



July 8, 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 the Asian Pacific Institute on Gender-Based Violence (API-GBV), we are submitting the following comments 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). The proposed rule will negatively impact Asian and Pacific Islander (API) and immigrant survivors of domestic violence and sexual assault, as well as have long term harmful impacts on children in our communities, and impose increased burdens on domestic violence and sexual assault victim advocates who are already over-stretched and under-resourced. We urge the rule to be withdrawn in its entirety, and that HUD's long-standing regulations continue to remain in effect.

The API-GBV is a national resource center on domestic violence, sexual violence, trafficking, and other forms of gender-based violence in Asian and Pacific Islander and immigrant communities. The API-GBV serves a national network of advocates; community-based service programs; federal agencies; national and state organizations; legal, health, and mental health professionals; researchers; policy advocates; and activists from social justice organizations. It analyzes critical issues, promotes culturally relevant evidence-informed

intervention and prevention, provides consultation, technical assistance and training; develops resources, conducts and disseminates research, and impacts systems change through administrative advocacy and policy analysis.

Based on our experience supporting victim services providers and in working directly with immigrant survivors, we write in opposition to the proposed rule and the undue burden it will place survivors of gender-based violence, who rely on Section 214 HUD funded housing, as well as victim advocates who work with survivors to help them escape and overcome abusive relationships.

Although HUD claims that the proposed rule is a means of addressing the waitlist crisis faced by Public Housing Authorities,¹ API-GBV² recognizes that the proposed rule is another proposal from the administration that would harm immigrant families, in particular, immigrant survivors of domestic violence, sexual assault, and other gender-based abuses.² We all share the concern that millions of U.S. households struggle with homelessness and finding affordable housing in the ongoing nationwide housing crisis, but punishing struggling immigrant families, and survivors of domestic and sexual violence in particular, will not fix this problem. The real issue is insufficient funding to ensure that every family, regardless of immigration status, has access to one of the most critical of human rights—safe housing.

I. The Proposed Rule Will Disproportionately Harm Immigrant 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

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>.

harmed by HUD's proposed rule. In many traditional Asian and Pacific Islander (API) communities, women may be discouraged from working and must depend on their male partners as sole wage-earners. Financial dependence on an abuser is one of the most common reasons survivors stay with abusive partners.³ Survivors fear that they will be unable to support themselves or their children, including providing for a roof over their heads, if they leave an abusive relationship.

Immigrant women in particular face a high risk for experiencing severe IPV and domestic violence victimization. Among intimate partner homicide victims in the United States, immigrant victims are disproportionately represented compared to their representation in the U.S. population.⁴ In the API community, between 21-55% of API women report experiencing domestic or sexual violence in their lifetimes.⁵ For immigrant victims of intimate partner violence, abusers may exploit their victims' lack of English proficiency, isolation from their family and other helping systems, lack of understanding or familiarity with the American legal system, religious and cultural customs, to further threaten, isolate, and abuse them.⁶ Immigration status may also limit a survivor's ability to gain employment, leading the survivor to be vulnerable to financial abuse by an abuser who is the sole wage-earner, and limiting housing options for the survivor. Meaningful and prompt access to safe, affordable housing is critical to their ability to flee abusive relationships. For some, their basic survival hangs in the balance.

Currently, survivors who are ineligible for the federal housing subsidies at issue in the proposed rule may nonetheless reside in subsidized housing if they live together with eligible family members as a "mixed status" household. U.S. citizenship, legal permanent residence, and various other forms of immigration status confer eligibility for prorated federal housing subsidies per 42 U.S.C.

³ The Mary Kay Foundation. "2012 Mary Kay Truth About Abuse Survey Report." Survey. 2012, <http://content2.marykayintouch.com/Public/MKACF/Documents/2012survey.pdf>.

⁴ Michael Runner, Mieko Yoshihama, & Steve Novick, Intimate partner violence in immigrant and refugee communities: Challenges, promising practices and recommendations. (2009) Retrieved from: <https://www.rwjf.org/en/library/research/2009/03/intimate-partner-violence-in-immigrant-and-refugeecommunities.html>.

⁵ Mieko Yoshihama & Chic Dabby, Asian Pacific Institute on Gender-Based Violence. *Facts & Stats Report: Domestic Violence in Asian and Pacific Islander Homes* (2015), Oakland, CA: Available at <https://www.apigbv.org/resources/facts-stats-dv-api-homes/>.

⁶ Yvonne Amanor-Boadu, Jill Messing, Sandra M. Stith, Jared R. Anderson, Chris S. O'Sullivan, Jacquelyn C. Campbell, "Immigrant and non-immigrant women: Factors that predict leaving an abusive relationship." *Violence Against Women*, 18, 611-633 (2012).

1436a(a).⁷ An individual eligible for the subsidy does not have to be the individual holding the lease. For example, a U.S. citizen abuser of a survivor who is ineligible for housing subsidies might be removed from their subsidized housing due to a restraining order. The survivor could continue to reside there along with the couple's U.S. citizen children who receive prorated subsidies, despite the survivor's lack of qualifying immigration status. In other words, the immigrant survivor would not face eviction for having called the police for help. Likewise, a survivor living with her abuser in non-subsidized housing could flee her violent home, with subsidized housing as a lifeline due to her US citizen children's eligibility for prorated housing subsidies.

By contrast, the proposed rule prohibits families from residing together in subsidized housing unless all members of the household establish eligibility for the subsidy.⁸ For example, a U-visa (crime victim visa) holder with minor U.S. citizen children could not continue to reside in Section 214 subsidized housing designated for domestic violence survivors. If the proposed rule goes into effect, ineligible survivors and their eligible children who are trying to escape violent homes will be trapped with untenable choices – 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. Research demonstrates 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.⁹

II. The Proposed Rule Will Create Further Barriers for Immigrant Survivors of Gender-Based Violence to Establish Safety and Security

Financial security, and affordable housing in particular, are critical to increasing survivors' chances of escape, recovery, and prevention of future abuse.¹⁰ Strikingly, domestic violence, including sexual abuse, is reported as the acute

⁷ Note that the list of eligibility categories in the statute does not include those who hold "U" visas as victims of gender-based and other crimes, despite their lawful immigration status.

⁸ Eviction will occur at, or potentially before, 18 months following final promulgation of the rule.

⁹ See, <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.

¹⁰ <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.

cause of homelessness among 22% to 57% of all homeless women.¹¹ 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.¹² The National Network to End Domestic Violence reports that 65% of victims' average daily unmet requests for help from domestic violence programs nationwide are for housing related services.¹³ Survivors of sexual assault note also that if they do not have housing, then other auxiliary services are only minimally helpful.¹⁴ Housing can be determinative as to whether a survivor can escape an abusive intimate partner or employer in many cases.¹⁵

Violent perpetrators are well-aware of the link between a victim's financial independence and her access to safety. Three-quarters of women report staying in an abusive relationship due to economic barriers.¹⁶ Financial abuse is extremely common in intimate partner violence (IPV) relationships with between 94% and 99% of survivors of IPV reporting experiencing financial abuse.¹⁷ Abusers will keep financial information from survivors, ruin credit, interfere with the survivor's employment through threats and tactics to hinder the survivor from going to work, and more.¹⁸ Having access to housing assistance helps survivors afford to leave abusive relationships and keep themselves and their families safe and housed.

¹¹ 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

¹² See FN 10 above.

¹³ 2018 statistics show 72,245 victim requests for assistance per day; 11,441 requests are unmet, and of those, 7,416 are for housing. Available at <https://nnedv.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.

¹⁴ 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.

¹⁵ See FN 4 above.

¹⁶ The Mary Kay Foundation. (2012). 2012 Mary Kay Truth About Abuse Survey Report. <http://content2.marykayintouch.com/Public/MKACF/Documents/2012survey.pdf>.

¹⁷ See, e.g., Postmus, J. L., Plummer, S. B., McMahon, S., Murshid, N. S., & and Mi Sung Kim, M. S. (2012). Understanding economic abuse in the lives of survivors. *Journal of Interpersonal Violence*, 27(3),411-430, Adams, A, Sullivan,C, Bybee, D, & Greeson, M. (2008), Development of the scale of economic abuse. *Violence Against Women*, 13, 563-588;

¹⁸ *Id.*

Abusers notoriously keep immigrant survivors in a state of isolation, poverty, and financial dependence, often conditioning them to fear retaliation not only for trying to flee, but also for seeking work or employment authorization. employment. They prevent survivors from doing either by holding their immigration documents hostage, leaving them in a state of paralysis. Further, even survivors able to work outside the home endure such instability day to day that they face difficulty maintaining regular employment.¹⁹ For example, immigrant survivors may have limited English skills or may hold degrees that are not given reciprocity in the United States, and as a result, face challenges in obtaining stable employment. 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. Landlords may be reluctant to rent to survivors who don't have their own credit or rental history. In addition, survivors may be susceptible to manipulation by landlords who charge them high rents for single rooms in unsafe conditions. Immigrant survivors who lack stable immigration status 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 into homelessness. Others face discrimination such that either no one will rent to them, or they cannot have their name on a lease or utility bills.²⁰

III. The Proposed Rule Will Undermine Longstanding and Vital Protections for Immigrant Survivors of Violence

Survivors who have assisted law enforcement with pursuing prosecution of a perpetrator may find themselves homeless when the perpetrator is deported and no longer contributing to rental payments. Through the Victims of Trafficking and Violence Protection Act of 2000, Congress intended to protect survivors in this situation. Yet, unless and until they have secured lawful permanent residence, the proposed rule will cruelly punish such survivors through eviction and

¹⁹ Ibid.

²⁰ <http://www.tahirih.org/wp-content/uploads/2018/01/Tahirih-Justice-Center-Survey-Report-1.31.18-1.pdf>

homelessness. Homelessness must not be the only alternative for survivors contemplating escape from violence.

When survivors live in a chronically threatening situation, trauma is ongoing. It frequently leads to mental and physical health conditions, with taxpayers bearing the burden of both short and long-term treatment. Maintaining housing stability is also crucial for children who have been exposed to domestic violence to feel safe, heal, and strengthen resilience. Disrupting the lives of children who have been witnesses or subjected to abuse by forcing them to leave their homes will lead to long-term harm to their development, recovery, health, and academic and social success.²¹ Children in these households exposed to violence and living with such instability face long-term impacts in their physical and emotional health.²²

Access to affordable housing is therefore critical for helping survivors flee violence and re-establish stability in their lives. Congress explicitly recognized this through the Violence Against Women Act (VAWA), which protects survivors who have petitioned for lawful immigration status as a result of their victimization. Likewise, HUD itself deems VAWA self-petitioners eligible for housing subsidies, stating that:

...when applying for assistance or continued assistance from Section 214-covered housing providers...[i]t is the Office of General Counsel's position that this interpretation...is consistent with Section 214 and VAWA's objectives to enhance victim safety and to place noncitizen victims of domestic violence in the same position vis-a-vis immigration law as they would have enjoyed had they not been abused by their U.S. citizen or LPR relative.²³

In light of the proposed rule, it is unclear whether HUD will continue to consider VAWA self-petitioners eligible for federal housing subsidies. Even if so, these protections do not extend to survivors who have not yet been able to apply for relief, or to those who have applied for relief as victims of perpetrators without lawful status. Rather, as VAWA specifically sought to prevent, HUD's proposed

²¹ Rollins, C., Billhardt, K., & Olsen, L. (2013). Housing: Safety, Stability, and Dignity for Survivors of Domestic Violence. Domestic Violence Housing First.

²² See, <https://www.cdc.gov/violenceprevention/childabuseandneglect/cestudy/about.html>

²³ <http://niwaplibrary.wcl.american.edu/wp-content/uploads/VAWA-Self-Petitioners-Letter-12-22-16.pdf>; <http://niwaplibrary.wcl.american.edu/wp-content/uploads/Eligibility-of-VAWA-Self-Petitioners-2016-12-14.pdf>

rule will empower violent perpetrators to exploit ineligible victims' fears of homelessness and potential loss of child custody, allowing them to act with impunity.

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 fail to reach them, and they may struggle to obtain pertinent 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 can also be instrumental in helping victims find long-term safety.²⁴

IV. The Proposed Rule Will Cause Additional Burdens to Service Providers and Negatively Impact Their Ability to Serve Survivors of Gender-Based Violence

The proposed rule will also place a significant burden on the ability for domestic violence and sexual assault advocates, as well as other service providers, to adequately serve and support survivors. With lack of housing being one of the greatest barriers to accessing safety, many domestic violence and victim advocacy programs refer survivors to programs utilizing housing subsidies to meet housing needs so that survivors and their families can escape and overcome abuse.

Housing resources are frequently funded by a complex mix and match of funding sources. Specifically, many housing providers utilize a mix of HUD funding and other public and private funding to support the housing programs that they offer. Through working with survivors in seeking and obtaining housing, advocates and service providers are aware of the relevant eligibility criteria for various housing resources for low-income individuals in a community. In engaging in safety planning for survivors, victim advocates and other service providers will be faced with having to determine whether the housing programs they are relying on to assist survivors are implicated by the proposed rule due to the funding sources

²⁴ 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.

for the housing. To the extent that a housing program cannot provide services to immigrant survivors due to the impact of the rule, victim advocacy programs will be faced with needing to blend a mix and match of existing resources to provide supports for immigrant survivors.

In addition, for immigrant survivors, the very process of obtaining documentation for each and every household or family member could prove to be harmful to a survivor's ability to escape abuse and seek protection. Requiring survivors to acquire additional documentation of children of an abusive ex-partner, for example may force vulnerable survivors to contact family members who will refuse to help or support survivors in maintaining their housing or who may even attempt to coerce survivors to return to their abusers. The proposed revisions will therefore harm service providers, and by doing so, their ability to assist survivors. Service providers will face increased workload and demanding hours, potentially resulting in their need to serve fewer survivors, reallocate already limited resources at the expense of other core services, or reallocate time and resources to training on the specific – time that would otherwise have been dedicated to serving survivors, both non-citizen and citizen alike.

Conclusion

HUD's proposed mixed status rule will have a harmful impact on immigrant survivors of domestic violence, sexual assault, and human trafficking, by putting them and their children at increased risk of future violence, harming their ability to escape and recover from abuse, and perpetuating increased short and long-term trauma. In addition, the proposed rule will not only place a large burden on immigrant survivors and their families, but also on victim advocates and service providers and the organizations in being able to provide timely and relevant services and safety planning.

As we stated above, prohibiting immigrant survivors in households with both ineligible and eligible members from accessing assisted or public housing will lead to even more barriers for survivors of gender-based violence and their families to escape abuse and seek safety, trapping them in abusive situations or causing them to face destitution and homelessness. 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, including survivors of violence, 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. Strong, safe families lead to stronger, safer communities. Further restricting access to these resources puts both at risk.

Please contact Grace Huang, Policy Director at API-GBV, if you have any questions or concerns relating to these comments. Thank you.

Respectfully submitted,
ASIAN PACIFIC INSTITUTE ON GENDER-BASED VIOLENCE



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