

July 9, 2019

Submitted via www.regulations.gov

Office of General Counsel, Rules Docket Clerk
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:

On behalf of Funders Together to End Homelessness, I am writing to voice our opposition to the Department of Housing and Urban Development (HUD's) proposed 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). This proposed rule would evict families and children who are U.S. citizens or legal permanent residents from homes and put them at risk of experiencing homelessness, thus adding to the current affordable housing and homelessness crisis.

Funders Together to End Homelessness is a national network of more than 240 private funders from across the country, including private foundations, community foundations, United Ways, corporate giving programs, and individual philanthropists. As an organization, we work to mobilize our members to utilize the voice, influence, and expertise of philanthropy in ways that will advance lasting solutions to end homelessness, including addressing its underlying causes like structural and racial inequities, and helping create policies and systems that center people with lived experience.

Through public-private partnerships, our mutual investments make progress on ending housing instability and homelessness. However, this proposal directly puts families and children at risk of experiencing homelessness in communities across the country, thus adding to the current homelessness crisis and reducing the impact of public-private partnerships.

We urge HUD to abandon its pursuit of this proposed rule and work to keep families and individuals housed and safe.

1. The Proposed Rule Will Hurt Tens of Thousands of Immigrant Families and Children Who Are U.S. Citizens or Legal Residents.

The proposed rule threatens to undermine the well-being of low-income U.S. citizens, immigrants, and their families. It would force mixed status families to make a decision between breaking up to allow eligible family members to continue receiving assistance or forgo the subsidies to stay together.

However, since 70% of mixed status families currently receiving HUD assistance are composed of eligible children and at least one ineligible parent, it is likely that these families will forgo the subsidies to avoid separation. 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."¹

¹ 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).

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).² These evictions and departures from housing assistance will cause increased rates of homelessness and unstable housing.³

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.⁴ Nearly all 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.⁵ 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. However, by prohibiting ineligible adults from living in subsidized units, the proposed rule forecloses the possibility of these U.S. citizen and LPR children from receiving housing assistance.

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

Secretary Carson stated that the proposed rule is an effort to address the waitlist crisis for subsidized housing.⁶ While there is a public housing and Section 8 waitlist crisis,⁷ the proposed rule would worsen it. By HUD's 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 comprising of members who are all eligible, this transition would cost HUD from \$372 million to \$437 million annually.⁸

² *Id.* at 8.

³ 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>.

⁴ 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, SEP Immigrants admitted for lawful temporary residence prior to January 1, 1982).

⁵ 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).

⁶ 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.

⁷ 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>.

⁸ 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).

To pay for these new costs,⁹ HUD has surmised that the likeliest scenario would be that **HUD would have to reduce the quantity and quality of assisted housing in response**. In this case, the transfer would be from assisted households who experience a decline in assistance 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...¹⁰

HUD's 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 exacerbate it. 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 homes for all."¹¹ In fact, it will do the opposite, reducing the quantity of affordable homes.

Despite belief from the Administration, philanthropy will not be able to fill the funding gaps for the ongoing housing needs of those forced in to housing instability or homelessness because of this rule. If philanthropy is expected to invest additional funds to address housing needs created by the rule, our members have said that it could take away critical resources from other private investments in housing, homelessness, and other preventative programs and solutions.

With that said, the ripple effects this rule will have on families will create needs that our grantees cannot absorb capacity and resource wise. This would cause a diversion in funds from other strategic investments from philanthropy and ultimately hurt communities across the country, adding to the current housing and homelessness crisis.

3. The Proposed Rule Conflicts with U.S. Policy Priorities on Preventing and Responding to Homelessness.

The proposed rule runs counter to U.S. policy priorities on preventing and responding to homelessness and poverty and 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.¹² 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."¹³ The proposed rule directly contradicts this by erecting additional barriers to housing access. The rule also conflicts 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."¹⁴

⁹ Braktkon 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>.

¹⁰ 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).

¹¹ HUD, ABOUT HUD, MISSION (last visited May 20, 2019), <https://www.hud.gov/about/mission>.

¹² 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; 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.

¹³ U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, SUMMARY OF ESSENTIAL ELEMENTS OF THE PLAN 2 (July 2018).

¹⁴ 42 U.S.C. § 12701.

4. The Proposed Rule Will Disproportionately Hurt Communities of Color and Vulnerable Populations, such as People Experiencing Homelessness.

This proposed rule is in direct conflict with Funders Together's value of ensuring homelessness is a rare, short-term, and one-time event, and housing opportunities are not conditioned by race, ethnicity, gender identity, and other personal characteristics. It would mainly affect people of color, who are already at a higher risk of experiencing homelessness and currently make up a disproportional percentage of the homeless population.

Most minority groups in the United States experience homelessness at higher rates than Whites, and therefore make up a disproportionate share of the homeless population. African Americans make up 13 percent of the general population, but more than 40 percent of the homeless population. Similarly, American Indians/Alaska Natives, Native Hawaiians and Pacific Islanders, and people who identify as two or more races make up a disproportionate share of the homeless population. Hispanics make up a share of the homeless population approximately equal to their share of the general population, while Whites and Asians are significantly underrepresented.¹⁵

People of color are a large population of the immigrant community and by targeting immigrants, this proposed rule will only fuel the racial disparities and inequities that exist in the housing and homelessness systems.

The rule would require that all who declare they are U.S. citizens under penalty of perjury provide evidence of their citizenship.¹⁶ 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 from 2006 showed that as many as seven percent of citizens did not have citizen documentation readily available.¹⁷ 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. That same survey suggests that:

- At least 12 percent of citizens earning less than \$25,000 a year do not have proof of citizenship;
- 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.

Those who are unable to produce the required documents within the required time period under the proposed rule will lose their housing assistance. Many will be evicted from their homes and a significant share may experience homelessness.

The proposed documentation requirements will be burdensome for recipients of rental assistance who formerly experienced homelessness, as well as for people experiencing homelessness who could be assisted by Section 214 programs. These individuals often no longer have important documents such as photo identification, birth certificates, and social security cards because they have been destroyed or lost due to the criminalization and

¹⁵ National Alliance to End Homelessness, *Racial Inequities in Homelessness By the Numbers* (June 2018), <https://endhomelessness.org/resource/racial-inequalities-homelessness-numbers/>

¹⁶ 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>.

¹⁷ *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



removal of encampments where these individuals live.¹⁸ Adding more requirements creates more barriers to housing and could cause many people who have gained stability through rental assistance to return to homelessness.

In closing, the philanthropic community calls on our partners at the U.S. Department of Housing and Urban Development to rescind this proposed rule and protect children and families from housing instability and homelessness in our communities. We look forward to working in partnership with HUD and the Administration to ensure our neighbors have access to one of the most basic of human rights – a safe and affordable place to call home.

On behalf of Funders Together to End Homelessness, I appreciate the opportunity to voice our collective concern with the implementation of this rule and to provide input on the impacts it will have on communities across the country. I encourage you to reach out to me with any questions or comments at amanda@funderstogether.org.

Sincerely,

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¹⁸ 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.