NATIONAL LEASED HOUSING ASSOCIATION

CARH Council for Affordable and Rural Housing

April 2, 2026

Regulations Division
Office of the General Counsel
Department of Housing and Urban Development
451 Seventh Street, S.W., Room 10276
Washington, D.C. 20410-0500

Re: Comments on Proposed Rule: Housing and Community Development Act of 1980: Verification of Eligible Status, Docket No. HUD-2026-0199, RIN 2501-AE16, 91 Fed. Reg. 8151 (February 20, 2026)

Dear Sir or Madam:

The National Leased Housing Association (NLHA) and the Council for Affordable Rural Housing (CARH) submit these comments in response to The Department of Housing and Urban Development (HUD)'s Proposed Rule on "Verification of Eligible Status" in certain affordable housing programs, as captioned above (the "Proposed Rule"). For over 50 years, NLHA has represented both public agencies and private organizations that develop, administer, or otherwise operate affordable multifamily housing. NLHA has been an architect and steward of the Section 8 project-based and tenant-based rental assistance programs since its inception. Since 1980, CARH has served as the nation's premier association for participants in the affordable rural housing arena, including developers, owners, managers, public agencies and other housing professionals. Together, our members include hundreds of entities that provide over a million units of affordable housing across the country that will be harshly impacted by this proposed rule.

For thirty years, HUD's existing regulations and procedures have faithfully implemented Section 214 of the Housing and Community Development Act of 1980 by ensuring that no federal housing subsidy flows to ineligible individuals while protecting the eligible family members. The Proposed Rule would dismantle that framework without adequate legal justification, imposing extensive new burdens on housing providers, displacing tens of thousands of eligible families, and producing no meaningful benefit to the assisted housing system. As detailed below, the rule:

- Is inconsistent with the governing statute and HUD's own longstanding interpretations, and cannot be justified under the Administrative Procedure Act;

- Imposes substantial uncompensated burdens on housing providers, including compelling them to perform immigration enforcement functions entirely outside their program obligations;
- Causes severe harm to tens of thousands of eligible U.S. citizens and lawful residents, many of whom are children;
- Produces no meaningful benefit to the affordable housing system; and
- Rests on a Regulatory Impact Analysis that systematically understates costs, overstates benefits, and fails to meaningfully consider less-disruptive alternatives.

I. Background: The Current Framework and What the Proposed Rule Would Change

Section 214 restricts HUD financial assistance to U.S. citizens, nationals, and certain categories of eligible noncitizens. Since 1995, HUD has implemented Section 214 through a framework codified at 24 C.F.R. Part 5, Subpart E. Under that framework, "mixed" families, which include both eligible and ineligible members, may participate in covered programs, but assistance is prorated to reflect only the eligible members. Ineligible household members receive no subsidy. Families with ineligible members may elect to "not contend" the eligibility status of those members, triggering proration and allowing the family to remain housed while no federal benefit flows to ineligible individuals. This structure has served the statutory mandate for three decades.

The Proposed Rule would eliminate this framework entirely. It would: (1) end prorated assistance for mixed families except as a brief measure during the verification process; (2) abolish the "do not contend" option; (3) require housing providers and PHAs to immediately report to DHS any household member determined to be present in violation of the Immigration and Nationality Act; (4) remove the existing documentation exemption for individuals 62 and older; and (5) require U.S. citizens to submit proof of citizenship and consent to SAVE system review. These changes impact each of the 4.4 million households in covered programs, as well as their housing providers.

II. The Rule Is Not Required by Section 214 and Cannot Be Reconciled With HUD's Own Prior Interpretations

The Proposed Rule characterizes the current proration framework as a "loophole" inconsistent with Section 214. That conclusion is not supported by the statute, contradicts HUD's prior statements in the original rulemaking, and disregards over 30 years of sustained implementation by HUD and its partners.

When HUD first proposed rules implementing Section 214 in 1994, it stated: "Section 214 is . . . specific about the special assistance to be provided to certain families with members who have eligible status and those who have ineligible status." 59 Fed. Reg. 43900, 43902 (Aug. 25, 1994). When HUD finalized those rules in 1995, HUD responded to commenters who argued that ineligible persons should not be allowed to reside in assisted units by stating: "[t]he 'preservation of family' provisions flow directly from the statute." 60 Fed. Reg. 14816, 14820–21 (Mar. 20, 1995). That conclusion reflects the plain text of Section 214, which expressly authorizes prorated

assistance for mixed families. The statute does not impose a time limit on prorated assistance. The Proposed Rule does not identify any change in Section 214 that renders these provisions inoperable.

Under the Administrative Procedure Act ("APA"), an agency that reverses a longstanding regulatory interpretation must provide a "reasoned explanation" acknowledging the prior position and demonstrating good reasons for the change. Encino Motorcars, LLC v. Navarro, 136 S. Ct. 2117, 2125–26 (2016). Where families, housing providers, and managers have organized their operations and their lives around a settled framework for thirty years, the agency "must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account." *Id*. The Proposed Rule cites executive orders and general regulatory reform priorities. Those do not constitute the reasoned explanation the APA requires.

The rule also imposes a transition timeline inconsistent with the statute it claims to implement. Section 214(c)(1)(B) provides that a family facing termination should be provided an initial deferral period of six months, renewable for an aggregate of 18 months. The Proposed Rule's 90-to-120-day hard deadline for existing tenants is shorter than what Congress itself prescribed.

III. The Rule Unduly Burdens Housing Providers and Imposes Immigration Enforcement Duties

NLHA and CARH members, who are private owners of project-based assisted housing, housing choice voucher landlords, and public housing authorities, entered into contracts and regulatory agreements defining their obligations under federal housing programs. None of those agreements contemplated a role in federal immigration enforcement. The Proposed Rule would impose exactly that role.

Proposed § 5.508(d)(4) requires that every verification consent form notify residents that PHAs and project owners "must immediately report to DHS" any household member determined to be present in the United States in violation of the Immigration and Nationality Act. This provision converts housing providers into front-line immigration enforcement agents: without additional compensation, without indemnification from HUD, without training in immigration law, and without consent. Housing providers are not equipped to make legal determinations about immigration status, and they should not be required to do so. Imposing this obligation unilaterally, through a change in housing regulations rather than a renegotiation of program contracts, is both legally questionable and operationally unworkable.

The DHS reporting requirement will also damage the trust relationship between providers and residents that is essential to effective property management. If residents believe that disclosing family composition to their housing manager may result in an immigration referral, they may withhold information or seek to conceal household members.

Beyond the reporting mandate, the rule imposes substantial additional uncompensated burdens. Providers must revise all administrative policies (Admissions and Continued Occupancy Policies and their equivalents), retrain staff, update forms and notices, implement new SAVE consent

workflows for U.S. citizens, and manage an unprecedented wave of tenant verification across their portfolios. For project-based owners with long-tenured mixed families, the rule may require eviction proceedings against lease-compliant, rent-paying residents solely due to a policy change. This will generate court costs, legal fees, unit turnover expenses, and extended vacancies, none of which is sufficiently addressed in HUD's cost estimates.

The rule also threatens to increase private-market owner reluctance to participate in the Housing Choice Voucher program. HUD's RIA acknowledges that "the proposed rule could potentially discourage attracting more private owners willing to participate in the HCV program" and then provides no analysis of this consequence. This will directly undermine HUD's stated goal of reducing regulatory burdens and encouraging more private sector landlords to participate in the voucher program.

IV. The Rule Will Cause Severe and Largely Irreversible Harm to Eligible Families

HUD's RIA estimates that between 62,000 and 79,300 people currently in assisted housing will lose assistance as a result of this rule. Approximately 36,000 of them are eligible children. These U.S. citizens or lawful residents will lose their homes not because they are ineligible, but because they cannot live apart from their families. The RIA acknowledges that 73 percent of mixed families consist of eligible children and ineligible parents and that most will leave assisted housing together rather than separate.

For these families, losing assisted housing does not mean transitioning to comparable private-market housing. Average mixed-family income is $27,000 per year, which is below the federal poverty line for a family of four. HUD acknowledges in the RIA that mixed families face significant barriers in the private market and concedes that the net impact on homelessness is "difficult to predict" but may be substantial. With local government costs of homelessness ranging from $20,000 to $50,000 per person per year, even modest increases in displacement could generate substantial downstream public costs that are entirely absent from HUD's cost summary.

The rule also creates risk for eligible residents who happen to lack ready access to citizenship documentation, which includes an estimated 9 percent of American adults, with a disproportionate share being elderly, low-income, and minority citizens. Approximately 2 percent of adult American citizens are estimated to have no form of documentary proof of citizenship whatsoever. Under the Proposed Rule, such individuals could lose housing assistance at their next annual recertification, despite being fully eligible, solely because they cannot produce a birth certificate or passport. The rule offers only vague assurance of possible fee waivers and extensions, with no systematic provision to protect this population.

V. The Rule Produces No Meaningful Benefits, and the RIA Is Unreliable

HUD frames the rule's principal economic effect as a "transfer" of assistance from mixed families to fully eligible replacement households, characterizing this as "zero-sum." That framing obscures the rule's true fiscal consequences.

Mixed households have higher incomes on average ($20,000 vs. $27,000) than replacement families, and have their subsidy prorated. Thus, replacement families require higher per-person subsidies ($7,700 vs. $2,700), and the same funds that currently serve 79,300 people in 20,000 households would serve only 24,100 people under a fixed budget. The rule's practical effect is to eliminate housing assistance for more than 55,000 currently eligible individuals, not because they are ineligible, but because HUD can no longer stretch resources through proration. The RIA's Section 5.4.2 discloses that maintaining current coverage levels would require $311 to $385 million in additional annual appropriations beyond the amounts made available by departing mixed families. HUD does not request those appropriations and offers no plan for addressing the gap.

The RIA's claimed benefits are entirely unquantified and largely speculative. HUD asserts that redirecting assistance to fully eligible households will better preserve the long-term benefits of housing assistance because those families are "more likely to remain in the United States." This argument implicitly discounts the welfare of eligible U.S. citizen children who will lose housing under the rule on the theory that their ineligible family members might not remain in the country. Applying this reasoning to American children is extraordinary, and it is not grounded in any analysis. Meanwhile, HUD's Appendix B data shows that mixed-status and non-mixed families have virtually identical welfare participation rates (41.6 percent vs. 41.5 percent), directly undermining the premise that the current framework is systematically misdirecting public benefits.

The RIA also significantly understates costs to responsible entities. Its estimate of $1 million in total eviction costs rests on the assumption that fewer than 1,000 households will require formal proceedings because most families will leave voluntarily in response to the current immigration enforcement environment. For long-tenured project-based tenants in high-cost markets and in jurisdictions with strong tenant protection laws, actual eviction and turnover costs could be far higher. Similarly, the RIA estimates $1.8 million in unit repair costs based only on formally evicted units. However, turnover costs apply to every vacated unit, not just those requiring court orders. At the RIA's own median repair cost of $1,800 per unit, the actual repair burden across 16,000 to 20,000 vacating households would be $28 to $36 million.

Finally, the RIA's Section 9 describes three regulatory alternatives that would achieve HUD's stated objectives at substantially lower cost: grandfathering existing mixed families and applying new requirements only to future admissions (which would naturally halve the mixed-family population within seven years); exempting families with children; and maximizing use of the statutory 18-month deferral framework. OMB Circular A-4 requires meaningful evaluation of regulatory alternatives. The RIA lists these alternatives and then, without explanation, proceeds as though they do not exist. The RIA should also consider, at a minimum, continuing the current exemption from documentation requirements for individuals 62 and over.

VI. Conclusion

The current mixed-family framework has worked as Congress intended for thirty years. It ensures that not one dollar of federal housing subsidy flows to ineligible individuals, while protecting the eligible members of mixed families, including tens of thousands of eligible children, from

displacement. The Proposed Rule dismantles that framework without adequate legal justification, compels housing providers to perform immigration enforcement functions that go well beyond their program obligations, displaces eligible families from their homes, reduces the number of Americans receiving housing assistance, and rests on an economic analysis that is incomplete and insufficient.

Our organizations respectfully urge HUD to withdraw the Proposed Rule. We appreciate the opportunity to comment and are available to discuss these issues further.

Respectfully submitted,

Denise B. Muha
COO/Executive Director
National Leased Housing Association
[redacted]

Colleen M. Fisher
Executive Director
Council for Affordable and Rural Housing
[redacted]