

July 9, 2019

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

Re: HUD Docket No. FR-6124-P-01, RIN 2501-AD89 Comments in Response to Proposed Rulemaking:  
Housing and Community Development Act of 1980: Verification of Eligible Status

Dear Sir/Madam:

These comments are submitted on behalf of the National Housing Law Project (NHLP) in response to the Department of Housing and Urban Development's (HUD) proposed rule to express our strong opposition to the changes regarding "verification of eligible status," published in the Federal Register on May 10, 2019 (RIN 2501-AD89; HUD Docket No. FR-6124-P-01). NHLP's mission is to advance housing justice for poor people and other marginalized communities, including immigrants and their families. Our expertise on Section 214 and federal housing issues is long-established. We participated in a critical stakeholder process that led to the creation of the current rule.<sup>1</sup>

The proposed rule would have widespread negative consequences on immigrant families who rely or would rely on housing assistance as a critical lifeline. According to HUD's analysis, the rule would directly impact over 100,000 individuals in 25,000 mixed status families that are currently receiving housing assistance from the covered programs.<sup>2</sup> The proposed rule would jeopardize their housing stability and place them at risk of homelessness, which could negatively impact their employment, education, health, and ability to be self-sufficient. Additionally, the rule could result in 11.5 million individuals losing their eligibility for future housing assistance, including 3.1 million children who are U.S. citizens or legal immigrants.<sup>3</sup>

As explained in these comments, the rationales that HUD and Secretary Carson have provided to justify the need for this proposed rule do not comport with current federal law and regulations or with practical realities. HUD also fails to provide data to support the agency's assertions. This consistent disconnect between the data and HUD's justifications for the proposed rule has created

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<sup>1</sup> Revised Restrictions on Assistance to Noncitizens, 61 Fed. Reg. 60535 (interim rule Nov. 29, 1996) (to be codified at 24 C.F.R. pt. 5).

<sup>2</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 7 (Apr. 15, 2019).

<sup>3</sup> Mike Nicholson, Center for Migration Studies, *Proposed HUD Rule Would Bar Vulnerable Children from Subsidized Housing*, <https://cmsny.org/nicholson-62619/>.

major confusion for the public and has compromised the ability of commenters to provide appropriate input during this comment period. This disconnect suggests that the reasons which HUD has provided are pretextual. As such, we strongly urge HUD to withdraw the proposed rule in its entirety and allow HUD’s long-standing regulations to remain in effect.

NHLP’s central focus is on the millions of U.S. households struggling to find affordable housing in the ongoing nationwide housing crisis, but blaming struggling immigrant families will not fix this problem. Indeed, HUD’s own analysis of the proposed rule concludes that fewer, not more, families are likely to receive assistance as a result of the rule.<sup>4</sup> The real issue is the lack of sufficient funding to ensure that every family, regardless of immigration status, has access to one of the most basic of human rights—a safe place to call home.

Given the significant changes the rule would impose on decades of housing policy and the administration of HUD’s most significant housing programs, the 60-day notice period is too short to adequately address all of the concerns regarding the rule. HUD’s own rules recognize this inadequacy by stating that “[a]n ANPR [Advanced Notice of Public Rulemaking] will be used to solicit public comment early in the rulemaking process for significant rules . . .”<sup>5</sup> But no ANPR was issued. Therefore, we submit these comments, even though we have not had sufficient time to fully assess the costs, consequences, and wisdom of the proposed regulation.

### **I. The Proposed Rule Must Consider the Costs to Families, Including Tens of Thousands of Citizen Children**

The proposed rule places tens of thousands of families at risk of homelessness, jeopardizing their family and housing stability, both of which are critical to getting families on a pathway to self-sufficiency and better life outcomes.

Family integrity is deeply ingrained in the legal history of United States. Indeed, “the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests. . . .”<sup>6</sup> The proposed rule threatens to undermine the family integrity of low-income U.S. citizens and immigrants. The proposed rule’s requirement that every individual in a household maintain an eligible status to receive “financial assistance” would force mixed status families to make an impossible decision — either break up to allow eligible family members to continue receiving assistance or forgo the subsidies so that the families can stay together. Forgoing the subsidy could mean homelessness for many families. Family separations undermine family stability, and lead to toxic stress, trauma, and attachment issues in children. Even a temporary separation has an enormous negative impact on the health and educational attainment of these children, and many parents

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<sup>4</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 (Apr. 15, 2019).

<sup>5</sup> 24 C.F.R. § 10.1 (2019).

<sup>6</sup> *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000).

struggle to restore the parent-child bond once it has been disrupted by a separation.<sup>7</sup> These impacts shock the conscience.

Because 70% of mixed status families currently receiving HUD assistance are composed of eligible children and at least one ineligible parent, many of these families likely will forgo the subsidies to avoid separation. In fact, HUD is banking on this, noting in their regulatory impact analysis that “HUD expects that fear of the family being separated would lead to prompt evacuation by most mixed households, whether that fear is justified.”<sup>8</sup> Therefore, this rule would effectively evict as many as 108,000 individuals in mixed status families (in which nearly 3 out of 4 are eligible for assistance) from public housing, Section 8, and other programs covered by the proposed rule.<sup>9</sup> These mass evictions and departures from housing assistance will cause increased rates of homelessness and unstable housing among an already vulnerable population.<sup>10</sup>

Additionally, families that risk homelessness to avoid separations may still be unable to keep their families intact. Many families once they have left HUD-assisted housing will likely be forced to rely on the homeless shelter system.<sup>11</sup> Many homeless shelters have a policy of only accepting individuals of a single gender, or only allowing young children to stay with their mother, forcing older children and adult male household members to find alternative shelters.<sup>12</sup> Additionally, given the misapplication and misunderstanding of federal guidance on immigrants’ rights to access to emergency shelters, it is likely that some families will be illegally barred from shelters entirely.<sup>13</sup>

These outcomes will not only hurt families while they struggle to find housing in the short term, but they will also lead to reduced opportunities and increased health problems for these families in the long term.<sup>14</sup> Studies have shown that unstable housing situations can cause individuals to experience increased hospital visits, loss of employment, and are associated with increased likelihood of mental health problems in children,<sup>15</sup> and can dramatically increase the risk of an acute episode of a

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<sup>7</sup> Laura C. N. Wood, *Impact of Punitive Immigration Policies, Parent-Child Separation and Child Detention on the Mental Health and Development of Children*, 2 *BMJ PEDIATRICS OPEN* (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6173255/>.

<sup>8</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 7 (Apr. 15, 2019).

<sup>9</sup> *Id.* at 8.

<sup>10</sup> PRATT CTR. FOR CMTY. DEV., *CONFRONTING THE HOUSING SQUEEZE: CHALLENGES FACING IMMIGRANT TENANTS, AND WHAT NEW YORK CAN DO* (2018), <https://prattcenter.net/research/confronting-housing-squeeze-challenges-facing-immigrant-tenants-and-what-new-york-can-do>.

<sup>11</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 15-16 (Apr. 15, 2019).

<sup>12</sup> Pat LaMarche, *Homeless Teens More Often Denied Shelter and Separated from Families*, HuffPost (Jan. 29, 2011), [https://www.huffpost.com/entry/most-shelter-seeking-home\\_b\\_815434](https://www.huffpost.com/entry/most-shelter-seeking-home_b_815434).

<sup>13</sup> See Meghan Fitzpatrick et al., *Access to Emergency Shelters and Transitional Housing for Battered Immigrants and Immigrant Victims of Crime*, NIWAP (June 3, 2014), <http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/pdf/PB-Tkit-TransitionalHousingReport-06.03.14.pdf>.

<sup>14</sup> Megan Sandel et al., *Unstable Housing and Caregiver and Child Health in Renter Families*, 141 *PEDIATRICS* 1 (2018), <http://pediatrics.aappublications.org/content/141/2/e20172199>.

<sup>15</sup> See Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, CENTER ON BUDGET AND POLICY PRIORITIES (October 7, 2015), <https://www.cbpp.org/research/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-longterm-gains>; see also Linda Giannarelli et al., *Reducing Child*

behavioral health condition, including relapse of addiction in adults. Having safe and stable housing is crucial to a person's good health, sustaining employment, and overall self-sufficiency. These effects will be particularly prominent on the children in these mixed status families, nearly all of whom are U.S. citizens. Research has shown that economic and housing instability impedes children's cognitive development, leading to poorer life outcomes as adults.<sup>16</sup> Housing instability is directly correlated to decreases in student retention rates and contributes to homeless students' high suspension rates, school turnover, truancy, and expulsions, limiting students' opportunity to obtain the education they need to succeed later in life.<sup>17</sup>

The proposed rule will bar children who are U.S. citizens and lawful permanent residents from maintaining and seeking federally subsidized housing.

By eliminating the ability of mixed status families to receive prorated assistance on a permanent basis, the proposed rule robs eligible children of housing subsidies because they have parents with ineligible noncitizen status. Section 214 of the Housing and Community Development Act of 1980 (Section 214) limits access to federally subsidized housing programs to U.S. citizens and a specific list of noncitizen categories.<sup>18</sup> Nearly all of the children in mixed status families who are receiving HUD assistance covered by Section 214 are U.S. citizens and lawful permanent residents (LPR) who live with parents or other adults who do not have eligible immigration status. HUD's statistics show that 70% of mixed status families are composed of eligible children and ineligible parents. There are over 38,000 U.S. citizen and otherwise eligible children in these families, and over 55,000 eligible children in mixed status families overall.<sup>19</sup> Since these children lack the legal capacity to sign leases themselves, the adult heads of household, including those who do not receive assistance, must sign these contracts on behalf of their family. Prohibiting the ineligible adults from living in subsidized units forecloses the possibility of these U.S. citizen and LPR children from receiving any housing assistance

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*Poverty in the US: Costs and Impacts of Policies Proposed by the Children's Defense Fund* (Jan. 2015), <http://www.childrensdefense.org/library/PovertyReport/assets/ReducingChildPovertyintheUSCostsandImpactsofPoliciesProposedbytheChildrensDefenseFund.pdf>.

<sup>16</sup> HEATHER SANDSTROM & SANDRA HUERTA, *THE NEGATIVE EFFECTS OF INSTABILITY ON CHILD DEVELOPMENT: A RESEARCH SYNTHESIS* (2013), <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF>.

<sup>17</sup> See Mai Abdul Rahman, *The Demographic Profile of Black Homeless High School Students Residing in the District of Columbia Shelters and the Factors that Influence their Education* 55 (Mar. 2014) (Ph.D. dissertation, Howard University), available at <http://gradworks.umi.com/3639463.pdf> (citations omitted).

<sup>18</sup> 42 U.S.C.A. § 1436a(a)(1)-(6) (West 2019) (Noncitizens eligible for Section 214 housing programs: Lawful Permanent Residents, VAWA Self-Petitioners, Asylees and Refugees, Parolees, Persons Granted Withholding of Removal/Deportation, Qualified Victims of Trafficking, Persons granted admission for emergent or public interest reasons, Persons granted lawful temporary residence amnesty under the Immigration Reform and Control Act of 1986, Immigrants eligible for registry who entered the U.S. before June 30, 1948, Lawful U.S. residents and individuals who entered the U.S. under the Compacts of Free Association with the Marshall Islands, Micronesia, Palau and Guam immigrants admitted for lawful temporary residence prior to January 1, 1982).

<sup>19</sup> See 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 6-8 (Apr. 15, 2019) (73% of eligible family members are children and there are a total of 76,141 eligible individuals in the covered programs, for a total of 55,582 eligible children; 70% of households are composed of eligible children with ineligible parents, for a total of 38,907 eligible children in households with ineligible parents).

under the covered housing programs. As explained below, the proposed rule directly contradicts the face of the statute governing these HUD regulations.

The rule fails to consider that immigrants live disproportionately in high cost housing areas and pay more for housing than U.S. citizens.

Immigrants and their families currently face additional barriers in finding affordable housing.<sup>20</sup> Compared to U.S. citizens, immigrant families are more likely to have higher housing costs, are more likely to face housing cost burdens, and are more likely to report difficulty paying for housing.<sup>21</sup> Many of these additional burdens are attributable to the fact that immigrants disproportionately live in states with high housing costs.<sup>22</sup> For example, California—the state with the largest immigrant population<sup>23</sup>—has eight of the ten highest rental cost metropolitan counties in the country.<sup>24</sup> The proposed rule will introduce additional burdens to immigrant families that already face significant hurdles in securing affordable housing, placing thousands of families at risk of homelessness. The proposed rule does not take into account these unique hardships and costs faced by immigrants in the U.S. housing market. The proposed rule should be withdrawn until HUD completes an in-depth study of these issues.

## II. The Proposed Rule Exceeds the Scope of its Statutory Authority

HUD’s proposed rule is not supported by the history of Section 214 and its implementing regulations.

Originally, Section 214 of Housing and Community Development Act of 1980 created restrictions prohibiting “nonimmigrant student-alien” from receiving financial assistance in applicable HUD programs.<sup>25</sup> The restrictions were expanded in 1981 to make ineligible any person who did not have one of an enumerated list of immigration statuses.<sup>26</sup> Several years later, in 1986, a court granted a preliminary injunction against the implementation of HUD’s rules implementing Section 214, to a national class of plaintiffs who would have been eligible for HUD-assisted housing but for the presence

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<sup>20</sup> See ROBERT WOOD JOHNSON FOUND., *LIVING IN AMERICA* (Katherine E. Garrett ed., 2006), <https://www.rwjf.org/en/library/research/2006/08/living-in-america.html>.

<sup>21</sup> Eileen Diza McConnell, *Who Has Housing Affordability Problems? Disparities in Housing Cost Burden by Race, Nativity and Legal Status in Los Angeles*, 5 *RACE & SOCIAL PROBLEMS* 173, 178 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3784340/pdf/nihms440365.pdf>.

<sup>22</sup> See Matt Levin, *Fleeing War-Torn Homes for Crippling Rents—California Housing Costs Creating Harsh Reality for Refugees*, *CALMATTERS* (July 19, 2018), <https://calmatters.org/articles/refugees-housing-costs-california/>.

<sup>23</sup> Jens Manuel Krogstad & Michael Keegan, *15 States with the Highest Share of Immigrants in Their Population*, PEW RESEARCH CTR.: FACTTANK (May 14, 2014), <http://www.pewresearch.org/fact-tank/2014/05/14/15-states-with-the-highest-share-of-immigrants-in-their-population/>.

<sup>24</sup> ANDREW AURAND ET AL., NAT’L LOW INCOME HOUSING COALITION, *OUT OF REACH: THE HIGH COST OF HOUSING 14* (2018), [https://nlihc.org/sites/default/files/oor/OOR\\_2018.pdf](https://nlihc.org/sites/default/files/oor/OOR_2018.pdf).

<sup>25</sup> Restriction on the Use of Assisted Housing, Pub. L. No. 96-339, 94 Stat. 1637 (1980).

<sup>26</sup> Restriction on the Use of Assisted Housing, Pub. L. No. 97-35, 95 Stat. 408 (1981).

of an ineligible immigrant adult.<sup>27</sup> In 1988, Congress passed another significant amendment to Section 214, allowing for the Secretary to provide for preservation of mixed-status families – with full subsidy.<sup>28</sup> In passing this amendment, Congress explained in a House Report that “the Committee is including these changes because the Department [HUD] has incorrectly interpreted the original Act. The modifications are intended to clarify the original intent of Congress that families in which at least one person is eligible are not disqualified and that the rules not be applied retroactively.”<sup>29</sup>

In 1995, HUD promulgated, and, for the first time, implemented a final rule regarding Section 214 that required housing authorities to prorate assistance.<sup>30</sup> On September 12, 1996, the *Yolano-Donnelly Tenant Ass’n* lawsuit was settled, with an agreement that the 1995 rule adequately protected the right of mixed status families to live together in 214 housing, further guaranteeing that HUD would continue to protect that right in implementing Section 214.<sup>31</sup> Only two weeks later, Congress enacted more amendments to Section 214, explicitly providing for proration of housing assistance.<sup>32</sup> To bring the regulations in line with the new statute, HUD promulgated an interim rule in 1996 and, though not required to, solicited in-person comments from stakeholders including NHP and through a 60-day comment period.<sup>33</sup> The interim rule brought proration provisions in line with the new statute. It also, significantly, included a provision based on the new statute, that a housing authority could ignore Section 214 altogether.<sup>34</sup>

After the implementation of the 1996 Interim Rule, Congress made one major change to Section 214. It removed the language that HUD had interpreted to allow housing authorities to ignore Section 214 and replaced it with the provision allowing housing authorities to choose to not affirmatively verify eligibility.<sup>35</sup> The fact that Congress changed one portion of HUD’s interpretation of Section 214 and let the rest remain clearly signifies its tacit approval of the agency’s **existing** interpretation that includes proration requirements. HUD promulgated a final rule in 1999, reflecting the change to a housing authority’s discretion to abide by 214.<sup>36</sup> Notably, HUD’s current proposed rule does not even acknowledge this previous rulemaking process in 1996 and 1999 or the 1996 Interim Rule. Without knowing this history, it is very difficult, if not impossible, for most commenters to understand HUD’s reasoning for changing its long-standing interpretation of the statute and compromises commenters’ ability to provide proper input to HUD.

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<sup>27</sup> *Yolano-Donnelly Tenant Ass’n v. Pierce*, No. CIV S-86-0846 MLS (E.D. Cal. 1996).

<sup>28</sup> Modification of Restriction on Use of Assisted Housing by Aliens, Pub. L. No. 100-242, 101 Stat. 1860 (1988).

<sup>29</sup> House Report 100-122(I) at 49-50.

<sup>30</sup> Restrictions on Assistance to Noncitizens, 60 Fed. Reg. 14816 (Mar. 20, 1996).

<sup>31</sup> No. CIV S-86-0846 MLS (E.D. Cal. 1996).

<sup>32</sup> Prorating of Financial Assistance, Pub. L. No. 104-208, , 110 Stat. 3009-684, 3009-685, 3009-687 (1996)

<sup>33</sup> Revised Restrictions on Assistance to Noncitizens, 61 Fed. Reg. 60535 (interim rule Nov. 29,1996) (to be codified at 24 C.F.R. pt. 5).

<sup>34</sup> Revised Restrictions on Assistance to Noncitizens, 61 Fed. Reg. 60535, 60538 (interim rule Nov. 29,1996) (to be codified at 24 C.F.R. pt. 5).

<sup>35</sup> PL 105-276, Title V, § 592(a), October 21, 1998, 112 Stat. 2653

<sup>36</sup> 64 FR 25726. The current Proposed Rule also fails to acknowledge the existence of this Final Rule, let alone address it.



The proposed regulations are in direct conflict with their underlying statute.

In the proposed rule, HUD claims to be revising its regulations “into greater alignment with the wording and purpose of Section 214,” namely by barring mixed-status families from receiving assistance. To support its claim, HUD insists that Section 214 prohibits the indefinite receipt of prorated assistance by mixed status families, but it cannot point to any statutory language containing such an edict. This is because Section 214 does **not** prohibit the indefinite receipt of prorated assistance. In fact, Section 214 makes it clear that Congress intended to provide for this type of assistance precisely to avoid forcing families into the impossible choices between living together without stable housing, or living apart with stable housing for some members. By conveniently ignoring these provisions, and omitting them from their analysis in the proposed rule, HUD is exceeding its statutory authority in violation of 5 U.S.C. § 706(2)(C).

Section 214 establishes that Congress intended that every eligible member of a mixed status family would receive assistance and that mixed status households would receive prorated assistance. For example, 42 U.S.C. § 1436a(b)(2) states, “If the eligibility for financial assistance **of at least one member** of a family has been affirmatively established under this section, and the ineligibility of one or more family members has not been affirmatively established under this section, any financial assistance made available to that family by the applicable Secretary **shall be prorated...**” (emphasis added). The law then explicitly permits housing authorities to choose not to establish eligibility of every family member before providing financial assistance.<sup>37</sup> Congress did not mince words. “Shall be prorated” does not mean “may be prorated for some period of time.”

The statute also requires that housing authorities verify eligibility for financial assistance on an individual – not a familial – basis. In the subsection entitled “Verification of eligibility”, Congress established a scheme by which a family could receive financial assistance when “eligibility of at least the individual or **one family member**” was established.<sup>38</sup> Section 214 does bar continued assistance for families that **knowingly** permit ineligible family members to reside in an assisted unit, but makes clear that termination “shall not apply to a family if the ineligibility of the ineligible individual at issue was considered in calculating any proration of assistance provided for the family.”<sup>39</sup> HUD cannot create a regulation that authorizes termination where Congress explicitly stated that the authority for termination does not apply.

HUD has not acknowledged these provisions in Section 214, and, instead, has fixated on those that discuss preservation of assistance and deferral of termination for certain families. However, a cursory glance at the legislative history of Section 214 reveals HUD’s mistake. Congress’s purpose for creating a system of prorated assistance is also evident. In 1988, Congress included a provision by which mixed status families who had been receiving full, non-prorated subsidies prior to the statute’s

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<sup>37</sup> 42 U.S.C.A. § 1436a(i)(2)(A) (West 2019).

<sup>38</sup> 42 U.S.C.A. § 1436a(i)(1) (West 2019) (emphasis added).

<sup>39</sup> 42 U.S.C.A. § 1436a(d)(6) (West 2019) (noting that the penalty for allowing ineligible household members to reside in assisted units “shall not apply to a family if the ineligibility of the ineligible individual at issue was considered in calculating any proration of assistance provided for the family”).

passage could avoid family breakup. Indeed, subsection (c) is entitled “(c) Preservation of families...”<sup>40</sup> The provision, as initially passed, allowed certain mixed-status families to receive full assistance and remain in assisted housing indefinitely and allows other families with ineligible immigrants to receive temporary deferrals of termination of assistance.<sup>41</sup> HUD badly misinterprets that provision to conclude that Congress only intended for prorated assistance to be provided for a limited time. In fact, Congress did not add the proration provisions until 1996.<sup>42</sup>

To suggest that the 1988 amendments were intended to temporarily limit the duration of financial assistance that did not exist under the statute until 1996 is demonstrably absurd. The correct, and indeed only logical, reading of the statute is that Congress sought to ensure that scarce federal subsidies would be provided for eligible immigrants and citizens while preserving the familial integrity of mixed-immigration status families. HUD’s interpretation requires ignoring the plain language and the history of the statute. HUD should withdraw its rule because it is in direct conflict with the congressional mandate of Section 214 to provide prorated assistance to mixed status families.

Further, HUD has failed to point to any provisions of Section 214 that require leaseholders to be U.S. citizens or have an eligible immigration status. In fact, 42 U.S.C. § 1436a(i)(1) makes clear that financial assistance may be provided to a family upon “the affirmative establishment and verification of eligibility of **at least ... one** family member”<sup>43</sup> and places no further requirements on the age, capacity, or other characteristic of that family member. By contrast, Congress knew how to make such distinctions in 42 U.S.C. § 1436a(c)(1)(A), which authorized the continued provision of financial assistance to certain families receiving assistance as of February 5, 1988, if either “the head of household or spouse” were a citizen or eligible immigrant).<sup>44</sup> The proposed rule, thus, makes a distinction that Congress purposefully intended not to create.

Finally, the Section 214 statute expressly provides that public housing agencies can choose not to verify self-declarations by citizens or nationals. Specifically, the statute indicates, “If the declaration states that the individual is a citizen or national of the United States, the applicable Secretary, or the agency administering assistance covered by this section, **may** request verification of the declaration by requiring presentation of documentation that the applicable Secretary considers appropriate, including a United States passport, resident alien card, alien registration card, social security card, or other documentation.”<sup>45</sup> In clear conflict to the statute that gives public housing agencies discretion to decide whether to verify citizenship, the proposed rule **mandates** verification of citizenship. HUD is not permitted to amend a statute through administrative rulemaking.

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<sup>40</sup> Housing and Community Development Act of 1987, Pub. L. No. 100-242, § 164, 101 Stat. 1815.

<sup>41</sup> *Id.*

<sup>42</sup> Use of Assisted Housing by Aliens Act of 1996, Pub. L. No. 104-208, § 572, 110 Stat. 3009.

<sup>43</sup> 42 U.S.C.A. § 1436a(i)(1) (West 2019) (emphasis added).

<sup>44</sup> 42 U.S.C.A. § 1436a (c)(1)(A) (West 2019) (“Permit the continued provision of financial assistance, if necessary to avoid the division of a family in which **the head of household or spouse** is a citizen of the United States, a national of the United States, or an alien resident of the United States described in any of paragraphs (1) through (6) of subsection (a)”) (emphasis added).

<sup>45</sup> 42 U.S.C.A. § 1436a(d)(1)(A) (West 2019) (emphasis added).



HUD has exceeded its authority through this proposed rule and, for all the aforementioned reasons in this section, must withdraw the proposed rule because it is in direct conflict with the history and text of Section 214.

### III. HUD Fails to Explain Why it is Upending Decades of Prior Interpretation of the Statute

For over two decades, through several administrations, HUD has maintained the same interpretation of Section 214. Now, without any explanation, HUD is proposing to radically change its longstanding interpretation. However, when changing a long-held agency interpretation, the agency must state “good reasons for the new policy” and consider that the rule has “engendered serious reliance interests” to some group.<sup>46</sup> HUD does neither, ignoring that the rule has engendered serious reliance interests to both mixed status families and the housing providers who depend on their higher rents.

Previously, HUD contended that the terms of Section 214 left it little flexibility in drafting its implementing rules. Thus, when it proposed the rules in 1994, HUD said “[i]n many respects, Section 214 allows little discretion on the part of HUD to expand or reduce the statutory provisions by regulation. Section 214 is specific about the special assistance to be provided to certain families with members who have eligible status and those who have ineligible status.”<sup>47</sup> At the time it adopted its current regulations concerning mixed status families in 1995, HUD addressed comments urging that “ineligible persons should not be allowed to reside in an assisted unit.”<sup>48</sup> Squarely rejecting that position, HUD stated that “[t]he ‘preservation of family’ provisions [in its final rule] flow directly from the statute.”<sup>49</sup> In fact, Section 214(c) provides for continued assistance and temporary deferral of termination of assistance to mixed families. The proposed rule does not identify any intervening change in Section 214 itself that justifies the proposed changes to its mixed family rule. It is incongruous, therefore, that more than twenty years after announcing that Section 214 “allow[ed] little discretion” in drafting the current rule and in the absence of any significant controversy with respect to the scope and operation of that rule, HUD now concludes that its long-standing interpretation of Section 214 was mistaken and that Section 214 allows it to do exactly what HUD claimed it could not do when it adopted the Final Rule in 1995.

In support of its proposed rule, HUD cites a handful of grounds that “prompted [it] to reconsider” its current regulations, including Executive Order 13828, which generally directs federal agencies to adopt rules that ensure that only eligible persons receive federal benefits and that “aliens

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<sup>46</sup> See *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126, 195 L. Ed. 2d 382 (2016) (holding that a Department of Labor regulation was arbitrary and capricious).

<sup>47</sup> 59 Fed. Reg. 43900, 43902 (August 25, 1994) (emphasis added).

<sup>48</sup> Restrictions on Assistance to Aliens, 60 Fed. Reg. 14816 (Mar. 20, 1995).

<sup>49</sup> Final Rule Preamble, 84 Fed. Reg. at 14820-21 (emphasis added).

who are not otherwise qualified and eligible do not receive such benefits."<sup>50</sup> In addition, HUD cites other unspecified regulatory initiatives to "reduce unnecessary burdens."<sup>51</sup> Additionally, at various points, HUD claims that its new interpretation more closely reflects the goals of Section 214. Neither references to general policy directions from the White House nor bare statements that it has changed its mind about the goals of Section 214, however, constitutes the "reasoned explanation" required to explain HUD's reversal from the positions it took more than 20 years ago.

Moreover, as the Supreme Court in *Encino* made clear, courts hold changes in regulations to higher scrutiny where stakeholders — individual persons, public agencies, and private firms alike — have relied upon long-standing statutory interpretations and regulations to order their lives and manage their business affairs. Because the proposed rule does not squarely address the impact of the rule on existing eligible residents or the impacts on housing providers and managers, discussed in more detail below, the proposed rule fails to satisfy the test of the "serious reliance interests that must be taken into account."<sup>52</sup>

#### **IV. The Proposed Rule Will Hurt U.S. Citizens and the Aging Population**

While it is clear that the proposed rule is a direct attack on immigrants and citizens in mixed status households, these families are not the only group that will be harmed if the rule is finalized. In addition to attacking mixed status families, the proposed rule creates red tape that threatens housing security for 9.5 million U.S. citizens currently receiving HUD assistance and all future U.S. citizens seeking these benefits. The rule would require that all who declare they are U.S. citizens under penalty of perjury provide evidence of their citizenship, a practice that has proven to be burdensome, costly and unnecessary to protect program integrity.<sup>53</sup> Many U.S. citizens never had a birth certificate or have lost it, and obtaining one can take months. Obtaining a passport similarly entails a long wait and is costly. Past experience with a rigid citizenship documentation requirement in the Medicaid program revealed that such policies accomplish virtually nothing while producing extraordinary collateral damage. One study found that six states spent over \$8.3 million to find 8 ineligible immigrants out of 3.6 million Medicaid enrollees for a total savings of \$11,000.<sup>54</sup> In the meantime, tens of thousands of

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<sup>50</sup> Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20,589, 20,590 (proposed May 10, 2019) (to be codified at 24 C.F.R. part 5);.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 2126.

<sup>53</sup> Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20,589, 20,592 (proposed May 10, 2019) (to be codified at 24 C.F.R. part 5); Donna Cohen Ross, *New Medicaid Citizenship Documentation Requirement is Taking a Toll: States Report Enrollment Is Down and Administrative Costs Are Up*, CPBB (Mar. 13, 2007), <https://www.cbpp.org/research/new-medicaid-citizenship-documentation-requirement-is-taking-a-toll-states-report>.

<sup>54</sup> General Accounting Office report: Medicaid: States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens GAO-07-889 June 28, 2007 at <http://www.gao.gov/new.items/d07889.pdf>.

U.S. citizens were prevented from securing critical services as a result of the rigid Medicaid citizenship documentation policy.<sup>55</sup>

Currently, to establish eligibility for access Section 214 housing assistance, U.S. citizens need to provide a declaration signed under penalty of perjury of their citizenship or nationality status. The proposed rule would require that these individuals also provide documentary proof of citizenship or nationality, such as a birth certificate, which can be extremely difficult for certain segments of the population. One survey showed that as many as seven percent of citizens did not have citizen documentation readily available.<sup>56</sup> Obtaining such documentation can be particularly difficult for U.S. citizens over the age of 50, citizens of color, citizens with disabilities, and citizens with low incomes. Older individuals face many challenges in getting this kind of documentation, including difficulties getting to government offices to replace lost records, coming up with the funds to replace these records, and some individuals may have never been issued a birth certificate in the first place.<sup>57</sup> That same survey suggests that:

- At least 12 percent of citizens earning less than \$25,000 a year do not have proof of citizenship;
- Many people who do have documentation have birth certificates or IDs that don't reflect their current name or address, such as people who changed their name;
- 18 percent of citizens over the age 65 do not have a photo ID; and
- 25 percent of African American citizens lacked a photo ID.

After Medicaid began implementing a citizenship documentation requirement, there was a sharp decline in Medicaid enrollment. Half of the 44 states responding to a Government Accountability Office survey indicated that Medicaid enrollment fell because of the citizenship documentation requirement. The GAO also found that states reported increased administrative costs and needed to spend more time providing help to applicants and beneficiaries, increasing their time spent on applications and redeterminations of eligibility.<sup>58</sup>

Furthermore, the process of obtaining a new passport or birth certificate imposes steep barriers for vulnerable populations. The application fee for a passport, which has a normal processing time of six weeks, is \$145 (\$115 if under age 16). The cost of an expedited passport, which is processed within two weeks, is an additional \$60 plus overnight delivery fees. There is an additional

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<sup>55</sup> See, e.g. Donna Cohen Ross, "New Medicaid Citizenship Documentation Requirement is Taking a Toll: States Report Enrollment Is Down and Administrative Costs Are Up (Center on Budget and Policy Priorities, May 2007) at <http://www.cbpp.org/2-2-07health.htm> and "Medicaid Documentation Requirement Disproportionately Harms Non-Hispanics, New State Data Show: New State Data Show: Rule Mostly Hurts U.S. Citizen Children, Not Undocumented Immigrants," at <http://www.cbpp.org/7-10-07health.htm>.

<sup>56</sup> Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification, Brennan Center for Justice (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>57</sup> Ina Jafe, *For Older Voters, Getting the Right ID Can Be Especially Tough*, NPR: ALL THINGS CONSIDERED (Sept. 7, 2018), <https://www.npr.org/2018/09/07/644648955/for-older-voters-getting-the-right-id-can-be-especially-tough>.

<sup>58</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, *Medicaid: States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens* (June 2007), <https://www.gao.gov/new.items/d07889.pdf>.

cost of passport photos that must be submitted with an application. For children under age 18, parents incur additional costs associated with travel to a passport-issuing office because children need to appear in person. Furthermore, if the citizen was not born in the U.S., additional documents must be submitted with the passport application. These underlying documents, such as a certificate of citizenship or naturalization certificate—can themselves be costly and time-consuming to secure.

For citizens who have lost or who never obtained these documents, there may be other means of obtaining a passport, but these require additional paperwork and costs, increasing the time and other barriers involved in securing the documents. Therefore, while obtaining a passport may appear to be the easiest and cheapest document option, it can be even more difficult and time-consuming than obtaining a certificate of naturalization or certificate of citizenship. Obtaining a copy of a birth certificate can also be difficult for the vulnerable populations served by HUD housing programs. Many U.S. citizens, particularly older African-Americans born in certain rural areas of the South, never had a birth certificate. Other U.S. citizens may have had a birth certificate at one time but lost it when moving from one home to another or as a result of fire, flood or similar event, or due to incapacity, infirmity, or poverty. The verification documentation required to obtain a replacement certificate can be quite burdensome, and obtaining a duplicate birth certificate can take months. The General Accounting Office has found that low-income families “often cannot afford to pay for original documents such as birth certificates, which can cost up to \$30 each.”<sup>59</sup>

Those people who are unable to produce the required documents, within the required time period under the proposed HUD rule will lose their housing assistance, and many will be evicted from their homes. A significant share could become homeless. The figures above suggest that hundreds of thousands of U.S. citizens could experience these harsh consequences under the proposed rule.

The proposed rule places additional documentation burdens on 120,000 noncitizen seniors as well, by requiring noncitizens 62 years old or older to provide documentation of their immigration status.<sup>60</sup> Presently, these noncitizen seniors are required to submit a signed declaration of their eligible immigration status and proof of age. Many immigrant seniors will struggle in the same way as citizen seniors to produce this documentation. HUD has not accounted for these concerns in the proposed rule, and should address these issues before finalizing the rule.

The proposed documentation requirements will be particularly burdensome for recipients of rental assistance who were formerly homeless, as well as for people experiencing homelessness who could be assisted by Section 214 programs in the future. People experiencing homelessness often lose important documents such as photo identification, birth certificates, and social security cards because they have no safe places to store them.<sup>61</sup> Adding more documentation requirements creates additional barriers to house those who need it most, and could cause many people who have gained stability

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<sup>59</sup> “States Reported that Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens,” General Accounting Office, June 2007.

<sup>60</sup> Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20,589, 20,592 (proposed May 10, 2019) (to be codified at 24 C.F.R. part 5).

<sup>61</sup> NAT’L L. CTR. ON HOMELESSNESS & POVERTY, PHOTO IDENTIFICATION BARRIERS FACED BY HOMELESS PERSONS: THE IMPACT OF SEPTEMBER 11 (Apr. 2004), [https://nlchp.org/wp-content/uploads/2018/10/ID\\_Barriers.pdf](https://nlchp.org/wp-content/uploads/2018/10/ID_Barriers.pdf).

through rental assistance to return to homelessness. HUD has failed to take into account the added costs and burdens of these new documentation requirements and should complete an analysis of these costs before finalizing the proposed rule.

## V. The Proposed Rule Will Reduce the Quality and Quantity of Federally Assisted Units

The proposed rule will reduce the number of families that receive federally subsidized assistance.

Secretary Carson stated that HUD has promulgated the proposed rule in an effort to address the waitlist crisis for subsidized housing faced by most Public Housing Authorities nationwide.<sup>62</sup> While it is true that there is a public housing and Section 8 waitlist crisis—there are currently 3 million individuals on voucher waitlists around the country, with an additional 6 million that would like to be on these waitlists<sup>63</sup>—the proposed rule would not alleviate and would, instead, worsen this crisis. By HUD’s own assessment, the proposed rule will likely lead to a *decrease* in the number of assisted families. According to HUD, if the agency were to replace the 25,000 mixed status families currently receiving HUD assistance with households comprised of members who are all eligible, this transition would cost HUD from \$372 million to \$437 million annually.<sup>64</sup>

To pay for these new costs of the proposed rule,<sup>65</sup> HUD has surmised that

the likeliest scenario, would be that **HUD would have to reduce the quantity and quality of assisted housing in response to higher costs.** In this case, the transfer would be from assisted households who experience a decline in assistance (in whole or in part) to the replacement households. With part of the budget being redirected to cover the increase in subsidy, there could be fewer households served under the housing choice vouchers program...<sup>66</sup>

HUD’s own economic analysis shows that the proposed rule will not only fail to achieve its stated goals of addressing the subsidized housing waitlist crisis, but will in fact exacerbate this very issue. The Regulatory Impact Analysis released by HUD makes it clear that the proposed rule will not further HUD’s mission to “create strong, sustainable, inclusive communities and quality affordable

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<sup>62</sup> Tracy Jan, *Trump Proposal Would Evict Undocumented Immigrants From Public Housing*, WASH. POST (Apr. 18, 2019), [https://www.washingtonpost.com/business/2019/04/18/trump-proposal-would-evict-undocumented-immigrants-public-housing/?utm\\_term=.f68fec836d53](https://www.washingtonpost.com/business/2019/04/18/trump-proposal-would-evict-undocumented-immigrants-public-housing/?utm_term=.f68fec836d53).

<sup>63</sup> See Alicia Mazzara, CBPP, *Housing Vouchers Work: Huge Demand, Insufficient Funding for Housing Vouchers Means Long Waits* (Apr. 19, 2017), <https://www.cbpp.org/blog/housing-vouchers-work-huge-demand-insufficient-funding-for-housing-vouchers-means-long-waits>.

<sup>64</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 11 (Apr. 15, 2019).

<sup>65</sup> Brakhton Booker, *White House Budget Calls for Deep Cuts to HUD*, NPR (Feb. 13, 2018), <https://www.npr.org/2018/02/13/585255697/white-house-budget-calls-for-deep-cuts-to-hud>.

<sup>66</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 3 (Apr. 15, 2019) (emphasis added).

homes for all.”<sup>67</sup> In fact, the proposed rule will do the exact opposite, reducing the quantity of affordable homes on the market.

The proposed rule would lead to a reduction in the quality of federally assisted housing provided by HUD.

It is no secret that public housing conditions are substandard in many parts of this country.<sup>68</sup> Some tenants are living in units that are riddled with mold, rodents, and are in a general state of disrepair as a result of decades of underfunding. Experts estimate that there is currently a \$50 billion backlog of desperately needed repairs, and making matters worse, the Trump administration has proposed to eliminate the federal fund used to make (already insufficient) repairs.<sup>69</sup>

Given this current state of affairs, HUD should focus on using its limited funds to address the housing quality conditions faced by so many of its residents. Instead, HUD has taken the opposite approach. In the Regulatory Impact Analysis issued by HUD, the agency acknowledged that the proposed rule could create about \$200 million in new costs and hurt public housing by reducing the “maintenance of the units and possibly [leading to] deterioration of the units that could lead to vacancy.”<sup>70</sup> In light of the negative consequences of the proposed rule, it is hard to see what legitimate purpose the proposed rule serves. We urge HUD to address this critical issue before it publishes the final rule.

## **VI. The Proposed Rule Will Hurt the U.S. Economy and is in Conflict with U.S. Policy Priorities on Preventing and Responding to Homelessness.**

America’s economy depends on immigrants.

Immigrants are a critical factor in keeping the United States’ economy healthy and growing. Currently, there are more than 27 million foreign-born workers in the U.S. labor market, accounting for about 17% of the total U.S. workforce.<sup>71</sup> Immigrants are more concentrated in labor markets that literally feed and house America—immigrants make up 28% of construction trade workers and upwards of 70% of agricultural workers. In-depth statistical analysis shows that low-income immigrants

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<sup>67</sup> HUD, ABOUT HUD, MISSION (last visited May 20, 2019), <https://www.hud.gov/about/mission>.

<sup>68</sup> Luis Ferre-Sadurni, *New York City’s Public Housing Is in Crisis. Will Washington Take Control?*, N.Y. TIMES (Dec. 25, 2018), <https://www.nytimes.com/2018/12/25/nyregion/nycha-hud-deblasio-carson.html>; Jill Ripenhoff & Lee Zurik, *Failure to Fix: Mold.Mice. Messes.*, INVESTIGATE TV (2018), <http://www.investigatetv.com/failure-to-fix-mold-mice-messes/>; Holbrook Mohr & Jeff Donn, *Health and Safety Conditions Worsen in U.S. Subsidized Housing*, SEATTLE TIMES (Apr. 9, 2019), <https://www.seattletimes.com/business/inspections-show-deterioration-of-us-funded-housing-for-poor/>.

<sup>69</sup> Pam Fessler, *Trump Administration Wants to Cut Funding for Public Housing Repairs*, NPR (May 16, 2019), <https://www.npr.org/2019/05/16/723231160/trump-administration-wants-to-cut-funding-for-public-housing-repairs>.

<sup>70</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 3 (Apr. 15, 2019).

<sup>71</sup> U.S. DEPT. LABOR, BUREAU OF LABOR STATISTICS, USDL-18-0786, FOREIGN-BORN WORKERS: LABOR FORCE CHARACTERISTICS—2017 (2018), <https://www.bls.gov/news.release/pdf/forbrn.pdf>.



and their families make important contributions to the U.S. economy, and that overall, immigration into the United States is a long-term fiscal net positive.<sup>72</sup> The proposed rule will cut into these economic gains by increasing housing instability. Essential immigrant workers, particularly those in areas with high rents, rely on stable housing in order to maintain their employment, contribute to local economies, and help their communities thrive. The proposed rule does not adequately consider these issues, and HUD should study the extended impact the rule will have on the U.S. economy before publishing its final rule.

The proposed rule runs counter to U.S. policy priorities on preventing and responding to homelessness and poverty.

The proposed rule is in direct conflict with federal policy priorities of ending homelessness and federal mandates for states to provide certain assistance and programs to everyone. For example, the U.S. Interagency Council on Homelessness (USICH) has prioritized ending and preventing homelessness among families with children, regardless of immigration status.<sup>73</sup> USICH’s mission is to affirmatively remove barriers to housing access, all while acknowledging that “communities that are diverse—in their demographics, in their needs, in their geographic characteristics, in their progress to date, in their resources, in their infrastructure, in their housing markets, and in many other ways.”<sup>74</sup> The proposed rule directly contradicts this policy goal by erecting additional barriers to housing access. Furthermore, the rule is in conflict with the National Affordable Housing Act’s edict to ensure that “every American family be able to afford a decent home in a suitable environment.”<sup>75</sup>

Although HUD acknowledges the potential costs of homelessness in their Regulatory Impact Analysis, noting that temporary and long-term homelessness is likely for many families because of the proposed rule, it has not provided a detailed analysis of this economic impact.<sup>76</sup> To fully understand the fiscal consequences of this rule, HUD should complete an in-depth study on these issues before finalizing the proposed rule.

The proposed rule poses a danger to public health, and will lead to increased medical costs hurting the U.S. economy as a whole.

Access to stable and affordable housing is a basic platform for family and community health, well-being and dignity, and our communities thrive when everyone has access to a high quality home. Immigrants and their families are vital to parts of the country’s social and economic fabric, and we should be building a housing system that creates the conditions for all of us to flourish. Instead, this

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<sup>72</sup> See PANEL ON ECON. & FISCAL CONSEQUENCES OF IMMIGRATION, THE ECONOMIC AND FISCAL CONSEQUENCES OF IMMIGRATION (Francine D. Blau & Christopher Mackie, eds., 2017), <https://www.nap.edu/catalog/23550/the-economic-and-fiscal-consequences-of-immigration>.

<sup>73</sup> U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, SUMMARY OF ESSENTIAL ELEMENTS OF THE PLAN 2 (July 2018), [https://www.usich.gov/resources/uploads/asset\\_library/Summary\\_of\\_Essential\\_Elements\\_of\\_the\\_Plan.pdf](https://www.usich.gov/resources/uploads/asset_library/Summary_of_Essential_Elements_of_the_Plan.pdf); U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, HOME, TOGETHER: THE FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS 6 (2018), [https://www.usich.gov/resources/uploads/asset\\_library/Home-Together-Federal-Strategic-Plan-to-Prevent-and-End-Homelessness.pdf](https://www.usich.gov/resources/uploads/asset_library/Home-Together-Federal-Strategic-Plan-to-Prevent-and-End-Homelessness.pdf).

<sup>74</sup> U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, SUMMARY OF ESSENTIAL ELEMENTS OF THE PLAN 2 (July 2018).

<sup>75</sup> 42 U.S.C.A. § 12701 (West 2019).

<sup>76</sup> *Id.* at 15-16.

proposed rule would harm the health of immigrant families and of our communities as a whole, threatening people with evictions and homelessness and breaking families apart. Public housing provides one crucial source of affordable homes to over 2 million low-income people in America,<sup>77</sup> and the evidence is clear that affordable housing supports health.<sup>78</sup> When families have to put too much of their income towards their rent, they can't afford to pay for other basic needs like food and health care, which is why problems like food insecurity increase along with housing costs,<sup>79</sup> and many renters delay needed medical care because they can't afford it.<sup>80</sup>

Thousands of immigrant families will be evicted from federally subsidized housing under this proposal and that will have severe consequences for their health. People who are evicted from their homes, or even threatened with eviction, are more likely to experience health problems like depression, anxiety, and high blood pressure than people with stable housing.<sup>81</sup> They are also more likely to become homeless, contend with long-term housing instability, and visit an emergency room.<sup>82</sup> Eviction and other forms of housing instability, such as having to move frequently, are particularly harmful for children including the many children living in mixed status families. Unstable housing means that kids are more likely to have behavioral problems and to struggle in school,<sup>83</sup> and in classrooms where the student population changes quickly and frequently, all students can fall behind.<sup>84</sup> Education itself is linked to positive health outcomes and longer lives;<sup>85</sup> thus, creating housing instability in children's lives can have immediate and negative health impacts, but can also lead to poorer health across the life course by disrupting their education.

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<sup>77</sup> CENTER ON BUDGET & POLICY PRIORITIES, *Policy Basics: Public Housing* (Nov. 15, 2017), <https://www.cbpp.org/research/policy-basics-public-housing>.

<sup>78</sup> Nabihah Maqbool, Janet Viveiros, & Mindy Ault, CENTER FOR HOUSING POLICY, *The Impacts of Affordable Housing on Health: A Research Summary* (Apr. 2015), <https://www.rupco.org/wp-content/uploads/pdfs/The-Impacts-of-Affordable-Housing-on-Health-CenterforHousingPolicy-Maqbool.etal.pdf>.

<sup>79</sup> Jason M. Fletcher, Tatiana Andreyeva, & Susan H. Busch, *Assessing the Effect of Increasing Housing Costs on Food Insecurity* (Nov. 12, 2009), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1503043](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1503043).

<sup>80</sup> ENTERPRISE, *Renters Report Housing Costs Significantly Impact Their Health Care* (Apr. 3, 2019), [https://www.enterprisecommunity.org/news-and-events/news-releases/2019-04\\_renters-report-housing-costs-significantly-impact-their-health-care](https://www.enterprisecommunity.org/news-and-events/news-releases/2019-04_renters-report-housing-costs-significantly-impact-their-health-care).

<sup>81</sup> Alison Bovell & Megan Sandel, *The Hidden Health Crisis of Eviction*, CHILDREN'S HEALTH WATCH BLOG (Oct. 5, 2018), <http://childrenshealthwatch.org/the-hidden-health-crisis-of-eviction/>.

<sup>82</sup> Robert Collinson & Davin Reed, *The Effects of Evictions on Low-Income Households*, NYU LAW (Dec. 2018), [https://www.law.nyu.edu/sites/default/files/upload\\_documents/evictions\\_collinson\\_reed.pdf](https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf).

<sup>83</sup> *Housing Instability is Linked to Adverse Childhood Behavior*, HOW HOUSING MATTERS (May 9, 2019), <https://howhousingmatters.org/articles/housing-instability-linked-adverse-childhood-behavior/>.

<sup>84</sup> Mary Cunningham & Graham MacDonald, *Housing as a Platform for Improving Education Outcomes among Low-Income Children*, URBAN INSTITUTE (May 2012), [https://www.researchgate.net/profile/Heather\\_Schwartz/publication/267687704\\_Housing\\_as\\_a\\_Platform\\_for\\_Improving\\_Education\\_Outcomes\\_among\\_Low-Income\\_Children/links/546621100cf25b85d17f58d7/Housing-as-a-Platform-for-Improving-Education-Outcomes-among-Low-Income-Children.pdf](https://www.researchgate.net/profile/Heather_Schwartz/publication/267687704_Housing_as_a_Platform_for_Improving_Education_Outcomes_among_Low-Income_Children/links/546621100cf25b85d17f58d7/Housing-as-a-Platform-for-Improving-Education-Outcomes-among-Low-Income-Children.pdf).

<sup>85</sup> S. Egerter, P. Braveman, T. Sadegh-Nobari, R. Grossman-Kahn, and M. Dekker, *An Examination of the Many Ways in Which Education can Influence Health, Including How Educational Attainment Affects Health Across Generations and the Social and Economic Advantages it Represents*, ROBERT WOOD JOHNSON FOUNDATION (Apr. 1, 2011), <https://www.rwjf.org/en/library/research/2011/05/education-matters-for-health.html>.

This rule change would leave families with the terrible choice of either losing their housing or splitting up their family members. HUD’s own regulatory impact analysis calls the potential breakup of family members “ruthless.”<sup>86</sup> Rather than continuing to target and scapegoat immigrant families, we should support public health and strengthen our communities by working to expand housing subsidies and supports for all low-income families.

## **VII. The Proposed Rule Will Disproportionately Hurt Already Vulnerable and Disadvantaged Populations**

### Aging Population

Federal housing assistance programs provide vital support to 1.9 million older adults who would otherwise be unable to afford the cost of shelter.<sup>87</sup> Seniors with fixed incomes are especially at risk of serious harm if they live in mixed status families and lose rental assistance due to the rule because they have such limited resources to spend on other basic needs, including food, medicine, transportation, and clothing.<sup>88</sup> The proposed rule would also make it impossible for many intergenerational families to live together and share resources that enable them to succeed. It ignores the critical roles many grandparents play in caring for their grandchildren and other family members, as well as the role adult children play in caring for their aging parents and relatives.

Furthermore, the proposed rule adds new documentation requirements that will be particularly burdensome on older adults.<sup>89</sup> The proposed rule will require all U.S. citizens to provide proof of citizenship, and will also require noncitizens 62 years old or over to provide additional documentation of their immigration status. Older individuals face many challenges in getting this kind of documentation, including difficulties getting to government offices to replace lost records, coming up with the funds to replace these records, and some individuals may have never been issued the documents in the first place.<sup>90</sup>

### Children

The proposed rule threatens the health of children, and will effectively evict over 55,000 children who are eligible for the covered housing programs. The changes proposed are specifically

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<sup>86</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 16 (Apr. 15, 2019) (emphasis added).

<sup>87</sup> <https://apps.cbpp.org/4-3-19hous/PDF/4-3-19hous-factsheet-us.pdf>

<sup>88</sup> See Justice in Aging, *Supporting Older Americans’ Basic Needs: Health Care, Income, Housing and Food* (Apr. 2018), available at [www.justiceinaging.org/wp-content/uploads/2018/04/Supporting-OlderAmericans%E2%80%99-Basic-Needs\\_Health-Care-Income-Housing-and-Food.pdf](http://www.justiceinaging.org/wp-content/uploads/2018/04/Supporting-OlderAmericans%E2%80%99-Basic-Needs_Health-Care-Income-Housing-and-Food.pdf)

<sup>89</sup> Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20,589, 20,592 (proposed May 10, 2019) (to be codified at 24 C.F.R. part 5).

<sup>90</sup> Ina Jafe, *For Older Voters, Getting the Right ID Can Be Especially Tough*, NPR: ALL THINGS CONSIDERED (Sept. 7, 2018), <https://www.npr.org/2018/09/07/644648955/for-older-voters-getting-the-right-id-can-be-especially-tough>.

designed to force families to make choices that will harm their children’s health. Mixed status families will have to make the excruciating decision to either face eviction or separate as a family in order to retain housing stability. Both options will have lasting impacts on child and family health. Research shows that families who are evicted are more likely to experience homelessness, move into substandard or overcrowded housing, and have a sequence of adverse physical and mental health outcomes.<sup>91</sup> The alternative, family separation, is a stressful and traumatizing experience for children, which can alter the architecture of a child’s developing brain and have lifelong consequences.<sup>92</sup>

Additionally, according to a recent study by the Center for Migration Studies (CMS), the rule could result in 11.5 million individuals losing their eligibility for housing assistance, including 3.1 million children who are U.S. citizens or legal immigrants and are in mixed status families.<sup>93</sup> The report asserts that preventing these children from receiving housing assistance could have severe consequences for their development and exacerbate the inequities that they already face.<sup>94</sup>

Approximately 18 million children in the U.S. live in a family with at least one immigrant parent.<sup>95</sup> An estimated 5 million children (of whom more than 80 percent are U.S. citizens) live in homes with at least one undocumented parent.<sup>96</sup> While the majority of children in these households are citizens, the fact that they have at least one member of their household who has limited or no eligibility for public assistance based on their immigration status means that children in immigrant families have higher rates of poverty than children in families with no immigrant members.<sup>97</sup>

Access to housing assistance already remains limited for families—only one in four families who are eligible for rental assistance in the U.S. receive it. Nearly 40% of the households currently receiving rental assistance include children.<sup>98</sup> Research shows that rental assistance for households with children results in significant positive effects for future outcomes and family economic security. Housing assistance lifts about a million children out of poverty each year,<sup>99</sup> and can improve a child’s chances

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<sup>91</sup> Bovell-Ammon A & Sandel M., *The Hidden Health Crisis of Eviction*, BOS. U. SCH. OF PUB. HEALTH (2018), <http://www.bu.edu/sph/2018/10/05/the-hidden-health-crisis-of-eviction/>; Desmond M. & Tolbert Kimbro R., *Evictions Fallout: Housing, Hardship, and Health*, 94 SOCIAL FORCES 295 (2015).

<sup>92</sup> Simha S., *The Impact of Family Separation on Immigrant and Refugee Families*, 80 N C MED J. 95, 96 (2019).

<sup>93</sup> Mike Nicholson, Center for Migration Studies, *Proposed HUD Rule Would Bar Vulnerable Children from Subsidized Housing*, <https://cmsny.org/nicholson-62619/>.

<sup>94</sup> *Id.*

<sup>95</sup> *Databank Indicator: Immigrant Children*, CHILD TRENDS (Oct. 2014), [www.childtrends.org/?indicators=immigrant-children](http://www.childtrends.org/?indicators=immigrant-children).

<sup>96</sup> Randy Capps, Michael Fix, and Jie Zong, *A profile of U.S. Children with Unauthorized Immigrant Parents* (Washington, DC: Migration Policy Institute, 2016), [www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents](http://www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents).

<sup>97</sup> *Id.*

<sup>98</sup> “National and State Housing Fact Sheets & Data.” Center on Budget and Policy Priorities, August 2017, <https://www.cbpp.org/research/housing/national-and-state-housing-fact-sheets-data>.

<sup>99</sup> Liana Fox, “The Supplemental Poverty Measure: 2017,” September 2018, <https://www.census.gov/library/publications/2018/demo/p60-265.html>.

for long-term economic mobility—one study finds that children in households receiving Housing Choice vouchers have higher adult earnings and a lower chance of incarceration.<sup>100</sup>

Housing assistance also improves child health—children of families receiving housing assistance had a 35 percent higher chance of being labeled a “well child,” a 28 percent lower risk of being seriously underweight and a 19 percent lower risk of food insecurity.<sup>101</sup> Access to affordable housing provides stability for families and frees up income for other necessities. Low-income households that include children and pay more than half of their monthly income on rent spend considerably less on other basic necessities—they spend \$200 less per month on food, nearly \$100 less on transportation, and about \$80 less on healthcare.<sup>102</sup> On the same theme, high rents are correlated with children’s food insecurity, malnutrition, missed preventative care, low school engagement, and poorer mental health.<sup>103</sup>

This rule would add insult to injury by further limiting access to housing assistance for families with children. HUD estimates that 55,000 children will be displaced and at-risk of homelessness as a result of implementation of this rule. Child and youth homelessness continues to skyrocket in the United States – the U.S. Department of Education identified 1.3 million homeless children in the 2016-2017, which is a 70 percent increase since the 2007-2008 school year.<sup>104</sup>

The proposed rule will only serve to further increase child homelessness, with detrimental effects to child well-being and our economy. Homelessness, even for a brief time, is extremely detrimental to a child’s healthy development. The younger and longer a child experiences homelessness, the greater the cumulative toll of negative health outcomes.<sup>105</sup> Homelessness is also associated with an 87 percent greater likelihood of a child or youth dropping out of school.<sup>106</sup>

A recent landmark study from the National Academy of Sciences finds that child poverty and homelessness costs our society over \$1 trillion each year.<sup>107</sup> This same study finds that making housing

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<sup>100</sup> Andersson, Fredrik and Haltiwanger, John C, et. al. “Childhood Housing and Adult Earnings: A Between-Siblings Analysis of Housing Vouchers and Public Housing.” National Bureau of Economic Research, Working Paper No. 22721, September 2018, <http://www.nber.org/papers/w22721>.

<sup>101</sup> Elizabeth March, “Rx for Hunger: Affordable Housing,” *Children’s Health-Watch; Medical-Legal Partnership*, December 2009, [http://www.vtaffordablehousing.org/documents/resources/435\\_RxforhungerNEW12\\_09.pdf](http://www.vtaffordablehousing.org/documents/resources/435_RxforhungerNEW12_09.pdf).

<sup>102</sup> “The State of the Nation’s Housing 2018”, Joint Center for Housing Studies of Harvard University, tabulations of US Bureau of Labor Statistics, 2016 Consumer Expenditure Survey, 2018, [http://www.jchs.harvard.edu/sites/default/files/Harvard\\_JCHS\\_State\\_of\\_the\\_Nations\\_Housing\\_2018.pdf](http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf)

<sup>103</sup> Mike Nicholson, Center for Migration Studies, *Proposed HUD Rule Would Bar Vulnerable Children from Subsidized Housing*, <https://cmsny.org/nicholson-62619/>.

<sup>104</sup> “Federal Data Summary School Years 2014-2015 to 2016-2017, National Center for Homeless Education, 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>.

<sup>105</sup> Megan Sandel, Richard Sheward, and Lisa Sturtevant, *Compounding Stress: The Timing and Duration Effects of Homelessness on Children’s Health*, Insights from Housing Policy Research (Washington, DC: Center for Housing Policy; Boston: Children’s HealthWatch, 2015), <https://www.issuelab.org/resources/21731/21731.pdf>.

<sup>106</sup> Erin S. Ingram, John M. Bridgeland, Bruce Reed, and Matthew Atwell, *Hidden in Plain Sight: Homeless Students in America’s Public Schools* (Washington, DC: Civic Enterprises and Hart Research Associates, 2016), <http://www.americaspromise.org/report/hidden-plainsight>.

<sup>107</sup> National Academies of Sciences, Engineering, and Medicine 2019. *A Roadmap to Reducing Child Poverty*, The National Academies Press, 2019, <https://doi.org/10.17226/25246>.

vouchers available for 70 percent of the families who are currently eligible would reduce child poverty by 3 percentage points.

This rule takes the opposite approach by taking away housing assistance from thousands of children and families, ignoring research from leading experts regarding what is best for the well-being of the nation's children and families. Evicting families or forcing them to separate will not only harm children's health today, but well into the future. We need policies that expand, not reduce, access to stable homes for families with children in order to ensure all children have opportunities to be healthy and reach their highest potential.

## Communities of Color

### ***Asian American Pacific Islanders***

The Asian American Pacific Islander (AAPI) community is the fastest growing racial group in the United States. Further, AAPIs are one of the fastest growing populations in poverty with more than half of all poor AAPIs living in only 10 Metropolitan Statistical Areas (MSAs)<sup>108</sup>, the majority of which are concentrated in the most expensive housing markets. Analysis of US Census 2016 ACS data shows that the majority of all AAPIs in poverty live in zip codes with housing costs above the national median. This is true for both for rental housing (64% of AAPIs in poverty live in zip codes where the median rent for rental housing in the zip code is higher than the US national median rent), and for homeownership (65% of AAPIs in poverty live in zip codes where the median home value is more expensive than the US national median home value).<sup>109</sup> In short, poor AAPIs are already at significant risk of displacement and housing instability, especially recently emigrated AAPIs who have limited proficiency with English. In fact, poor AAPIs are at twice the risk of displacement relative to the general US population in poverty.<sup>110</sup> Further compounding this issue is the fact that many AAPI families live in multigenerational households that include a mix of immigrants and US citizens.

The impact of HUD's proposed rule, if implemented, would be devastating. The presence of a single ineligible member of a household could lead to disqualification of the entire household, including citizens, children, and the elderly who are eligible for public housing and Section 8 programs. In 2018, over a quarter of a million AAPIs received HUD subsidized housing assistance.<sup>111</sup> Further, nearly 10% of AAPI households live in multi-generational homes,<sup>112</sup> a figure that is likely much lower than the actual proportion reported anecdotally from the field, which is closer to 20%.

### ***Latinos***

According to a recent report released by the Center on Budget and Policy Priorities, of the 100,000 people in the 25,000 mixed status families that would be directly impacted by the rule, nine-

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<sup>108</sup> US Census, 1-Year American Community Survey, 2011-2017.

<sup>109</sup> US Census, 5-Year American Community Survey, 2016.

<sup>110</sup> National CAPACD analysis of US Census data (5-Year ACS, 2016).

<sup>111</sup> US Department of Housing and Urban Development, *Picture of Subsidized Households*, 2018.

<sup>112</sup> US Census, 2010 Decennial Census, SF2.



five percent (95%) are people of color, including 85% who are Latino.<sup>113</sup> Therefore, the proposal will harm thousands of Latinos across the country. Today, the U.S. Latino population stands at more than 55 million, comprising 18 percent of the total U.S. population, and approximately one in five Latinos are non-citizens.<sup>114</sup> By 2050, it is projected that nearly one-third of the U.S. workforce will be Latino.<sup>115</sup> Latino children account for a quarter of all U.S. children and the majority (52 percent) have at least one immigrant parent.<sup>116</sup> Latinos continue to face prejudice and discrimination throughout the United States, and many continue to struggle to meet basic needs, including finding a home they can afford. This is not surprising, as there is not a single part of the country where a minimum wage worker working full-time year-round can afford a two-bedroom rental home — nationally, on average, a worker would need to earn at least \$22.96 an hour to afford a two-bedroom apartment.<sup>117</sup> In 2017, 4.4 million (55 percent) Latinos who rented their home were cost-burdened – meaning they devoted 30 percent or more of their income towards rent.<sup>118</sup>

However, access to federal housing assistance has allowed hundreds of thousands of Latinos to lift themselves out of poverty. According to an analysis conducted by UnidosUS, federal housing assistance – including public and other subsidized housing – lifted approximately 800,000 Latinos out of poverty in 2017, including more than 280,000 Latino children.<sup>119</sup> While research suggests that Latinos remain underrepresented in these programs,<sup>120</sup> the proposed rule would deter many eligible Latinos participating in public or subsidized housing programs, and increase housing insecurity for Latino families. As HUD acknowledges, families that lose housing assistance are at risk of homelessness, with serious consequences for family well-being and child development. When families have access to housing assistance, they have more resources to cover the cost of nutritious foods, health care, and other necessities.<sup>121</sup> Where families live is also directly tied to where they work. If parents lose access to affordable housing, they may also be at risk of losing their jobs.

For progress to continue in the Latino community and our nation, immigrants should have an opportunity to support the resilience and upward mobility of their families. The proposed changes by

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<sup>113</sup> Alicia Mazzara, Center on Budget and Policy Priorities, *Demographic Data Highlight Potential Harm of New Trump Proposal to Restrict Housing Assistance* (July 1, 2019), <https://www.cbpp.org/research/housing/demographic-data-highlight-potential-harm-of-new-trump-proposal-to-restrict-housing>.

<sup>114</sup> U.S. Census Bureau, American FactFinder: Selected Population Profile in the United States: 2017 American Community Survey 1-Year Estimates.

<sup>115</sup> J. S. Passel & D. Cohn, “U.S. Population Projections: 2005-2050,” Pew Research Center (February 2008) <https://www.pewhispanic.org/2008/02/11/us-population-projections-2005-2050/>.

<sup>116</sup> Richard Fry and Jeffrey S. Passel “Latino Children: A Majority Are U.S.-Born Offspring of Immigrants” (Washington, DC: Pew Research Center, 2009) <https://www.pewhispanic.org/2009/05/28/latino-children-a-majority-are-us-born-offspring-of-immigrants/>.

<sup>117</sup> National Low Income Housing Coalition “Out of Reach the High Cost of Housing” (Washington, DC: NLIHC, 2019) [https://reports.nlihc.org/sites/default/files/or/OOR\\_2019.pdf](https://reports.nlihc.org/sites/default/files/or/OOR_2019.pdf).

<sup>118</sup> UnidosUS “Latinos and the Great Recession: 10 Years of Economic Loss and Recovery” (Washington, DC: UnidosUS, March 2019) <http://publications.unidosus.org/handle/123456789/1932>.

<sup>119</sup> UnidosUS, “Federal Programs Lift Millions of Latinos Out of Poverty” (Washington, DC: UnidosUS, October 2018) <http://publications.unidosus.org/handle/123456789/1894>.

<sup>120</sup> UnidosUS “Latinos and the Great Recession: 10 Years of Economic Loss and Recovery” (Washington, DC: UnidosUS, March 2019) <http://publications.unidosus.org/handle/123456789/1932>.

<sup>121</sup> Nabihah Maqbool, Janet Viveiros, and Mindy Ault, *The Impacts of Affordable Housing on Health: A Research Summary*, Center for Housing Policy, 2015, [http://www.housingpartners.com/assets/creating\\_change/http\\_app.brnto.pdf](http://www.housingpartners.com/assets/creating_change/http_app.brnto.pdf).

HUD fail in this respect as Latino families of mixed immigration status would be forced to break up to receive housing assistance, to forego the assistance altogether, or face termination from the programs.

### ***Individuals with Disabilities***

The lack of accessible, affordable housing is a continuing and significant barrier to integrated community living, making it difficult for people with disabilities to move from segregated facilities into the community, and putting many people with disabilities at risk of unnecessary institutionalization or homelessness. People with disabilities comprise a large percentage of the individuals served by HUD programs, including programs covered under the proposed rule. For example, about 1 in 3 households using Section 8 vouchers are headed by a non-elderly person with a disability and about 1 in 5 households living in public housing are headed by a non-elderly person with a disability. People with disabilities often have few financial resources and remain among the country's poorest.<sup>122</sup> At the same time, people with disabilities all too often face discrimination when seeking housing.<sup>123</sup> Termination of assistance under the proposed rule could put people with few options at risk, with tremendous cost to their health, earning potential and well-being.

In addition to people with disabilities living in mixed status families that will lose rental assistance, many people with disabilities will be at risk of losing assistance because of the proposed documentation requirements for seniors and citizens. People with disabilities often have additional barriers to accessing proof of citizenship and identity. For example, some people with disabilities do not drive and are less likely to have state-issued identification. In 2012, 7.5 percent of people with disabilities lacked a valid ID compared to less than 5 percent of people without disabilities.<sup>124</sup>

### ***Survivors of Gender Based Violence***

Certain immigrant survivors of gender-based violence such as human trafficking, sexual assault, and domestic violence will be severely and disproportionately harmed by HUD's proposed rule. Traumatized and vulnerable, survivors are also often indigent and face numerous challenges to their basic well-being. As a result, ready access to safe, affordable housing is critical to their ability to flee abusive homes. For some, their survival hangs in the balance.

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<sup>122</sup> See, e.g., L. Kraus et al., "2018 Disability Statistics Annual Report," 9 (2019).

at [https://disabilitycompendium.org/sites/default/files/user-uploads/Annual\\_Report\\_2018\\_Accessible\\_AdobeReaderFriendly.pdf](https://disabilitycompendium.org/sites/default/files/user-uploads/Annual_Report_2018_Accessible_AdobeReaderFriendly.pdf) ("In 2017, the poverty rate of individuals with disabilities (ages 18-64) was 29.6 percent. In contrast, in 2017 the poverty rate of individuals without disabilities was estimated at 13.2 percent.").

<sup>123</sup> See, e.g., National Fair Housing Alliance, "Making Every Neighborhood A Place of Opportunity: 2018 Fair Housing Trends Report," 52 (2018) at [https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report\\_4-30-18.pdf](https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report_4-30-18.pdf) ("As has been the case in past years, the majority of complaints from 2017 involved housing discrimination against people with disabilities.").

<sup>124</sup> s.e. smith & Rebecca Cokley, *Reforming Elections Without Excluding Disabled Voters*, CTR. FOR AM. PROGRESS (Mar. 29, 2019), <https://www.americanprogress.org/issues/disability/news/2019/03/28/468019/reforming-elections-without-excluding-disabled-voters/>.

If the proposed rule goes into effect, ineligible survivors and their eligible children who are trying to escape violent homes will be trapped in a false “choice”—homelessness or remaining with an abuser. Those already living in subsidized housing who are evicted and forced to return to a violent home will face an even greater risk to their safety. It is commonly known that the danger to a victim actually increases once she escapes, with one estimate noting a 75% increase in violence for at least two years following an escape.<sup>125</sup>

Financial security and affordable housing in particular is critical to increasing survivors’ chances of escape, recovery, and prevention of future abuse.<sup>126</sup> Strikingly, domestic violence, including sexual abuse, is reported as the acute cause of homelessness among 22% to 57% of all homeless women.<sup>127</sup> According to the Centers for Disease Control and Prevention, over half of all female lifetime victims of intimate partner abuse—including rape, other physical violence, and stalking—did not receive housing services after requesting them.<sup>128</sup> The National Alliance to End Sexual Violence reports that 65% of victims’ average daily unmet requests for help from domestic violence programs nationwide are for housing related services.<sup>129</sup> Survivors of sexual assault note that if they do not have housing, then other auxiliary services are only minimally helpful.<sup>130</sup> Housing can be determinative as to whether a survivor can escape an abusive partner.<sup>131</sup>

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<sup>125</sup> “Barriers to Leaving an Abusive Relationship,” Center for Relationship Abuse Awareness, <http://stoprelationshipabuse.org/educated/barriers-to-leaving-an-abusive-relationship/>. See also, Liam Kelly, “Domestic abuse: ‘You’re most at risk of being killed when you try to leave,’” *The Guardian* (Dec. 10, 2014), <https://www.theguardian.com/society-professionals/2014/dec/10/domestic-abuse-risk-trying-leave-housing-community>; <https://www.clarionledger.com/story/news/2017/01/28/most-dangerous-time-for-battered-women-is-when-they-leave-jerry-mitchell/96955552/>, citing multiple sources.

<sup>126</sup> “Preventing Intimate Partner Violence Across the Lifespan: A technical Package of Programs, Policies, and Practices,” National Center for Injury Prevention and Control, (2017) <https://www.cdc.gov/violenceprevention/pdf/ipv-technicalpackages.pdf>. See also Breiding, M.J., Chen J., & Black, M.C. (2014). *Intimate Partner Violence in the United States — 2010*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

<sup>127</sup> Wilder Research Center, *Homelessness in Minnesota, 2003 (2004)*; Center for Impact Research, *Pathways to and from Homelessness: Women and Children in Chicago Shelters (2004)*; Nat’l Center on Family Homelessness & Health Care for the Homeless Clinicians’ Network, *Social Supports for Homeless Mothers (2003)*; Institute for Children & Poverty, *The Hidden Migration: Why New York City Shelters Are Overflowing with Families (2004)*; *Homes for the Homeless & Institute for Children & Poverty, Ten Cities 1997-1998: A Snapshot of Family Homelessness Across America (1998)*; See also [http://www.nsvrc.org/sites/default/files/NSVRC\\_Publications\\_Reports\\_Housing-and-sexual-violence-overviewof-national-survey.pdf](http://www.nsvrc.org/sites/default/files/NSVRC_Publications_Reports_Housing-and-sexual-violence-overviewof-national-survey.pdf)

<sup>128</sup> “Preventing Intimate Partner Violence Across the Lifespan: A technical Package of Programs, Policies, and Practices,” National Center for Injury Prevention and Control, (2017) <https://www.cdc.gov/violenceprevention/pdf/ipv-technicalpackages.pdf>.

<sup>129</sup> 2018 statistics show 72,245 victim requests for assistance per day; 11,441 requests are unmet, and of those, 7,416 are for housing. <https://nnev.org/content/domestic-violence-counts-12th-annual-census-report/>. See also National Alliance to End Sexual Violence, 2016 internet survey of rape crisis centers from all 50 states, Washington D.C. and two territories.

<sup>130</sup> See, e.g., Logan, TK, Evans, L., Stevenson, E., & Jordan C. E. (2005). Barriers to services for rural and urban survivors of rape. *Journal of Interpersonal Violence*, 20, 591-616. doi:10.1177/0886260504272899.

<sup>131</sup> “Preventing Intimate Partner Violence Across the Lifespan: A technical Package of Programs, Policies, and Practices,” National Center for Injury Prevention and Control, (2017) <https://www.cdc.gov/violenceprevention/pdf/ipv-technicalpackages.pdf>

Violent perpetrators are well aware of the link between a victim’s financial independence and her access to safety. Abusers notoriously keep immigrant survivors in a state of isolation, poverty, and economic dependence, conditioning them to fear retaliation not only for trying to flee, but for seeking a work permit or employment. Abusers prevent survivors from doing either by holding their immigration documents hostage, leaving them in a state of paralysis. Even survivors able to work outside the home endure such instability day to day that they face difficulty maintaining regular employment.<sup>132</sup> As a result, even current and future survivors who are eligible for subsidized housing will be vulnerable to eviction under the proposed rule. The rule requires proof of immigration status and submitting such evidence will be challenging for those whose abusers have destroyed or withheld their documents from them as a tool of abuse.

Securing non-subsidized housing is also extremely difficult for survivors. They are susceptible to manipulation by landlords who charge them high rents for single rooms in unsafe conditions. Undocumented survivors suffer in silence, deterred from seeking recourse by the looming threat of immigration, incarceration, or deportation. Overcrowding at shelters, or rules prohibiting children with disabilities from residing there, drive many back onto the streets. Others face discrimination such that either no one will rent to them, or they cannot have their name on a lease or utility bills.<sup>133</sup>

Finally, without adequate housing, survivors, including those who have been recently released from immigration detention, will have tremendous difficulty maintaining regular, meaningful communication with service providers. Notifications of critical appointments and court hearings may never reach them, and they may struggle to access evidence needed for legal matters involving immigration, child custody, or protection orders. If a survivor is homeless and cannot effectively participate in her immigration case, the consequence could be permanent loss of child custody and return to her home country to face dangerous circumstances. Legal access is often instrumental in helping victims find long-term safety.<sup>134</sup>

## **LGBTQ**

This proposed rule is likely to have a profound impact on the LGBTQ community, including thousands of bi-national same-sex couples. The most recent available data from the American Community Survey indicates that there are nearly one million same-sex couples in the United States.<sup>135</sup> Nearly one in ten LGBTQ adults are immigrants<sup>136</sup> and it is likely that same-sex couples are bi-national

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<sup>132</sup> *Id.*

<sup>133</sup> “NATIONWIDE SURVEY: A Window Into the Challenges Immigrant Women and Girls Face in the United States and the Policy Solutions to Address Them,” Tahirih Justice Center (Jan. 31, 2018), <http://www.tahirih.org/wp-content/uploads/2018/01/Tahirih-Justice-Center-Survey-Report-1.31.18-1.pdf>.

<sup>134</sup> Reckdenwald, A., & Parker, K.K. (2010). Understanding gender-specific intimate partner homicide: A theoretical and domestic service-oriented approach. *Journal of Criminal Justice*, 38, 951-958.

<sup>135</sup> Census Bureau, “Household Characteristics of Opposite-Sex and Same-Sex Couple Households: 2017 American Community Survey,” 2017, available at: <https://www.census.gov/data/tables/time-series/demo/same-sex-couples/ssc-house-characteristics.html>.

<sup>136</sup> Gary J. Gates, “LGBT Adult Immigrants in the United States,” The Williams Institute, March 2013, available at <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/us-lgbt-immigrants-mar-2013/>

at rates similar to the general population. Nearly one-third of LGBTQ immigrants are undocumented, indicating that a significant number of LGBTQ bi-national couples could be impacted by this proposed rule.<sup>137</sup>

While we lack specific data on the use of public housing assistance by LGBTQ immigrants, we know that the need for housing support is high in this community as a general matter. As a result of systemic discrimination, LGBTQ people are 2.5 times more likely to receive public housing assistance than their non-LGBTQ peers. The need for these programs is especially acute for transgender people, LGBTQ people with disabilities, and LGBTQ people of color.<sup>138</sup>

### **VIII. HUD Has Not Adequately Addressed the Administrative Burdens Created by the Proposed Rule**

#### Housing providers and landlords will be significantly burdened by the rule.

Under the proposed requirements for documentation, tens of thousands of public housing agencies and private property owners and managers would need to collect documents “proving” the citizenship of over nine million assisted residents receiving HUD assistance who have already attested, under penalty of perjury that they are citizens. This would also apply to all future applicants for assistance. Housing providers would also need to collect status documentation from 120,000 elderly immigrants<sup>139</sup> as well as screen over 30,000 immigrants<sup>140</sup> who currently do not contend eligibility for the public housing or Section 8 programs. Additionally, the proposed rule calls for public housing authorities to establish their own policies and criteria to determine whether a family should receive continued or temporary deferral of assistance.

All of these requirements will place a significant cost burden on public housing authorities and other subsidized housing providers and this burden is completely unaccounted for in the rule. Housing authorities, charged with administering the public housing and Housing Choice Voucher programs, have spoken out against the proposed rule. For example, the president of the Public Housing Authorities Directors Association (PHADA)—John Clarke—noted that “[r]emoving a family is not free. It takes staff time. It takes legal resources. Staff will have to sit in court instead of screening families or going over eligibility applications. It doesn’t seem like a quality way to maximize the slim resources we do have.”<sup>141</sup>

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<sup>137</sup> *Id.*

<sup>138</sup> Rooney, Whittington, and Durso, *Protecting Basic Living Standards for LGBTQ People*, AM. PROGRESS (2018), <https://www.americanprogress.org/issues/lgbt/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/>.

<sup>139</sup> Center on Budget and Policy Priorities analysis of 2017 HUD administrative data.

<sup>140</sup> *Id.*

<sup>141</sup> Matt Quinn, *Public Housing Agencies Oppose HUD’s Plan to Evict Immigrant Families*, GOVERNING (May 21, 2019), <https://www.governing.com/topics/health-human-services/gov-hud-public-housing-immigrants-rule-hearing-congress.html>.

Other anticipated costs for housing authorities and other subsidized housing providers include:

- Formally evicting and terminating the assistance of thousands of mixed status families that HUD estimates would be \$4.4 million.<sup>142</sup>
- Unit turnovers because of the chilling effect of this rule on eligible immigrant families who will forgo housing assistance.
- Fielding questions from tenants fearful about the implications of the proposed rule on their families. Housing providers will have to be prepared to answer consumer questions about the new rule. They will experience increased call volume and traffic from tenants and applicants about the new policies.
- Updating forms and notices to ensure that they are providing tenants and applicants with accurate information about the potential consequences of receiving certain housing assistance.

Again, many of these costs and burdens on housing providers are not considered in the proposed rule. Moreover, these costs could deter housing providers from participating or continuing to participate in these programs, which would decrease the affordable housing supply even more. The proposed rule will require already overburdened public housing authorities and housing providers to take on additional administrative costs, without providing the benefit of reduced waitlists or improving public housing. HUD has failed to account for these costs and must do its due diligence and perform a comprehensive assessment on the impact the proposed rule will have on housing providers and local housing markets more generally, before finalizing the proposed rule.

#### **IX. Due to Implementation Gaps, It is Unclear How Many Families Will Qualify for Temporary Deferral of Termination of Assistance.**

When faced with criticism about the increased homelessness that would result if the proposed rule were finalized, Secretary Carson has repeatedly pointed to the temporary deferral of assistance termination provisions as a safety net for mixed status families that will be forced off HUD assistance, stating that the 18-month period will be **“enough time for Congress to engage in comprehensive immigration reform.”**<sup>143</sup> Putting aside Secretary Carson’s claim that Congress will be able to resolve the decades-long immigration reform battle in a matter of months, the Secretary’s citing of the temporary deferral of assistance termination provisions as a panacea for displaced families is dubious at best.

The existing regulations have gaps in the process of determining how a mixed status family can qualify for this assistance. While the regulations list specific criteria on qualification for temporary

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<sup>142</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 15 (Apr. 15, 2019).

<sup>143</sup> Tracy Jan, “HUD Secretary Ben Carson defends plan to evict undocumented immigrants: ‘It’s not that we’re cruel, mean-hearted. It’s that we are logical,’” Washington Post (May 21, 2019) (emphasis added), <https://www.washingtonpost.com/business/2019/05/21/house-democrats-grill-hud-secretary-ben-carson-plan-evict-undocumented-immigrants/>.



deferral in “housing covered programs” (which as defined in the regulations, are the programs in Section 235 and 236 of the National Housing Act, and Section 101 of the Housing and Urban Development Act of 1965),<sup>144</sup> it does not list specific criteria for families with public housing or Section 8 assistance. This is particularly confusing given the regulation’s structure of separate criteria for the continuation of temporary deferral for housing covered programs versus Section 8 and public housing programs found respectively in sections 24 C.F.R. § 5.518(b)(5)(i)(A) and 24 C.F.R. § 5.518(b)(5)(i)(B).

Furthermore, even if the existing criteria for housing covered programs are extended to Section 8 and public housing, these criteria are too vague to be properly implemented. To qualify for temporary deferral a family must show that either:

- (i) The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful (for purposes of this section, reasonable efforts include seeking information from, and pursuing leads obtained from the State housing agency, the city government, local newspapers, rental agencies and the owner);
- (ii) The vacancy rate for affordable housing of appropriate size is below five percent in the housing market for the area in which the project is located; or
- (iii) The consolidated plan, as described in 24 CFR part 91 and if applicable to the covered program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.<sup>145</sup>

The regulations do not specify how long a family will have to search before they will qualify for assistance, or how they can adequately document their search to qualify. While the affordable housing vacancy rate provision seems to be more straightforward, there are critical questions as to whether HUD has access to accurate and timely data sets determining this rate for millions of localities across the country. It is also questionable as to whether consolidated plans include data on affordable housing opportunities for specific household sizes and with certain incomes. Since jurisdictions are only required to update consolidated plans once every five years, the data available in these plans might also not be up to date.

Given the vagueness and shortcomings of the temporary deferral of termination of assistance provisions, it is unclear how thousands of families who are at risk of homelessness would qualify for

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<sup>144</sup> 24 C.F.R. § 5.518(b)(2) (2019). “Housing covered programs means the following programs administered by the Assistant Secretary for Housing:

(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); and

(3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program).” 24 C.F.R. 5.504(b).

<sup>145</sup> 24 C.F.R. § 5.518(b)(2) (2019).

this protection. HUD must withdraw the proposed rule until the agency can address these key implementation problems.

## **X. The Notice for Proposed Rulemaking Violates HUD’s Title VI Language Access Obligations**

### Failure to Translate the NPRM Violates HUD’s Language Access Obligations Under Title VI and E.O. 13166

In issuing this Notice of Proposed Rulemaking (NPRM), HUD failed to translate the notice, or even provide a summary of the NPRM in languages other than English, despite the clearly foreseeable disproportionate impact the proposed rule would have on limited English proficient (LEP) individuals. By failing to provide non-English materials about the proposed rule, HUD denied LEP individuals an opportunity to meaningfully participate in the public comment portion of rulemaking regarding a policy change that would directly impact their ability to access HUD programs. Such a denial violates the agency’s obligations to provide language access to HUD programs under Title VI of the Civil Rights Act of 1964 and Executive Order 13166.

Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>146</sup> A failure to provide meaningful language access has the effect of denying persons participation in a federally assisted program on the basis of national origin under Title VI.<sup>147</sup> In 2000, Executive Order 13166 mandated that each federal agency “shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons.”<sup>148</sup> Such plans are required to include “the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency’s programs and activities.”<sup>149</sup> HUD’s agency LEP implementation plan posted online appears incomplete, but notes that the agency “wants to ensure that the programs and activities made possible through [HUD] resources [directed to state and local governments, PHAs, and others] are made available to the LEP population.”<sup>150</sup> However, HUD falls woefully short in its issuance of the proposed rule, as neither the proposed rule, nor the regulatory analysis, nor a summary of any of these documents are available on any HUD website in non-English languages.

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<sup>146</sup> 42 U.S.C.A. § 2000d.

<sup>147</sup> *Lau v. Nichols*, 414 U.S. 563 (1974).

<sup>148</sup> Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. Reg. 50,121, 50,121 (Aug. 16, 2000).

<sup>149</sup> *Id.*

<sup>150</sup> HUD, “Limited English Proficiency Implementation Plan,” available at:

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/promotingfh/whatislep](https://www.hud.gov/program_offices/fair_housing_equal_opp/promotingfh/whatislep) (accessed July 9, 2019).

It should be noted that HUD does have the capacity to translate rulemaking into other languages, as it did with HUD's final affirmatively furthering fair housing rule.<sup>151</sup> Given the clearly foreseeable impact and interest many immigrants and LEP persons would have in the development of this particular rulemaking, HUD had a Title VI obligation to ensure that meaningful language access was provided in this process. HUD failed to meet its obligation; in fact, advocacy organizations have had to step in to partially fill in this void and provide Spanish-language resources about the NPRM. HUD's failure to provide these resources for this NPRM is unacceptable and violates its Title VI language access obligations.

## **XI. The Proposed Rule is Motivated by Racial Animus**

Although HUD maintains that the proposed regulatory changes are merely an attempt to bring "HUD's regulations into greater alignment with the requirements of Section 214,"<sup>152</sup> several news reports have revealed the rule's true origins. The Washington Post reported, "The push came from Stephen Miller, senior policy adviser responsible for crafting much of Trump's hardline immigration policy. Miller led a White House working group charged with introducing new regulations to strip away benefits from undocumented immigrants, according to a person with direct knowledge who is not authorized to speak on the record."<sup>153</sup>

In a similar story, the New York Times cited a "senior official" who noted that "For months, Stephen Miller, one of President Trump's top advisers, has pushed the administration to institute regulations that would penalize legal immigrants who rely on public benefits as part of a larger effort to limit the number of immigrants living in the country." The Times story further reported that "Mr. Miller, along with White House aides, sent the new regulations to HUD officials this year; Mr. Carson was not pleased with the changes, and he questioned how they would be enforced but did not object..."<sup>154</sup> These reports show that HUD played a limited role in crafting the rule, and that the agency's highest official is skeptical of the practicability of the rule. Given these facts, it would seem that the official rationales offered by HUD to justify the rule are merely pretext, and that the agency is acting both arbitrarily and capriciously in its decision to put forth this rule.

The Trump Administration's general hostility toward low-income immigrants and immigrants of color fuel its immigration policies, including its proposed changes to HUD's long-standing mixed status family regulations. That people of color will be harmed disproportionately by the proposed rule is no

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<sup>151</sup> Promoción de la Equidad en la Vivienda, 80 Fed. Reg. 42272 (July 16, 2015),

<https://files.hudexchange.info/resources/documents/Preambulo-y-Regla-Definitiva-Espanol.pdf> (accessed July 9, 2019).

<sup>152</sup> Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20,589, 20,590 (proposed May 10, 2019) (to be codified at 24 C.F.R. part 5).

<sup>153</sup> Tracy Jan, "Trump proposal would evict undocumented immigrants from public housing," The Washington Post (April 18, 2019), <https://www.washingtonpost.com/business/2019/04/18/trump-proposal-would-evict-undocumented-immigrants-public-housing/>.

<sup>154</sup> Zolan Kanno-Youngs & Glenn Thrush, "HUD Says Its Proposed Limit on Public Housing Aid Could Displace 55,000 Children," The New York Times (May 10, 2019), <https://www.nytimes.com/2019/05/10/us/politics/hud-public-housing-immigrants.html>.

accident – in fact, it appears to be quite intentional. Throughout his campaign and presidency, Donald Trump and his administration have expressed a clear intent to limit the number of immigrants from Latin American, African, and Asian countries. President Trump’s inaccurate and misleading statements reflect an anti-immigrant animus based on race, ethnicity and national origin. Examples include:

- During his first campaign speech, Trump said: “When Mexico sends its people, they’re not sending their best. They’re sending people that have lots of problems. They’re bringing drugs. They’re bringing crime. They’re rapists. . . They’re sending us not the right people. It’s coming from more than Mexico. It’s coming from all over South and Latin America . . . .”<sup>155</sup>
- In August 2015, Trump defended two men who urinated on a sleeping Latino man and then beat him with a metal pole, stating that the men were “passionate” and that “people who are following me are very passionate. They love this country and they want this country to be great again. They are passionate.”<sup>156</sup>
- In December 2015, Trump called for “a total and complete shutdown of Muslims entering the United States,” including refusing to readmit Muslim-American citizens who were outside of the country at the time.<sup>157</sup>
- In May 2016, in response to anti-Trump protestors in New Mexico, Trump tweeted that the protestors “were thugs who were flying the Mexican flag. The rally inside was big and beautiful, but outside, criminals.”<sup>158</sup>
- On June, 2, 2016, President Trump told the Wall Street Journal that a federal judge hearing a case about Trump University was biased because of the judge’s Mexican heritage.<sup>159</sup>
- On January 25, 2017, newly-inaugurated President Trump issued two Executive Orders: one that called for the immediate construction of a wall along the U.S.-Mexico border and another that ordered the withholding of federal funds from sanctuary cities that limited their cooperation with federal immigration officials.<sup>160</sup> When delivering a speech at USCIS, President Trump cited Central American migration as a purported justification for both orders and asserted that the country is “in the middle of a crisis on our southern border” and condemned a

<sup>155</sup> Washington Post Staff, Full text: Donald Trump announces a presidential bid, Washington Post (June 16, 2015), [https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/fulltext-donald-trump-announces-apresidential-bid/?utm\\_term=.963f83af6ca3](https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/fulltext-donald-trump-announces-apresidential-bid/?utm_term=.963f83af6ca3)

<sup>156</sup> Adrian Walker, ‘Passionate’ Trump fans behind homeless man’s beating?’ Boston Globe (Aug. 21, 2015), <https://www.bostonglobe.com/metro/2015/08/20/after-two-brothers-allegedlybeat-homelessman-one-them-admiringly-quote-donald-trump-deportingillegals/l4NXR3Dr7litLi2NB4f9TN/story.html>.

<sup>157</sup> Jenna Johnson, Trump calls for ‘total and complete shutdown of Muslims entering the United States,’ Washington Post (Dec. 7, 2015), [https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donaldtrump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/?utm\\_term=.ed82566c9ae67](https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donaldtrump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/?utm_term=.ed82566c9ae67), 2015), [https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/?utm\\_term=.240d49f7bd22](https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/?utm_term=.240d49f7bd22).

<sup>158</sup> Donald J. Trump (@realDonaldTrump), TWITTER (May 25, 2016, 6:39 AM), <https://twitter.com/realdonaldtrump/status/735465352436408320>.

<sup>159</sup> Tom Kertscher, Donald Trump’s racial comments about Hispanic judge in Trump University case, politifact.com (June 8, 2016, 4:29 p.m.), at <http://www.politifact.com/wisconsin/article/2016/jun/08/donald-trumps-racial-comments-aboutjudge-trumpun/>.

<sup>160</sup> E.O. 13767 (border wall); E.O. 13768, sec. 9 (Jan. 25, 2017) (sanctuary cities).

so-called “unprecedented surge” of migrants from Central America for eroding safety in the United States, claiming that these two orders “will save thousands of lives.”<sup>161</sup>

- On January 26, 2017, less than a week after taking office, President Trump issued the first of three executive orders banning people from predominantly Muslim countries from entering or reentering the United States. The ban currently affects millions of people, including hundreds of thousands of U.S citizens and permanent residents, who are prevented from reuniting with family members who live in the designated countries.<sup>162</sup>
- In June 2017, Trump said 15,000 recent immigrants from Haiti “all have AIDS” and that 40,000 Nigerians, once seeing the United States, would never “go back to their huts” in Africa.<sup>163</sup>
- On May 16, 2018, President Trump commented that “[w]e have people coming into the country, or trying to come in. . . . You wouldn't believe how bad these people are. These aren't people, these are animals . . .”<sup>164</sup>
- On October 19, 2018, in response to a question on migrants fleeing violence and grinding poverty in Guatemala, El Salvador and Honduras, the President stated: “These are tough, tough people, and I don't want them, and neither does our country.”<sup>165</sup>  
In a rally in Arizona on October 20, 2018, as well as at other campaign stops, President Trump repeated his claim that immigrants from Latin America are “bad hombres.”<sup>166</sup>

In addition to expressing hostility toward immigrants and people of color, President Trump has frequently displayed friendliness with proud racists and white nationalists. For example, he called some of those who marched alongside white supremacists in Charlottesville, Virginia, last August “very fine people.”<sup>167</sup> After David Duke, the former leader of the Ku Klux Klan, endorsed him, President Trump was reluctant to disavow Duke even when asked directly on television.<sup>168</sup> President Trump endorsed and campaigned for Roy Moore, the Alabama Senate candidate who spoke positively about slavery.<sup>169</sup> President Trump also pardoned and praised Joe Arpaio, the Arizona sheriff who was

<sup>161</sup> 1 President Trump Visits Homeland Security Department (Jan. 25, 2017), <https://www.cspan.org/video/?422704-1/president-trump-visits-homeland-security-department>.

<sup>162</sup> See, Resources on the Travel and Refugee Bans, (American Immigration Lawyers Association, Sept. 21, 2018), <https://www.aila.org/advo-media/issues/all/executive-actions-on-the-muslim-and-refugee-bans>.

<sup>163</sup> Michael D. Shear & Julie Hirschfeld Davis, Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda, New York Times (Dec. 23, 2017), [https://www.nytimes.com/2017/12/23/us/politics/trumpimmigration.html?\\_r=0](https://www.nytimes.com/2017/12/23/us/politics/trumpimmigration.html?_r=0).

<sup>164</sup> Julie Hirschfeld Davis, “Trump calls some unauthorized immigrants ‘animals’ in rant” New York Times (May 16, 2018), <https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html>.

<sup>165</sup> “The Latest: Trump: Migrants Headed to US Hardened Criminals” US News & World Report (Oct. 19, 2018) at <https://www.usnews.com/news/best-states/arizona/articles/2018-10-19/the-latest-trump-calls-senate-hopefulmcsally-brilliant>.

<sup>166</sup> Christopher Cadelago and Brent D. Griffiths, “Still hopeful of keeping House, Trump torches Democrats in the Desert” Politico (Oct. 20, 2018).

<sup>167</sup> Rosie Gray, “Trump Defends White-Nationalist Protesters: ‘Some Very Fine People on Both Sides,’” The Atlantic (Aug. 15, 2017), <https://www.theatlantic.com/politics/archive/2017/08/trump-defends-white-nationalistprotesters-some-very-fine-people-on-both-sides/537012/>.

<sup>168</sup> Alan Rappeport, “Donald Trump Wavers on Disavowing David Duke”, New York Times (Feb. 28, 2016), <https://www.nytimes.com/politics/first-draft/2016/02/28/donald-trump-declines-to-disavow-david-duke/>.

<sup>169</sup> Z. Byron Wolf, “Roy Moore's incredible ‘even though we had slavery’ quote,” CNN (Dec. 8, 2017), <https://www.cnn.com/2017/12/08/politics/roy-moore-slavery/index.html>.

criminally sanctioned for racially profiling Latinos and for keeping immigrants in brutal prison conditions.<sup>170</sup>

As noted above, in January 2018, President Trump asked, “Why do we want all these people from ‘shithole countries’ coming here?” At the same time, President Trump “suggested that the United States should instead bring more people from countries such as Norway,” while he was “open” to immigrants from some Asian countries thought to be economically beneficial to the United States.<sup>171</sup> It is clear that the President’s view on limiting immigration from “shithole countries” is based on his discriminatory belief that immigrants from such countries are poorer, drain taxpayer resources, and are somehow less worthy of entering the United States than their white counterparts. Indeed, Trump has been open about his misinformed view that immigrants drain resources. President Trump has stated:

- “According to the National Academy of Sciences, our current immigration system costs America’s taxpayers many billions of dollars a year.”<sup>172</sup>
- “We also believe that those seeking to immigrate into our country should be able to support themselves financially and should not be able to use welfare for themselves or the household for a period of at least five years.”<sup>173</sup>
- “The RAISE Act prevents new migrants and new immigrants from collecting welfare ... They’re not going to come in and just immediately go and collect welfare. That doesn’t happen under the RAISE Act. They can’t do that.”<sup>174</sup>
- “Current immigration policy imposes as much as \$300 billion annually in net fiscal costs on U.S. taxpayers.”<sup>175</sup>

<sup>170</sup> Julie Carrie Wong and Lauren Gambino, “Donald Trump pardons Joe Arpaio, former sheriff convicted in racial profiling case,” *The Guardian* (Aug. 26, 2017), <https://www.theguardian.com/us-news/2017/aug/25/donaldtrump-joe-arpaio-pardon-arizona-sheriff>.

<sup>171</sup> Josh Dawsey, “Trump Derides Protections for Immigrants from ‘Shithole’ Countries,” *Wash. Post* (Jan. 12, 2018), [https://www.washingtonpost.com/politics/trump-attacks-protections-forimmigrants-from-shithole-countries-inoval-office-meeting/2018/01/11/bfc0725c-f711-11e791af31ac729add94\\_story.html?noredirect=on&utm\\_term=.bd24836c5250https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94\\_story.html?utm\\_term=.db932b93efa3](https://www.washingtonpost.com/politics/trump-attacks-protections-forimmigrants-from-shithole-countries-inoval-office-meeting/2018/01/11/bfc0725c-f711-11e791af31ac729add94_story.html?noredirect=on&utm_term=.bd24836c5250https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html?utm_term=.db932b93efa3).

<sup>172</sup> Michelle Ye Hee Lee, “Trump’s Claim that Immigrants Cost Taxpayers ‘Many Billions of Dollars a Year,’” *Wash. Post* (Mar. 7, 2017), at [https://www.washingtonpost.com/news/factchecker/wp/2017/03/07/trumps-claim-thatimmigrants-cost-taxpayers-many-billions-of-dollarsa-year/?utm\\_term=.ede94af91a0fhttps://www.washingtonpost.com/news/fact-checker/wp/2017/03/07/trumps-claim-that-immigrants-cost-taxpayers-many-billions-of-dollars-a-year/?utm\\_term=.a7731fcdcb5c](https://www.washingtonpost.com/news/factchecker/wp/2017/03/07/trumps-claim-thatimmigrants-cost-taxpayers-many-billions-of-dollarsa-year/?utm_term=.ede94af91a0fhttps://www.washingtonpost.com/news/fact-checker/wp/2017/03/07/trumps-claim-that-immigrants-cost-taxpayers-many-billions-of-dollars-a-year/?utm_term=.a7731fcdcb5c).

<sup>173</sup> Michelle Ye Hee Lee, “President Trump’s Claim About Immigrants ‘Immediately’ Collecting ‘Welfare,’” *Wash. Post* (Aug. 24, 2017), at [https://www.washingtonpost.com/news/factchecker/wp/2017/08/04/president-trumpsclaim-about-immigrants-immediately-collectingwelfare/?noredirect=on&utm\\_term=.f0522d2868b4https://www.washingtonpost.com/news/fact-checker/wp/2017/08/04/president-trumps-claim-about-immigrants-immediately-collecting-welfare/?utm\\_term=.0e55632e54ed](https://www.washingtonpost.com/news/factchecker/wp/2017/08/04/president-trumpsclaim-about-immigrants-immediately-collectingwelfare/?noredirect=on&utm_term=.f0522d2868b4https://www.washingtonpost.com/news/fact-checker/wp/2017/08/04/president-trumps-claim-about-immigrants-immediately-collecting-welfare/?utm_term=.0e55632e54ed) (quoting a July 5, 2017 speech in Youngstown, Ohio).

<sup>174</sup> *Id.* (quoting an Aug. 2, 2017 press conference).

<sup>175</sup> Miriam Valverde, “Do Immigrants Cost U.S. Taxpayers \$300 Billion Annually?” *PolitiFact* (Jan. 23, 2018), <https://www.politifact.com/truth-o-meter/statements/2018/jan/23/donaldtrump/does-immigration-policyimpose-300-billion-annual/>.



- “[T]hey’re not sending their finest. We’re sending them the hell back.”<sup>176</sup>

Several of President Trump’s senior advisors and senior officials have expressed similar views. Stephen Miller misleadingly claimed that America’s current immigration system “cost[s] taxpayers enormously because roughly half of immigrant head of households in the United States receive some type of welfare benefit,” and that “a recent study said that as much as \$300 billion a year may be lost as a result of our current immigration system in terms of folks drawing more public benefits than they’re paying in.”<sup>177</sup> When Miller discovered that an agency had drafted a report describing the benefits of refugees to the economy, he “swiftly intervened,” and the report was “shelved in favor of a three-page list of all the federal assistance programs that refugees used.”<sup>178</sup> Within the Trump Administration, Miller has forcefully advocated for expanding the definition of public charge, even directing federal agencies to “prioritize” those changes over “other efforts.”<sup>179</sup>

Likewise, former Attorney General Jeff Sessions—the Attorney General during much of the Trump Administration’s efforts to change the public charge rules—voiced concerns about immigrants using public benefits, asserting that “[n]o great and prosperous nation can have both a generous welfare system and open borders. Such a policy is both radical and dangerous.”<sup>180</sup> As a senator, Sessions “obsessed over immigrants using the safety net.”<sup>181</sup>

## XII. The Proposed Rule Would Violate the Fair Housing Act

According to a recent report released by the Center on Budget and Policy Priorities, of the 100,000 people in the 25,000 mixed status families that would be directly impacted by the rule, nine-five percent (95%) are people of color, including 85% who are Latino.<sup>182</sup> As such, the rule would disproportionately impact Latinos who are currently receiving the covered housing subsidies. This fact, coupled with the Administration’s explicit racial animus against immigrants and persons of Latin American heritage,<sup>183</sup> strongly suggests that this rule is driven by bias against Latinos. Such a policy

<sup>176</sup> “Trump: ‘We’re Sending Them the Hell Back,’” NBC News (June 20, 2018), <https://www.nbcnews.com/video/trump-we-re-sending-them-the-hell-back-1260491331685?v=raila&>.

<sup>177</sup> Press Briefing by Press Secretary Sarah Sanders and Senior Policy Advisor Stephen Miller, The White House (Aug. 2, 2017), <https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sarah-sanders-seniorpolicy-advisor-stephen-miller-080217/>.

<sup>178</sup> Michael D. Shear & Julie Hirschfeld Davis, “Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda” New York Times (Dec. 23, 2017), <https://www.nytimes.com/2017/12/23/us/politics/trumpimmigration.html? r=0>.

<sup>179</sup> Sources: Stephen Miller Pushing Policy to Make It Harder for Immigrants Who Received Benefits to Earn Citizenship, CNN (Aug. 7, 2018), <https://www.cnn.com/2018/08/07/politics/stephen-miller-immigrants-penalizebenefits/index.html>.

<sup>180</sup> Attorney General Sessions Delivers Remarks to the Largest Class of Immigration Judges in History for the Executive Office for Immigration Review (EOIR), U.S. Dep’t of Justice (Sept. 10, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-largest-class-immigrationjudges-history>.

<sup>181</sup> 1 Arthur Delaney, “Trump Considering Crackdown On Welfare for Legal Immigrants,” HuffPost (Feb. 2, 2017), [https://www.huffingtonpost.com/entry/trump-immigration-welfare\\_us\\_58938368e4b06f344e409174](https://www.huffingtonpost.com/entry/trump-immigration-welfare_us_58938368e4b06f344e409174).

<sup>182</sup> Alicia Mazzara, Center on Budget and Policy Priorities, *Demographic Data Highlight Potential Harm of New Trump Proposal to Restrict Housing Assistance* (July 1, 2019), <https://www.cbpp.org/research/housing/demographic-data-highlight-potential-harm-of-new-trump-proposal-to-restrict-housing>.

<sup>183</sup> See Section VI of these comments.

would violate the federal Fair Housing Act, which prohibits making housing unavailable as well as discrimination in the provision of housing-related facilities and services on the basis of race or national origin.<sup>184</sup>

A recent case illustrates a similar fair housing violation. In *Reyes v. Waples Mobile Home Park*, the Court of Appeals for the Fourth Circuit held that a district court erred when it ruled that residents failed to make a prima facie case of disparate impact on Latinos where a mobile home park owner expanded enforcement of its requirement that “all individuals who live at the Park to present either (1) an original Social Security card, or (2) an original (foreign) Passport, original U.S. Visa, and original Arrival/Departure Form (I-94 or I-94W), which together evince legal status in the United States” against all household members, not just leaseholders.<sup>185</sup> The plaintiffs provided statistics stating that Latinos comprised nearly 65 percent of “the total undocumented immigrant population in Virginia,” and that “Latinos are ten times more likely than non-Latinos to be adversely affected by the [documentation requirement] Policy, as undocumented immigrants constitute 36.4% of the Latino population in Virginia compared with only 3.6% of the non-Latino population.”<sup>186</sup> Regarding the mobile home park itself, plaintiffs also submitted evidence that “60% of the tenants at the Park were Latino, and that eleven of the twelve tenants at the Park who were not in compliance with the Policy as of May 2016, or 91.7%, were Latino.”<sup>187</sup> This rule is no different. The proposed rule would similarly have a disparate impact on Latino families, given that most individuals currently receiving assistance in mixed status families are Latino.<sup>188</sup>

Furthermore, the court in *Waples* resoundingly rejected the argument that policies that discriminate on the basis of immigration status are immune from Fair Housing Act liability, noting that without an exemption for exclusionary practices aimed at undocumented immigrants, “we must infer that Congress intended to permit disparate-impact liability for policies aimed at [undocumented] immigrants when the policy disparately impacts a protected class, regardless of any correlation between the two.”<sup>189</sup> In fact, *Waples* observes that HUD’s own guidance counsels that the plaintiffs’ disparate impact claim in that case is not precluded “simply because the female Plaintiffs cannot satisfy the Policy because they are [undocumented] immigrants when they have alleged that the Policy disparately impacts Latinos.”<sup>190</sup>

Additionally, adoption of HUD’s proposed rule directly violates the agency’s statutory obligation to affirmatively further fair housing. The federal Fair Housing Act (FHA) mandates that the HUD Secretary shall “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of” the FHA.<sup>191</sup> In its 2015 regulation, HUD defined

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<sup>184</sup> See 42 U.S.C.A. § 3604(a)-(b) (West 2019).

<sup>185</sup> *Reyes v. Waples Mobile Home Park Ltd. P’ship*, 903 F.3d 415, 419 (4th Cir. 2018), cert. denied sub nom. *Waples Mobile Home Park Ltd. P’ship v. de Reyes*, 139 S. Ct. 2026 (2019).

<sup>186</sup> *Reyes*, 903 F.3d at 421.

<sup>187</sup> *Id.* at 422.

<sup>188</sup> See *supra* note 182.

<sup>189</sup> *Id.* at 431-32 (emphasis added).

<sup>190</sup> *Id.* at 432.

<sup>191</sup> 42 U.S.C.A. § 3608(e)(5) (West 2019).

“Affirmatively further fair housing” to mean “taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.”<sup>192</sup> The affirmatively furthering fair housing obligation also includes “fostering and maintaining compliance with civil rights and fair housing laws.”

The proposed rule does nothing to advance fair housing aims or compliance with other civil rights laws. Instead, it seeks to do the exact opposite by denying housing opportunities to thousands of immigrant families, using eligible immigration status as a pretext for discriminating against individuals based on their race and national origin. Furthermore, according to HUD’s own analysis, 70 percent of the households negatively impacted by this proposed rule *are families with eligible children*.<sup>193</sup> Since minor children comprise the vast majority of eligible occupants of mixed status households,<sup>194</sup> the proposed rule would also have a disproportionate and devastating impact on families with children. This clearly discriminatory policy is wholly inconsistent with HUD’s obligation to combat housing discrimination and segregation of members of groups protected by the FHA.

### **XIII. The Proposed Rule Would Violate Constitutional Due Process Protections**

The proposed rule infringes on the Fifth Amendment right to familial association.

The proposed rule denies mixed status families their right to familial association under the U.S. Constitution’s Fifth Amendment Due Process Clause. The proposed rule would force members of mixed status families to choose between safe and affordable shelter and living together as families. This forced choice is a direct infringement upon the fundamental right of family integrity. It is longstanding precedent that “the Constitution protects the sanctity of the family,” since “the institution of the family is deeply rooted in this Nation’s history and tradition.”<sup>195</sup> The proposed rule not only ignores our country’s history of protecting families, but actively works against it by putting families in the untenable position of choosing between staying together or being out of a home. This attack on family integrity is even more shocking considering that this policy by HUD’s own analysis will lead to a reduction in the quantity and quality of subsidized housing.<sup>196</sup> Given these state of affairs, it is difficult to imagine what government interest HUD is trying to protect while it tramples on the constitutional rights of mixed status families.

Denying mixed status families the right to familial association is even more egregious in light of the fact that HUD had previously come under fire for **this exact same issue** thirty years ago. In *Yolano-*

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<sup>192</sup> 24 C.F.R. § 5.152 (definition of “Affirmatively furthering fair housing”).

<sup>193</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>194</sup> *Id.* At 6 (noting that in mixed status households, 73 percent of eligible occupants are children between 0 and 17 years old).

<sup>195</sup> *Moore v. East Cleveland*, 431 U.S. 494, 503 (1977).

<sup>196</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 3 (Apr. 15, 2019).

*Donnelly v. Cisneros*,<sup>197</sup> HUD was sued in federal court for its regulations that prohibited mixed status families from living together in assisted housing. In granting the plaintiffs’ motion for preliminary injunction, the court found that housing assistance restrictions for mixed families that interfere with the right to cohabit with family members may violate the substantive due process clause of the Fifth Amendment.<sup>198</sup>

#### The proposed rule violates procedural due process rights.

The rule proposes to amend the information that subsidized housing providers are required to include in termination notices for families whose assistance has been terminated because of the policy. Specifically, it proposes to take out language from the notice regarding the right to a fair hearing and replaces the language with an ability to seek a record correction with DHS.<sup>199</sup> However, the Section 214 statute mandates that the termination notice “provide that the individual may request a fair hearing during the 30-day period beginning upon receipt of the notice...” as well as “provide to the individual written notice of the determination under this paragraph, the right to a fair hearing process, and the time limitation for requesting a hearing...”<sup>200</sup> Since these procedural notice requirements are dictated by the 214 statute, HUD cannot remove these mandates from existing regulations. Doing so robs tenants of vital due process protections and is contrary to the statute.

Additionally, HUD’s proposal would violate the due process rights of existing tenants who are receiving assistance and would lose their subsidies merely because they are living in mixed status families. Case law has established that subsidized tenants have property interests in their federal housing assistance.<sup>201</sup> This rule would effectively force thousands of U.S. citizens and eligible immigrants in mixed status families to lose their assistance without “good cause”, which is required in the public housing and Section 8 programs.<sup>202</sup> Evictions and terminations without “good cause” constitute a violation of the tenants’ due process rights as provided by the statutory requirements of the housing programs.

#### The proposed rule violates the administrative doctrine of repose.

With respect to persons already receiving housing assistance, an additional reason why the proposed rule is invalid is that it violates the administrative doctrine of repose. Under the doctrine of repose, an agency cannot change a final administrative determination of fact unless there has been a change of circumstances (e.g., a recipient of housing assistance renounces their U.S. citizenship), or there is some indication that the determination was wrong or fraudulent. Implementing new procedures without any legitimate triggering factual indication impairs recipients’ property right in the

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<sup>197</sup> Civ. No. S-86-846 MLS (E.D. CA, Dec 8, 1986).

<sup>198</sup> U.S. CONST. amend. V.

<sup>199</sup> Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20,589, 20,594 (proposed May 10, 2019) (to be codified at 24 C.F.R. part 5).

<sup>200</sup> 42 U.S.C.A. § 1436a(d)(5).

<sup>201</sup> See, e.g., Bd. of Regents v. Roth, 408 U.S. 564 (1972); Nozzi v. Housing Authority of City of Los Angeles, 425 Fed. Appx. 539 (9th Cir. 2011).

<sup>202</sup> 24 C.F.R. § 880.607.

continuing receipt of housing assistance by forcing them into new and complex administrative procedures.

For the reasons mentioned in this section, the proposed rule is unlawful and, therefore, HUD must withdraw the proposed rule in its entirety.

#### **XIV. The Effects of the Rule Will Be Contrary to its Stated Justifications**

HUD claims this rule will “bring its regulations into greater alignment with the wording and purpose of Section 214.”<sup>203</sup> This appears predicated on the agency’s belief “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.” But, as discussed previously, Section 214 contains no such prohibition. Section 214 expressly countenances the occupancy of non-eligible persons as members of mixed status families receiving pro-rated financial assistance. The rule also requires housing authorities to verify every individual’s immigration status, when Section 214 explicitly authorizes those agencies not to do so. As such, HUD’s interpretation is inconsistent with the rule and does not bring its regulations into greater alignment with the wording or purpose of Section 214.

Secretary Carson has also put forth the justification that mixed status families need to be removed to make room for people on the waiting lists.<sup>204</sup> But HUD’s own cost-benefit analysis suggests the cost of the proposed rule will likely reduce both the quantity and quality of HUD-supported housing.<sup>205</sup> For vouchers, “there could be fewer households served under the housing choice vouchers program,” and for public housing programs, this rule “would have an impact on the quality of service, likely decreased maintenance of the units and possibly deterioration of the units that could lead to vacancy.”<sup>206</sup> In other words, the proposed rule would result in public housing units deteriorating until the low-income tenants living there are forced to leave. Furthermore, the reality is that even if every one of the 25,000 mixed status families were evicted under this rule, this would create housing opportunities for less than 1% of the families on existing public housing and Section 8 voucher waitlists, while creating millions of dollars in homelessness costs to states and localities as well as eviction and administrative costs for thousands of subsidized housing providers.<sup>207</sup>

HUD asserts that requiring the head of household or leaseholder to have verified eligibility will “better assure that the person who is legally obligated under the lease or other tenancy agreement has

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<sup>203</sup> 84 Fed. Reg. at 20591.

<sup>204</sup> Zolan Kanno-Youngs & Glenn Thrush, “HUD Says Its Proposed Limit on Public Housing Aid Could Displace 55,000 Children,” *The New York Times* (May 10, 2019), <https://www.nytimes.com/2019/05/10/us/politics/hud-public-housing-immigrants.html>.

<sup>205</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 3 (Apr. 15, 2019).

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

been through a uniform identity verification process that would better facilitate locating such person and bringing any necessary administrative or legal actions.”<sup>208</sup> HUD cites no evidence that it (or public housing agencies) have had difficulty locating heads of household or bringing necessary legal or administrative actions against them. Since the people in question are residing in HUD-funded housing units, it strains credulity that such difficulties would arise. Moreover, there are plenty of less-harmful measures HUD could take to better keep track of and locate heads of household for legal and administrative purposes.

HUD also claims that the rule is necessary to comply with Executive Order 13828, “Reducing Poverty in America by Promoting Opportunity and Economic Mobility.” It states that the proposed rule complies with the Order’s admonition 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.’” But the rule ignores that, under current law, people who are not eligible for benefits *do not currently receive* benefits. While they may reside in public housing, or be in the same household as a voucher recipient, the financial assistance is prorated or decreased to ensure that ineligible household members do not receive assistance. As HUD’s own analysis finds, that means that mixed status families, 70% of whose members are eligible for subsidy – pay significantly higher rents than non-mixed status families.<sup>209</sup> Therefore, contrary to HUD’s assertion, the proposed rule is unnecessary.

HUD explains further that it “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.” The proposed rule then vaguely states, “HUD believes the proposed regulatory amendments are consistent with the principles of Executive Order 13828 and regulatory reform.” HUD does not explain how the amendments are consistent with those principles in any way. Nor does HUD explain how the agency’s findings that the proposed rule will impose great ongoing costs and greater administrative requirements on public housing agencies will reduce regulatory burdens. HUD’s stated justifications are not supported by any evidence.

As described in this section, HUD has not provided data or evidence to support the agency’s stated justifications for the proposed rule, which adversely impacts thousands of assisted families. Therefore, HUD has compromised the ability for members of the public to properly respond during this comment period to the agency’s rationales for developing this rule. Additionally, the disconnect between the data and HUD’s justifications for the proposed rule suggests that the reasons HUD has provided are in fact pretextual. HUD’s admission that they are purposefully adopting a policy that will result in the agency helping fewer people, and helping them in less effective ways, shows that this proposal is completely illogical. The rule will lead to actions that contradict HUD’s mission “to create strong, sustainable, inclusive communities.”<sup>210</sup> For these reasons, HUD must withdraw the current

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<sup>208</sup> 84 Fed. Reg. at 20591.

<sup>209</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 12 (Apr. 15, 2019).

<sup>210</sup> *Mission*, HUD, <https://www.hud.gov/about/mission> (last visited June 26, 2019).



proposed rule and allow HUD’s existing regulations to remain in effect. HUD should only reissue a new proposed rule if the agency can provide the necessary evidence to support its explanations for the need for the rule.

## **XV. An Environmental Impact Review is Required**

The National Environmental Policy Act requires an environmental impact report in connection with any “major federal actions significantly affecting the quality of the human environment.”<sup>211</sup> HUD claims in the proposed rule that it is exempt from the obligation to conduct an environmental review under 24 C.F.R. § 50.19(c)(1)(i) because “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[.]”<sup>212</sup> But the rule will indeed govern or regulate leasing of real property (in particular, public and privately-managed, site-based subsidized housing) and relates to the provision of assistance in such real property leasing. This renders the exception inapplicable and therefore, an environmental impact report is required.

## **XVI. A Regulatory Flexibility Analysis is Required**

The Regulatory Flexibility Act provides that “[w]henver an agency is required ... to publish general notice of proposed rulemaking for any proposed rule, ... the agency shall prepare and make available for public comment an initial regulatory flexibility analysis [describing] the impact of the proposed rule on small entities.”<sup>213</sup> Small entities include small nonprofits and governmental jurisdictions with populations of less than 50,000.<sup>214</sup> The requirement is waived “if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>215</sup> HUD has invoked this waiver provision.<sup>216</sup>

The proposed rule significantly impacts numerous small entities, including: (i) small public housing agencies that have or may have mixed status families or must carry out additional verification procedures for program participants; (ii) landlords who lease to mixed status families with Housing Choice Vouchers; (iii) homeless shelters and other programs and services that can be expected to serve the needs of displaced mixed families; (iv) nonprofit owners of housing that receive project-based Section 8 or other funding covered by Section 214. Indeed, the Housing Authority of the City of Los Angeles estimates that it would have to evict one of every three households in its public housing.<sup>217</sup>

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<sup>211</sup> 42 U.S.C.A. § 4332(C)(1) (West 2019).

<sup>212</sup> 84 Fed. Reg. at 20591.

<sup>213</sup> 5 U.S.C.A. § 603(a) (West 2019).

<sup>214</sup> 5 U.S.C.A. § 601(6) (West 2019).

<sup>215</sup> 5 U.S.C.A. § 605(b) (West 2019).

<sup>216</sup> See 84 Fed. Reg. at 20592.

<sup>217</sup> Lola Fadulu & Zolan Kanno-Youngs, *Landlords Oppose Trump Plan to Evict Undocumented Immigrants*, New York Times (June 17, 2019), <https://www.nytimes.com/2019/06/17/us/politics/public-housing-immigrants.html>.

Some small nonprofits could suffer significantly – they operate on small budgets and the eviction costs alone could be financially infeasible.

The proposed rule also claims “[t]he requirements of the proposed rule could be satisfied using existing procedures,” including verification of all noncitizen eligibility through SAVE.<sup>218</sup> This too seems unlikely. At minimum, forms and instructions may need to be altered to reflect that persons over age 62 now require documentation. Staff would also need to be trained on the modifications.

## **XVII. Executive Order 13132**

The proposed rule would impose direct compliance costs on public housing agencies, which are state and local governmental entities, by requiring them to screen and verify the eligibility of additional non-citizens in HUD-assisted housing, evict residents who become ineligible, and turn over units. Section 6 of Executive Order 13132<sup>219</sup> provides that “no agency shall promulgate any regulation ... that imposes substantial direct compliance costs on State and local governments, and that is not required by statute” unless either the federal government provides funds for compliance or publishes a “federalism impact statement” that describes “the extent of the agency’s prior consultation with State and local officials, a summary of the nature of their concerns and the agency’s position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and (C) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.”<sup>220</sup>

HUD claims the proposed rule “does not impose substantial direct compliance costs on State and local governments”<sup>221</sup> and, thus, Executive Order 13132 is not applicable. It is unknown what the actual direct costs to public housing agencies of complying with these requirements would be and whether those costs would be “substantial” within the meaning of the Executive Order. But HUD states in its impact analysis that “HUD would bear eviction costs between \$3.3 to \$4.4 million.”<sup>222</sup> However, those eviction costs would likely be borne by public housing agencies in addition to their other associated costs. HUD also states the cost of turning over units “may be sizeable,”<sup>223</sup> which seems like a good synonym for “substantial.” HUD does not estimate the increased costs to PHAs of conducting the additional eligibility verifications. In sum, it is apparent that a federalism impact statement is required in connection with this regulation but none has been issued.

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<sup>218</sup> 84 Fed. Reg. at 50592.

<sup>219</sup> 64 Fed. Reg. at 43255.

<sup>220</sup> 64 Fed. Reg. at 43257-58.

<sup>221</sup> 84 Fed. Reg. at 20592.

<sup>222</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 4 (Apr. 15, 2019).

<sup>223</sup> *Id.*

## XVIII. Unfunded Mandate Analysis is Required

The Unfunded Mandates Reform Act requires an agency to perform a cost analysis before promulgating any rule that imposes a federal mandate which “may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year[.]”<sup>224</sup> The UMRA defines “federal mandate” as to include “any provision in a statute or regulation that imposes an enforceable duty upon State, local, or tribal governments including a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.”<sup>225</sup> This easily encompasses the proposed rule.<sup>226</sup> HUD’s own cost-benefit analysis shows that compliance with the proposed rule may result in State, local, tribal, and private expenditures well over \$100,000,000. In addition to moving costs (estimated between \$12.8 and \$17.4 million), HUD notes the cost of homelessness will be between \$20,000 and \$50,000 per person per year. Considering that over 106,000 individuals will be displaced from housing by the rule, anticipated homelessness costs alone could easily exceed \$100,000,000 within any one year. Therefore, a cost analysis is required.

The cost benefit analysis HUD did prepare is insufficient under the UMRA. Among other things, the analysis does not contain a description of the extent of HUD’s prior consultation with elected representatives of affected State, local, and tribal governments, a summary of the comments and concerns raised by such state, local, or tribal officials, or a summary of the agency’s evaluation of those comments and concerns.<sup>227</sup>

## CONCLUSION

For the aforementioned reasons, the National Housing Law Project strongly opposes the proposed rule as unnecessary, unlawful, and fundamentally un-American. We wholly reject the idea that some families are more deserving than others of having a safe place to live, and we condemn this proposal’s scapegoating of low-income immigrant families as a contributing factor to the nation’s affordable housing crisis. Not only is this patently untrue, but the proposed rule will actually exacerbate this issue. No family should have to choose between staying together and having a roof over their head.

We are all better off as a country if we ensure that all families can access programs that ensure their health and well-being. We urge HUD to immediately withdraw its current proposal, and dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants and citizens to support themselves and their families in the future. If we want our communities to thrive, everyone in those communities must be able to stay together and get the care, services, and support they need to remain healthy and productive.

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<sup>224</sup> 2 U.S.C.A. § 1532(a) (West 2019).

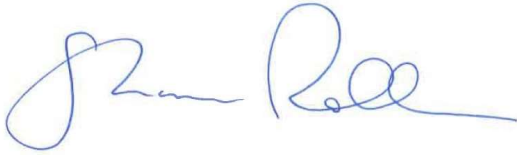
<sup>225</sup> 2 U.S.C.A. § 1555 (West 2019).

<sup>226</sup> 2 U.S.C.A. § 1555 (West 2019).

<sup>227</sup> See 2 U.S.C.A. § 1532(a)(5) (West 2019).

Thank you for the opportunity to submit comments on the proposed rulemaking. If you have questions, please do not hesitate to contact Karlo Ng at [kng@nhlp.org](mailto:kng@nhlp.org) and Arianna Cook-Thajudeen at [acooktha@nhlp.org](mailto:acooktha@nhlp.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "Shamus Roller". The signature is fluid and cursive, with a large initial "S" and "R".

Shamus Roller  
Executive Director