508(e): Notification of requirements of Section 214.

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

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

19 Because of these proposed changes, proposed § 5.508(e)(1)(ii) would require responsible
20 entities to provide notification of Section 214 requirements to tenants that have not submitted
21 evidence of citizenship or eligible status by the effective date of HUD’s final rule for this
22 rulemaking. As under HUD’s current regulations, responsible entities must provide the
23 notification to tenants at the time of and together with notice of regular reexamination of income.

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

9 Finally, HUD is proposing to reorganize what is currently paragraph (f)(2)(iii), and is
10 paragraph (e)(2)(iii) in this proposed rule, by moving the last sentence—which requires the
11 notification to include information for tenants on how to obtain assistance under §§ 5.516 and
12 5.518—to a new paragraph (e)(2)(v).

13 § 5.508(f): When evidence of eligible status is required to be submitted.

14 Proposed § 5.508(f) (currently § 5.508(g)) concerns when applicants and tenants must
15 submit evidence of citizenship or eligible status. Because of changes described elsewhere in this
16 preamble, under proposed § 5.508(f)(2), a tenant in a Section 214 covered program who has not
17 previously submitted evidence of U.S. citizenship or eligible immigration status would be
18 required to do so at the next annual reexamination of income and household composition after
19 the effective date of HUD's final rule for this rulemaking. This applies to citizens and
20 noncitizens. This proposed rule would not change the timing of verification for new applicants
21 to a Section 214 covered program.

22 § 5.508(g): Extensions of time to submit evidence of eligible status.

1 Proposed § 5.508(g) (currently § 5.508(h)) governs extensions of time periods under
2 proposed § 5.508(f) (currently § 5.508(g)). HUD is proposing only technical changes to
3 paragraph (g) to align it with changes discussed elsewhere in this preamble.

4 *§ 5.512 Verification of citizenship and eligible immigration status.*

5 As stated earlier in this preamble, HUD is proposing to require submission of appropriate
6 documentation as described in § 5.506(b)(1) for persons who declare that they are U.S. citizens.
7 Citizenship for U.S.-born citizens is not verified through SAVE.²⁹ Therefore, HUD is proposing,
8 in a new § 5.512(c), that responsible entities review the evidence documents submitted by
9 applicants and tenants to verify citizenship. Individuals would be able to contest failed
10 verifications of citizenship under the informal hearing process under § 5.514(f), which is
11 currently in HUD's regulations but is the subject of proposed changes in this rulemaking.

12 HUD is also proposing changes to § 5.512 to remove outdated information related to INS
13 verification of eligible immigration status and replace it with information regarding the DHS-
14 administered SAVE system. Proposed § 5.512(d) describes initial and additional verification
15 procedures for verifying eligible immigration status. Proposed § 5.512(d)(1) would state that
16 initial verification is conducted by the responsible entity through SAVE, which confirms
17 immigration status using biographic information (first name, last name, date of birth) and
18 immigration numeric identifiers. Under proposed § 5.512(d)(2), if initial verification fails to
19 confirm immigration status, then additional verification must be performed. In proposed
20 § 5.512(e), HUD is proposing to replace existing language regarding manual search of INS
21 records and secondary verification with a simplified "additional" verification procedure: The
22 responsible entity must request additional verification within 10 days of receiving the results of
23 the initial verification. Additional verification is initiated when the responsible entity submits an

²⁹ For more information on U.S. citizenship and SAVE, see <https://www.uscis.gov/save/about-save/about-save>

1 additional request to SAVE with optional additional information and/or a copy of the original
2 document that the noncitizen had presented as acceptable evidence of their immigration status to
3 SAVE.

4 HUD is also proposing technical changes to § 5.512 for consistency with changes
5 discussed elsewhere in this preamble.

6 *§ 5.514 Delay, denial, reduction, or termination of assistance.*

7 As discussed previously in this preamble, HUD is proposing to require persons who
8 declare that they have U.S. citizenship to submit evidence documents, and to have responsible
9 entities review those documents to verify citizenship. See proposed 24 CFR 5.508(b)(1) and
10 5.512(c). Therefore, HUD is proposing to revise and reorganize existing § 5.514(c)(1)(ii).
11 Proposed paragraphs (c)(1)(ii)(A) and (B) would discuss denial or termination related to
12 verifications of citizenship, and related to eligible immigration status, respectively. Proposed
13 paragraph (c)(1)(ii)(A) would permit denial or termination of assistance when evidence of
14 citizenship is timely submitted, but the responsible entity's review does not verify U.S.
15 citizenship for the respective family member. In those situations, denial or termination of
16 assistance would be appropriate only if a family does not pursue informal hearing rights under
17 proposed § 5.514(f), or the family pursues an informal hearing but the decision is against the
18 family. Proposed paragraph (c)(1)(ii)(B) concerns DHS appeals under § 5.514(e), which are
19 related only to eligible immigration status as SAVE does not verify U.S. citizenship.

20 HUD is also proposing to remove the last sentence of § 5.514(c)(1)(iii). Paragraph
21 (c)(1)(iii) provides that a responsible entity must deny or terminate an applicant or tenant's
22 assistance if the responsible entity determines that a family member has knowingly permitted a
23 person ineligible for assistance to permanently reside in the family member's assisted unit, and
24 termination must be for at least 2 years. The last sentence of paragraph (c)(1)(iii) exempts

1 application of this provision if the ineligible person was considered in calculating any prorated
2 assistance for the family, which is possible under HUD's current "do not contend" provision in
3 existing § 5.508(e). Because HUD is proposing through this rulemaking to remove the "do not
4 contend" provision, the last sentence of § 5.514(c)(1)(iii) is not necessary.

5 Further, because HUD is proposing through this rulemaking to require persons declaring
6 to be U.S. citizens to submit documentation and for responsible entities to review that
7 documentation for U.S. citizenship verification purposes, HUD is proposing in § 5.514(f)(1)(i)
8 that a family may request that a responsible entity provide an informal hearing within 30 days of
9 the family receiving notice under § 5.514(d) regarding denial or termination of assistance due to
10 failure to verify citizenship. Proposed § 5.514(f)(1)(ii) captures existing regulatory language in
11 existing § 5.514(f)(1) and clarifies that that existing language applies to eligible immigration
12 status verification through SAVE (SAVE does not verify citizenship). Proposed § 5.514(h)
13 contains minor changes to require responsible entities, as applicable, to retain U.S. citizenship
14 documents under the document retention requirements in existing paragraph (h).

15 Finally, HUD is proposing technical changes throughout § 5.514 to update terminology
16 and for consistency with changes discussed elsewhere in this preamble.

17 *§ 5.516 Availability of preservation assistance to tenant families.*

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

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

3 *§ 5.518 Types of preservation assistance available to tenant families.*

4 HUD is proposing changes to § 5.518 that would conform this section to changes made
5 throughout the rest of this proposed rule. For example, proposed § 5.518(a) would provide that a
6 tenant family (no longer a “mixed family”) may receive prorated continued assistance if all the
7 conditions in paragraphs (a)(1)(i)-(iii) are met, and a tenant family assisted under the Section 236
8 program must be provided prorated continued assistance if the family meets specific conditions.

9 Paragraph (a)(ii) already provides that one of the conditions is that the family’s head of
10 household or spouse has eligible immigration status as described in § 5.506. HUD is proposing
11 to clarify this language by stating that the family’s head of household or spouse must be “a U.S.
12 citizen, a national of the United States, or [have] eligible immigration status as described in
13 § 5.506,” which aligns with the statutory language of Section 214.

14 HUD is also proposing to remove the last sentence of § 5.518(b)(1), which defines the
15 phrase “other affordable housing” as meaning housing that is not substandard, that is of
16 appropriate size for the family, and that can be rented for an amount not exceeding the amount
17 that the family pays for rent, including utilities, plus 25 percent. This meaning applies in the
18 context of transition of an ineligible family from a rent level that reflects HUD assistance to a
19 rent level that is unassisted. This language is not in the statute and would effectively preclude
20 families eligible for temporary deferral from finding other affordable housing as defined in
21 existing § 5.518(b)(1), based on the average Total Tenant Payment for Section 8 project-based
22 rental assistance residents for part of 2024.³⁰

³⁰ See https://www.hud.gov/sites/default/files/Housing/documents/Tenant_Characteristics_Rpt12312024.pdf.

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

5 *§ 5.520 Proration of assistance.*

6 HUD is proposing to revise § 5.520(a)(1) to provide that prorated assistance under this
 7 section applies to families with at least one family member who has U.S. citizenship, U.S.
 8 nationality, or eligible immigration status pending final verification, including any appeal or
 9 informal hearing procedures under § 5.514(e) and (f), of the status of other family members. This
 10 change more closely aligns HUD's regulations with the statute and conforms with other changes
 11 HUD is proposing, such as the change from "mixed family" to "tenant family". HUD is also
 12 proposing to revise § 5.520(a)(2). Under Section 214 as amended, continued assistance for
 13 eligible families must be prorated based on the percentage of the total number of members of the
 14 family that are eligible for that assistance under a covered housing program and Section 214.³¹
 15 The proposed language for § 5.520(a)(2) would clarify this requirement by stating that continued
 16 assistance under § 5.518 must be prorated.

17 HUD is further proposing technical changes throughout § 5.520 to update terminology
 18 and for consistency with changes discussed elsewhere in this preamble. Specifically, HUD is
 19 proposing to revise paragraph (b) to discuss only the method of proration for the Section 236
 20 program, and to remove the outdated paragraphs related to other Housing programs that are no
 21 longer in effect. HUD is also proposing to add a parenthetical to proposed § 5.520(b)(2)(ii) to

³¹ 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).

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 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.

Changing "Mixed Family" to "Tenant Family."

HUD is proposing to remove the term "mixed family" and replace it with "tenant family" or "family" through 24 CFR part 5, subpart E. The existing definition of "tenant" in 24 CFR 5.504 provides that "tenant" means an individual or a family renting or occupying an assisted dwelling unit and that this term as used in subpart E includes a homebuyer, where appropriate. HUD is proposing to define "tenant family" as meaning the same thing as "tenant" under existing § 5.504: a family renting or occupying an assisted dwelling unit (for Section 214 covered programs). This change would standardize the terminology used throughout HUD's regulations while emphasizing the statutory requirement of eligibility, both for the underlying program and for purposes of Section 214. Some proposed replacements of "mixed family" simply use "family" (e.g., in proposed § 5.506), as the proposed language surrounding "family"

1 in this rule captures any detailed statutory requirements and the use of “tenant family” is not
 2 necessary, or the use of “tenant family” would be inappropriate and “family” is used instead to
 3 collectively refer to tenant families and families applying for but not yet receiving assistance.

4 *Technical changes.*

5 HUD is proposing some technical changes to the regulations to further conform to
 6 Section 214 statutory requirements. For example, the proposed rule would also revise regulations
 7 throughout 24 CFR part 5, subpart E, to include updated terminology such as “initial
 8 verification” and “additional verification,” which are related to SAVE procedures, in place of
 9 existing terminology related to INS procedures.

10 HUD is also proposing to remove references to programs that are no longer in effect.
 11 There are no remaining Rent Supplement contracts under Section 101 of the Housing and Urban
 12 Development Act of 1965 (12 U.S.C. 1701s), so HUD is proposing to remove paragraph (a)(3)
 13 from 24 CFR 5.500, which applies HUD’s regulations that restrict Federal financial assistance
 14 for noncitizens to the Rent Supplement Program, and to remove language throughout 24 CFR
 15 part 5, subpart E, that references rent supplements under this program. Section 401(d) of the
 16 1987 HCD Act terminated HUD’s authority to provide insurance or assistance payments to
 17 mortgagees under Section 235 of the National Housing Act (12 U.S.C. 1715z), so HUD is
 18 proposing to remove paragraph (a)(1) from 24 CFR 5.500 and to remove language throughout 24
 19 CFR part 5, subpart E, that references the Section 235 Program. Any existing Section 235
 20 Program mortgages will be governed by the requirements in place at the time HUD endorsed the
 21 contract for insurance or made the commitment to provide assistance payments.³² Finally, HUD
 22 is also proposing to remove language throughout 24 CFR part 5, subpart E, that references rental

³² 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.”).

1 assistance payments related to Section 236 projects as there are no longer any such payments
2 under the Section 236 program.

3 Further, HUD is proposing to add “U.S. citizen” or “citizenship” throughout 24 CFR part
4 5, subpart E where HUD’s regulations discuss submission of required “evidence for eligible
5 status” or “eligible immigration status,” because HUD is proposing through this rulemaking to
6 require submission of appropriate documentation and a signed verification consent form—in
7 addition to the already-required signed declaration—from individuals declaring to have U.S.
8 citizenship or U.S. nationality. For example, see proposed § 5.508(f)-(g), which describe
9 requirements related to timing for when applicants and tenants must provide required evidence of
10 citizenship or eligible immigration status.

11 Finally, HUD is proposing to add clarifying language to its regulations providing that
12 prorated assistance to an applicant or tenant under § 5.520 is only permissible “pending final
13 verification, including any procedures under § 5.514(e) and (f), on the eligibility of family
14 members.” This clarifies the statutory requirement that prorated assistance that is not continued
15 assistance must only be provided when at least one family member’s citizenship or eligible status
16 has been verified and other family members’ statuses are still pending, meaning that no family
17 member has been determined to be ineligible.

18 **IV. Findings and Certifications**

19 *Regulatory Review – Executive Orders 12866 and 13563*

20 Under Executive Order 12866 (Regulatory Planning and Review), a determination must
21 be made whether a regulatory action is significant and, therefore, subject to review by the Office
22 of Management and Budget (OMB) in accordance with the requirements of the order. Executive
23 Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to
24 analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and

1 to modify, streamline, expand, or repeal them in accordance with what has been learned.”

2 Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory
3 objectives, and to the extent permitted by law, agencies are to identify and consider regulatory
4 approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

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

9 The docket file is available for public inspection in the Regulations Division, Office of
10 the General Counsel, Room 10276, 451 7th Street SW, Washington, DC 20410-0500. Due to
11 security measures at the HUD Headquarters building, please schedule an appointment to review
12 the docket file by calling the Regulations Division at (202) 402-3055 (this is not a toll-free
13 number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard
14 of hearing, as well as individuals with speech or communication disabilities. To learn more about
15 how to make an accessible telephone call, please visit
16 <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

17 *Environmental Impact*

18 The proposed rule does not direct, provide for assistance or loan and mortgage insurance
19 for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation,
20 alteration, demolition, or new construction or establish, revise or provide for standards for
21 construction or construction materials, manufactured housing, or occupancy. Accordingly, under
22 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review
23 under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

24 *Regulatory Flexibility Act*

1 The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) generally requires an agency to
2 conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking
3 requirements, unless the agency certifies that the rule will not have a significant economic
4 impact on a substantial number of small entities. The proposed regulatory amendments to
5 HUD's noncitizen requirements will have only a minimal impact on small housing project
6 owners, small mortgagees, and small housing agencies. The proposed amendments would not
7 require verification of citizenship beyond the collection and review of appropriate
8 documentation. Some of the proposed requirements could also be satisfied using existing
9 procedures. For example, the proposed rule would require that the eligible immigration status of
10 all noncitizens be verified through SAVE. This requirement can be fulfilled by utilizing the
11 existing verification procedures. Verification for both citizens and noncitizens who are tenants
12 would generally occur at the same time as review for other aspects of eligibility: the next annual
13 reexamination of income and household composition. Further, although the proposed rule would
14 revise eligibility for prorated assistance, current methods would be used to calculate the prorated
15 assistance provided to an eligible family.

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

20 *Executive Order 13132, Federalism*

21 Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any
22 rule that has federalism implications if the rule either imposes substantial direct compliance costs
23 on State and local governments, and is not required by statute, or preempts State law, unless the
24 agency meets the consultation and funding requirements of section 6 of the Executive order.

1 This proposed rule does not have federalism implications and does not impose substantial direct
2 compliance costs on State and local governments nor preempt state law within the meaning of
3 the Executive order.

4 *Unfunded Mandates Reform Act*

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

10 *Paperwork Reduction Act*

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

16 This proposed rule would require each family member in tenant families who have not
17 yet submitted evidence of citizenship or eligible immigration status, and applicants who are
18 declaring they have U.S. citizenship, to submit evidence in accordance with § 5.508 to
19 responsible entities (mortgagors, project or housing owners, and PHAs). HUD does not
20 anticipate this proposed requirement as applied to existing tenants and future applicants under
21 Section 8 and Public Housing covered programs to impose significant burden. PHAs already
22 typically receive a birth certificate, passport, or some other identity verification document for
23 deductions, program eligibility, and other purposes. Under this proposed rule, responsible
24 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. Finally, this proposed rule would require that notification of Section 214 requirements, verification consent forms, and notification of any denials or terminations of assistance be provided to applicants and tenants declaring to be U.S. citizens, 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—Restriction on Assistance to Noncitizens						
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	13,100	1	.16	2,096	\$30	\$62,880
Public Housing	6,800	1	.16	1,088	\$30	\$32,640
Section 8 Project-Based Rental Assistance	4,200	1	.16	672	\$30	\$20,160
Section 236	3	1	.16	.48	\$30	\$14
Totals	24,103	1	.16	3,856	\$30	\$115,694
Data is from HUD's Public & Indian Housing Information Center (PIC) and the Tenant Rental Assistance Certification System (TRACS).						
** New tenants that are citizens or have permanent eligible immigration status must submit this documentation only once.						

Tabulation of Annual Reporting Burden for New Admissions —Restriction on Assistance to Noncitizens						
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	413,374	1	.16	66,140	\$30	\$1,984,200
Public Housing	121,152	1	.16	19,384	\$30	\$581,520
Section 8 Project-Based Rental Assistance	299,894	1	.16	47,983	\$30	\$1,439,490
Section 236	586	1	.16	94	\$30	\$2,820
Totals	835,006	1	.16	133,601	\$30	\$4,008,030
Data is from HUD's Public & Indian Housing Information Center (PIC) and the Tenant Rental Assistance Certification System (TRACS).						
** New tenants that are citizens or have permanent eligible immigration status must submit this documentation only once.						

1

2 **List of Subjects in 24 CFR Part 5**

- 3 Administrative practice and procedure, Aged, Claims, Crime, Government contracts,
- 4 Grant programs-housing and community development, Individuals with disabilities,
- 5 Intergovernmental relations, Loan programs-housing and community development, Low and
- 6 moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies,
- 7 Reporting and recordkeeping requirements, Social security, Unemployment compensation,
- 8 Wages

CLEARANCE DRAFT – FOR HUD INTERNAL USE ONLY

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. 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.

4. Amend paragraph (b) of § 5.504 by

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

b. Removing the definitions of “Housing covered programs,” “INS,” and “Mixed family,” and;

c. Revising the definitions of “responsible entity” and “tenant.”

The addition, removals, and revisions to read as follows:

§ 5.504 Definitions.

* * * * *

(b) * * *

DHS means the Department of Homeland Security.

* * * * *

Responsible entity means the person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigrations 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 means an individual or a family renting or occupying an assisted dwelling unit.

5. 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 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 § 5.514(e) and (f), on the eligibility of other family members.

* * * *

6. Revise § 5.508 to read as follows:

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

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

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

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

11 (i) A U.S. birth certificate;

12 (ii) A naturalization certificate;

13 (iii) A Consular Report of Birth Abroad (FS-240);

14 (iv) A valid unexpired U.S. passport;

15 (v) A certificate of citizenship; or

16 (vi) Other appropriate documentation, as specified in HUD guidance.

17 (2) For noncitizens who are 62 years of age or older or who will be 62 years of age or
18 older and receiving assistance under a Section 214 covered program on September 30, 1996, or
19 applying for assistance on or after that date, the evidence consists of:

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

22 (ii) A proof of age document, as specified in HUD guidance.

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

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

(ii) One of the DHS documents referred to 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, (except U.S. citizens who are 62 years of age or older and 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 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 U.S. citizenship will be reviewed by the responsible entity for verification purposes; and

(ii) 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:

(A) HUD, as required by HUD; and

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

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

(4) *Notice of Required Reporting by Public Housing Agencies.* The verification consent form must also notify the individual that the PHA must inform the local USCIS office immediately whenever personnel responsible for the certification or recertification of households determine that any member of a household is ineligible to receive assistance because the member is present in the U.S. in violation of the Immigration and Nationality Act. The PHA may meet the reporting requirement by conforming with the Interagency Notice providing guidance for compliance with PRWORA section 404 published on September 28, 2000 (65 FR 58301).

(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.

1 (ii) *Notice to tenants.* The responsible entity must give the notification to each tenant who
2 has not submitted evidence of citizenship or eligible status as of **[insert effective date of final**
3 **rule]** at the time of, and together with, the responsible entity's notice of regular reexamination of
4 income.

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

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

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

11 (iii) State that assistance will be denied or terminated, as appropriate, upon a final
12 determination of ineligibility after all appeals, if any, have been exhausted (see § 5.514(e) and
13 (f)) or, if appeals are not pursued, at a time to be specified in accordance with HUD
14 requirements;

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

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

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

1 (1) *Applicants*. For applicants, responsible entities must ensure that evidence of
2 citizenship or eligible status is submitted not later than the date the responsible entity anticipates
3 or has knowledge that verification of other aspects of eligibility for assistance will occur (see
4 §5.512(a)).

5 (2) *Tenants*. A tenant receiving financial assistance under a Section 214 covered program
6 who has not submitted evidence of citizenship or eligible status as of [insert effective date of
7 **final rule**] is required to submit such evidence at the next annual reexamination of income and
8 household composition after [insert effective date of **final rule**], in accordance with program
9 requirements.

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

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

17 (5) *One-time evidence requirement for continuous occupancy*. For each family member,
18 the family is required to submit evidence of citizenship or eligible status only one time during
19 continuously assisted occupancy under any Section 214 covered program.

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

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

4 (ii) Certifies that the evidence needed to support a claim of citizenship or eligible
5 immigration status is temporarily unavailable, additional time is needed to obtain and submit the
6 evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

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

11 (3) *Grant or denial of extension to be in writing.* The responsible entity's must issue its
12 decision to grant or deny an extension to the family by written notice. If the extension is granted,
13 the notice must specify the extension period granted (which is limited to a total of 60 days). If
14 the extension is denied, the notice must explain the reasons for denial of the extension.

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

22 **§ 5.510 [Amended]**

7. In § 5.510(b), remove the reference to “INS” and add “DHS” in its place and remove the phrase “in one of the six categories mentioned in § 5.506(a)” and add “in one of the categories referred to and implemented in § 5.506(a)(2)” in its place.

8. 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 documentation to the responsible entity in accordance with § 5.508.

(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) *Verification of citizenship.* Verification of citizenship of the person is conducted by the responsible entity by reviewing the evidence submitted in accordance with this subpart E.

(d) *Initial verification of eligible immigration status—(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.

(e) *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 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.

(f) *Failure to confirm eligible immigration status.* If initial or additional verification does not confirm eligible immigration status, the responsible entity must issue to the family the notice described in § 5.514(d), which includes notification of the right to appeal to the DHS of the DHS finding on immigration status (see § 5.514(d)(4)).

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

9. Amend § 5.514 as follows:

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

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

c. In paragraphs (d) and (e), remove “secondary” everywhere it appears and add “additional” in its place;

d. Revise paragraph (d)(2);

e. In paragraph (d)(3), remove “5.514” and add “5.516” in its place;

f. Revise paragraph (f)(1);

g. In paragraph (f)(2)(ii), remove “paragraph (f)(3)(i)” and add “paragraph (f)(2)(i)” in its place;

h. Revise the introductory text for paragraph (f)(2)(iii) and revise paragraphs (f)(2)(iii)(C) and (h); and

i. In the introductory text of paragraph (i)(1), remove “Under Housing covered programs” and add “Under the Section 236 program” .

The removals, 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 reduction, denial, 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 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) The DHS appeals process under § 5.514(e) has not been concluded;

(v) Assistance is prorated in accordance with § 5.520 pending final verification, including any procedures under § 5.514(e) and (f), on the eligibility of family members;

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

(vii) 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*. The responsible entity may 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 is timely submitted, but:

(A) The responsible entity's review does not verify U.S. citizenship for a family member; and

(1) The family does not pursue informal hearing rights as provided in this section; or

(2) The family does pursue informal hearing rights, but the hearing decisions are decided against the family member; or

(B) SAVE verification does not verify eligible immigration status of a family member; and

(1) The family does not pursue a DHS appeal related to eligible immigration status or informal hearing rights as provided in this section; or

(2) DHS appeal related to eligible immigration status and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member. (c) 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.

* * * *

(d) * * *

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

* * * *

(f) * * *

(1) *When request for hearing is to be made.* Requests for a hearing must be made as follows:

(i) For U.S. citizenship verification by responsible entities: After notification of the responsible entity's verification of citizenship, 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.

(ii) For eligible immigration status verification through SAVE: After notification of the DHS decision on appeal, or in lieu of request of appeal to the DHS, the family may request that the responsible entity provide a hearing. This request must be made either within 30 days of receipt of the notice described in paragraph (d) of this section, or within 30 days of receipt of the DHS appeal decision issued in accordance with paragraph (e) 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

1 already receiving assistance) and for applicants for assistance under all covered programs, the
 2 procedures for the informal hearing before the responsible entity are as follows: * * *

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

7 * * * *

8 (h) *Retention of documents.* The responsible entity must retain, for a minimum of 5 years,
 9 the following documents that may have been submitted to the responsible entity by the family, or
 10 provided to the responsible entity as part of the DHS appeal or the informal hearing process:

11 (1) The application for financial assistance;

12 (2) The form completed by the family for income reexamination;

13 (3) Photocopies of any original documents (front and back), including original DHS and
 14 citizenship documents;

15 (4) The signed verification consent form;

16 (5) The DHS or responsible entity verification results, as applicable;

17 (6) The request for a DHS appeal, if applicable;

18 (7) The final DHS or responsible entity determination, as applicable;

19 (8) The request for an informal hearing; and

20 (9) The final informal hearing decision.

21 * * * *

22 10. Revise § 5.516 to read as follows:

23 **§ 5.516 Availability of preservation assistance to tenant families.**

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

5 (i) Continued assistance (see § 5.518(a)); and

6 (ii) Temporary deferral of termination of assistance (see § 5.518(b)).

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

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

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

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

21 (2) *For Section 8 or Public Housing covered programs*. The responsible entity may make
22 temporary deferral of termination of assistance to families assisted under a Section 8 or Public
23 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).

11. Amend § 5.518 as follows:

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

b. In paragraph (b)(5)(i)(A), remove “Housing covered programs” and add “the Section 236 Program” in its place and remove “paragraph (b)(2)” and add “paragraph (b)(2)(i) and (ii)” in its place;

c. Revise paragraph (b)(5)(ii)(A);

d. 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.* (1) A tenant family may receive prorated continued housing assistance if all the following conditions are met (a tenant 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 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.

(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 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.

(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 granted asylum under section 208 of that Act.

* * * *

(5) * * *

(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*

* * * *

12. Amend § 5.520 as follows:

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

b. In paragraph (c)(1)(ii), remove “section 5.613(a)” and add “section 5.628” in its place.

The revisions to read as follows:

§ 5.520 Proration of assistance.

(a) *Applicability.* This section applies to a 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 § 5.514(e) and (f), for other family members, or to a family eligible for prorated continued 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.

* * * *

13. Revise § 5.522 to read as follows:

1 **§ 5.522 Prohibition of assistance to noncitizen students.**

2 (a) *General.* The provisions of §§ 5.516 and 5.518 permitting continued assistance or
3 temporary deferral of termination of assistance for certain families do not apply to any person
4 who is determined to be a noncitizen student as in Section 214(c)(2)(A) (42 U.S.C.
5 1436a(c)(2)(A)).

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

9
10 **Scott Turner**
11 Secretary

12
13
14 **[BILLING CODE: 4210-67]**