



NATIONAL
MULTIFAMILY
HOUSING
COUNCIL

Office of General Counsel
Regulations Division
U.S. Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0500

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

To Whom It May Concern:

On behalf of the National Apartment Association (NAA) and the National Multifamily Housing Coalition (NMHC),¹ our organizations submit these comments in response to the U.S. Department of Housing and Urban Development's ("HUD") Proposed Rule entitled *Housing and Community Development Act of 1980: Verification of Eligible Status* (the "Proposed Rule").

NAA and NMHC members are committed to providing quality, affordable housing to the nation's over 40 million renters and adhering to all applicable immigration laws, including Section 214 of the Housing and Community Development Act of 1980, as amended, which places restrictions on the provision of housing assistance to noncitizens with ineligible immigration status.² Housing providers and their staff, however, may be unable to enforce immigration laws as the proposed rule would require. Moreover, our member firms are concerned that the Proposed Rule would impose higher costs that may need to be absorbed by the residents they serve and result in less efficient utilization of taxpayer-funded subsidies.

As background, housing providers often evaluate renters' identification and documentation during the leasing process. On-site teams may utilize identification (ID) verification and/or authentication tools to reduce the risk of rental fraud and as a precautionary measure for on-site staff before conducting property tours. Additionally, housing providers may evaluate renters' immigration information to confirm whether an applicant's visa aligns with the lease term during the screening process. While housing providers engage in these practices for legitimate business reasons associated with renting, we are concerned the Proposed Rule would put property owners, operators and their on-site employees in a position to enforce immigration laws, an activity these individuals are simply unequipped to undertake. Furthermore, the Proposed Rule would impose costs that would ultimately be absorbed by citizen residents in the form of reduced maintenance and less efficient use of taxpayer dollars.

¹ For over 26 years, NAA and NMHC have worked on behalf of the nation's apartment industry, serving our combined members who represent all aspects of the multifamily sector including development, construction, ownership, management and finance. As a federation of over 139 state and local affiliates, NAA represents 113,000 members representing more than 13.5 million Apartment homes. NMHC is where rental housers and suppliers come together to help meet America's housing needs by creating resilient and inclusive communities where people build their lives. One-third of all Americans rent their housing, and our industry plays a critical role in meeting the nation's housing needs by providing apartment homes for 40 million residents and contributing \$3.4 trillion annually to the economy.

² 42 U.S.C. § 1436a.

Our associations urge HUD to consider how these changes to federal policy could disrupt effective property management and operations of rental communities as well as impede housing providers' ability to serve their residents.

I. The Proposed Rule Could Significantly and Adversely Impact Housing Providers, Residents, and Taxpayers

A. Administrative Burdens and Costs

NAA and NMHC are concerned about the initial surge in administrative burdens as well as the change in ongoing compliance monitoring. The impact of the Proposed Rule on housing providers would be most acute during the first year of implementation since they would be required to *retroactively* verify the eligibility status of residents who had previously chosen to not contend eligibility status. This retroactive application will also require verification of the eligibility of those who previously had declared themselves to be a U.S. citizen or U.S. national, and of individuals 62 years of age and older who had previously declared themselves to have eligible immigration status. The breadth of the required retroactive verification could entail significant administrative time and costs that could raise housing costs nationwide, result in deferred maintenance and mean less efficient use of taxpayer subsidies. According to an NAA survey on this matter, over half of rental operator respondents are concerned that the 90-day compliance window is insufficient to complete this verification.

These additional administrative and financial burdens, however, will not be limited to the first year of implementation. Because the Proposed Rule would require all household members to be eligible to receive housing assistance, housing providers must engage in verification processes on an ongoing basis for new residents. Housing providers may also be required to engage in a multi-step verification process involving review of any documentation that the federal government's SAVE system cannot confirm, an obligation not currently imposed under Section 214.

In addition, rental housing owners and operators will incur administrative time and costs associated with the development of the new policies, procedures and associated forms that will be necessary to implement these new requirements. Fifty-eight percent of NAA member survey respondents said that the rule would increase administrative costs for their organization. These additional costs would also be ultimately borne by citizen residents and taxpayers.

Our organizations also ask HUD to consider how this Proposed Rule's new requirements may be incompatible with housing providers' existing fair housing responsibilities. Many states and localities have their own fair housing laws, some of which prohibit discrimination on the basis of immigration status. As a result, housing providers could also be exposed to increased liability. In these cases, NAA and NMHC members would be caught between competing federal, state and local laws.

Because of this, over half of survey respondents expect increased legal counsel and compliance costs if the Proposed Rule were implemented as written.

B. Exits, Evictions and Turnovers

The additional verification obligations imposed by the Proposed Rule will likely lead to a significant number of mixed-status families exiting assisted housing to avoid splitting up their families, and a potentially significant increase in turnover caused by residents losing eligibility.

Rental housing communities operate best when vacancies remain low, and high turnover threatens a property's financial health. Even a small increase in turnover rates can have a dramatic impact on affordable housing providers (and the taxpayers who support them), which are already financially constrained by lower margins and strict federal regulations.

C. Hiring and Training Costs

Sixty-one percent of survey respondents anticipate increased staff time for intake and verification processes. To successfully manage and implement the multiple new requirements imposed by the Proposed Rule and to assist residents with their compliance, housing providers will be required to hire additional employees and provide training for both existing and new employees, costs that will ultimately be borne by citizen residents and taxpayers.

II. The Proposed Rule Would Compel Housing Providers to Act as Immigration Officers

Pursuant to the newly proposed § 5.508(e)(vi), housing providers will be required to immediately notify the U.S. Department of Homeland Security (DHS) whenever they “determine that any member of a household is present in the U.S. in violation of the Immigration and Nationality Act.” This far exceeds any obligation imposed on housing providers by current statute or by the agreements housing providers have entered into with HUD. Sixty-three percent of NAA member survey respondents reported that these new requirements are a strong operational challenge, emphasizing the fact that rental housing providers are not trained or equipped to enforce federal immigration laws, and deputizing their staff to do so is a significant departure from on-site teams' job responsibilities.

III. The Proposed Rule Would Discourage Owner Participation in the Housing Choice Voucher Program

Our organizations agree with HUD that, in light of the significant departure from the current regulations and the resulting additional administrative and financial burdens, the Proposed Rule may have the effect of discouraging additional private owners from participating in the

HCV Program.³ This program is the country's most successful public-private partnership to provide affordable market-rate housing to low- and moderate-income households. According to HUD estimates, over 10,000 housing providers exit the HCV Program each year, largely due to frustration with program requirements. Adding extensive new documentation and reporting requirements could exacerbate this trend. This would have the impact of further limiting affordable housing options for families across the country, regardless of their citizenship or immigration status.

CONCLUSION

The sweeping changes in the Proposed Rule would impose significant administrative and financial burdens on housing providers, impeding the ability of NAA's and NMHC's members to operate their businesses and effectively serve their communities and the individuals who reside in those communities. These costs will ultimately be borne by citizen residents in the form of fewer available homes due to delayed maintenance or fewer participating housing providers and taxpayers due to increased demands for tax-supported subsidies.

The Proposed Rule could produce extraordinary hardships for rental housing providers and residents alike, including high turnover, denials of admission to U.S. citizens where all members of assisted households cannot be properly documented, and the substantial increase in scope of documentation and verification requirements. These changes could hamper NAA and NMHC members' ability to provide quality, affordable housing and, as such, increase housing costs nationwide for everyone. Moreover, NAA and NMHC are concerned that HUD's interpretation of Section 214 in the Proposed Rule conflicts with the language and Congressional intent of the authorizing statute.

As HUD contemplates further rulemaking, our associations urge it to consider the unique needs of the rental housing industry and the residents they serve and the taxpayers that support them.

On behalf of NAA and NMHC, we appreciate the opportunity to comment on the Proposed Rule. If you have any questions, please do not hesitate to contact us.

Sincerely,

National Apartment Association

National Multifamily Housing Council

³ *Id.* § 6.1.1.3, at 25.