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July 3, 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:

I am writing on behalf of the Alliance to End Homelessness in Suburban Cook County (the Alliance) 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). This rule will make homelessness significantly worse by kicking thousands of people out of public housing, creating an influx of family homelessness. As we work to ensure that no one experiences homelessness, creating increased inflow of almost 100,000 people while simultaneously taking away a housing intervention for others in our system of care, is simply inhumane and counterproductive. We urge the rule to be withdrawn in its entirety, and that HUD's long-standing regulations remain in effect.

The Alliance serves as the lead agency for the Continuum of Care for suburban Cook County in Illinois, and our mission is to strive for the elimination of homelessness in suburban Cook County through the coordination and maximization of available resources to assist homeless individuals and families. The Alliance serves as a convener for the collaborative, community-based endeavors of homeless service providers, affordable housing developers, local governments, foundations, and the private sector. We serve over 8,000 people each year in our system of care and house 700 people in permanent housing annually. Yet, through all of this, homelessness is going up. There is a crisis in affordable housing and discrimination for housing that is paired by flat funding for homeless services. We rely on our local PHAs to provide a vital source of affordable housing and we *strongly reject* the notion that kicking families out of housing because of a mixed immigrant status will help any problems with affordable housing. It will make homelessness worse.

Although HUD contends that the proposed rule is a means of addressing the waitlist crisis faced by a majority of Public Housing Authorities nationwide,¹ The Alliance recognizes that the proposed rule is a part of the current administration’s coordinated attack on immigrant families.² We all share the concern that millions of U.S. households struggle 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.³ 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.

I. The Proposed Rule Will Hurt Tens of Thousands of Immigrant Families Including Many Citizen Children.

The proposed rule places tens of thousands of immigrant 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.

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. 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.”⁴ 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.⁵ These mass evictions and departures from housing assistance will cause increased rates of homelessness and unstable housing among an already vulnerable population.⁶

Eviction rates at this level will cause an inflow into our already burdened system, without providing a solution to the affordable housing crisis. Further, we know that families who

¹ 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=.c6fd40565b83.

² See, e.g., NAT’L IMMIGRATION L. CTR., *Understanding Trump’s Muslim Bans* (updated Mar. 8, 2019), <https://www.nilc.org/issues/immigration-enforcement/understanding-the-muslim-bans/>; Michael D. Shear & Emily Baumgaertner, *Trump Administration Aims to Sharply Restrict New Green Cards for Those on Public Aid*, N.Y. TIMES (Sept. 22, 2018), <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*, WASH. POST (May 10, 2019), 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*, N.Y. TIMES (May 3, 2019), <https://www.nytimes.com/reuters/2019/05/03/us/politics/03reuters-usa-immigration-benefits-exclusive.html>.

³ 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).

⁴ 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).

⁵ *Id.* at 8.

⁶ 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>.

experience homelessness and housing instability have increased hospital visits, loss of employment, and are associated with increased likelihood of mental health problems in children,⁷ and can dramatically increase the risk of an acute episode of a 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 in the children, nearly all of whom are U.S. citizens, in these mixed status families. Research has shown that economic and housing instability impedes children's cognitive development, leading to poorer life outcomes as adults.⁸ 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.⁹

At the Alliance, we have seen families move onto housing choice vouchers and because they can move to an area of opportunity have access to better school districts, access to transportation, and access to gainful employment. We believe that these families have a right to better their lives and have housing stability—as everyone does!

II. 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.¹⁰ 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

⁷ 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 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>.

⁸ 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>.

⁹ 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).

¹⁰ 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>.

have citizen documentation readily available.¹¹ Obtaining such documentation can be particularly difficult for U.S. citizens over the age of 50, citizens of color, citizens with disabilities, citizens with low incomes, and citizens who are experiencing homelessness—many of whom fall into the other aforementioned categories, as well.

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 may have never been issued a birth certificate in the first place. 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.

We know that policies like this proposed rule have the consequences we are expecting. For example, 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 needing to spend more time providing help to applicants and beneficiaries, increasing their time spent on applications and redeterminations of eligibility.

For those who are unable to produce the required documents within the required time period under the proposed HUD rule, they 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.

In our partnerships with our PHA, we already have difficulty with homeless clients getting documentation within the allotted time. Adding in further requirements, many of which require going to government offices in person, will *unfairly penalize* people experiencing homelessness, including those who are citizens.

III. 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

¹¹ 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

nationwide.¹² 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 waitlists¹³—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 comprising of members who are all eligible, this transition would cost HUD from \$372 million to \$437 million annually.¹⁴

To pay for these new costs of the proposed rule,¹⁵ 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...¹⁶

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 homes for all.”¹⁷ In fact, the proposed rule will do the exact opposite, reducing the quantity of affordable homes on the market.

This outcome makes it clear that HUD is targeting immigrant families without making a true effort to solve the affordable housing crisis. We *strongly urge* HUD to fully repeal this rule and work to truly create more affordable housing for all who need it—regardless of immigration status.

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

¹² 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.

¹³ 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>.

¹⁴ 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).

¹⁵ Brakkton 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>.

¹⁶ 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).

¹⁷ HUD, ABOUT HUD, MISSION (last visited May 20, 2019), <https://www.hud.gov/about/mission>.

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.¹⁸ 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.”¹⁹ 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.”²⁰

Communities across the country are ending homelessness and we know that it is possible to achieve this goal. However, we will see an increase in homelessness and housing instability as a result of the evictions from public housing proposed by this rule. Further, our Continuum serves people regardless of their immigration status. As a direct result of the fear this rule will cause, immigrant families who are struggling with housing will be less likely to see our system of care as one that they can access without penalty. This rule directly goes against the mission that HUD sets out for a Continuum of Care—to *end homelessness for our most vulnerable neighbors*.

V. The Rule Would Violate HUD’s Obligation to Affirmatively Further Fair Housing.

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.²¹ In its 2015 regulation, HUD defined “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.”²² 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

¹⁸ 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.

¹⁹ U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, SUMMARY OF ESSENTIAL ELEMENTS OF THE PLAN 2 (July 2018).

²⁰ 42 U.S.C. § 12701.

²¹ 42 U.S.C.A. § 3608(e)(5) (West 2019).

²² 24 C.F.R. § 5.152 (definition of “Affirmatively furthering fair housing”).

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*.²³ Since minor children comprise the vast majority of eligible occupants of mixed status households,²⁴ 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.

As we stated above, the Alliance believes that this proposed rule will most *certainly* increase homelessness in our community and communities across the country. This rule will make it more difficult for people who are most vulnerable in our society to access what should be a human right: safe and stable housing. 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 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.

Thank you,

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²³ RIA at 8.

²⁴ *Id.* At 6 (noting that in mixed status households, 73 percent of eligible occupants are children between 0 and 17 years old).