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By electronic submission to www.regulations.gov

April 21, 2026

Office of General Counsel Regulations Division
U.S. Department of Housing and Urban Development
451 Seventh Street, SW, Room 10276
Washington, DC 20410-0500

Re: Housing and Community Development Act of 1980: Verification of Eligible Status
Docket No. FR-6524-P-01

Greetings:

1. Summary.

Please accept this letter as the comments of the Citizens' Housing and Planning Association ("CHAPA") and Klein Hornig LLP ("Klein Hornig"), in opposition to the proposed rule issued by the U.S. Department of Housing and Urban Development ("HUD") on February 20, 2026 entitled "Housing and Community Development Act of 1980: Verification of Eligible Status" (the "Proposed Rule").[1]

The Proposed Rule is an unlawful reinterpretation of 42 U.S.C. §1436a ("Section 214"), governing immigrant eligibility for subsidized rental housing administered by HUD, and related laws regulating use of the system of records known as the Systematic Alien Verification for Entitlements ("SAVE") program.[2] It disregards significant human and financial costs, imposes significant regulatory burdens on PHAs and housing providers, eliminates statutorily required prorated assistance, and assesses improper penalties and verification requirements. Viewed in its entirety, the Proposed Rule exceeds HUD's statutory authority and must be withdrawn.

2. Interests of Klein Hornig and CHAPA.

Klein Hornig is a national law firm with offices in Boston, Massachusetts and Washington, D.C. The firm's practice is focused exclusively on affordable housing and community development. We represent non-profit and for-profit developers and owners, community development corporations, tenant organizations, civil rights groups, lenders, investors and community development finance institutions. Our work extends to all aspects of affordable housing and development, including, for purposes of these comments, advice and counsel related to admissions, occupancy, fair housing, civil rights and regulatory compliance in affordable housing. We are a mission-driven firm whose work is aimed at creating vibrant communities broadly inclusive of all residents. Our clients share in the mission.

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[1] 91 Fed. Reg. 8151 (February 20, 2026) (the "Proposed Rule").

[2] The statute was originally enacted as Section 214 of Housing and Community Development Act of 1980, Pub. L. 96-399, §214 (October 8, 1980).

CHAPA is a Massachusetts non-profit organization with more than 1,200 individual and organizational members. CHAPA's mission is to encourage the production and preservation of housing that is affordable to low and moderate-income households, and to foster diverse and sustainable communities through planning and community development. The organization's membership is representative of the entire community of interests in affordable housing across Massachusetts. It includes non-profit and for-profit developers and owners, community development corporations, tenants, tenant organizations, civil rights groups, lenders, investors and community development finance institutions.

The Proposed Rule is an unjustified, illegal and immensely harmful assault on individual families who are vital members of the communities served by Klein Hornig and CHAPA and who are valued residents of the residential developments operated by the firm's clients and CHAPA's members. Additionally, it directly undermines our respective missions to foster inclusive and affordable residential communities. We oppose the Proposed Rule on these bases.

3. The Proposed Rule and the Accompanying Regulatory Impact Analysis Disregard Significant Human and Financial Costs.

The purpose of a Regulatory Impact Analysis is to accurately project the human and financial impact of a proposed agency action by weighing both benefits and costs, considering not only quantitative outcomes measured by objective data, but also "values such as equity, human dignity, fairness, potential distributive impacts, privacy, and personal freedom."[3] The Proposed Rule and the related Regulatory Impact Analysis by HUD dated September 30, 2025 ("RIA") fail those measures in all regards. More particularly, HUD's RIA fails to sufficiently consider significant harmful impacts of the Proposed Rule, relies on flawed justifications for the Proposed Rule, and inaccurately estimates the cost and impact of the Proposed Rule.

First, the RIA neglects to adequately address the measurable increases in housing instability and homelessness that will result from implementation of the Proposed Rule. Nowhere does HUD estimate the number of households or individuals losing assistance that will experience housing instability or homelessness as result of the Proposed Rule even though relevant data is publicly and readily available.[4] While the RIA acknowledges that "[t]here may be an increase in homelessness as mixed families adjust to the withdrawal of assistance" it contends that "this effect may be counterbalanced by a decrease in homelessness for new replacement families."[5] There is neither rigorous analysis nor adequate citation to sources to support this proposition. In a footnote, HUD asserts that "[u]p to 10.4 percent of households" on waitlists "may be experiencing homelessness."[6] But HUD arrives at this suggested result by extrapolating from a 2012 report on waiting lists and improperly assuming that this data (more than a decade old) accurately predicts current waiting lists. The RIA only discusses the Proposed Rule's effect on

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[3] "Regulatory Impact Analysis: A Primer" (Office of Information and Regulatory Affairs), available at https://www.reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf (last visited April 3, 2026).

[4] *See, e.g.*, Robert Collinson et al., *Eviction and Poverty in American Cities*, 139 Q.J. Econ. 57 (2024).

[5] HUD's Regulatory Impact Analysis, Housing and Community Development Act of 1980: Verification of Eligibility Status, September 30, 2025 (the "RIA"), § 7 at 34-35.

[6] *Id.,* § 7 at 35 n.58.

homelessness in terms of "net effect," concluding that the "net effect on homelessness is ambiguous"[7] without providing any supporting analysis. HUD itself essentially acknowledges that, if the Proposed Rule were to take effect, the number of eligible people losing housing assistance will far outweigh the number of eligible people replacing them in HUD programs.[8] The RIA acknowledges that it is unlikely the proposal "would lead to an increased budget for HUD" and that "[t]he immediate effect" of implementing the proposed rule without a budget increase "would be a reduction in the number of households *and eligible persons assisted*."[9] This is because, without proration, subsidies for fully eligible families would cost significantly more. The RIA then elaborates that, if all mixed-status families choose to give up assistance to avoid family separation—and no additional funding from Congress is forthcoming—the transfer of assistance from mixed-status families to fully eligible families would cause the total number of assisted eligible people to drop from 55,100 to 24,100.[10] This alone substantially undermines any contention by HUD that there will be a balancing effect in terms of overall homelessness. Rather than analytic rigor, HUD's RIA relies on speculation and guesswork. HUD has not made the required good faith effort to assess the real-world implications of the Proposed Rule.

Further, HUD entirely declines to consider the potential negative impacts this increased homelessness would have on mixed-status households, including the many eligible children who would become displaced. Housing instability and homelessness have enormous cascading negative effects on people, particularly for children.[11] Research shows that housing instability and homelessness can harm child physical and mental health, development, academic performance, and much more.[12] HUD's analysis does not appear to have considered this issue at all. Disregarding the potential devastating impact that the Proposed Rule could have on individual members of mixed-status families—particularly the many assistance-eligible children who have no say over whether their family keeps assistance—invalidates any claim HUD might make that the agency seriously attempted to assess the full scale of the Proposed Rule's impact.

Lastly, HUD's RIA entirely fails to consider the harms to housing owners and public housing authorities participating in HUD programs. It neglects to evaluate the increased program complexities that could disincentivize owner participation in Section 8 and increase private owner unwillingness to accept vouchers. HUD ignores that the Proposed Rule could weaken revenue predictability and undermine the financial viability of affordable housing developments by reducing the number of voucher-supported tenants and introducing uncertainty around tenant eligibility and turnover. In addition, HUD declines to consider the harm to housing providers and public housing authorities ("PHAs") resulting from increased

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[7] *Id.* § 7 at 36.

[8] *See id.* § 5 at 17.

[9] *Id.* § 5 at 17 (emphasis added).

[10] *See id.*

[11] *See, e.g.*,

[11] *See, e.g.,* Homeless Children and Youth: Causes and Consequences (National Center for Children in Poverty, Sept. 1, 2009), available at https://www.nccp.org/publication/homeless-children-and-youth-causes-and-consequences/ (lasted visited April 20, 2026).

[12] *Id.*

administrative expenses. More generally, to comply with the Proposed Rule, PHAs and housing providers would be required to develop new and additional policies and procedures, create new forms and notices, and manage an unprecedented number of verifications for existing and new households – a hugely increased regulatory burden that will discourage housing provider participation, especially among private landlords. The RIA vastly underestimates this burden.

4. The Proposed Rule is an Unlawful Reinterpretation of Section 214.

(a) The current Section 214 rules reflect four decades of detailed congressional enactments which HUD lacks the authority to alter.

HUD claims that changes to existing Section 214 regulations are necessary to bring "HUD's regulations into greater alignment with the wording and purpose of Section 214."[13] That assertion is false. Since its first enactment in 1980, the statute has been amended as many as eight times.[14] In its present form, the law sets out detailed standards of immigrant eligibility for subsidized housing and creates a carefully prescribed protocol for verifying eligibility. The Proposed Rule departs from those requirements.

The current Section 214 regulations derive from the congressional recognition in 1988 that HUD's prior implementation of the law would "produce extraordinary hardships, excessive paperwork and unnecessary financial difficulties for the individuals, the owners and, in some cases, the Federal Government." Congress' concerns regarding HUD's incorrect interpretation of the statute, and the detailed prescriptions of Section 214 that were then enacted in 1988 to address them, were explicit in a House Report leading up to that 1988 amendment:

> The injustice that would be caused by implementation of Sec. 214 of the Housing and Community Development Act of 1980 include: the mandatory eviction of thousands of families now residing in federally-subsidized housing; the eviction of individuals who are citizens or who are properly documented aliens because other members of their household cannot meet the documentation requirements; the denial of admission to families which include citizens and properly documented aliens because not all family members can be properly documented; and the imposition of documentation and verification requirements upon citizens and aliens alike which are not only unduly burdensome, but also impossible even for some citizens to meet. Since these hardships and burdens have not been made obvious, this statute is amended by the bill to address these concerns.

Because Congress was especially concerned with HUD's then-incorrect interpretation of Section 214, it explained in this same House Report that "modifications" to the statute were required "to clarify the original intent of Congress that families in which at least one person is eligible are not disqualified and that the rules not be applied retroactively:"

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[13] *See, e.g.,* Proposed Rule at 8151.

[14] Pub. L. 97–35, §329(a) (August 13, 1981); Pub. L. 99–603, §121(a)(2) (November 6, 1986); Pub. L. 100–242, §164 (February 5, 1988); Pub. L. 104–193, §441(a) (August 22, 1996); Pub. L. 104–208, §572–576, et seq (September 30, 1996); Pub. L. 105–276, §592(a) (October 21, 1998); Pub. L. 106–504, §3(b) (November 13, 2000); Pub. L. 114–201, §113 (July 29, 2016).

> Every alien (other than non-immigrant student aliens who continue to be ineligible for federally subsidized housing under all conditions) presently living in a federally-assisted housing project would continue to qualify for assistance. Any family applying for housing assistance in the future and containing any member who is an alien could be eligible to receive housing assistance if at least one member of the family was a U.S. citizen or a legal alien (including an alien undergoing legalization pursuant to the amnesty provisions of the 1986 amendments to the Immigration and Nationality Act). Elderly persons 62 years or older would only have to certify, and would not have to provide documentation establishing their immigration status or nationality. In addition no housing assistance may be denied or terminated until the individual has had the opportunity to appeal and have an impartial hearing.[15]

If adopted, the Proposed Rule will bring about all these harms that Congress specifically intended the current version of Section 214 to prevent. And as further discussed below, the Proposed Rule will contravene the very statutory provisions adopted "to clarify the original intent of Congress."

The detailed prescriptions of Section 214—summarized aptly in the House Report quotation above—represent questions of deep economic and political significance that "[are] central to [the] statutory scheme."[16] The Proposed Rule's departure from those prescriptions, which are addressed in detail below, raises "major questions" the answers to which Congress reserves to itself and which HUD lacks the authority to alter.[17]

(b) The Proposed Rule unlawfully imposes onerous verification requirements for citizenship status.

The Proposed Rule would require all household members, including those age 62 and older, to submit proof of citizenship and consent to SAVE system review—and would require housing providers and PHAs to use the SAVE system to verify citizenship status—even if a household member does not contend immigration status or receive financial assistance. This exceeds HUD's statutory authority and presents a significant barrier for households and housing providers. Under the provisions of Section 214, only individuals who receive or apply for financial assistance are required to provide a declaration of eligible status and receive verification.[18] For households that include both those with citizenship or eligible immigration status and those without citizenship or eligible immigration status ("mixed families"),[19] Section 214 is explicit that prorated assistance shall be available and those household members not seeking financial assistance are not required to submit proof of citizenship.[20]

In addition, Section 214 and related laws do not permit SAVE to be used to verify citizenship. Under Section 214, the "automated system" represented by SAVE may only be utilized *only* for the purpose of

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[15] H.R. Rep. 100-122 (I) (June 3, 1987), p. 49-50.

[16] *Biden v. Nebraska,* 143 S.Ct. 2355 (2023) (internal citations omitted).

[17] *Id*; *see also, Learning Resources, Inc. v. Trump,* 146 S.Ct. 628 (2026).

[18] 42 U.S. Code § 1463a(d)(2)-(3).

[19] 24 C.F.R. § 5.504.

[20] 24 U.S.C. § 1463a(b)(2).

verifying an "individual's *immigration status*."[21] The Proposed Rule, however, would require the use of the SAVE system to verify citizenship status of residents and applicants for HUD-assisted housing – a function that is not only unlawful but also has not been proven reliable.[22] Further, requiring all residents of HUD-assisted housing to verify citizenship status through the SAVE system—and all PHAs and housing providers to process information through that system—would create significant and onerous burdens for households and housing providers alike.

The Proposed Rule's requirements for individuals aged 62 years and older also violate the statutory requirements. The statutory language of Section 214 is clear: individuals aged 62 years and older receiving financial assistance are subject to a different verification regime than individuals younger than 62.[23] Individuals 62 and older are only required to provide a declaration regarding their own eligibility.[24] HUD's Proposed Rule—which imposes a verification requirement on individuals aged 62 and older—unlawfully contravenes the statutory text.

(c) The Proposed Rule improperly eliminates a statutorily mandated form of prorated assistance.

HUD's proposal to eliminate prorated assistance as a category of preservation assistance under 24 C.F.R. § 5.516(a) represents another unlawful violation of Section 214. Section 214 explicitly enshrines the availability of prorated assistance. 42 U.S. Code § 1436a(b)(2) clearly directs that the HUD Secretary "shall" provide such assistance to any household in which "the eligibility . . . of at least one member of a family has been affirmatively established" under Section 214 and a Section 214-covered program "and the ineligibility of one or more family members has not been affirmatively established."[25] The statute uses the non-discretionary term "shall" in imposing the mandate. It is a mandate that HUD is not free to ignore.[26] Neither the text of the statute nor the well-documented legislative history of its amendments contain any indication that Congress intended prorated assistance to be time-limited, a restriction that would depart from the typical structure of other forms of preservation assistance as well as financial assistance under Section 214-covered programs generally.[27] Such a novel interpretation demands additional evidence that HUD cannot provide.

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[21] 42 U.S.C. § 1436a(d)(3) (emphasis added). *See also,* Pub. L. 99-603, §121(c) (Nov. 6, 1986), codified at 42 U.S.C. §1320b-7, note (DHS "shall implement a system for the verification of *immigration status*") (emphasis added). We realize that the Trump Administration is currently utilizing SAVE to verify citizenship, including verification of the status of individuals claiming citizenship by birth. *See,* 90 Fed. Reg. 48948 (Oct. 31, 2025) (Privacy Act System of Records Notice). The legality of using SAVE to verify citizenship for any purpose whatsoever is open to question. *See, League of Women Voters v. U.S. Dept. of Homeland Security,* 2025 WL 3198970 (D.C. D.C., Nov. 17, 2025) ("the Court is troubled by the recent changes to SAVE and doubts the lawfulness of the Government's actions").

[22] *See id.*

[23] 42 U.S. Code § 1463a(d)(1)(A).

[24] *Id.*

[25] See, e.g., *Bennett v. Spear*, 520 U.S. 154, 172 (1997) (citing "shall" as language of administrative "obligation rather than discretion").

[26] See, e.g., *Bennett v. Spear*, 520 U.S. 154, 172 (1997) (citing "shall" as language of "obligation rather than discretion" in finding an agency's statutory responsibilities to be nondiscretionary).

[27] See, e.g., H.R. Rep. 100-122 (I) (June 3,1987), p. 50 ("Any family applying for housing assistance in the future and containing any member who is an alien could be eligible to receive housing assistance if at least one member of the family was a U.S. citizen or a legal alien.").

HUD's proposal to replace prorated assistance with a temporary and "rarely [] applicable" alternative by the same name therefore represents an impermissible departure from Congress' statutory instructions.[28] As the Supreme Court has affirmed, "Congress [does] not set agencies free to disregard legislative direction in the statutory scheme that the agency administers."[29]

In contrast, the agency's current regulations define three forms of preservation assistance, all of which derive from this nondiscretionary statutory language:

1. Continued assistance, for any mixed family already receiving assistance under a Section 214-covered program on June 19, 1995, and in which the head of household or spouse has eligible immigration status;[30]
2. Prorated assistance, for any mixed family that applies for assistance through a Section 214-covered program but does not qualify for continued assistance;[31] and
3. Temporary deferral of assistance termination, for any family in which no members have eligible immigration status, or any mixed family that is eligible for but declines prorated assistance.[32]

Prorated assistance takes the form of recurring monthly payments calculated according to the methods set forth in 24 C.F.R. § 5.520. These payments have no set expiration date absent (i) a family's assistance being terminated for cause under a Section 214-covered program, or (ii) the occurrence of one of the termination events described in 24 C.F.R. § 5.514(c).

Through the Proposed Rule, HUD now seeks to end prorated assistance in its current form in favor of "temporary" assistance available only during the "short duration" during which a housing provider is still verifying the "U.S. Citizenship or the eligible immigration status . . . of all family members [within a household]."[33]

This proposed transformation of prorated assistance assumes—erroneously—that the agency may lawfully proceed with requiring proof of citizenship and consent to SAVE system review from all household members, including seniors and members who do not contend immigration status or receive financial assistance. As previously established, that course of action represents a violation of Section 214.

(d) The penalties imposed by the Proposed Rule on families including unqualified immigrants go beyond those permitted by Section 214.

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[28] Proposed Rule at 8155.

[29] *Heckler v. Chaney,* 470 U.S. 821, 839 (1985).

[30] 24 C.F.R. § 5.516(a)(i); see also 24 C.F.R. § 5.518(a).

[31] 24 C.F.R. § 5.516(a)(iii); see also 24 C.F.R. § 5.518(b).

[32] 24 C.F.R. § 5.516(a)(ii); see also 24 C.F.R. § 5.520.

[33] Proposed Rule at 8153, 8155, 8153.

HUD proposes to impose a two-year disqualification from rental assistance on all members of mixed households where an unqualified immigrant was knowingly allowed to live with the family. The impact of the change is severe. According to the RIA, more than 79,000 individuals live in mixed households currently receiving prorated assistance. Seventy percent of these people are eligible for rental subsidy.[34] If adopted as drafted, *all* of these families, and *all* of these individuals will suffer the two-year disqualification because they knowingly and lawfully permitted an unqualified immigrant who elected not to affirmatively establish eligibility to live in the family, as permitted under current rules. HUD justifies this extraordinarily harsh penalty by claiming the authority to remove the "do not contend" provisions from the rule.[35]

Of course, HUD lacks the authority to remove the right to not contend eligibility from the rule because Section 214 requires HUD to assist otherwise eligible individuals in mixed households in which one or more other individuals elect not to affirmatively establish eligibility.[36] More to the point, Section 214 explicitly says that the two-year disqualification "shall not apply to a family if the ineligibility of the ineligible individual at issue was considered in calculating any proration of assistance provided for the family."[37] The current rules import this text in its entirety. HUD has no authority to make a change.

(e) The Proposed Rule unlawfully requires owners and PHAs to notify the Department of Homeland Security of the presence of ineligible immigrants in a household.

With the Proposed Rule, HUD would require housing providers and PHAs to report immediately to DHS any household members that are determined to be present in violation of the Immigration and Nationality Act. In HUD's own words, the proposed changes "would require the verification consent form to notify individuals that public housing agencies (PHAs) or owners, as applicable, must inform DHS immediately whenever personnel determine that any member of a household is present in the U.S. in violation of the Immigration and Nationality Act."[38] The Proposed Rule places an exceptional burden on owners of HUD subsidized housing and PHAs by requiring them to transform into immigration enforcers. In doing so, the Proposed Rule exceeds HUD's authority. The language of Section 214 does not require PHAs or housing providers to notify DHS when making a determination that an individual is ineligible.

HUD's Proposed Rule justifies this requirement for PHAs by relying on an Interagency Notice ("Interagency Notice") providing guidance for compliance with Section 404 of the Personal Responsibility Work Opportunity Reconciliation Act of 1996 ("PRWORA") regarding reporting.[39] However, HUD's reliance is misplaced. The Interagency Notice is clear that "[d]eterminations of status for purposes of the Immigration and Nationality Act are the responsibility of the Department of Justice, not of any other agency."[40] As defined in the Interagency Notice, reporting is only required "when the unlawful presence is

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[34] RIA § 3 at 8 and 9.

[35] Proposed Rule at 8160.

[36] 42 U.S.C. § 1436a(b)(2).

[37] 42 U.S.C. § 1436a(d)(6).

[38] Proposed Rule at 8156.

[39] *Id*.

[40] 65 Fed. Reg. 58302.

a finding of fact or conclusion of law that is made by the entity as part of a formal determination" subject to administrative review, which must be supported by a determination by DHS.[41]

Moreover, whatever the requirements are of PRWORA, they are superseded by a law enacted by Congress specific to HUD. Under that statute, "Notwithstanding any other provision of law," it is only HUD that "shall, at least 4 times annually and" only "upon request of [DHS]… furnish [DHS] with the name and address of, and other identifying information on, any individual who [HUD] knows is not lawfully present in the United States."[42] It is HUD's obligation to make reports to DHS. It is not the duty of HUD-assisted housing providers. Indeed, the only purpose of imposing this unlawful obligation on assisted housing providers is to conscript them into a larger scheme of immigration enforcement. The information gathered by housing providers is part and parcel of the system of records represented by SAVE. The authorization for SAVE is clear. The records associated with SAVE "system shall not be used…. for administrative (non-criminal) immigration enforcement purposes."[43]

Further, HUD seeks to extend this already unlawful requirement to private housing providers for the sake of uniformity. But, again, this requirement has no basis in Section 214, and HUD has no argument that the Interagency Notice, which it falsely relies on for PHAs, could apply to private housing providers. Neither PHAs nor private housing providers are immigration experts and neither should be forced to make the determinations requested by the Proposed Rule about whether an individual's presence violates the Immigration and Nationality Act.

(f) Elimination of DHS appeal procedures violates Section 214.

The Proposed Rule eliminates all references of appeals to the Department of Homeland Security ("DHS") when secondary verification fails to confirm eligible immigration status. The preamble explains that the change is warranted because the "provision is outdated [and], reflects procedures that existed before the SAVE program was utilized by HUD."[44]

This justification is either a fabrication or a failure to understand the implementation of the SAVE system. It may be that "at the time of enactment of Section 214" in 1980, "verification of eligible immigration status was a manual, paper-driven process that could take days or even weeks to complete."[45] At that point in the evolution of the statute, it only excluded "non-immigrant student aliens."[46] When the broader restrictions on immigrant access to housing assistance were enacted as amendments to Section 214 in 1986, the statute directed HUD to utilize the "automated system" established by the Immigration and Naturalization Service, as authorized by a separate provision in the same law.[47] And when the current Section 214 regulations inclusive of DHS appeal procedures were adopted in 1995, HUD rejected public comments urging

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[41] *Id.*

[42] 42 U.S.C §1437y.

[43] Pub. L. 99-603, §121(c)(1).

[44] Proposed Rule at 8160.

[45] Proposed Rule at 8160.

[46] Pub. L. 96-399, §214 (Oct. 8, 1980).

[47] *See,* Pub. Law 99-603, §121(a)(2), adopting 42 U.S.C. §1436a(d)(3) and §121(c) (authorizing SAVE).

postponement of the use of SAVE, saying that it "will proceed to use the SAVE system, as provided by Section 214."[48]

The failure of SAVE to establish eligible immigration status can be caused by inaccurate information in the various data sets that comprise the system, including in particular the citizenship information in Social Security Administration data utilized by SAVE.[49] For this reason, Section 214 directs HUD to make a DHS appeal available to any individual for whom the SAVE system does not establish eligible immigration status. The right to an appeal is not discretionary for HUD. Section 214 says that HUD "*shall* provide" such individuals "a reasonable opportunity, not to exceed 30 days, to submit… evidence indicating a satisfactory immigration status, *or to appeal… the [DHS] verification determination.*" In the event of an appeal, the statute directs HUD to "transmit to [DHS] photostatic or other similar copies of such documents or additional information for official verification."[50]

The right to a DHS appeal is more than procedural. During the period an appeal is pending, HUD may not "delay, deny, reduce, or terminate the eligibility of [an] individual for financial assistance on the basis of the immigration status of that individual."[51] Thus, the DHS appeal procedure embodied in Section 214 is intended to protect against the "injustice that would be caused by" erroneous "implementation of Section 214," consistent with congressional objectives.[52]

To repeat, the DHS appeal procedures in Section 214 are not discretionary. HUD lacks any authority to remove them from the Section 214 rules. "That is the whole point of having written statutes; 'every statute's meaning is fixed at the time of enactment.'"[53]

5. No Provision of the Proposed Rule is Severable; the Entire Rule must be Withdrawn.

In light of its repeatedly contravening Section 214, the Proposed Rule is not viable. HUD must withdraw the regulation in its entirety.

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[48] 60 Fed. Reg. 14816, 14820 (March 20, 1995).

[49] *See, e.g.,* RIA, p. 29 ("As of 2017, SAVE had a 1 percent error rate."); *Privacy Impact Assessment for the Systematic Alien Verification for Entitlements "SAVE" Program* (DHS Reference No. DHS/USCIS/PIA-006(d),), pages 19-20 (available at https://www.dhs.gov/sites/default/files/2025-10/privacy-pia-dhsuscis006d-save-october2025%20%28002%29.pdf, last accessed April 11, 2026) ("There is a risk that the U.S. Citizenship and Immigration Services may share inaccurate information with registered agencies, which could in turn impact a registered user agency's eligibility determination for an individual….The U.S. Citizenship and Immigration Services" only "partially mitigates this risk."). *See also, League of Women Voters v. U.S. Dept. of Homeland Security,* 2025 WL 3198970 (D.C. D.C., Nov. 17, 2025) (the government does not dispute allegations that "the use of SSA data raises serious accuracy concerns because 'the citizenship [data] SSA maintains merely represents a snapshot ... [from] the time of their interaction with SSA,' e.g., when they applied for a social security card. And a 2006 internal audit estimated that SSA's citizenship data inaccurately identified about 3.3 million citizens as non-citizens 'because they had become U.S. citizens after obtaining their SSN.'").

[50] 42 U.S.C. §1436a(d)(4)(A)(i) and (B)(i) (emphasis added).

[51] 42 U.S.C. §1436a(d)(4)(A)(ii) and (iii) and (B)(ii)(I) and (II).

[52] H.R. Rep. 100-122 (I) (June 3,1987), p. 49.

[53] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024).

Should the agency persist, the Proposed Rule will fail the severability analysis necessary for any portion of it to survive scrutiny by a reviewing court. It is well established that a court will only deem individual subsections of a regulation to be severable from the whole if: (1) "[a provision's] severance and invalidation will not impair the function of the statute as a whole," and (2) "there is no indication that the regulation would not have been passed but for [the provision's] inclusion."[54]

In the case of the Proposed Rule, the "the regulation [cannot] function sensibly" once its numerous unlawful provisions have been excised; the resulting muddle would "undercut[s] the whole structure" of Section 214 and HUD's implementing regulations.[55] The agency's proposed elimination of prorated assistance, for example, presumes that all household members will be required to their citizenship or eligible immigration status, an unlawful prerequisite that cannot stand.

Similarly, imposing two-year disqualification penalties on members of mixed families who knowingly allow an unqualified immigrant to live in the household represents a nonsensical outcome when Section 214 requires HUD to provide prorated assistance to the same families, provided that unqualified members do not contend citizenship or eligible status. In sum, the defects of the Proposed Rule are systemic and unable to remedied through severance.

6. Conclusion

We appreciate the opportunity to comment on the Proposed Rule and respectfully urge HUD to withdraw the Proposed Rule. The current regulations implementing Section 214 comply with the statute and lawfully ensure that only eligible individuals receive federal housing subsidies. The Proposed Rule would needlessly and unlawfully burden PHAs and housing providers with additional regulatory requirements and, most importantly, lead to displacement and homelessness for eligible household members of mixed families – devastating families and communities across the nation.

Sincerely,

Emily Blumberg, Claudia Wack and Henry Korman for Klein Hornig LLP

Jacob Love and Matthew Noyes for CHAPA

cc: Maritza Crossen, CHAPA

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[54] *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 282 (1988).

[55] *MD/DC/DE Broadcasters Ass'n v. F.C.C.*, 236 F.3d 13, 22 (D.C. Cir. 2001).