

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR-4154-F-03]

RIN 2501-AC36

Revised Restrictions on Assistance to Noncitizens

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule updates HUD's noncitizens regulations to incorporate the amendments made to section 214 of the Housing and Community Development Act of 1980 by section 592 of the Quality Housing and Work Responsibility Act of 1998 (the "1998 Act"). Specifically, section 592 of the 1998 Act provides that PHAs, notwithstanding the requirements of Section 214, may elect not to affirmatively establish and verify eligibility before providing financial assistance to an individual or family. Before this amendment, statutory authority allowed PHAs to opt-out of compliance with the Section 214 immigration verification requirements in their entirety. This final rule also makes final a November 29, 1996 interim rule and takes into consideration the public comments submitted on the interim rule.

EFFECTIVE DATE: June 11, 1999.

FOR FURTHER INFORMATION CONTACT: For the covered programs, the following persons should be contacted:

1. *For the Public Housing, Section 8 Rental Certificate, Rental Voucher and Moderate Rehabilitation (except Single Room Occupancy-"SRO") programs:* Patricia Arnaudo, Office of Public and Indian Housing, Room 4222, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 619-8201;

2. *For the Section 8 Moderate Rehabilitation SRO program:* John Garrity, Office of Community Planning and Development, Room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-4300;

3. *For the other Section 8 programs, the Section 236 programs, and Housing Development Grants and Rent Supplement:* Helene DeVous, Office of Housing, Room 6146, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-2866.

4. *For the Section 235 homeownership program:* Phillip Murray, Office of

Lender Activities and Program Compliance, Office of Housing, Room B133, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410, telephone (202) 708-1515.

Persons with hearing or speech impairments may access the above telephone numbers via TTY by calling the Federal Information Relay Service at 1-800-877-8339. With the exception of the "800" number, none of the foregoing telephone numbers are toll-free.

SUPPLEMENTARY INFORMATION:

I. HUD's Implementation of Section 214 of the Housing and Community Development Act of 1980

On March 20, 1995 (60 FR 14816), HUD issued its final rule implementing Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) ("Section 214") and that rule became effective on June 19, 1995. Section 214 prohibits HUD from making certain financial assistance available to persons other than United States citizens, nationals, or specified categories of eligible noncitizens.

HUD's March 20, 1995 final rule promulgated virtually identical "noncitizens" regulations for the various HUD programs covered by Section 214. On March 27, 1996 (61 FR 13614), HUD published a final rule eliminating the repetitiveness of these duplicative regulations by consolidating the noncitizens requirements in a new subpart E to 24 CFR part 5. HUD established part 5 (entitled "General HUD Program Requirements; Waivers") to describe those requirements which are applicable to one or more program regulations.

II. The November 29, 1996 Interim Rule

On November 29, 1996 (61 FR 60535), HUD published an interim rule amending its noncitizens regulations to incorporate the 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 Immigrant Responsibility Act of 1996, Public Law 104-208, approved September 30, 1996; 110 Stat. 3009-546) (the "1996 Immigration Act"). Section 577 of the 1996 Immigration Act directed that HUD's implementing regulations "be issued in the form of an interim final rule, which shall take effect upon issuance." Accordingly, the amendments made by the November 29, 1996 interim rule were effective upon publication, but also provided members of the public with a 60-day period to submit their comments on the interim rule.

The most significant changes made to Section 214 by the 1996 Immigration Act, and consequently to HUD's Section 214 regulations by the November 29, 1996 interim rule, are as follows:

1. HUD's interim noncitizens regulations provide that responsible entities may not make assistance available to a family applying for assistance until at least the eligibility of one family member has been established, and assistance must be prorated based on the number of individuals in the family for whom eligibility has been affirmatively established.

2. The interim regulations require that continued financial assistance be provided to an eligible mixed family after November 29, 1996 (the effective date of the interim rule) be prorated based on the percentage of family members that are eligible for assistance. An eligible mixed family is a family containing members with eligible immigration status, as well as members without such status, and that meets the criteria for eligibility for continued assistance as described in Section 214.

3. The interim regulations require that HUD suspend financial assistance to a family upon determining that the family has knowingly permitted an ineligible individual to reside on a permanent basis in the family's unit. The suspension shall be for a period of at least 24 months. This provision does not apply if the ineligible individual has already been considered in calculating any proration of assistance for the family.

4. The interim regulations allow responsible entities administering financial assistance under a Section 214 covered program to require that individuals who declare themselves to be U.S. citizens verify the declaration through appropriate documentation (e.g., United States passport, resident alien card, registration card, social security card, or other appropriate documentation). Before this amendment, only individuals who were not U.S. citizens or nationals were required to present documentation of their eligible immigration status.

5. The November 29, 1998 interim rule revised the maximum period for deferral of termination of assistance provided after November 29, 1996 from an aggregate of 3 years to an aggregate of 18 months. The 18-month maximum deferral period does not apply to refugees under section 207 of the Immigration and Nationality Act or to individuals seeking asylum under section 208 of that Act. The maximum deferral period for deferrals granted

prior to November 29, 1996 continues to be 3 years.

6. The interim regulations provide that an individual has a maximum period of 30-days, starting from the date of receipt of the notice of denial or termination of assistance, to request a fair hearing. HUD believes that due process requires that assistance already being provided to a tenant may not be delayed, denied, reduced or terminated until completion of the fair hearing.

7. The interim regulations provide that a Public Housing Agency (PHA) may elect not to comply with the requirements of 24 CFR part 5, subpart E. This amendment was based on the language of subsection 214(h)(2), which was added by section 575 of the 1996 Immigration Act. Subsection 214(h)(2) provided that "[a] Public Housing Agency . . . may elect not to comply with this section." The use of the word "section" (as opposed to "subsection") in this provision, in a strict statutory construction, referred to Section 214 in its entirety.

III. Section 592 of the Quality Housing and Work Responsibility Act of 1998

On October 21, 1998, President Clinton signed into law HUD's fiscal year (FY) 1999 Appropriations Act, which includes the Quality Housing and Work Responsibility Act of 1998 (title V of the FY 1999 HUD Appropriations Act; Public Law 105-276; 112 Stat. 2461) (the "1998 Act"). The 1998 Act constitutes a substantial overhaul of HUD's public housing and Section 8 assistance programs. The 1998 Act enacts many of the reforms originally proposed in Secretary Andrew Cuomo's HUD 2020 Management Reform Plan, HUD's public housing bill and Congressional bills that are directed at revitalizing and improving HUD's public housing and Section 8 tenant-based programs.

Section 592 of the 1998 Act (entitled "Use of Assisted Housing by Aliens") removed the option of PHAs to elect not to comply with Section 214. In its place, the 1998 Act provides that PHAs, notwithstanding the requirements of Section 214, may elect not to affirmatively establish and verify eligibility before providing financial assistance to an individual or family (as discussed above, Section 214, and HUD's noncitizens regulations, provide that no individual or family applying for financial assistance may receive such financial assistance prior to the affirmative establishment and verification of eligibility of at least the individual or one family member). Section 592 of the 1998 Act was

effective upon enactment (October 21, 1998).

On February 18, 1999 (64 FR 8192), HUD published a Notice of Initial Guidance in the **Federal Register**. The notice advises the public of those provisions of the 1998 Act that are effective immediately and of action that may or should be taken immediately by affected public and assisted housing providers. The February 18, 1999 notice advises the public that section 592 of the 1998 Act removed the option of PHAs to elect not to comply with Section 214. Further, the notice provides that in the event a PHA elected to "opt-out" of compliance with Section 214, the PHA may, but is not required to, immediately commence verification of eligibility of families for whom eligibility status under Section 214 has not yet been undertaken. A PHA must, however, verify eligibility status in accordance with the requirements of Section 214 and HUD's implementing regulations at 24 CFR part 5, subpart E, no later than the date of the family's annual reexamination.

IV. This Final Rule

This rule makes final the amendments in the November 29, 1996 interim rule, and takes into consideration the public comments submitted on the interim rule. After careful consideration of all the comments received on the November 29, 1996 interim rule, HUD has made one change as a result of public comment. Specifically, HUD has revised the list of documentation that may constitute acceptable evidence of U.S. citizenship or U.S. nationality (see discussion of public comment captioned "Rule Should Specify Acceptable Evidence of Citizenship" in section V.B of this preamble).

This final rule updates HUD's noncitizens regulations to incorporate the amendments made by section 592 of the 1998 Act. Specifically, the final rule removes § 5.501 (which granted PHAs the ability to opt-out of compliance with Section 214) and revises § 5.512 (entitled "Verification of eligible immigration status") to state that PHAs may elect to provide financial assistance to an individual or family before verifying the eligibility of the individual or one family member.

This final rule also makes a correction to § 5.508 of the November 29, 1996 interim rule. The 1996 Immigration Act permits responsible entities to verify the eligibility of individuals who declare themselves to be U.S. citizens or nationals. Although the preamble to the November 29, 1996 interim rule correctly referred to both U.S. citizens and nationals, § 5.508 of the interim

rule, which implemented this statutory provision, inadvertently failed to refer to U.S. nationals. This final rule makes the necessary correction to § 5.508.

This final rule does not implement the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193, approved August 22, 1996; 110 Stat. 2105) which concern immigration. The changes required by that Act will be the subject of future rulemaking.

Readers should note that the regulatory text of this final rule is identical to that of the November 29, 1996 interim rule, with the exception of the changes implementing section 592 of 1998 Act and the changes to § 5.508.

V. Discussion of Public Comments on the November 29, 1996 Interim Rule

The public comment period on the November 29, 1996 interim rule closed on January 28, 1997. HUD received twenty-two comments, including comments from nonprofit organizations, PHAs, and PHA interest organizations. This section of the preamble presents a summary of the significant issues raised by the public commenters on the November 29, 1996 interim rule, and HUD's responses to these comments.

A. Comments on the Statutory PHA "Opt Out" Provision (Section 5.501)

Many of the comments received regarding the PHA "opt-out" provision were submitted before publication of the November 29, 1996 interim rule. The vast majority of these comments urged that HUD interpret section 575 of the 1996 Immigration Act to permit PHAs to opt-out of compliance with Section 214 in its entirety. As noted above, the recommended interpretation of section 575 was in fact the position adopted by HUD in the November 29, 1996 interim rule and this interpretation was based on the statutory language itself.

Many of these commenters noted that in some cities, such as New York City, most ineligible noncitizens are part of families that include citizens, nationals, or other eligible persons, and are "deeply woven into the fabric of everyday life." The commenters wrote that it would be a great hardship to such families to penalize these ineligible persons. Other commenters wrote that the recommended interpretation of the opt-out provision would further HUD's policy of "vest[ing] in local public housing agencies the maximum amount of responsibility in the administration of their housing programs."

HUD Response. As noted above, section 592 of the 1998 Act amended the scope of the PHA opt-out provision.

This final rule updates 24 CFR part 5, subpart E to incorporate the amendments made by section 592 of the 1998 Act. Specifically, the final rule removes § 5.501 (entitled "PHA election whether to comply with this subpart"), which allowed PHAs to opt-out of compliance with the Section 214 requirements. The final rule also amends § 5.512 (entitled "Verification of eligible immigration status") to state that PHAs may elect to provide financial assistance to an individual or family before verifying the eligibility of the individual or one family member.

B. Comments on the Submission of Evidence of Eligible Status (Section 5.508)

Comment: Nondiscrimination Requirements Should be Codified. Two commenters suggested that HUD amend the interim rule to explicitly provide that an entity administering a program covered by Section 214 may not request verification of citizenship based on race, national origin, or personal characteristics, such as accent, language spoken, or familial association with a noncitizen.

HUD Response. As § 5.524 makes clear, all regulatory procedures in the implementation of Section 214 must be administered in accordance with all applicable nondiscrimination and equal opportunity requirements, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5) and the implementing regulations in 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations in 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations in 24 CFR part 100. Further, section VI of this preamble reminds the public that the Section 214 prohibitions on assistance to noncitizens must be implemented in the uniform manner prescribed, without regard to race, national origin, or personal characteristics (e.g., accent language spoken, or familial association with a noncitizen). The individual regulations for the HUD programs subject to Section 214 specify the fair housing and civil rights requirements applicable to each program.

Comment: Senior Noncitizens Should be Subject to Stricter Verification Procedures. Section 214 provides that certain senior noncitizens (those 62 years of age or older) need only submit a signed declaration of eligible immigration status and a proof of age document for purposes of verifying their eligibility to receive assistance. All other noncitizens, however, must

submit their documentation of eligible immigration status for verification by the Immigration and Naturalization Service (INS). Before the amendments made by the 1996 Immigration Act, Section 214 limited this more lenient treatment to senior noncitizens receiving assistance on June 19, 1995 (the effective date of HUD's original March 20, 1995 noncitizens rule). The November 29, 1996 interim rule expanded the exemption to include senior noncitizens receiving assistance on September 30, 1996 (the date of enactment of the 1996 Immigration Act) or applying for assistance on or after that date. Two commenters objected to this amendment, and wrote that the higher standard of documentation should continue to be required of senior noncitizens who apply after September 30, 1996.

HUD Response. This regulatory amendment merely tracks the revision made to section 214(d)(4) by the 1996 Immigration Act. Accordingly, HUD does not have the discretion to modify this provision in the manner suggested by the commenters.

Comment: Rule Should Specify Acceptable Evidence of Citizenship or Nationality. The 1996 Immigration Act allows responsible entities administering financial assistance under a Section 214 covered program to require that individuals who declare themselves to be U.S. citizens or nationals to verify the declaration through appropriate documentation. Before this amendment, only individuals who were not U.S. citizens or nationals were required to present documentation of their eligible immigration status.

Three commenters recommended that HUD provide greater specificity regarding what documentation constitutes acceptable evidence of citizenship and nationality. One of the commenters noted that two of the documents listed as examples in § 5.508 (a resident alien card and a Social Security Card) do not constitute adequate evidence of citizenship or nationality. The commenter wrote that several of the other listed examples, such as a "registration card" or "other appropriate documentation," were too vague. One commenter suggested that acceptable proof of citizenship should include a signed declaration of citizenship accompanied by proof that a timely request for supporting documentation has been made. According to the commenter, this would ease the situation encountered by applicants who have difficulty obtaining original birth certificates from distant jurisdictions.

HUD Response. The commenters are correct that neither a resident alien card nor a Social Security Card is evidence of U.S. citizenship or U.S. nationality. Therefore, HUD has removed the references to these documents, as well as the reference to a "registration card", from § 5.508(b)(1). If HUD determines that additional examples are necessary, HUD will more appropriately provide them through notice, handbook, or other non-regulatory guidance.

C. Comments on Verification of Eligible Status: Timing of Procedure and Proration of Assistance (Section 5.512)

Comment: Verification of All Household Members Should be Required Before Admission. HUD's noncitizens regulations provide that responsible entities may not make assistance available to a family applying for assistance until at least the eligibility of one family member has been established, and assistance must be prorated based on the number of individuals in the family for whom eligibility has been affirmatively established.

Several commenters indicated that proration of rent for newly admitted families due to an inability to complete the verification of eligibility of all family members before admission is a problem, both to the applicant and to the housing provider. They wrote that families who have not yet moved in will choose not to pay a prorated rent. If families are admitted with full subsidy after verification of eligibility of only one family member, the family and housing provider will both suffer losses if proration becomes required, since it is unlikely that the family will be able to pay the higher rent and eviction will follow.

Three commenters suggested that this perceived difficulty might be resolved by requiring verification of all household members before admission. The commenters wrote that this would not constitute an undue delay in the provision of assistance. According to two of these commenters, housing providers usually receive verification within one to two weeks after submission of the appropriate documentation. The commenters noted that the regulations grant individuals and families up to 30 days to submit the required documentation—a longer time period than what the commenters' experience indicates it takes to complete the entire verification process.

HUD Response. Subsection 214(d)(4)(B)(ii), as amended by the 1996 Immigration Act, prohibits the delay, denial, reduction, or termination of assistance to an applicant or tenant

pending the completion of the verification process. Assistance to newly admitted families may not be prorated based on the inability of the responsible entity to complete verification for all family members.

The commenters are correct in noting that assistance may need to be prorated if the verification process determines that one or more family members is not eligible. HUD acknowledges that families may be unable to pay the higher rent resulting from proration. Nevertheless, the requirement that assistance be prorated based on the number of individuals in the family for whom eligibility has been affirmatively established is statutorily mandated by the 1996 Immigration Act.

Comment: Rent Should be Retroactively Reduced Following Verification of Status for All Family Members. Another commenter suggested that, where assistance was initially prorated because the status of all the family members had not been established, the rent should be reduced retroactively to the date of admission following verification of the eligible status of all the family members.

HUD Response. As noted in the response the preceding comment, responsible entities may not prorate assistance to a family before the completion of the verification process.

D. Comments on Delay, Denial, Reduction, or Termination of Assistance (Section 5.514)

Comment: Verification Should be Completed Before Admission. One commenter praised HUD's interpretation that assistance to a tenant not be delayed, denied, reduced, or terminated until the completion of an informal hearing when a timely request for such a hearing is made. This contrasted with the opinion of another commenter, who stated that, although it was the intent of the Congress to not delay assistance to current program participants, no such authority exists regarding applicants. Accordingly, this commenter wrote all aspects of eligibility need to be verified before a family is admitted.

HUD Response. HUD's noncitizens regulations track the statutory language of the 1996 Immigration Act. Specifically, subsection 214(d)(4)(B)(ii), as amended by the 1996 Immigration Act, prohibits the delay, denial, reduction, or termination of assistance to an applicant or tenant pending the completion of the verification process.

Comment: What Constitutes "Knowingly" Permitting an Ineligible Person to Reside in an Assisted Housing Unit? Several commenters wrote to

express uncertainty regarding § 5.514(c)(1)(iii), which provides that assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, if—

(iii) The responsible entity determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the public or assisted housing unit of the family member. Such termination shall be for a period of not less than 24 months * * *

Several commenters asked for greater clarity regarding what constitutes "knowingly" permitting an ineligible person to reside in an assisted unit on a permanent basis. One of the commenters suggested that a deliberate intention to deceive the housing provider (i.e., knowledge about the ineligible status and intentionally permitting permanent residence in the unit), should be the basis for the imposition of sanctions.

HUD Response. HUD believes that "knowingly" has the everyday meaning normally associated with the term. Specifically, the word "knowingly," as used in this provision of the 1996 Immigration Act, means that a tenant possesses knowledge that an ineligible individual is residing (on a permanent basis) in the unit.

Comment: What Constitutes "Termination" of Assistance Under Section 5.514(c)(1)(iii)? As noted above, HUD's noncitizens regulations at 24 CFR 5.514(c)(1)(iii) provide that, if a family member knowingly permits an ineligible individual to reside in an assisted housing unit, the family member's assistance must be "terminated" for a period of not less than 24 months. Several commenters questioned whether the effect of this termination is that the formerly assisted family is required to reapply for assistance after the expiration of the prescribed period (or immediately upon termination, with a required wait of the prescribed period), or whether assistance is to be automatically reinstated after the prescribed period.

HUD Response. Termination of assistance under § 5.514(c)(1)(iii) would be no different than termination of assistance for any other reason under the individual program requirements for each of the HUD programs covered by Section 214. For example, recipients of Section 8 tenant-based assistance who violate § 5.514(c)(1)(iii) are subject to the termination procedures described in 24 CFR part 982, subpart L ("Family Obligations; Denial and Termination of Assistance").

Comment: Maximum Period or Termination Should Exceed 24 Months. One commenter wrote that HUD should

establish conditions for imposing a termination period longer than the statutory minimum 24 month sanction. Subsection 214(d)(6), and HUD's implementing regulation at § 5.514(c)(1)(iii), provides that HUD shall terminate assistance for a period of "not less than 24 months."

HUD Response. At this time, HUD is not amending 24 CFR part 5, subpart E to incorporate the recommendations made by the commenter. The establishment of regulatory criteria for the imposition of termination periods greater than 24 months would constitute a substantive revision of HUD's noncitizens regulations. Accordingly, HUD would implement such changes only after providing the public with notice and the opportunity to comment. HUD would not include the revisions suggested by the commenter in a final rule issued for effect. Should HUD decide to provide for termination periods of greater than 24 months, it will issue a future rulemaking accompanied by a request for public comment.

Comment: Time Period for Requesting Hearing Should Conform to Hearing Procedures Established by Responsible Entity. One commenter recommended that the time period for requesting a hearing on a negative determination be consistent with the amount of time established by the responsible entity for all terminations of assistance (such as 10 days).

HUD Response. The regulatory language of § 5.514 conforms to the language of the 1996 Immigration Act, which provides that the Secretary of HUD shall provide a "reasonable period, not to exceed 30 days" to appeal an INS eligibility determination. At this time, HUD is not revising its noncitizens regulations to permit the establishment of less than a 30-day period for requesting an informal hearing. Such a change would constitute a substantive revision to the November 29, 1996 interim rule, and could not be implemented through a rule issued for effect. In the event HUD determines that responsible entities should be provided with the flexibility to modify the 30-day period for requesting a hearing, it will implement the change using notice and comment rulemaking procedures.

E. Comments on Deferral of Termination of Assistance for Ineligible Families (Section 5.518)

Comment: Requested Clarifications Regarding Eligibility and Timing for Temporary Deferral of Termination of Assistance. One commenter asked under what circumstances anyone would now receive a deferral of termination of

assistance. According to the commenter, deferrals were only given to those families living and receiving assistance in Section 214 covered properties on or before June 19, 1995. Another question raised was whether a family that chose proration of assistance before November 29, 1996 and that chooses deferral of termination after that date is limited to a deferral of 18 months.

HUD Response. HUD believes that it would be the exceptional case in which a family would be eligible for deferral of termination of assistance in 1999. As the commenter notes the statute provides deferral of termination of assistance for families living and receiving assistance in Section 214 covered properties on or before June 19, 1995. It is conceivable that the verification process or appeals process may have significantly delayed a final eligibility determination such that a family receiving assistance on or before June 19, 1995 would now find themselves faced with termination of assistance (due to lack of eligibility), and would therefore be eligible for deferral of termination of assistance. Again, however, HUD believes that this would be the exception.

With respect to a family that is eligible for deferral of termination and chooses deferral of termination of assistance after November 29, 1996, the period of deferral of termination is limited to 18 months.

F. Comments on Continued Full Assistance to Ineligible Family Members (Section 5.518)

Comment: Rule Should be Clarified Regarding Continued Assistance Provided Before November 29, 1996. One commenter wrote that it was not completely clear that "continued assistance," for purposes of families receiving housing assistance before November 29, 1996, means non-prorated assistance. The commenter requested that § 5.518(a)(2) be revised to clarify this provision of the 1996 Immigration Act. In addition, this commenter wrote that the aggregate deferral period for a tenant who was granted a temporary deferral before November 29, 1996, is three years from the date the first deferral was granted.

HUD Response. Section 5.518(a)(2) provides, a family granted continued assistance before November 29, 1996 is entitled to receive non-prorated assistance. A family granted continued assistance after November 29, 1996 must receive prorated assistance. In response to the commenter's second comment, § 5.518(b)(3) provides that the "aggregate deferral period for deferrals granted prior to November 29, 1996 shall not exceed 3 years."

Comment: Reference to Refugees and Asylees is Confusing. One commenter wrote that the reference to refugees and asylees in § 5.518(b)(3) was confusing, since these individuals have eligible status under the statute and their presence in a family would not be cause for terminating assistance or deferring termination any more than the presence of a citizen would be.

HUD Response. The language of § 5.518(b)(3) exempting certain categories of noncitizens from the 18-month maximum deferral period tracks the statutory language of the 1996 Immigration Act. The language serves to remind responsible entities of the statutory exemption. Accordingly, the language has been retained.

VI. Nondiscrimination in the Implementation of Section 214

HUD reiterates the statement made in the March 20, 1995 final rule and the November 29, 1996 interim rule that all regulatory procedures in implementation of Section 214 must be administered in the uniform manner prescribed without regard to race, national origin, or personal characteristics (e.g., accent, language spoken, or familial association with a noncitizen).

VII. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this final rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this interim rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed this final rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. As explained in the preamble to the November 29, 1996 interim rule, the implementation of HUD's noncitizen requirements have only a minimal impact on small housing project owners, small mortgagees, and small housing agencies. The amendments made final by this rule do not alter that previous determination. This final rule does not require the creation of new procedures or impose significant additional costs on responsible entities. Rather, the requirements of the final rule can be satisfied through the use of existing procedures. For example, the final rule prohibits responsible entities from making assistance available to a noncitizen until the necessary documentation establishing eligible immigration status is verified. This requirement can be fulfilled by utilizing the existing verification procedures. Likewise, current methods may be used to prorate the assistance provided to an eligible mixed family receiving continued assistance.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the interim rule stage in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That finding continues to be applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this final have no federalism implications, and that the policies are not subject to review under the Order. This interim rule addresses immigration, a topic exclusively the province of the Federal government, and the effect is the direct result of the statute that imposes the restriction against assistance to noncitizens, rather than a result of HUD's exercise of

discretion in promulgating a rule to implement the statute.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, for the reasons stated in the preamble, 24 CFR part 5 is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

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).

§ 5.501 [Removed]

3. Remove § 5.501.

4. Section 5.508 is amended by revising paragraphs (b)(1), (b)(2), (h)(2) and (h)(3) to read as follows:

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

* * * * *

(b) * * *

(1) For U.S. citizens or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. nationality. The responsible entity may request verification of the declaration by requiring presentation of a United States passport or other appropriate documentation, as specified in HUD guidance.

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

- (i) A signed declaration of eligible immigration status; and
- (ii) Proof of age document.

* * * * *

(h) * * *

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

(3) *Grant or denial of extension to be in writing.* The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted (which shall not exceed thirty (30) days). If the extension is denied, the notice shall explain the reasons for denial of the extension.

* * * * *

5. Section 5.510 is amended by revising paragraph (b) to read as follows:

§ 5.510 Documents of eligible immigration status.

* * * * *

(b) *Acceptable evidence of eligible immigration status.* Acceptable evidence of eligible immigration status shall be the original of a document designated by INS as acceptable evidence of immigration status in one of the six categories mentioned in § 5.506(a) for the specific immigration status claimed by the individual.

6. Section 5.512 is amended by:

- a. Revising paragraph (a);
- b. Adding new paragraph (b); and
- c. Redesignating existing paragraphs (b) through (d) as paragraphs (c) through (e), respectively to read as follows:

§ 5.512 Verification of 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 may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member.

* * * * *

7. Section 5.514 is amended by:

- a. Revising paragraph (b);

- b. Revising paragraph (c)(1);
- c. Revising paragraph (e)(1); and
- d. Revising paragraph (f)(1), to read as follows:

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

* * * * *

(b) *Restrictions on delay, denial, reduction or termination of assistance.*

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

(i) The primary and secondary 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 INS verification has moved from the assisted dwelling unit;

(iv) The INS appeals process under § 5.514(e) has not been concluded;

(v) Assistance is prorated in accordance with § 5.520; or

(vi) Assistance for a mixed family 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.

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

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

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 5.508(g) or by the expiration of any extension granted in accordance with § 5.508(h);

(ii) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and secondary verification does not verify eligible immigration status of a family member; and

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

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member; or

(iii) The responsible entity determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the public or assisted housing unit of the family member. Such termination shall be for a period of not less than 24 months. This provision does not apply to a family if the ineligibility of the ineligible individual was considered in calculating any proration of assistance provided for the family.

* * * * *

(e) *Appeal to the INS.* (1) *Submission of request for appeal.* Upon receipt of notification by the responsible entity that INS secondary verification failed to confirm eligible immigration status, the responsible entity shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the responsible entity's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the responsible entity with a copy of the written request for appeal and proof of mailing.

* * * * *

(f) *Informal hearing.* (1) *When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, 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 INS appeal decision issued in accordance with paragraph (e) of this section.

* * * * *

8. Section 5.516 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 5.516 Availability of preservation assistance to mixed families and other families.

* * * * *

(c) *Assistance available to other families in occupancy.* Temporary deferral of termination of assistance may be available to families receiving assistance under a Section 214 covered program on June 19, 1995, and who have no members with eligible

immigration status, as set forth in paragraphs (c)(1) and (2) of this section.

* * * * *

9. Section 5.518 is amended by revising paragraphs (a), (b)(3) and (b)(5) to read as follows:

§ 5.518 Types of preservation assistance available to mixed families and other families.

(a) *Continued assistance.* (1) *General.* A mixed family may receive continued housing assistance if all of the following conditions are met (a mixed family assisted under a Housing covered program must be provided 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 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.* A family entitled to continued assistance before November 29, 1996 is entitled to continued assistance as described in paragraph (a) of this section. A family entitled to continued assistance after November 29, 1996 shall receive prorated assistance as described in § 5.520.

(b) * * *

(3) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period for deferrals provided after November 29, 1996 shall not exceed a period of eighteen months. The aggregate deferral period for deferrals granted prior to November 29, 1996 shall not exceed 3 years. These time periods do 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.

* * * * *

(5) *Determination of availability of affordable housing at end of each deferral period.* (i) Before the end of each deferral period, the responsible entity must satisfy the applicable requirements of either paragraph (b)(5)(i)(A) or (B) of this section.

Specifically, the responsible entity must:

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

(B) *For Section 8 or Public Housing covered programs:* Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the responsible entity's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing.

(ii) The responsible entity must also:

(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). 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, and a determination was made that other affordable housing is not available; or

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed the maximum deferral period (unless the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act), or a determination has been made that other affordable housing is available.

* * * * *

10. Section 5.526 is revised to read as follows:

§ 5.526 Protection From liability for responsible entities and State and local government agencies and officials.

(a) *Protection from liability for responsible entities.* Responsible entities are protected from liability as set forth in Section 214(e) (42 U.S.C 1436a(e)).

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system described in § 5.512, as long as the implementation by the State and local government agency or official is in accordance with prescribed HUD rules and requirements.

Dated: April 30, 1999.

Andrew Cuomo,
Secretary.

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