

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

THE LEGAL AID SOCIETY,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN  
DEVELOPMENT,

Defendant.

Civil Action No. 1:20-cv-2283

**COMPLAINT**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, seeking to compel the United States Department of Housing and Urban Development (“HUD”) to immediately respond to a request and disclose records under the Freedom of Information Act concerning HUD’s Proposed Rule, *Housing and Community Development Act of 1980; Verification of Eligible Status*, 84 Fed. Reg. 20,589 (May 10, 2019) (to be codified at 24 C.F.R. pt. 5), amending Section 214 of the Housing and Community Development Act of 1980, 42 U.S.C. § 1436a (the “Proposed Rule”). This information is subject to disclosure and critical to understanding the impact of (and intent behind) a proposed rule that poses an imminent threat to the integrity of the family unit.

2. Currently, families are eligible to receive federal rental assistance from HUD if at least one member of a household has eligible immigration status. When the eligibility of at least one family member is established, the household’s subsidy is prorated to account only for members eligible for rental assistance. Family members without an eligible immigration status (including, but not limited to, individuals who have a legal right to be present in the United

States, such as on a student visa or an employment visa) can live in a household, but do not receive a federal subsidy.

3. Accordingly, families with (i) eligible U.S. citizens or members with eligible immigration status and (ii) members without such status meet the eligibility requirements for receiving prorated financial assistance (hereinafter, a “mixed status family”). These eligibility requirements are set forth in a number of agency rules and statutory amendments, and have applied for more than thirty years. Through these statutes and regulations, Congress not only has affirmatively sanctioned prorating assistance to mixed status families, but has shown an express intent to protect the sanctity of the family unit.

4. Despite this, on May 10, 2019, HUD published the Proposed Rule, which would exclude mixed status households from receiving federal rental assistance. Under the Proposed Rule, any household whose leaseholder is not an eligible immigrant will not receive any financial rental assistance—regardless of the proration of rent or presence of eligible U.S. citizens or immigrants in the household. Further, the Proposed Rule would require families applying to or currently receiving financial rental assistance to verify the immigration status of each household member. Households containing family members without eligible status will be forced to either have non-eligible family members move out (thus threatening familial integrity) or face having their entire household’s assistance terminated (thus facing near certain homelessness).

5. HUD has claimed that the Proposed Rule is intended to “bring HUD’s regulations into greater alignment with the requirements of Section 214 [of the Housing and Community Development Act].”<sup>1</sup> The Proposed Rule, reverses decades of consistent Congressional and

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<sup>1</sup> Regulatory Impact Analysis, *Housing and Community Development Act of 1980: Verification of Eligible Status*, Proposed Rule Docket No: FR-6124-P-01 (hereinafter “Regulatory Impact Analysis”), HUD, 1 (April 15, 2019).

agency practice without reasoned explanation, falls short of the text and purpose of the Housing and Community Development Act of 1980, falls short of the Secretary's statutory obligation to administer all HUD programs in a manner which affirmatively furthers fair housing, undermines Congressional prerogative to preserve families, and impairs the constitutional right of mixed-status households to family integrity. At the same time, HUD Secretary Benjamin Carson has testified that the actual motivation behind the Proposed Rule is to build pressure on Congress to pass comprehensive immigration reform. *Housing in America: Oversight of the U.S. Dep't. of Housing and Urb. Dev.*, 114th Cong. (2019) (statement of Hon. Dr. Benjamin Carson, Secretary, U.S. Dep't. of Housing and Urb. Dev.).

6. In order to learn the actual motivation for, impact of, and intent behind a proposed rule which appears to be contrary to the law and in stark opposition to certain constitutional protections, a request to HUD for records concerning the Proposed Rule on October 29, 2019 (the "FOIA Request") was submitted by Winston & Strawn LLP, which subsequently assigned its right to the FOIA Request to The Legal Aid Society ("Legal Aid").

7. Currently, the Proposed Rule is finalized to go into effect in May 2020.

8. Despite the imminent finalization of the Proposed Rule which threatens the integrity of the family unit (a fundamental due process right), Defendant HUD has failed to provide a determination within the statutory timeframe mandated by law. As a result, the purpose, intent, and impact of a proposed rule that would have a devastating, permanent, and unnecessary impact on families and society as a whole if allowed to go into effect remains opaque, to the detriment of the public.

9. Legal Aid files this action to compel Defendant HUD to respond to the FOIA Request and produce the requested information within thirty (30) days.

### **JURISDICTION AND VENUE**

10. This Court has subject-matter jurisdiction pursuant to 5 U.S.C. §§ 552(a)(4)(B), (a)(6)(C)(i), (a)(6)(E)(iii) and 28 U.S.C. § 1331.

11. This Court has jurisdiction to grant declaratory and further proper relief pursuant to 28 U.S.C §§ 2201-2202 and the Federal Rules of Civil Procedure 57 and 65.

12. Venue lies in this District under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) because Legal Aid has its principal place of business within the Southern District of New York.

### **PARTIES**

13. Plaintiff Legal Aid is a nonprofit organization incorporated under section 501(c)(3) of the Internal Revenue Code, headquartered at 199 Water Street, New York, NY 10038. Legal Aid is New York City's oldest and largest provider of legal aid to the indigent, providing services for both criminal cases and civil cases.

14. On March 4, 2020, Winston & Strawn assigned all of the rights, benefits, and interests from the FOIA Request to Legal Aid.

15. By letter dated March 4, 2020, Winston & Strawn and Legal Aid notified Deborah R. Snowden, a Deputy Chief FOIA Officer, that Winston & Strawn assigned all of the rights, benefits and interests from the FOIA Request to Legal Aid, and that all further responses and communications should be directed to Legal Aid (the "Assignment"). A copy of the Assignment is attached as Exhibit A.

16. On March 4, 2020, Winston & Strawn provided copy of the Assignment to Ethan Bodell, a Government Information Specialist at HUD, via email.

17. Legal Aid thus retains all of the rights, benefits, and interests of the FOIA Request submitted on October 29, 2019.

18. Defendant HUD is an agency of the United States government and an agency within the meaning of 5 U.S.C. § 552(f). HUD is the Federal agency responsible for national policy and programs that address America's housing needs, that improve and develop the nation's communities, and enforce fair housing laws. HUD is responsible for helping create a decent home and suitable living environment for all Americans, and giving a strong national voice to America's communities at the Cabinet level.

19. Defendant has custody and control over the records that Plaintiff seeks to make publicly available under 5 U.S.C § 552(a)(3)(A).

## **FACTUAL ALLEGATIONS**

### **I. Background**

#### ***a. History of Section 214 of the Housing and Community Development Act***

20. In the 1980s, Congress, for the first time, limited assistance under federal housing programs to certain categories of eligible immigrants in Section 214 of the Housing and Community Development Act (the "Act"). However, Congress (and the courts) ultimately voided efforts to deem mixed-status families ineligible for housing assistance.<sup>2</sup>

21. In 1994, HUD proposed a rule to finally implement Section 214. *See* Restrictions on Assistance to Noncitizens, 59 Fed. Reg. 43,900, 43,901 (Aug. 25, 1994). This rule was finalized in March 1995 and expressly mandated prorated assistance to mixed-status families.

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<sup>2</sup> *See, e.g.*, Housing and Urban-Rural Recovery Act of 1983, Pub. L. No. 98-181, 97 Stat. 1153 (1983); Restriction on Use of Assisted Housing, 51 Fed. Reg. 26,876 (July 28, 1986) (delaying the effective date of the rule for two months in response to a request by several Members of Congress in view of the possible enactment of pending legislation, containing amendments to section 214, during the 1986 Congressional session); Restriction on Use of Assisted Housing; Delay of Effective Date and Related Technical Amendments, 51 Fed. Reg. 34,570 (Sept. 29, 1986) (delaying the effective date an additional three months in response to a second congressional request); Restriction on Use of Assisted Housing, 51 Fed. Reg. 42,088 (Nov. 21, 1986) (delaying the effective date of the rule until at least October 31, 1987); Memorandum and Order, *Yolano-Donnelly Tenant Ass'n v. Pierce*, No. S-86-0846 MLS (E.D. Cal., July 15, 1986) (finding, *inter alia*, that plaintiffs raised serious questions on the merits of their claim that the rule violated their Fifth Amendment right to due process because it denied the right to cohabit with their families).

Restrictions on Assistance to Noncitizens, 60 Fed. Reg. 14,816, 14,817 (Mar. 20, 1995). As HUD explained, “[p]roration of assistance is consistent with the preservation of Families [sic] provisions of Section 214.” *Id.* at 14,822.

22. Thereafter, in 1996, Congress added language to Section 214 that made clear that where “the eligibility for financial assistance of at least one member of a family has been affirmatively established under the program of financial assistance, and under this section, any financial assistance made available to that family... shall be prorated.” 42 U.S.C. § 1436a(b)(2).

23. Further, Congress expressly sought to avoid disrupting the family unit by excepting mixed-status families from the category of households that could lose their eligibility of financial assistance if it was determined that an individual within that household allowed an ineligible individual to reside with them: “The applicable Secretary shall terminate the eligibility for financial assistance of an individual and the members of the household of the individual . . . upon determining that such individual has knowingly permitted another individual who is not eligible for such assistance to reside in the public or assisted housing unit of the individual. **This provision shall not apply to a family if the ineligibility of the individual at issue was considered in calculating any proration of assistance provided for the family.**” 42 U.S.C. § 1436a(d)(6) (emphasis added).

24. This language remains in Section 214(b) to this day.

25. An interim rule published in November 1996 continued the practice of prorated assistance, “requir[ing] that continued financial assistance be provided to an eligible mixed family after November 29, 1996 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.” Revised Restrictions on Assistance to Noncitizens, 61 Fed. Reg. 60,535, 60,536 (Nov. 29, 1996).

26. Despite having opportunities to change its mandate to HUD that mixed-status families are entitled to assistance, Congress has repeatedly chosen not to do so.

***b. The Proposed Rule***

27. On May 10, 2019, HUD published the Proposed Rule. A copy of the Proposed Rule is attached as Exhibit B.

28. The Proposed Rule aims to make two changes to Section 214. First, it would “require the verification of the eligible immigration status of all recipients of [housing] assistance.” Second, it would require “that individuals who are not in eligible immigration status may not serve as a leaseholder, even as part of a mixed family whose assistance is prorated based on the percentage of members with eligible status.” Ex. B at 1.

29. As a result of these two changes, the Proposed Rule will make “prorated assistance a temporary condition pending verification of eligible status, as opposed to under the current regulation where it could continue indefinitely.” *Id.* Consequently, households that do not consist exclusively of eligible members (*i.e.*, mixed-status families) will no longer be eligible to receive housing assistance.

30. Consequently, the Proposed Rule cruelly forces mixed-status families to choose between staying together as a familial unit and losing critical housing assistance (risking homelessness) or separating in order to allow eligible family member to maintain their housing assistance.

31. The stated animating factor for the Proposed Rule is Executive Order 13828, titled “*Reducing Poverty in America by Promoting Opportunity and Economic Mobility*” (the

“Executive Order”), which was issued by President Donald J. Trump on April 10, 2018. *Id.* at 2. The Executive Order states, among other provisions, that agencies should “adopt policies to ensure that only eligible persons receive benefits and enforce all relevant laws provided that aliens who are not otherwise qualified and eligible may not receive benefits.” *Id.*

32. The Proposed Rule is currently scheduled to be finalized in May 2020.<sup>3</sup>

***c. Impact of the Proposed Rule***

33. According to HUD’s own admission, the Proposed Rule will impact approximately 108,000 individuals residing in mixed-status family households.<sup>4</sup> This includes approximately 55,000 U.S. citizen children who would otherwise be entitled to housing assistance.

34. Of these 108,000 individuals living in mixed-status families projected to be impacted, HUD acknowledges that approximately 70% are eligible to receive rental assistance, the vast majority of which are children.<sup>5</sup> Therefore, most families who will be impacted face the prospect of one or both parents being forced to leave the family home.

35. Within New York City alone, the Proposed Rule threatens to render 11,400 individuals, including approximately 5,000 children, homeless.<sup>6</sup>

36. Further, the Proposed Rule disproportionately threatens the housing assistance of people of color, and especially individuals who are Latinx. Of the 108,000 individuals that will

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<sup>3</sup> OFFICE OF INFORMATION AND REGULATORY AFFAIRS, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2501-AD89> (last visited February 7, 2020).

<sup>4</sup> See Federal Data Summary School Years 2014-2015 to 2016-2017, NAT’L CENTER FOR HOMELESS EDUC. (February 2019) <https://nche.ed.gov/wp-content/uploads/2019/02/Federal-Data-Summary-SY-14.15-to-16.17-Final-Published-2.12.19.pdf>; HUD, Regulatory Impact Analysis, *Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980*, Docket No. FR-6124-P-01, at 7 (Apr. 15, 2019).

<sup>5</sup> HUD, Regulatory Impact Analysis, *Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980*, Docket No. FR-6124-P-01, at 8 (Apr. 15, 2019).

<sup>6</sup> Impact Numbers for NYCHA/HPD cited by NYCHA to counsel on 5/16/2019, does not include State HCR-administered vouchers.

be affected by the Proposed Rule, approximately 95% are people of color, including 85% of who are Latinx.<sup>7</sup>

37. The Proposed Rule threatens households beyond mixed-status families. Because of the Proposed Rule's verification requirement, the housing security of over 9 million assisted U.S. citizens, who may not have the documents needed to verify citizenship and are unable to retrieve them within the time required, is threatened.<sup>8</sup> As just one example, according to a 2006 study, 12% of U.S. citizens with incomes below \$25,000 lack proof of citizenship.<sup>9</sup>

38. Likewise, the Proposed Rule threatens the housing of all individuals that have obtained a U-Visa. Recipients of a U-Visa are victims of qualifying criminal activity that are helpful to law enforcement to bring the perpetrator of the crime to justice. These individuals are ineligible for federal benefits, and would be unable to live in federally subsidized housing.<sup>10</sup>

39. Further, the Proposed Rule disproportionately threatens the housing of U.S. citizens who are people of color or women. According to a NYU Brennan Center for Justice study, 25% of African American citizens lack government issued photo identification and 50% of female citizens lack a birth certificate with their current legal name.<sup>11</sup>

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<sup>7</sup> See Alicia Mazzara, *Demographic Data Highlight Potential Harm of New Trump Proposal to Restrict Housing Assistance*, CENTER ON BUDGET AND POLICY PRIORITIES (July 1, 2019), <https://www.cbpp.org/research/housing/demographic-data-highlight-potential-harm-of-new-trump-proposal-to-restrict-housing>.

<sup>8</sup> See *ACLU Comment*; Douglas Rice, *Trump Proposal Would Jeopardize Rental Aid for Many U.S. Citizens*, Center for Budget and Policy Priorities, (June 18, 2019), available at <https://www.cbpp.org/blog/trump-proposal-would-jeopardize-rental-aid-for-many-us-citizens>.

<sup>9</sup> *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, BRENNAN CTR. FOR JUST. (Nov. 2006), [http://www.brennancenter.org/sites/default/files/legacy/d/download\\_file\\_39242.pdf](http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf).

<sup>10</sup> See *New York State Office for the Prevention of Domestic Violence Comment*; Gwen Wright, *Comments in Response to Department of Housing and Urban Development's Notice of Proposed Rulemaking*, (July 9, 2019), available at <https://www.regulations.gov/document?D=HUD-2019-0044-9329>.

<sup>11</sup> *Id.*

40. HUD's own projections reveal that the Proposed Rule will likely reduce the quality and quantity of assisted housing in response to higher costs from the "replacement households" for mixed-status family households.<sup>12</sup>

## **II. The FOIA Request**

41. On October 29, 2019, Winston & Strawn submitted its FOIA Request by U.S. certified mail to the Freedom of Information Act Office of the United States Department of Housing and Development. A copy of the Request is attached as Exhibit C.

42. The FOIA Request seeks records reflecting HUD's communications regarding the Proposed Rule, including but not limited to those within HUD, with third parties, or with the White House. Additionally, the Request seeks, amongst other things, drafts, comments, assessments, analyses, and data used in the creation of the Proposed Rule. *See generally* Ex. C.

43. The FOIA Request also seeks records, from July 1, 2008 to the date the search is conducted, reflecting HUD's communications concerning the Systematic Alien Verification for Entitlements Program ("SAVE"), and management of the SAVE Program. *Id.*

44. Winston & Strawn requested expedited processing pursuant to 24 C.F.R. § 15.105(b) because "[t]he imminent ratification of the Proposed Rule threatens the integrity of the family unit—long recognized as a fundamental due process right, *see Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977)—as mixed-status families will face the possibility of asking an ineligible member to leave an assisted household." Ex. C at 3. Accordingly, the "failure to obtain the requested records on an expedited basis could reasonably be expected to pose... a threatened loss of a substantial due process right." *Id.*

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<sup>12</sup> *See* Regulatory Impact Analysis, *Housing and Community Development Act of 1980: Verification of Eligible Status*, Proposed Rule Docket No: FR-6124-P-01, HUD, 3 (Apr. 15, 2019).

45. In a letter dated November 12, 2019, HUD acknowledged that it had received the FOIA Request, determined that unusual circumstances existed, purported to “extend the time limit to respond beyond the ten additional days provided by the statute,” and assigned the FOIA Request to HUD’s “complex track.” HUD granted Winston & Strawn’s request for expedited processing, determining that the FOIA request was in response to a “compelling need.” A copy of the letter is attached as Exhibit D.

46. By email dated November 12, 2019, HUD requested additional information for three identified items within the FOIA request.

47. By email dated November 22, 2019, Winston & Strawn promptly provided the necessary additional information requested by HUD.

48. Nearly two months later, by an email dated January 13, 2020, Winston & Strawn requested an updated timeline on the status of the FOIA Request. In response, HUD informed Winston & Strawn that the FOIA Request was scheduled for collection between November 5, 2020 and November 13, 2020.

49. By email dated January 15, 2020, Winston & Strawn offered to refine the scope of its request to ensure a speedy resolution. HUD failed to respond to this request.

50. By email dated January 28, 2020, Winston & Strawn repeated its desire to reach a mutually agreed upon set of documents to ensure the request’s speedy resolution. In response, HUD did not provide Winston & Strawn an option to refine its request.

51. The projected collection date of November 5, 2020, is 256 business days after Winston & Strawn submitted the FOIA Request. It is 247 business days after HUD acknowledged receipt of the FOIA Request. A copy of these emails is attached hereto as Exhibit E.

52. In a letter dated February 11, 2020, HUD provided an interim response (the “Interim Response”), which did not include an appealable final determination.

53. The Interim Response only provided a partial response to items 2, 3, 5, 6, and 7 of the FOIA Request, indicating that “additional searches are ongoing, including an electronic search for email records responsive to your request.”

54. The Interim Response failed to include a list of documents that were withheld, or a statement of reasons justifying their withholding.

55. Implausibly, the Interim Response provided only 18 pages for release, consisting entirely of a publicly available document that Plaintiff is already in possession of, and based a portion of the FOIA Request on.

56. To date, HUD has failed to conduct an adequate search and have unlawfully withheld responsive records to items 2, 3, 5, 6, and 7 of the FOIA Request.

57. To date, HUD has failed to provide a final determination to the FOIA Request.

58. HUD has violated the applicable statutory time limit for processing of FOIA requests. Under 5 U.S.C. § 552(a)(6)(A) and (B), HUD was required to make a determination on the FOIA Request within thirty business days. The request was tolled for 7 business days, pursuant to HUD’s request for additional information. Therefore, HUD’s response to the FOIA Request was due by December 23, 2019.

59. Because Defendant has failed to provide a final determination to the FOIA Request within the applicable statutory period, any administrative remedies are deemed exhausted. 5 U.S.C. § 552(a)(6)(C)(i).

**CLAIM FOR RELIEF**

**FIRST CAUSE OF ACTION**

**Violation of the Freedom of Information Act, 5 U.S.C. § 552:  
Failure to Disclose Responsive Records**

60. Plaintiff realleges paragraphs 1 through 59 as if fully set forth herein.

61. Defendant is obligated under 5 U.S.C. § 552(a)(3) to promptly produce all records responsive to Plaintiffs' FOIA Request.

62. Plaintiff has a legal right to obtain such records, and no legal basis exists for Defendant's failure to disclose them.

63. Defendant's failure to disclose all responsive records within the statutory timeframe violates 5 U.S.C. § 552 (a)(3)(A) and 5 U.S.C. § 552(a)(6)(A)(i).

64. Because of these failures to comply with FOIA's response deadlines, and because exceptional circumstances do not exist, HUD may not assess any search fees. 5 U.S.C. § 552(a)(6)(C)(i).

**SECOND CAUSE OF ACTION**

**Violation of the Freedom of Information Act, 5 U.S.C. § 552:  
Failure to Adequately Search for Responsive Records**

65. Plaintiff realleges paragraphs 1 through 59 as if fully set forth herein.

66. Defendant are obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for records responsive to the FOIA Request.

67. Plaintiff has a legal right to obtain such records, and no legal basis exists for failure to search for them.

68. Defendant's failure to conduct a reasonable search for records responsive to the FOIA Request violates 5 U.S.C. § 552(a)(3).

**PRAYER FOR RELIEF**

For the foregoing reasons, Legal Aid respectfully requests that judgment be entered in their favor against Defendant, and that the Court:

69. Order Defendant and any of its departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of Defendant to conduct a reasonable search for all records responsive to the FOIA Request and produce the requested information within thirty (30) days;

70. Enjoin and order the Defendant and any of its departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of Defendant from improperly withholding records or portions of records responsive to the FOIA Request and order them to promptly produce the same;

71. Enjoin Defendant from charging Legal Aid fees for the processing of the FOIA Request;

72. Award Legal Aid reasonable attorney's fees and costs; and

73. Grant such other relief as the Court may deem just and proper.

March 13, 2020

Respectfully Submitted,

By: /s/ Jeffrey L. Kessler

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*Counsel for Plaintiff*

# **EXHIBIT A**



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March 4, 2020

Deborah R. Snowden  
Deputy Chief FOIA Officer  
Freedom of Information Act Branch  
Office of the Executive Secretariat  
451 7<sup>th</sup> St., SW, Room 10139  
Washington, DC 20410

**Re:** FOIA Request #20-FI-HQ-002246

### **ASSIGNMENT OF RIGHTS**

This document constitutes an Assignment of Rights (“AOR”) pertaining exclusively to the above indicated Freedom of Information Act (“FOIA”) request submitted by Winston & Strawn LLP (“Winston & Strawn”) to the U.S. Department of Housing and Urban Development (“HUD”) on October 29, 2019.

Effective immediately, Winston & Strawn is assigning to The Legal Aid Society (“Legal Aid”) any and all rights, benefits, and interests derived from this FOIA request. Winston & Strawn is transferring to Legal Aid the ability and right to pursue any administrative or legal methods at its disposal relative to this FOIA request, and Winston & Strawn is surrendering any claims it may have with respect to this FOIA request. All HUD correspondence pertaining to this FOIA request should now be addressed to Staff Attorney Lucy Newman, at Legal Aid, at the below indicated email or the following address:

Lucy Newman  
Staff Attorney  
The Legal Aid Society Civil Law Reform Unit  
199 Water Street, 3<sup>rd</sup> Floor  
New York, NY 10038

Nothing in this AOR should be construed as assigning any other rights, benefits, or interests, whether contractual or personal, between Winston & Strawn and Legal Aid. Nothing in this AOR should be construed as contravening any obligations imposed by law upon either Winston & Strawn or Legal Aid.

WINSTON  
& STRAWN  
LLP

March 4, 2020  
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Your cooperation in this matter is appreciated. If you wish to discuss this AOR, please do not hesitate to contact Lucy Newman at Legal Aid at [LCNewman@legal-aid.org](mailto:LCNewman@legal-aid.org), or Jeffrey Kessler at Winston & Strawn at [JKessler@Winston.com](mailto:JKessler@Winston.com).

Respectfully submitted.



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CC:  
Ethan Bodell  
Government Information Specialist  
U.S. Department of Housing and Urban Development  
Office of the Executive Secretariat  
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Washington, DC 20410

# **EXHIBIT B**

# Proposed Rules

Federal Register

Vol. 84, No. 91

Friday, May 10, 2019

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 5

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

RIN 2501-AD89

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

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

**ACTION:** Proposed rule.

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

**DATES:** *Comment Due Date:* July 9, 2019.

**ADDRESSES:** Interested persons are invited to submit comments to the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10276, Washington, DC 20410-0001. Communications should refer to the above docket number

and title and should contain the information specified in the "Request for Comments" section. There are two methods for submitting public comments.

**1. Submission of Comments by Mail.** Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Due to security measures at all Federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments by mail be submitted at least 2 weeks in advance of the public comment deadline.

**2. Electronic Submission of Comments.** Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** John Gibbs, Senior Advisor, Office of the Secretary, Department of Housing and Urban Development, 451 7th Street, SW, Room 10282, Washington, DC 20410; telephone number (202) 402-4445 (this is not a toll-free number). Individuals with hearing or speech impediments may access this number via TTY by calling the Federal Relay, during working hours, at 1 (800) 877-8339 (this is a toll-free number).

### SUPPLEMENTARY INFORMATION:

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

Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a) (Section 214) prohibits HUD from making certain financial assistance available to persons other than United States citizens or specified categories of eligible noncitizens. The Section 214 requirements apply to financial assistance provided under the following HUD programs (collectively referred to as Section 214 covered programs):

1. Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);
2. Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program);
3. Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program); and
4. The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) which covers: HUD's Public Housing programs, the Section 8 Housing Assistance programs, and the Housing Development Grant programs (with respect to low-income units only).<sup>1</sup>

Section 214 states that the "Secretary [of HUD] may not provide . . . assistance for the benefit of . . . [an] individual before documentation [of eligible immigration status] is presented and verified."<sup>2</sup> This is consistent with the statute's stated goal of ensuring that HUD's limited financial resources be used to aid families lawfully present in the United States, encompassing U.S. citizens and nationals, as well as

<sup>1</sup> 42 U.S.C. 1436a(b). Additional limitations on noncitizen eligibility are also found in the Personal Responsibility and Work Opportunity Act of 1996, 8 U.S.C. 1611(b)(1)(E).

<sup>2</sup> 42 U.S.C. 1436a(d)(2).

noncitizens with eligible immigration status as set forth in HUD regulations.<sup>3</sup> However, Section 214 also contains several provisions to mitigate the potential impacts on the elderly and families. The Housing and Community Development Act of 1987<sup>4</sup> (1987 HCD Act) amended Section 214 to exempt individuals 62 years of age or older from the immigration status verification requirements.<sup>5</sup> The 1987 HCD Act also amended Section 214 to authorize “preservation assistance” to prevent the separation of families already receiving assistance on “the date of enactment of the” 1987 HCD Act (*i.e.*, February 5, 1988). Specifically, Section 214 authorizes the continuation of assistance to such a family if “necessary to avoid the division of the family” and the head of household or spouse has eligible immigration status.<sup>6</sup> Assistance to such families, however, “may be provided only on a prorated basis, under which the amount of financial assistance is based on the percentage of the total number of [eligible] members.”<sup>7</sup> Section 214 also authorized the temporary deferral of termination of assistance for families receiving assistance on February 5, 1988, but who were ineligible for continued assistance on a prorated basis “to permit the orderly transition of the individual and any family members involved to other affordable housing.”<sup>8</sup>

## II. HUD’s Regulations Implementing Section 214

HUD’s original regulations implementing Section 214 were promulgated by final rule published on March 20, 1995, with an effective date of June 19, 1995.<sup>9</sup> The 1995 final rule promulgated virtually identical noncitizens’ regulations for the various HUD programs covered by Section 214. On March 27, 1996,<sup>10</sup> HUD published a final rule eliminating the repetitiveness of these duplicative regulations by consolidating the noncitizens requirements in a new subpart E to 24 CFR part 5 (captioned “Restrictions on Assistance to Noncitizens”), where they continue to be codified at present.

The preamble to the March 20, 1995, final rule stated that, for purposes of eligibility for preservation assistance, HUD considered the effective date of the final rule as the pivotal date rather than the date of enactment of the statute. As

noted, the amendments to Section 214 made by the 1987 HCD Act condition a family’s eligibility for preservation assistance on the family’s receipt of assistance on the date of the statute’s enactment. HUD explained in the preamble to the 1995 final rule that it had determined the provisions of Section 214 too “complex to be determined self-implementing as of the date of enactment of the 1987 HCD Act (February 5, 1988).” Thus, HUD’s regulations use the effective date of the March 20, 1995, final rule (June 19, 1995) as the relevant date for determining eligibility for preservation assistance.

HUD’s current regulations require that each family member applying for assistance under a Section 214 covered program either: (1) Submit a declaration declaring that he or she is a U.S. citizen, as defined in 24 CFR 5.504(b), or a noncitizen with eligible immigration status<sup>11</sup>; or (2) elect not to contend eligible immigration status and, therefore, not submit documentation for verification.<sup>12</sup> Family members who declare themselves eligible must provide the original of a document designated by the Department of Homeland Security (DHS) as acceptable evidence of immigration status<sup>13</sup> and consent to transmittal of a copy of the document and the information contained on the document to DHS to verify whether the individual has eligible immigration status.<sup>14</sup> Verification of the immigration status of the individual is provided through Systematic Alien Verification for Entitlements (SAVE), which is administered by DHS.<sup>15</sup> SAVE verifies the immigration status information of noncitizens.

The regulations require that financial assistance made available to a “mixed family” be prorated, based on the number of individuals in the family for whom eligibility has been affirmatively established.<sup>16</sup> As noted, Section 214 provides for proration in the context of preservation assistance to mixed families grandfathered by the 1987 HCD Act. However, the amendments made by the 1987 HCD Act limited prorated continued assistance to families with a head of household or spouse in eligible immigration status. In contrast, HUD’s current regulations do not require that the head of household or spouse have

eligible immigration status in order for a mixed family to qualify for such assistance.

## III. This Proposed Rule

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

1. *Verification of eligible immigration status.* The first proposed amendment would require that the eligible immigration status of all recipients of assistance under a Section 214 covered

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

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

<sup>3</sup> 42 U.S.C. 1436a(a).

<sup>4</sup> Public Law 100–242, enacted February 5, 1988.

<sup>5</sup> 42 U.S.C. 1436a(d)(2).

<sup>6</sup> 42 U.S.C. 1436a(c)(1)(A).

<sup>7</sup> *Id.*

<sup>8</sup> 42 U.S.C. 1436a(c)(1)(B)(i).

<sup>9</sup> 60 FR 14816.

<sup>10</sup> 61 FR 13614.

<sup>11</sup> § 5.508(c).

<sup>12</sup> § 5.508(e).

<sup>13</sup> § 5.510.

<sup>14</sup> § 5.508(d)(2).

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

<sup>16</sup> § 5.516(a)(1)(iii).

program who are under the age of 62 be verified through SAVE.

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

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

2. *Leaseholder eligibility.* The second proposed regulatory amendment would specify that individuals who are not verified in an eligible immigration status may not serve as the head of household or spouse (*i.e.*, the holder of the lease). As with the prior change, HUD believes this amendment better reflects the statutory requirements of Section 214. In addition, it will better assure that the person who is legally obligated under the lease or other tenancy agreement has been through a uniform identity verification process that would better facilitate locating such person and bringing any necessary administrative or legal actions.

Under the current regulations, the “do not contend” provision facilitates the indefinite use by a mixed family of prorated assistance. Further, it is possible under the current regulations for the holder of the lease to be

ineligible under the Section 214 covered program for which the mixed family is receiving assistance. Upon reconsideration of its implementing regulations for Section 214, HUD believes that Section 214 requires that no financial assistance be provided to, or on behalf of, an individual if his or her eligible status has not been verified, except for such time that it takes to verify eligible status. In this respect, Section 214 generally provides that “with respect to a family, the term “eligibility” means the eligibility of each family member.” HUD believes that an individual without verified eligible status living in a mixed household receiving long-term prorated assistance is benefiting from HUD financial assistance in a way that is prohibited by Section 214. At the time of enactment of Section 214, verification was a manual, paper-driven process that could take days or even weeks to complete. Prorated assistance struck a balance with timely permitting assistance but providing an incentive to cooperate in timely completion. Today, verification through SAVE is almost instantaneous in most instances. Thus, prorated assistance should rarely be applicable and then of short duration. The “do not contend” provision is inconsistent with the statutory requirements insofar as it permits prorated assistance of unlimited duration.

Further, HUD no longer agrees that a leaseholder, the individual who is contractually bound to the landlord and who holds conditional ownership of the unit for the lease term, can be exempted from having verified eligible immigration status at the outset of the tenancy and assistance. HUD believes that requiring the verified eligible immigration status of the head of household or spouse is more in keeping with the intent of Section 214 to limit eligibility to individuals with eligible immigration status, subject to limited exceptions, and consistent with HUD’s existing treatment of leaseholders in its assisted housing programs.

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

#### IV. Findings and Certifications

##### *Regulatory Review—Executive Orders 12866 and 13563*

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

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

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

##### *Environmental Impact*

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

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed regulatory amendments to HUD's noncitizen requirements will have only a minimal impact on small housing project owners, small mortgagees, and small housing agencies. The amendments would not require the creation of new procedures or impose significant additional costs on responsible entities. Rather, the requirements of the proposed rule could be satisfied using existing procedures. For example, the proposed rule would require that the eligible immigration status of all noncitizens be verified through SAVE. This requirement can be fulfilled by utilizing the existing verification procedures. Likewise, although the proposed rule would revise eligibility for prorated assistance, current methods would be used to calculate the prorated assistance provided to an eligible family.

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

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt state law within the meaning of the Executive order.

*Unfunded Mandates Reform Act*

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

local, or tribal government, or on the private sector, within the meaning of UMRA.

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

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

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 5, subpart E as follows:

**PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS**

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

**Authority:** 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109–115, 119 Stat. 2936; Sec. 607, Pub. L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e *et seq.*); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.

**Subpart E—Restrictions on Assistance to Noncitizens**

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

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

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

**§ 5.504 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*DHS* means the Department of Homeland Security.

\* \* \* \* \*

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

**§ 5.506 General provisions.**

\* \* \* \* \*

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section, or unless the family meets the conditions set forth in either paragraph (b)(2) or (3) of this section.

(2) Despite the ineligibility of one or more family members, a family that was

receiving assistance under a Section 214 covered program on June 19, 1995, may be eligible for continued assistance, as provided in §§ 5.516 and 5.518. If the family does not qualify for continued assistance, it may nonetheless be eligible for temporary deferral of termination of assistance as provided in §§ 5.516 and 5.518.

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

\* \* \* \* \*

■ 5. Revise § 5.508 to read as follows:

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

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

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

(1) For U.S. citizens as defined in § 5.504(b), the evidence consists of appropriate documentation, such as:

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

(2) For noncitizens who are 62 years of age or older and were receiving assistance under a Section 214 covered program on September 30, 1996, or who will be 62 years of age or older or applying for assistance on or after that date, the evidence consists of a proof of age document, as may be specified by HUD, and one of the following:

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

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

- (i) A signed declaration of eligible immigration status (see paragraph (c) of this section);
- (ii) One of the DHS documents referred to in § 5.510; and

(iii) A signed verification consent form (see paragraph (d) of this section).

(c) *Declaration.* (1) Each family member, regardless of age, must submit to the responsible entity a written declaration, signed under penalty of perjury, by which the family member declares he or she is a U.S. citizen as defined in § 5.504(b) or a noncitizen with eligible immigration status set forth in § 5.506(a)(2).

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

(ii) For each child, as defined in § 5.504(b), the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) The written declaration may be incorporated as part of the application for housing assistance or may constitute a separate document.

(d) *Verification consent form*—(1) *Who signs.* Each family member, regardless of age, (except certain noncitizens who are 62 years of age or older as described in paragraph (b)(2) of this section) must sign a verification consent form as follows:

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

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

(2) *Notice of release of evidence by responsible entity.* The verification consent form shall provide that evidence of eligible immigration status may be released by the responsible entity, without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD, as required by HUD; and

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

(3) *Notice of release of evidence by HUD.* The verification consent form shall also notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to DHS for purposes of verifying the individual has eligible immigration status for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by DHS.

(e) *Notification of requirements of Section 214*—(1) *When notice is to be issued.* Notification of the requirement to submit evidence that the individual is a U.S. citizen, as defined in § 5.504(b), or that individual has eligible immigration status, as required by this section, shall be given by the responsible entity as follows:

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

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

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

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

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

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

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

(iv) State that assistance may be prorated, pursuant to § 5.520, to a family whose head of household or spouse has eligible immigration status, pending final determinations for other family members; and

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

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

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

(2) *Tenants.* A tenant who has not submitted evidence of eligible status as of [insert effective date of final rule] is required to submit such evidence as follows:

(i) For financial assistance under a Section 214 covered program, with the

exception of Section 235 assistance payments, the required evidence shall be submitted at the first regular reexamination after [insert effective date of final rule], in accordance with program requirements.

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

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

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

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

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

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

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

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

(3) *Grant or denial of extension to be in writing.* The responsible entity's

decision to grant or deny an extension shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted (which shall not exceed 30 days). If the extension is denied, the notice shall explain the reasons for denial of the extension.

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

#### § 5.510 [Amended]

- 6. In § 5.510(b), remove the reference to “INS” and add in its place “DHS”.
- 7. Revise § 5.512 to read as follows:

#### § 5.512 Verification of eligible immigration status.

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

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

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

(c) *Additional verification.* If the initial verification does not confirm eligible immigration status, or if initial verification confirms immigration status that is ineligible for assistance under a Section 214 covered program, the responsible entity must request additional verification within 10 days of receiving the results of the initial verification. Additional verification is

initiated when the responsible entity submits an s additional request to SAVE with optional additional information and/or a copy of the original document that the noncitizen had presented as acceptable evidence of their immigration status to SAVE.

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

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

- 8. Amend § 5.514 as follows:
  - a. Revise paragraphs (b)(1), (c), and (d); and
  - b. In paragraphs (e), (f), and (h), remove the reference to “INS” everywhere it appears and add in its place “DHS”.

The revisions read as follows:

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

\* \* \* \* \*

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

- (i) The SAVE verification of any immigration documents that were timely submitted has not been completed;
- (ii) The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;
- (iii) The family member who is determined not to be in an eligible immigration status following the SAVE verification has moved from the assisted dwelling unit;
- (iv) Assistance is continued in accordance with §§ 5.516 and 5.518; or
- (v) Deferral of termination of assistance is granted in accordance with §§ 5.516 and 5.518.

\* \* \* \* \*

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

occurrence of any of the following events:

(i) Evidence that the individual is a U.S. citizen as defined in § 5.504(b) (*i.e.*, the declaration), or has eligible immigration status, is not submitted by the date specified in § 5.508(f) or by the expiration of any extension granted in accordance with § 5.508(g); or

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

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

(d) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families in §§ 5.516 and 5.518; and

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

\* \* \* \* \*

- 9. Revise § 5.516 to read as follows:

#### § 5.516 Availability of preservation assistance to tenant families.

(a) *Assistance available for tenant families—(1) General.* Preservation assistance may be available to tenant families, in accordance with this section and following the conclusion of a records correction request. There are two types of preservation assistance:

- (i) Continued assistance (see § 5.518(a)); and
- (ii) Temporary deferral of termination of assistance (see § 5.518(a)).

(2) *Availability of assistance—(i) For Housing covered programs.* One of the two types of assistance described in paragraph (a)(1) of this section may be available to tenant families assisted under a National Housing Act or 1965 HUD Act covered program, depending upon the family’s eligibility for such assistance. Continued assistance must be provided to a tenant family that meets the conditions for eligibility for continued assistance.

(ii) *For Section 8 or Public Housing covered programs.* One of the two types of assistance described in paragraph (a)(1) of this section may be available to

tenant families assisted under a Section 8 or Public Housing covered program.

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

(1) *For Housing covered programs.* Temporary deferral of termination of assistance is available to families assisted under a Housing covered program.

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

(c) *Section 8 covered programs: Discretion afforded to provide certain family preservation assistance—(1) Project owners.* With respect to assistance under a Section 8 Act covered program administered by a project owner, HUD has the discretion to determine under what circumstances families are to be provided one of the two statutory forms of assistance for preservation of the family (continued assistance or temporary deferral of assistance). HUD is exercising its discretion by specifying the standards in this section under which a project owner must provide one of these two types of assistance to a family.

(2) *PHAs.* The PHA, rather than HUD, has the discretion to determine the circumstances under which a family will be offered one of the two statutory forms of assistance (continued assistance or temporary deferral of termination of assistance). The PHA must establish its own policy and criteria to follow in making its decision. In establishing the criteria for granting continued assistance or temporary deferral of termination of assistance, the PHA must incorporate the statutory criteria, which are set forth in § 5.518(a) and (b).

■ 10. Amend § 5.518 as follows:

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

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

The revisions read as follows:

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

(a) *Continued assistance.* A tenant family may receive continued housing assistance if all the following conditions are met (a tenant family assisted under

a Housing covered program must be provided continued assistance if the family meets the following conditions):

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

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

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

(b) *Temporary deferral of termination of assistance—(1) Eligibility for this type of assistance.* If a tenant family does not qualify for continued assistance, the family may be eligible for temporary deferral of termination of assistance, if necessary, to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family, and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) *Housing covered programs: Conditions for granting temporary deferral of termination of assistance.* The responsible entity shall grant a temporary deferral of termination of assistance to a family if the family is assisted under a Housing covered program and one of the following conditions is met:

\* \* \* \* \*

(3) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period for deferrals shall not exceed a period of eighteen months. These time periods do not apply to a family that includes an individual admitted as a refugee under section 207 of the Immigration and Nationality Act or an individual granted asylum under section 208 of that Act.

\* \* \* \* \*

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

**§ 5.520 Proration of assistance.**

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

\* \* \* \* \*

■ 12. Revise § 5.522 to read as follows:

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

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

Dated: May 3, 2019.

**Benjamin S. Carson, Sr.,**  
*Secretary.*

[FR Doc. 2019-09566 Filed 5-9-19; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 917**

**[KY-260-FOR; Docket ID: OSM-2018-0008, S1D1S SS08011000 SX064A000 190S180110, S2D2S SS08011000 SX064A000 19XS501520]**

**Kentucky Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Kentucky regulatory program, (herein referred to as 'the Kentucky program'), under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through this proposed amendment, Kentucky seeks to revise its program to include statutory changes that involve civil penalty escrow accounts, civil penalty fund distributions, self-bonding, and major permit revisions related to underground mining.

This document gives the times and locations that the Kentucky program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the

# **EXHIBIT C**

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& STRAWN  
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North America Europe Asia

RECEIVED BY EXECUTIVE  
SECRETARIAT

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New York, NY 10166  
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F +1 212 294 4700

2019 NOV -8 A 10 23

JEFFREY L. KESSLER  
Partner  
212-294-4698  
JKessler@Winston.com

October 29, 2019

**Via Certified Mail**

U.S. Department of Housing and Urban Development  
Freedom of Information Act Office  
451 7<sup>th</sup> Street, SW, Room 10139  
Washington, DC 20410-3000

Re: Freedom of Information Act Request re HUD Docket No. FR 6142-PF-01

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”) and the Department of Housing and Urban Development’s (“HUD”) FOIA regulations, 24 C.F.R. Part 15, I write to request copies of the following HUD records:

1. All records reflecting communications (including, but not limited to, emails, email attachments, text messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), calendar invitations, calendar entries, meeting notices, meeting agendas, any handwritten or electronic notes taken during any oral communications, or any summaries of any oral communication) relating to the Proposed Rule, *Housing and Community Development Act of 1980: Verification of Eligible Status*, 84 Fed. Reg. 20,589 (May 10, 2019) (to be codified at 24 C.F.R. pt. 5), amending Section 214 of the Housing and Community Development Act of 1980, 42 U.S.C. § 1436a (the “Proposed Rule”) held by or received by or from HUD, including, but not limited to:
  - a. those with any employee or representative of the White House (including anyone using an eop.gov email address) or with anyone purporting to act on behalf of the White House;
  - b. those with any third-party;
  - c. those relating to HUD’s interpretation of Section 214;
  - d. those relating to HUD’s decision to not issue an Advanced Notice of Public Rulemaking federalism statement;
  - e. those relating to HUD’s decision to not issue an impact statement on small entities;

- f. those relating to HUD's decision to not issue a federalism impact statement on small entities;
  - g. those relating to HUD's decision to not prepare an Unfunded Mandates Reform Act cost analysis; and/or
  - h. those relating to the accompanying Regulatory Impact Analysis ("RIA").
2. All records reflecting any draft and/or final applications, memoranda, analyses, notes, files, or any other records held by or received by or from HUD relating to the Proposed Rule, including, but not limited to,
  - a. those relating to HUD's interpretation of Section 214;
  - b. those relating to HUD's decision to not issue an Advanced Notice of Public Rulemaking federalism statement;
  - c. those relating to HUD's decision to not issue an impact statement on small entities;
  - d. those relating to HUD's decision to not issue a federalism impact statement on small entities;
  - e. those relating to HUD's decision to not prepare an Unfunded Mandates Reform Act cost analysis; and/or
  - f. those relating to the accompanying Regulatory Impact Analysis ("RIA").
3. All records that relate to any assessments, analyses, data, research, recommendations, and findings used to promulgate the Proposed Rule or the accompanying RIA held by or received by or from HUD.
4. All records reflecting drafts of, or comments to, the Proposed Rule or the accompanying RIA held by or received by or from HUD.
5. All records reflecting communications (including, but not limited to, emails, email attachments, text messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), calendar invitations, calendar entries, meeting notices, meeting agendas, any handwritten or electronic notes taken during any oral communications, or any summaries of any oral communication) held by or received by or from HUD, including by, from, or with any employee or representative of the White House (including anyone using an eop.gov email address), relating to the Systematic Alien Verification for Entitlements Program ("SAVE") from July 1, 2018, to the date the search is conducted.
6. Any and all records relating to HUD's management of the SAVE Program held by or received by or from HUD from July 1, 2018, to the date the search is conducted.

7. All records reflecting communications (including, but not limited to, emails, email attachments, text messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), calendar invitations, calendar entries, meeting notices, meeting agendas, any handwritten or electronic notes taken during any oral communications, or any summaries of any oral communication) held by or received by or from HUD, including by, from, or with any employee or representative of the White House (including anyone using an eop.gov email address), relating to the White House's immigration agenda from July 1, 2018, to the date the search is conducted.
8. All complaints or grievances relating to HUD's management of the Section 8 Housing Choice Voucher Program from July 1, 2018, to the date the search is conducted.

Under the 1996 FOIA amendments, you must answer the request within twenty working days after your receipt of this letter. If your agency plans to take an extension of up to 10 days for an unusual circumstance, please notify me upon invoking the extension. If your agency chooses to withhold records or parts of records, please state which records or parts of records have been withheld and which exemptions apply.

Pursuant to 24 C.F.R. § 15.105(b), HUD shall expedite any request which establishes that a "failure to obtain the requested records on an expedited basis could reasonably be expected to pose . . . a threatened loss of a substantial due process right." The imminent ratification of the Proposed Rule threatens the integrity of the family unit—long recognized as a fundamental due process right, *see Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977)—as mixed-status families will face the possibility of asking an ineligible family member to leave an assisted household. The requested documents will contribute significantly to the public understanding of the Proposed Rule and will be crucial to any adjudication as to the legality of the Proposed Rule. Thus, this request should be treated on an expedited basis by HUD.

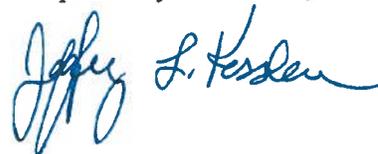
If any of the requested records are available on your agency's Internet website, it will be sufficient to provide the specific Uniform Resource Location (URL) where such records can be viewed and/or downloaded in lieu of sending an electronic or hard copy of the actual document. Responses to the above request may be provided in electronic format – if your agency has it in electronic format or can readily reproduce it in electronic format – by email to me at JKessler@Winston.com or via disc delivered to Winston & Strawn LLP, 200 Park Avenue, New York, New York, 10166, c/o Jeffrey L. Kessler. I agree to pay the applicable fee pursuant to the schedule set at 24 C.F.R. § 15.110 for "other requesters."

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& STRAWN  
LLP

October 29, 2019  
Page 4

Please contact me with any questions about handling this request. Thank you for your assistance and cooperation.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jeffrey L. Kessler". The signature is fluid and cursive, with the first name being the most prominent.

Jeffrey L. Kessler

cc: Jeffrey J. Amato, Esq.  
Lucy C. Newman, Esq.

# **EXHIBIT D**



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-3000

OFFICE OF ADMINISTRATION

November 12, 2019

Mr. Jeffrey L. Kessler  
Winston & Strawn LLP  
200 Park Avenue  
New York, NY 10166  
jkessler@winston.com

Re: 20-FI-HQ-00246

Dear Mr. Kessler:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request dated October 29, 2019, and received in this Office on November 8, 2019, in which you requested records related to a proposed rule, the SAVE program, and other subjects. At this time, your request has been assigned the above-referenced tracking number.

Pursuant to the FOIA, 5 U.S.C. 552 § (a)(6)(A)(i)(2012 & Supp. V 2017), once HUD properly receives a FOIA request, the Department has 20 working days within which to make a determination on the request unless unusual circumstances exist. To the extent that your request requires a search in another Office, consultations with other Department components or another agency, and/or involves a voluminous amount of material, your request falls within “unusual circumstances.” See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2012 & Supp. V 2017). Accordingly, we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. For your information, we use multiple tracks to process requests, but within those tracks we work in an agile manner, and the time needed to complete our work on your request will necessarily depend on a variety of factors, including the complexity of our records search, the volume and complexity of any material located, and the order of receipt of your request. At this time, we have assigned your request to the complex track. In an effort to speed up our process, you may wish to narrow the scope of your request to limit the number of potentially responsive records so that it can be placed in a different processing track. You can also agree to an alternative time frame for processing, should records be located, or you may wish to await the completion of our records search to discuss either of these options. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for this request.

Pursuant to HUD FOIA Regulations at 24 C.F.R. 15.104(c), the Department will grant a request for expedited processing under the FOIA when it can be determined that a compelling need exists. The term “compelling need” is defined as either: (1) circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; (2) in the case of a request made by a person primarily engaged in disseminating information, an urgency to inform the public concerning actual or alleged Federal Government activity; or (3) the loss of substantial due process rights. In your request, you state that

the reason for seeking expedited processing is that “[t]he imminent ratification of the Proposed Rule threatens the integrity of the family unit . . . as mixed-status families will face the possibility of asking an ineligible family member to leave an assisted household.” Your request for expedited processing is approved.

You may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

For your information, your FOIA request, including your identity and any information made available, is releasable to the public under subsequent FOIA requests. In responding to these requests, the Department does not release personal information, such as home address, telephone number, or Social Security number, all of which are protected from disclosure under FOIA Exemption 6.

If you have any questions regarding your request, please contact me at (202) 402-3450. Thank you for your interest in the Department’s programs and policies.

Sincerely,

*Ethan Bodell*

Ethan G. Bodell, Esq.  
Government Information Specialist  
Freedom of Information Act Office  
Office of the Executive Secretariat

# **EXHIBIT E**

**From:** [Bodell, Ethan G](#)  
**To:** [Williams, Malik](#)  
**Subject:** RE: FOIA Request Status Update  
**Date:** Thursday, February 6, 2020 10:01:18 AM

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Mr. Williams,

It's impossible for me to offer a specific timeline for this, or any, FOIA request. I can only offer insight into when I anticipate completing my portion of a request. I am one part of a much bigger process, which includes people searching for records, a substantive review of what they provide, legal clearances, and approval of a release by people above me. I understand the urgent nature of your request, but your allusion to litigation is not something that enables me to expedite mechanisms of our overall process that are out of my control. I'm the low man on the totem pole. I did receive notice that the data team put a ticket in to move the eDiscovery up the queue as much as possible, and I'm going to be reviewing additional responses from manual searches later today and tomorrow. My goal is to put together our first response next week, but (not to be repetitive; I just want to be clear about the process) that does not necessarily mean that response will *go out* next week.

Best,

Ethan Bodell

---

**From:** Williams, Malik <MWWilliams@winston.com>  
**Sent:** Wednesday, February 05, 2020 2:37 PM  
**To:** Bodell, Ethan G <Ethan.G.Bodell@hud.gov>  
**Cc:** Kessler, Jeffrey L. <JKessler@winston.com>; Amato, Jeffrey J. <JAmato@winston.com>; Donovan, Kerry C. <KCDonovan@winston.com>; Angus-Yamada, Colleen K. <CAngusYamada@winston.com>; Wexler, Jay R. <JWexler@winston.com>  
**Subject:** RE: FOIA Request Status Update

Ethan,

I appreciate the response.

Are you able to provide a specific timeline as to when you will be able to provide an interim response and any responsive/releasable records collected? We hope to resolve this amicably, but this matter is of the utmost urgency, and we cannot afford to delay much longer prior to seeking court-intervention.

Thanks,  
Malik

**Malik Williams**

Law Clerk

Winston & Strawn LLP  
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New York, NY 10166-4193

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& STRAWN**  
LLP

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**From:** Bodell, Ethan G <[Ethan.G.Bodell@hud.gov](mailto:Ethan.G.Bodell@hud.gov)>  
**Sent:** Tuesday, January 28, 2020 5:08 PM  
**To:** Williams, Malik <[MWWilliams@winston.com](mailto:MWWilliams@winston.com)>  
**Cc:** Kessler, Jeffrey L. <[JKessler@winston.com](mailto:JKessler@winston.com)>; Amato, Jeffrey J. <[JAmato@winston.com](mailto:JAmato@winston.com)>; Donovan, Kerry C. <[KCDonovan@winston.com](mailto:KCDonovan@winston.com)>; Angus-Yamada, Colleen K. <[CAngusYamada@winston.com](mailto:CAngusYamada@winston.com)>; Wexler, Jay R. <[JWexler@winston.com](mailto:JWexler@winston.com)>  
**Subject:** RE: FOIA Request Status Update

Mr. Williams,

My apologies. I received your email, but it seemed as though you were telling me those were your terms rather than asking me for my input, so I did not have anything additional to provide in response.

We will work as diligently as we can to release what we have prior to your provided date of April 15, 2020. I am in the process of reviewing the responses from our program offices, and additionally have asked our eDiscovery team to do whatever they can to expedite the electronic portion of the request. While that is not a manual search, I'm hoping they are able to work with the contractor to adjust the submission's place in the queue. As soon as I have gotten through the current portion of responses, I should be able to provide an interim response and any responsive/releasable records collected.

Best,

Ethan

---

**From:** Williams, Malik <[MWWilliams@winston.com](mailto:MWWilliams@winston.com)>  
**Sent:** Tuesday, January 28, 2020 1:38 PM  
**To:** Bodell, Ethan G <[Ethan.G.Bodell@hud.gov](mailto:Ethan.G.Bodell@hud.gov)>  
**Cc:** Kessler, Jeffrey L. <[JKessler@winston.com](mailto:JKessler@winston.com)>; Amato, Jeffrey J. <[JAmato@winston.com](mailto:JAmato@winston.com)>; Donovan, Kerry C. <[KCDonovan@winston.com](mailto:KCDonovan@winston.com)>; Angus-Yamada, Colleen K. <[CAngusYamada@winston.com](mailto:CAngusYamada@winston.com)>; Wexler, Jay R. <[JWexler@winston.com](mailto:JWexler@winston.com)>  
**Subject:** RE: FOIA Request Status Update

Ethan,

Approximately two weeks ago we reached out to you hoping to mutually agree upon an accelerated timeline that would allow for us to retrieve critical information prior to April 15, 2020. To date, we have yet to receive any response.

If we are unable to reach a resolution soon, we will be forced to either work with a FOIA mediator or seek court-intervention to ensure that our request is fulfilled in a timely manner.

We look forward to hearing from you shortly.

Best,  
Malik

**Malik Williams**

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*Not admitted to practice in New York*



---

**From:** Williams, Malik  
**Sent:** Wednesday, January 15, 2020 6:11 PM  
**To:** 'Bodell, Ethan G' <[Ethan.G.Bodell@hud.gov](mailto:Ethan.G.Bodell@hud.gov)>  
**Cc:** Kessler, Jeffrey L. <[JKessler@winston.com](mailto:JKessler@winston.com)>; Amato, Jeffrey J. <[JAmato@winston.com](mailto:JAmato@winston.com)>; Donovan, Kerry C. <[KCDonovan@winston.com](mailto:KCDonovan@winston.com)>; Angus-Yamada, Colleen K. <[CAngusYamada@winston.com](mailto:CAngusYamada@winston.com)>; Wexler, Jay R. <[JWexler@winston.com](mailto:JWexler@winston.com)>  
**Subject:** RE: FOIA Request Status Update

Ethan,

In light of the new projected collection date of November 2020, we wish to either further refine the scope of our request or to prioritize certain items. Due to the pressing nature of our matter, confirmed by the expedited processing status granted by your office, we need to receive a significant portion of our request by no later than April 15, 2020. If it is impossible to have the full request completed by that date, we would like to work with you to figure out what we can retrieve by that deadline, and create an accelerated alternative timeline for the rest.

We are also willing to work with a FOIA mediator, provided by the Office of Governmental Services, if that would best ensure the speedy resolution of our urgent request. If these alternatives fail, we

are also prepared to seek court-intervention to ensure that our request is fulfilled in the timely manner contemplated by law.

Best,

**Malik Williams**

**Law Clerk**

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New York, NY 10166-4193

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---

**From:** Bodell, Ethan G <[Ethan.G.Bodell@hud.gov](mailto:Ethan.G.Bodell@hud.gov)>

**Sent:** Monday, January 13, 2020 11:01 PM

**To:** Williams, Malik <[MWWilliams@winston.com](mailto:MWWilliams@winston.com)>

**Subject:** RE: FOIA Request Status Update

Mr. Williams,

I'm not sure of the basis for your statement that "it appears that the HUD FOIA Office has not begun actively processing our request." In fact, this request was assigned to no less than seven program offices, and was also submitted for an electronic discovery (eDiscovery) request for the collection of email records of certain named employees. The eDiscovery process is not one over which we have direct control; it is an automated collection system run by an outside contractor that pulls requests from the queue of submissions, on a first-in-first-out basis. Due to the influx of email-related requests since the start of the new Presidential administration in 2017, we have experienced significant delays with the eDiscovery turnaround times. This particular submission is scheduled for collection between 11/5/20 and 11/13/20. We may be able to provide interim releases sooner based on responses from our program offices.

Best,

**Ethan G. Bodell, Esq.**

Government Information Specialist  
U.S. Department of Housing and Urban Development  
Office of the Executive Secretariat

---

**From:** Williams, Malik <[MWWilliams@winston.com](mailto:MWWilliams@winston.com)>  
**Sent:** Monday, January 13, 2020 4:18 PM  
**To:** Bodell, Ethan G <[Ethan.G.Bodell@hud.gov](mailto:Ethan.G.Bodell@hud.gov)>  
**Cc:** Kessler, Jeffrey L. <[JKessler@winston.com](mailto:JKessler@winston.com)>; Amato, Jeffrey J. <[JAmato@winston.com](mailto:JAmato@winston.com)>; Angus-Yamada, Colleen K. <[CAngusYamada@winston.com](mailto:CAngusYamada@winston.com)>; Wexler, Jay R. <[JWexler@winston.com](mailto:JWexler@winston.com)>; Donovan, Kerry C. <[KCDonovan@winston.com](mailto:KCDonovan@winston.com)>  
**Subject:** FOIA Request Status Update

Ethan,

On October 29<sup>th</sup>, 2019, we submitted the attached Freedom of Information Act request. It has been assigned the tracking number: 20-FI-HQ-00246. On November 12<sup>th</sup>, we received an acknowledgment of receipt from your office that granted our request for expedited processing, ensuring that HUD would give our request priority. According to HUD's website, our request had an estimated delivery date of December 10<sup>th</sup>, 2019. However, to date, it appears that the HUD FOIA Office has not begun actively processing our request.

If you could provide us with a more detailed update on the status of our request, as well as an updated timeline that would be greatly appreciated.

Best,  
Malik Williams

**Malik Williams**

**Law Clerk**

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F: +1 212-294-4700

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---

**From:** Donovan, Kerry C. <[KCDonovan@winston.com](mailto:KCDonovan@winston.com)>  
**Sent:** Friday, November 22, 2019 3:33 PM  
**To:** [Ethan.G.Bodell@hud.gov](mailto:Ethan.G.Bodell@hud.gov)  
**Cc:** Kessler, Jeffrey L. <[JKessler@winston.com](mailto:JKessler@winston.com)>; Amato, Jeffrey J. <[JAmato@winston.com](mailto:JAmato@winston.com)>; Angus-Yamada, Colleen K. <[CAngusYamada@winston.com](mailto:CAngusYamada@winston.com)>; Williams, Malik <[MWWilliams@winston.com](mailto:MWWilliams@winston.com)>  
**Subject:** RE: FOIA Receipt

Ethan,

Thank you for updating us on the current status of our FOIA request. In connection with your follow-up requests, please find below (i) a list of specific custodians and program offices within HUD that we would like you to search in connection with items 5 & 6, and (ii) a list of specific employees whose records we would like you to search for item 7. Please let us know if there is any additional information that we need to provide to complete this request.

For items 5 & 6, referring to any records (as defined in items 5 & 6 of our initial FOIA request) related to the SAVE program, we seek records from the following offices and employees:

- Secretary of HUD:
  - Ben Carson
- Office of the Chief Human Capital Officer:
  - Monica Matthews
  - Krista Mills
  - Rose Butler
  - Debra Cool
  - Michelle Dockett
- Office of Fair Housing and Equal Opportunity:
  - Anna Marie Farias
  - Linda M. Ayala
  - Daniel Huff
  - DeAndra Johnson Cullen
  - Danielle Garcia
  - Jamie E. Forero
  - Tiffany M. Johnson
- Office of Field Policy and Management:
  - Benjamin Eugene Demarzo
  - Alexander Stowe
  - Timothy Smyth
  - Jill Yu
  - Christopher D. Taylor
  - Karen A. Lake
  - Michael C. Lawyer
  - Holly A. Kelly

For item 7, referring to any records (as defined in item 7 of our initial FOIA request) related to the White House's immigration agenda, we seek records from the following employees:

- Secretary of HUD:
  - Ben Carson
- Office of Public Affairs:
  - Caroline VanVick
  - Jereon Brown
  - Bradley Bishop
  - Matthew Schuck
  - Sadie Thurman
  - Michael Benz
  - Shantae Goodloe

- April Tey Brown
- White House Liaisons
  - Todd Thurman
  - Michael Burley
  - Drew Mccall
- Office of Policy Development and Research
  - Seth Appleton
  - Todd Richardson
  - Dana B. Bres
  - Monique M. Floyd
  - Rebecca J. Reed

We appreciate your timely cooperation with this request. Please feel free to reach out with any additional questions.

Best,  
Kerry Donovan

**Kerry C. Donovan**

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**From:** "Bodell, Ethan G" <[Ethan.G.Bodell@hud.gov](mailto:Ethan.G.Bodell@hud.gov)>

**Date:** November 12, 2019 at 11:49:10 AM EST

**To:** "Kessler, Jeffrey L." <[JKessler@winston.com](mailto:JKessler@winston.com)>

**Subject: FOIA Receipt**

Mr. Kessler,

Attached, please find a letter acknowledging HUD's receipt of your FOIA request, 20-FI-HQ-00246. At this time, I'd like to seek clarification on a few of the requested items. Specifically, for our office to be able to conduct correspondence searches (including emails, phone logs, text messages, etc.) we must first be able to identify specific custodians whose records we seek to search. Our electronic discovery platform, which we utilize to obtain emails from @hud.gov accounts, is custodian-based, as are our phone record searches. I.e. without a name (and a date range, which you have provided), we cannot even initiate a search. We do not have the technological capability to run searches

through the accounts of all employees.

Where very specific topics are referenced, we may not need specific custodians. For instance, items 1-4 of your request relate to a specific Proposed Rule. I have assigned this to a few program offices who worked on the matter, who should be able to identify specific individuals, allowing us to initiate searches in those individuals' accounts. For more broadly-worded items (see below) where we are not able to identify specific program offices or employees on the face of the request, we rely on requesters to identify whose records they are seeking.

For items 5 and 7, you ask for all communications relating to the SAVE program, and related to the White House's immigration policy, from 7/1/18 to the present. On their face, these items could pertain to any one of the 8,000+ employees of the Department. Because this is a more broadly-worded item, we are unable to identify specific custodians whose records you may seek. Are you able to identify any specific employees of HUD whose records you would like us to search?

For item 6, are you able to identify specific custodians, or specific program offices, within HUD that you may be interested in?

If you have a moment to provide any additional information for the three identified items, I would appreciate it. We have initiated a search for the other items already.

Best,

**Ethan G. Bodell, Esq.**

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