

July 9, 2019

Submitted via [www.regulations.gov](http://www.regulations.gov)  
Office of General Counsel, Rules Docket Clerk  
Department of Housing and Urban Development  
451 7<sup>th</sup> 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

To Whom it May Concern:

We write on behalf of the American Civil Liberties Union of Connecticut (ACLU-CT) and the Connecticut Coalition to End Homelessness (CCEH) in response to the Department of Housing and Urban Development's (HUD) Proposed Rulemaking: Housing and Community Development Act of 1980: Verification of Eligible Status (hereinafter "Proposed Rule"), which was published in the Federal Register on May 10, 2019 (RIN 2501-AD89; HUD Docket No. FR-6124-P-01). The Proposed Rule would significantly harm immigrant families, including U.S. citizens, and expose 55,000 children to eviction and homelessness. We urge HUD to withdraw the Proposed Rule in its entirety and to leave intact its long-standing regulations establishing housing access for mixed-status families on a prorated basis.

The American Civil Liberties Union of Connecticut is a nonpartisan, non-profit membership organization that defends, promotes, and preserves individual rights and liberties under the U.S. and Connecticut constitutions in state and federal court, the Connecticut General Assembly, and the state's 169 towns and cities. Since 1948, the ACLU-CT has exercised its legal expertise to protect freedom, justice, and equality. The ACLU-CT's priorities include defending the rights of immigrants, advocating for economic justice, and defending the housing rights of vulnerable populations. Immigrants to the United States are frequently targets of discrimination, and undocumented immigrants are particularly susceptible to abuse. The ACLU-CT works to defend and protect immigrants' rights and to ensure humane treatment under the Constitution, which protects all people within our borders.

The Connecticut Coalition to End Homelessness, in partnership with members and communities throughout the state, creates change through leadership, advocacy, and building the capacity of members and the field to respond to environmental challenges. CCEH's collective mission is to prevent and end homelessness in Connecticut. CCEH represents more than 100 members – emergency shelter providers, transitional housing providers, community and business leaders, and strategic partners – who share the goal of ending homelessness. CCEH advances this goal through leadership, community organizing, advocacy, research, and education. Among its work, CCEH coordinates and supports statewide advocacy efforts to secure the resources and policies needed to end homelessness; educates elected officials and members of the public on the problem of homelessness and approaches to solve it; supports shelters, housing, and services programs via education, training, technical assistance, and networking opportunities; leads and

manages the federally-mandated statewide Homeless Management Information System and provides analysis of data to improve performance; and leads the statewide Point-in-Time Count, a HUD-mandated annual census of homelessness.

The ACLU-CT and CCEH oppose HUD's Proposed Rule on mixed-status families because it represents a coordinated attack on immigrant families without increasing access to HUD-supported housing.<sup>1</sup> The Proposed Rule would force mixed-status families to make an impossible choice: keep their families together and face eviction, or separate so that those with eligible status can keep receiving housing assistance.<sup>2</sup> The Proposed Rule furthermore imposes new and burdensome requirements to prove citizenship or eligible immigration status, which will be daunting for many citizens and legal permanent residents. The mass evictions and onerous documentation requirements will have a disparate impact on Latinx<sup>3</sup> and Black families, the elderly, and people with disabilities.<sup>4</sup> Given the national shortage of affordable housing options,<sup>5</sup> many families displaced by this Proposed Rule will face severe housing precarity or homelessness.

Currently, people who are not U.S. citizens and immigrants with certain immigration statuses are ineligible for housing assistance. If a household includes some eligible and some ineligible people, assistance is prorated to only cover citizens and eligible immigrants. The Proposed Rule imposes new documentation requirements on all citizens and eligible noncitizens over the age of 62 and bars families from getting rental assistance if at least one person in the household is not eligible for assistance because of their immigration status.

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<sup>1</sup> See, e.g., *Understanding Trump's Muslim Bans*, National Immigration Law Center (updated Mar. 8, 2019), available at <https://www.nilc.org/issues/immigration-enforcement/understanding-the-muslim-bans/>; Michael D. Shear & Emily Baumgartner, "Trump Administration Aims to Sharply Restrict New Green Cards for Those on Public Aid," *New York Times* (Sept. 22, 2018), available at <https://www.nytimes.com/2018/09/22/us/politics/immigrants-green-card-public-aid.html>; Dan Lamothe, "Pentagon Will Shift an Additional \$1.5 Billion to Help Fund Trump's Border Wall," *The Washington Post* (May 10, 2019), available at [https://www.washingtonpost.com/national-security/2019/05/10/pentagon-will-shift-an-additional-billion-help-fund-trumps-border-wall/?utm\\_term=.37360e7cda10](https://www.washingtonpost.com/national-security/2019/05/10/pentagon-will-shift-an-additional-billion-help-fund-trumps-border-wall/?utm_term=.37360e7cda10); Reuters, "Exclusive: Trump Administration Proposal Would Make It Easier to Deport Immigrants Who Use Public Benefits," *New York Times* (May 3, 2019), available at <https://www.nytimes.com/reuters/2019/05/03/us/politics/03reuters-usa-immigration-benefits-exclusive.html>.

<sup>2</sup> HUD's own regulatory analysis acknowledges that the Proposed Rule forces a "ruthless" choice for mixed-status families between compliance with the rule and keeping their families together. HUD, *Regulatory Impact Analysis, Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980*, Docket No. FR-6124-P-01, 16 (Apr. 15, 2019) (hereinafter "HUD Regulatory Impact Analysis").

<sup>3</sup> We use "Latinx" as a gender-neutral alternative to Latina(s) and Latino(s).

<sup>4</sup> Mazzara, Alicia. "Demographic Data Highlight Potential Harm of New Trump Proposal to Restrict Housing Assistance," Center on Budget and Policy Priorities, July 1, 2019, <https://www.cbpp.org/research/housing/demographic-data-highlight-potential-harm-of-new-trump-proposal-to-restrict-housing>.

<sup>5</sup> There is no state, metropolitan area, or county in the United States where a worker earning the federal minimum wage or prevailing state minimum wage can afford a two-bedroom rental at fair market rent by working a standard 40-hour work week. See *Out of Reach 2018, The High Cost of Housing*, National Low Income Housing Coalition, (2018) at 1, available at [https://nlihc.org/sites/default/files/oor/OOR\\_2018.pdf](https://nlihc.org/sites/default/files/oor/OOR_2018.pdf). Despite the affordability crisis, three out of four low income households in need of housing assistance in the United States are denied federal help due to chronic underfunding. Will Fischer & Barbara Sard, "Federal Housing Spending is Poorly Matched to Need, Tilt Toward Well-Off Homeowners Leaves Struggling Low-Income Renters Without Help," Center on Budget and Policy Priorities (last updates March 8, 2017), available at <https://www.cbpp.org/sites/default/files/atoms/files/12-18-13hous.pdf>.

This attack on housing assistance for immigrants would drastically affect the lives of Connecticut families and families nationwide. More than 74,000 Connecticut families receive assistance from public housing, Section 8 project-based rental assistance, Section 8 moderate rehabilitation, or a housing choice voucher program. Close to 200 Connecticut families receive prorated HUD rental assistance because they live with an immigrant who is ineligible for HUD assistance. Under the Proposed Rule change, these families would lose their assistance or be forced to separate their families in order to keep a roof over their heads. The Proposed Rule would impose new documentation requirements for elderly immigrants who are eligible for housing assistance, such as refugees or lawful permanent residents.

Nationally, 9.5 million people living in 4.5 million families are assisted by the programs that the Proposed Rule would affect. Of those, 410,000 are noncitizens living in 280,000 families. Seventy percent of people in these programs are children, elderly, or people with disabilities, meaning the Proposed Rule will affect the most vulnerable populations. Studies show that low-income people, seniors, and Black residents often have difficulty producing the documents that would be required under the Proposed Rule, meaning that they would be more likely to lose their aid and their homes. It is predicted that at least 70 percent of mixed-status families would likely lose their aid and their homes. The other 30 percent would most likely split their families up to continue receiving aid. This will exacerbate homelessness.

HUD's own analysis confirms that the Proposed Rule will hurt mixed-status families, and that its implementation will cost so much that fewer families overall will receive housing assistance as a result.<sup>6</sup> Blaming struggling immigrant families for the nation's ongoing housing affordability crisis is unfair and will only exacerbate this problem by increasing housing instability and reducing the amount and availability of federally assisted housing. HUD should instead focus on securing funding to ensure that every family has a safe, affordable place to call home.

## **I. The Proposed Rule Will Deny Housing to U.S. Citizens, Children, Seniors, Protected Groups, and Immigrants Who Are Eligible for Federally Assisted Housing Programs**

The Proposed Rule, should it go into effect, would harm more people than it would supposedly help. U.S. citizens, children, aging populations, groups of people who are protected under the Fair Housing Act, and immigrants who are eligible for housing assistance would feel the effects the most.

Due to the average makeup of mixed-status families, the Proposed Rule is primarily an attack on U.S. citizens and children. 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 solely because their parents lack eligible noncitizen status. Nearly all children in mixed-status families who receive HUD assistance covered by Section 214 are U.S. citizens and legal permanent residents who live with parents or other adults who do not have eligible immigration status. Roughly 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

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<sup>6</sup> HUD, Regulatory Impact Analysis, *supra* note 2, at 3.

55,000 eligible children in mixed-status families overall.<sup>7</sup> Since children cannot sign leases, the adult heads of household, including those who do not receive assistance, must sign these contracts on behalf of their family. By prohibiting the ineligible adults from living in subsidized units with prorated assistance, the Proposed Rule forecloses U.S. citizen and legal permanent resident children from receiving any housing assistance, unlawfully discriminating against them based on their parentage.

In addition to attacking mixed-status families, the Proposed Rule threatens housing security for 9.5 million U.S. citizens currently receiving HUD assistance and all future U.S. citizens seeking these benefits. The Proposed Rule would require that U.S. citizens provide *additional* evidence of their citizenship, a practice that has proven to be burdensome, costly, and unnecessary to protect program integrity in other regulatory contexts.<sup>8</sup> Rather than the current rule requiring a declaration signed under penalty of perjury of their citizenship or nationality status, the Proposed Rule would require U.S. citizens to also provide documentary proof of citizenship or nationality, such as a birth certificate or a naturalization certificate, which can be extremely difficult for certain segments of the population. In fact, one survey showed that roughly 7 percent of U.S. citizens did not have this documentation readily available.<sup>9</sup> The same survey found that obtaining such documentation can be particularly difficult to obtain for certain citizens, including people over the age of 50, people of color, people with disabilities, people with low incomes, and those who were formerly homeless or are experiencing homelessness. This means that hundreds of thousands of U.S. citizens may not be able to produce the required documentation and lose their housing assistance as a result. As many as 151,000 Connecticut residents could lose their housing assistance if they are unable to produce documents verifying their citizenship under the new rule.

Seniors, including the current 1.9 million older adults who receive federal housing assistance, would also be harmed by the Proposed Rule. Older adults tend to have fixed incomes and limited resources to spend on basic needs. The Proposed Rule would make it more difficult for intergenerational families to live together and share resources. More than 1,500 older adults living in mixed-status families who are U.S. citizens or otherwise eligible for housing benefits could face eviction under the Proposed Rule. Even if they are not evicted, eligible noncitizen seniors would be required to provide additional documentation to qualify for housing benefits. This requirement would be incredibly burdensome to older adults, who face many challenges in obtaining such documentation. Roughly 120,000 older adult immigrants would be impacted by this new documentation requirement. More than 1,400 Connecticut households receiving assistance include an elderly immigrant who is eligible for HUD rental assistance. Because elderly people are less

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<sup>7</sup> See HUD, Regulatory Impact Analysis, *supra* note 2, at 6-8 (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).

<sup>8</sup> Proposed Rule; 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 (Mar. 13, 2007), available at <https://www.cbpp.org/research/new-medicaid-citizenship-documentation-requirement-is-taking-a-toll-states-report>.

<sup>9</sup> *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, Brennan Center for Justice (Nov. 2006), available at [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).

likely to have the documents needed to verify their status, the Proposed Rule puts them at risk of losing their homes.

In addition to harming U.S. citizens, children, and the elderly, the Proposed Rule poses significant legal concerns under the Fair Housing Act. The Fair Housing Act prohibits discrimination on the basis of many characteristics, including national origin and familial status, yet the Proposed Rule targets immigrant recipients of housing assistance, who are disproportionately Latinx,<sup>10</sup> and families with children.

The Proposed Rule would have a significant chilling effect on otherwise eligible individuals' willingness to access important housing benefits to which they are entitled. Indeed, in its own analysis, HUD recognized that the fear of family separation will "lead to prompt evacuation by most mixed households."<sup>11</sup>

Millions of immigrant families would be harmed by the fear and confusion created by the Proposed Rule, meaning many of those who would remain eligible for housing assistance would likely forgo their eligible assistance or forgo reapplying due to the purposeful confusion created by the rule. The overbroad rule would cause mostly eligible immigrants and U.S. citizens — the overwhelming majority of people in mixed-status families who currently receive prorated federal housing assistance — to lose their homes.<sup>12</sup>

## **II. The Proposed Rule Will Expose Tens of Thousands of Immigrant Families to Housing Instability and Homelessness**

By threatening access to stable, affordable housing, the Proposed Rule will undermine the well-being of low-income U.S. citizens, eligible immigrants, and their families. The Proposed Rule 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. Because 70 percent of mixed-status families receiving assistance include eligible children and at least one ineligible parent, most of these families will likely forgo the subsidies to avoid separating their families. This means that the rule would evict as many as 108,000 people in mixed-status families, increasing rates of homelessness and housing instability for a vulnerable population that is overwhelmingly eligible for the assistance this rule would deny them.<sup>13</sup>

People who undergo involuntary displacement suffer short-term and long-term economic consequences that greatly affect their families. Displacement often leads to or exacerbates existing

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<sup>10</sup> Of the approximately 75,000 people in mixed-status families who will lose housing benefits, 85% are Latinx.

<sup>11</sup> HUD, Regulatory Impact Analysis, *supra* note 2, at 7.

<sup>12</sup> Douglas Rice, *Trump Proposal Would Jeopardize Rental Aid for Many U.S. Citizens*, Center for Budget and Policy Priorities, (June 18, 2019), available at <https://www.cbpp.org/blog/trump-proposal-would-jeopardize-rental-aid-for-many-us-citizens>.

<sup>13</sup> *Confronting the Housing Squeeze: Challenges Facing Immigrant Tenants, and What New York Can Do*, Pratt Center for Community Development (2018), available at <https://prattcenter.net/research/confronting-housing-squeeze-challenges-facing-immigrant-tenants-and-what-new-york-can-do>.

economic instability and increases job loss. The \$9.5 million to \$13 million upfront moving costs HUD estimates displaced households would have to bear would be debilitating to these families. Long-term consequences from this displacement could include increased health problems, loss of employment, poor education, heightened risk of criminalization, and others.

### **III. The Proposed Rule Contravenes Policy Priorities on Preventing and Responding to Homelessness**

The Proposed Rule is in direct conflict with the federal policy priority to end homelessness. The U.S. Interagency Council on Homelessness has prioritized ending and preventing homelessness among families with children and youth homelessness, regardless of immigration status. The National Affordable Housing Act was passed to ensure that all U.S. residents have “access to decent shelter or assistance in avoiding homelessness.” This Proposed Rule, however, contradicts these goals. It would increase housing instability for immigrant families who rely on stable housing to maintain their employment, contribute to local economies, and help their communities thrive. Undoubtedly, the rule would lead to homelessness for many families.

Reports show that homelessness continues to decline in Connecticut. In fact, there are 10 percent fewer people experiencing homelessness in 2019 than there were in 2018. Homelessness has decreased by 32 percent since 2007. Much of this is due to the work of the Connecticut Coalition to End Homelessness and the Coordinated Access Network it is building to prevent and end homelessness. Though there is progress, Connecticut has the sixth highest housing cost in the nation. Many low-income households hover on the brink of homelessness. More than 4,500 people are homeless on any given night in Connecticut – nearly one in five are children. Connecticut’s emergency shelters are full beyond capacity. Homelessness is expensive: it costs our public systems (emergency services, hospitals, and schools) more to leave our neighbors homeless than it does to help them secure housing and provide them the supports to keep it. The Proposed Rule could drastically increase the number of people who are homeless in Connecticut and reverse our state’s downward trend in homelessness.

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 Proposed Rule change would harm immigrant families and our communities as a whole, threatening people with evictions and homelessness and breaking families apart.

### **IV. The Proposed Rule Will Reduce Access to and the Quality of Federally Assisted Housing**

HUD’s purported justification that the Proposed Rule will address the nationwide waitlist crisis for subsidized housing<sup>14</sup> contradicts its own regulatory impact analysis, which concludes that the Proposed Rule will likely *decrease* the total number of assisted families. The agency’s analysis finds that replacing the approximately 25,000 mixed-status families currently receiving HUD

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<sup>14</sup> Tracy Jan, “Trump Proposal Would Evict Undocumented Immigrants From Public Housing,” The Washington Post (Apr. 18, 2019), *available at* [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).

assistance with households comprising members who are all eligible would cost HUD between \$372 million to \$437 million annually.<sup>15</sup> HUD admits that the likeliest scenario under the Proposed Rule would be that HUD would have to reduce the quantity and quality of assisted housing in response to higher costs.<sup>16</sup> With 75 percent of low-income households in need of housing assistance being denied federal help due to underfunding and three million people on voucher waitlists around the country, reducing the quantity of assisted housing will cause great harm to many people in our country.

## **V. The Proposed Rule Conflicts with the Statute, Congressional Intent, and HUD’s Prior Rulemaking**

The Proposed Rule claims that it brings HUD regulations “into greater alignment with the wording and purpose of Section 214” by barring mixed-status families from receiving assistance. This rationale is flatly contradicted by the statutory language, Congressional intent, and HUD’s prior rulemaking. Section 214 requires that housing assistance be made available to mixed-status families on a prorated basis as long as one family member is eligible, and Congress enacted amendments to the section to allow for financial assistance to eligible members of mixed-status families. Additionally, HUD’s own rules provide for prorated financial assistance for these families. The Proposed Rule should be withdrawn given its clear conflict with the law, congressional intent, and HUD’s own prior rulemaking.

## **VI. The Rule Would Violate HUD’s Obligation to Affirmatively Further Fair Housing**

The Proposed Rule would violate HUD’s statutory obligation to affirmatively further fair housing, 42 U.S.C. § 3608(e)(5), which requires that the HUD Secretary “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of” the Fair Housing Act. According to HUD, “affirmatively furthering fair housing” includes “fostering and maintaining compliance with civil rights and fair housing laws.” However, the Proposed Rule specifically does not advance fair housing aims or comply with civil rights laws. Instead, it seeks to deny housing opportunities to thousands of immigrant families and to people who will struggle to meet new documentation requirements. The rule would also have a disproportionate effect on families with children, a protected classification under the Fair Housing Act. This is a discriminatory policy that is wholly inconsistent with HUD’s obligation to affirmatively further fair housing.

## **CONCLUSION**

Immigrants have been the backbone of this nation for centuries and continue to provide for the benefit of all Americans in so many ways. Immigrants are human beings. Immigrants are our family members, friends, and coworkers. The repeated attacks from this administration, including HUD’s Proposed Rule, are unwarranted, hateful, and unjustified. The Proposed Rule will hurt mixed-status families, including many U.S. citizens and eligible immigrants; is in direct conflict with Section 214; fails to address the housing affordability and subsidized housing waitlist crisis; runs counter to U.S. policy priorities on preventing and responding to homelessness and poverty;

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<sup>15</sup> HUD, Regulatory Impact Analysis, *supra* note 2, at 11.

<sup>16</sup> HUD, Regulatory Impact Analysis, *supra* note 2, at 3 (emphasis added).

and violates the agency's statutory duty to affirmatively further fair housing. It will hurt families in our state and across the nation. We urge HUD immediately to withdraw the Proposed Rule and instead to advance housing policies that strengthen — not undermine — families' abilities to remain together in stable, affordable housing.

Please do not hesitate to contact us for further information.

Sincerely,

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