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Comments

Department of Housing and Urban Development

Notice of Proposed Rulemaking

Housing and Community Development Act of 1980: Verification of Eligible Status

Docket No. FR-6124-P-01

RIN 2501—AD89

Submitted by:

CENTER ON BUDGET AND POLICY PRIORITIES

July 9, 2019

1) Introduction

These comments are submitted on behalf of the Center on Budget and Policy Priorities in response to the Department of Housing and Urban Development's Notice of Proposed Rulemaking entitled "Housing and Community Development Act of 1980: Verification of Eligible Status" published in the Federal Register on May 10, 2019. The Center on Budget and Policy Priorities (CBPP) is a nonpartisan research and policy institute. CBPP pursues federal and state policies designed to reduce both poverty and disparity, to promote opportunity, and to achieve fiscal responsibility in equitable and effective ways. We apply our expertise in programs and policies to inform debates on issues affecting low- and moderate-income people and fiscal policy. Through our work we have developed a deep knowledge of eligibility and enrollment policies and processes as well as the short- and long-term benefits of major federal assistance programs, including the federal rental assistance programs specifically implicated in the proposed rule. The Center has extensive expertise on eligibility rules for immigrants across low-income benefit programs and the impact of documentation requirements on program applicants and participants. We appreciate the opportunity to comment on the important policy issues presented by the proposed rule.

We strongly urge HUD to withdraw the proposed rule and leave in place the existing regulation that establishes a reasonable and balanced set of policies that have operated effectively for more than two decades to ensure that ineligible individuals do not receive assistance, that eligible individuals have access to rental assistance they need, and that documentation rules do not put up unnecessary roadblocks to participation in rental assistance programs.

2) Overview of Policy and Legal Failings of Proposed Rule

The proposed rule has two main components: new, unnecessary documentation requirements for U.S. citizens and noncitizens over 62, and a prohibition, with few exceptions, on housing assistance to mixed-status families - families with at least one noncitizen who is ineligible because of their immigration status. The proposed policy is contrary to longstanding HUD policy, current regulations, the statute itself, and Congressional intent, which all support the current policy of prorating housing assistance based on the number of eligible family members.

If this new rule were to be finalized, families will lose rental assistance – or be forced to separate their families to avoid losing the needed help. The impacts of the loss of assistance are significant – and largely ignored by the proposed rule and accompanying RIA, which antiseptically comments on the costs *HUD* will face evicting families but ignores the research on how families will be harmed. As Matthew Desmond writes in his book *'Evicted'*, "…there is the toll eviction takes on a person's spirit. The violence of displacement can drive people to depression and, in extreme cases, even suicide. One in two recently evicted mothers reports multiple symptoms of clinical depression, double the rate of similar mothers who were not forced from their homes."[1] .

This rule targets immigrant families and denies assistance to **eligible** people on the basis of an ineligible person residing with them, even though such ineligible individuals are not receiving assistance because of the pro-ration policy. This proposed rule is one in a series of actions the

[1] Matthew Desmond, "Evicted: Poverty and Profit in the American City", Allen Lane, 2016, p. 298; Mathew Desmond, Rachel Kimbro, "Eviction's Fallout: Housing, Hardship and Health" Social Forces Advance Access, 2015, p. 23

Administration has taken that target immigrant families in ways that will increase hardship among both immigrants and their U.S. citizen family members. Coming on the heels of the proposed public charge rule, the rule now under OMB review that appears to seek to increase deportations among lower income immigrants, as well as actions to put those with deferred action for childhood arrival status in jeopardy and many others, this rule will add to the fear that has been sown among immigrant families. Our nation has always been strengthened by immigrants and rules that increase hardship and instability among immigrant families will have long-term negative impacts on those families, particularly children, and in turn, our nation.

In addition to being contrary to our values, the proposed rule is contrary to our laws. Those who will be harmed are disproportionately Latinx individuals, people whose national origin is not the United States, and families with children — groups protected by the Fair Housing Act. The fact that such households will now disproportionately face difficulty securing housing and rental assistance is clear evidence that the regulation is contrary to HUD's statutory obligation to affirmatively further fair housing. This proposed rule also runs counter to the plain reading of the statute and a series of congressional enactments related to the issue of the eligibility of mixed status households and documentation requirements.

While each component of the rule has its own effects, there are 3 overarching problems with the proposed rule that cut across both the citizenship documentation requirements for all recipients of housing assistance and restrictions on assistance for 'mixed-status' families.

i. The proposed rule does not make the case for why policy changes are needed and elements of it are not supported by the federal statute and congressional actions in these areas.

The proposed rule and subsequent statements by HUD officials, including Secretary Ben Carson, claim that the rule is needed to better align practice with statutory requirements and to extend assistance to more families. The proposed rule fails on both accounts. There is a long history through the 1980s and 90s of Administrative and Congressional action to refine Section 214 of the Housing and Community Development Act of 1980 and Congress consistently has acted in ways that align with today's rules with regards to both proration policy for mixed status households and current documentation requirements. Congress has had multiple opportunities to determine who must produce citizenship and immigration status documentation and how rental assistance should be calculated to ensure eligible people receive assistance but ineligible people don't.

For example, once HUD implemented a 1995 final rule that established the current proration policy, Congress has only acted to affirm this policy and maintain assistance for mixed status families, specifically adding statutory language that indicates that the only circumstance in which the entire household becomes ineligible for assistance due to the presence of an ineligible individual is when the household has not disclosed that the individual is ineligible and pro-ration is *not* in place. Yet, the rule ignores this statutory language. Similarly, the statute is extremely clear as it relates to immigration status documentation requirements for noncitizens over 62. The Housing and Community Development Act of 1987 exempted people age 62 and older from the eligible immigrants' documentation and verification requirements. This exemption can't be over-ridden by new regulations.

This proposed rule also will not expand the number of families receiving rental assistance. New families will receive rental assistance if the proposed rule takes affect but not MORE families. HUD's own Regulatory Impact Analysis (RIA) predicts that this proposed rule will cost HUD between $193 - $227 million annually and goes further to predict that Congress will not increase HUD's budget authority amounts. The RIA explains that there could be fewer households served under the housing choice voucher program and public housing would likely see decreases in funding available for resident services and property maintenance.

ii. The rule will result in large numbers of households losing assistance and those harmed disproportionately are in classes protected under the Fair Housing Act, raising concerns about its legality under the Act.

The rule will result in large numbers of households losing assistance, including mixed status households who cannot or will not split up their families to maintain assistance, households in which citizens are unable to meet new documentation requirements, and households with elderly noncitizens who will be unable to meet new immigration verification requirements. Those households that lose assistance, will face significant hardship that will have negative short-term and long-term consequences. The harm done by the rule is enough of a reason not to proceed with it, but the harm will fall disproportionately on groups that are protected by the Fair Housing Act, contrary to HUD's obligations to affirmatively further fair housing, not hurt protected groups.

The Fair Housing Act of 1968 (as amended) prohibits federal housing assistance programs from discriminating on the basis of race, color, religion, sex, national origin, familial status, and disability, and policies that have a disparate impact on one of these classes of people may be illegal even if they are not explicitly or intentionally discriminatory.[2] As we further explain in later sections, data from HUD and other research reveals that the proposed rule is likely to disproportionately impact groups protected by the Fair Housing Act in three key ways[3]:

- The new documentation requirements for citizens would likely disproportionately harm women, African Americans, and people with disabilities;
- The new documentation requirements for noncitizens age 62 and older will overwhelming harm individuals (and their families) who are Hispanic/Latinx and who have national origins other than the United States; and
- The bar on nearly all mixed-status families will disproportionately harm families with children and people who are Hispanic/Latinx.

[2] The Fair Housing Act, 42 U.S.C. § 3601 et seq; See, Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc. 576 U.S. (2015), (holding that "disparate-impact claims are cognizable under the Fair Housing Act"), https://www.supremecourt.gov/opinions/14pdf/13-1371_8m58.pdf.

[3] See, Alicia Mazzara, "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.

The strong likelihood that HUD's proposed rule will disproportionately harm protected groups raises substantial concerns that the rule is inconsistent with the Fair Housing Act and therefore barred by federal law.

Yet, HUD's RIA entirely ignored these conspicuous fair housing concerns. This is in stark conflict with the Fair Housing Act, which requires HUD to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of" the Fair Housing Act.[4] While HUD unwisely delayed implementation of the Affirmatively Furthering Fair Housing regulation, it must still comply with its statutory obligations to affirmatively further the policies of the Fair Housing Act. HUD cannot ensure that it is both refraining from discrimination and affirmatively promoting the policies of the Fair Housing Act if it doesn't consider the potential fair housing implications of all proposed rules, but HUD should be especially thorough when there is a strong potential for violating the Fair Housing Act, as is the case with this rule given that it will harm protected groups disproportionately. Instead, the proposed rule and RIA present no evidence that HUD considered the fair housing implications of the proposed rule at all, let alone provide any evidence that the rule advances — rather than running afoul — of its fair housing obligations.

iii. The Regulatory Impact Analysis is incomplete. In addition to a lack of analysis on the fair housing implications, it does not adequately address the impact of families' costs of producing documentation, families' costs of avoiding eviction, or the cost of poor outcomes for families, especially for children, that lose assistance as a result of this rule, among other issues discussed below.

The Regulatory Impact Analysis ignores entirely the costs, harm, and any purported benefits of the new citizenship and elderly noncitizen documentation requirements. This is a significant flaw in the RIA, particularly because contrary to HUD's assertion, the rule does meet the test for economic significance, as discussed below. The RIA does not address the burden families will have meeting the new documentation requirements and the related costs families who do not already have their documentation will have to bear. HUD's analysis also does not include basic data on the number of families subject to the requirement or the number projected to lose housing because they cannot produce sufficient documentation. Many, possibly hundreds of thousands of the over 9 million people affected by this new requirement, who will lose housing are citizens or otherwise eligible for housing assistance, which means these costs are not accruing to individuals or households engaged in misrepresentation, but by those fully eligible for program participation.

The RIA is deficient for the mixed-status parts of the proposed rule as well. The RIA does not fully examine the higher rental costs that families that lose assistance due to either the new documentation or mixed status provisions will face, nor the costs of living in lower quality or more crowded housing as a result of the financial strain of affording housing without assistance. In the context of the mixed-status provisions, HUD's analysis does estimate an annual rent payment increase of $1,900 per household member to explain the increased risk of homelessness but there are other ways this increased cost could impact families. Families may

[4] 42 U.S.C. § 3608.

attempt to pay the increased rent but, since their income will likely remain the same, be forced to make choices about other daily expenses that have harmful effects, such as forgoing food, medicine, childcare, and school supplies. HUD should provide an analysis of the new cost of rent based and families' ability to pay for other typical expenses using available research and current data on income of HUD assisted families.

The RIA also doesn't fully examine the potential negative impact of housing instability and eviction on families' health and well-being, especially children. About 58,000 of the more than 100,000 people living in mixed-status families are children, nearly all of whom are U.S. citizens. The stress of these choices, along with the impact of likely moves to lower quality housing in higher poverty areas, can be harmful to a family and result in negative outcomes for adults and children. As discussed above, studies show that eviction and forced moves can lead to job loss, depression, and causes deepening poverty for adults. As discussed below, children in families that are behind on their rent are disproportionately likely to be in poor health and experience developmental delays.[5] Research also shows that children in low-income households that pay more than 30 percent of their income for rent score worse on cognitive development tests than otherwise similar children in households with lower rent burdens (such as those who have a housing voucher).[6] HUD should more fully examine the available research and data to analyze the impact this rule would have on children, not only in mixed-status families but also children in families who cannot produce the citizenship and immigration status documentation required by the proposed rule. This analysis should have been part of the original NPRM and available for public comment and, if HUD chooses to continue with this rule, it should make this analysis available for public comment.

Finally, HUD's claim that the proposed rule is not economically significant does not stand up to scrutiny. Executive Order 12866 establishes a four-part test to determine if a rule is a significant regulatory action and a single test to determine if a rule is economically significant. Under that test, a proposed rule is economically significant if it has "an annual effect on the economy of $100 million or more…" OMB's FAQ on Circular A-4[7] further explains that the $100 million criterion applies to program costs *and transfers*, "Executive Order 12866 provides that agencies must submit a regulatory impact analysis for those regulatory actions that are — significant within the meaning of Section 3(f)(1) – or what Circular A-4 describes as — economically significant…A regulatory action is economically significant if it is anticipated (1) to —[h]ave…an annual effect on the economy of $100 million or more or (2) to — adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs,

[5] Elizabeth March *et al.,* "Behind Closed Doors: The Hidden Health Impacts of Being Behind on Rent," Children's HealthWatch, January 2011, http://www.childrenshealthwatch.org/upload/resource/behindcloseddoors_report_jan11.pdf.

[6] Sandra Newman and Scott Holupka, "Housing Affordability and Child Well-Being," *Housing Policy Debate*, Vol. 25, No. 1, pp 116-151, 2015, https://pdfs.semanticscholar.org/af30/9e3a3941d56d858c3087664fe7e5d94cbc37.pdf; Sandra Newman and Scott Holupka, "Housing Affordability and Investments in Children," *Journal of Housing Economics*, December 2013.

[7] White House Office of Management and Budget, "Regulatory Impact Analysis: Frequently Asked Questions (FAQs)", February 7, 2011, https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/circulars/a004/a-4_FAQ.pdf.

> the environment, public health or safety, or State, local, or tribal governments or communities… The $100 million threshold applies to the impact of the proposed or final regulation in any one year, and it includes benefits, costs, or transfers. (The word —or is important: $100 million in annual benefits, or costs, or transfers is sufficient; $50 million in benefits and $49 million in costs, for example, is not.)"
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> HUD's flawed RIA documents transfers in excess of $100 million per year, making the rule clearly economically significant and, thus, one that needs a far more fulsome RIA than the one provided.

The following details our specific concerns within each component of the proposed rule.

3. Proposed Documentation Requirements

HUD proposes to require U.S. citizens to submit a birth certificate, passport, or other document verifying their citizenship as a condition of receiving housing assistance under the programs covered by Section 214 of the Housing and Community Development Act of 1980 (Section 214). HUD also proposes to require elderly noncitizens to submit one document from a list of immigration documents. These new mandates would be added to the existing requirement that citizens and elderly noncitizens provide a declaration of their status that is signed under penalty of perjury. Under current rules, elderly noncitizens are also required to submit proof of their age, and public housing agencies *may* (but do not have to) require citizens to submit documentation of their citizenship.

The proposed documentation requirements will create substantial burdens for, and cause significant harm to, many U.S. citizens, elderly noncitizens, and their families who are either seeking housing assistance or already receiving aid under one of the programs covered by the rule. In addition, the burdens and harm caused by the proposed documentation requirements will fall disproportionately on classes of people — particularly women and African Americans — that are protected from discrimination under the Fair Housing Act, raising questions about the proposed rule's legality; as explained, HUD has a statutory obligation to affirmatively further fair housing, yet this rule would affirmatively harm protected groups.[8] The proposed documentation requirements also will impose substantial burdens and costs on housing agencies and private owners that rent units to assisted households.

With respect to private owners, the added burdens could discourage them from participating in federal housing assistance programs, thereby significantly undermining the programs' effectiveness, and undercutting HUD's recent initiatives to improve landlord participation in its rental assistance programs.

Finally, HUD offers insufficient justification for or explanation of the intended purpose of these documentation requirements, and the RIA of the proposed rule provides no analysis of the burdens and harm that the proposed documentation requirements would cause or the fair housing implications of the rule, serious deficiencies that mean that the public (as well as policymakers) did not have all of the information needed to consider the proposal and submit public comment. There

[8] The Fair Housing Act, 42 U.S.C. § 3601 et seq; see, 42 U.S.C. § 3608 (requirement to affirmatively further fair housing).

is substantial additional analysis that HUD must conduct and make available for comment, before it considers further action.

The proposed rule would modify reasonable, balanced policies that have been in place for more than two decades. Section 214 does not mandate documentation requirements such as those the Administration has proposed; indeed, some of the proposed requirements appear to be inconsistent with the authorizing statue in important respects. Moreover, the Administration has presented no evidence whatsoever that ineligible noncitizens have accessed HUD housing assistance by falsely declaring themselves to be U.S. citizens — in other words, the Administration has provided no justification for making the changes it proposes.

In light of the substantial burdens and harm that the proposed documentation requirements would cause, as well as the complete absence of evidence that the requirements would provide any public benefits, we strongly urge the Administration to withdraw the proposed changes in documentation requirements.

a. HUD's proposed new documentation requirements will create substantial burdens for and cause significant harm to many U.S. citizens, elderly noncitizens, and their families who are either seeking housing assistance or already receive it.

i. A significant share of the people subject to the proposed documentation requirements are not likely to have the required documents.

HUD provides no analysis of the number or share of U.S. citizens who may find it difficult to produce a birth certificate or passport, a serious deficiency in the proposed rule and RIA, but there are reasons to believe that the share will be significant. A 2006 national survey by the Brennan Center for Justice at the New York University School of Law found that millions of U.S. citizens do not have valid documents proving their citizenship.[9] For instance, the survey found that 12 percent of U.S. citizens earning less than $25,000 per year do not have documents proving their citizenship.[10] Among all adult women who *have* birth certificates, moreover, nearly *half* (48 percent) do not have one with their current legal name.

Every year, housing agencies and owners of assisted housing determine the eligibility of close to one million vulnerable people in hundreds of thousands of households that apply for admission into one of the housing assistance programs covered by the proposed rule.[11] The NYU Brennan Center survey results suggest that tens or even

[9] Brennan Center for Justice at NYU School of Law, "Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of citizenship and Photo Identification," November 2006, https://www.brennancenter.org/analysis/citizens-without-proof.

[10] In about half of U.S. counties, $25,000 or less would place a 4-person household in the "extremely-low income" category under HUD's 2019 income limits, which implies that the survey results are likely representative of the status of people who apply for assistance under the rental assistance programs covered by the proposed rule; see https://www.huduser.gov/portal/datasets/il.html.

[11] Because of funding limitations, the vast majority of these admissions are to replace other families that have exited programs. HUD administrative data suggest that roughly 5 to 15 percent of assisted households exit every year, on average.

hundreds of thousands of households who are being considered for admission every year may not have birth certificates or other documents necessary to meet the requirements of the proposed rule, and would be denied assistance if they are unable to produce such documents within the required period of time.

The proposed rule would thus create roadblocks for a significant share of the low-income people who wish to obtain assistance under one of HUD's covered programs. In addition, the rental assistance programs covered by the proposed rule often serve individuals and families in crisis — for instance, individuals and families that have been evicted from their homes or are experiencing homelessness, including people who have lived on the street for many months or even years. People experiencing these types of crises are much less likely than others to have personal documents such as birth certificates at hand. Demanding that they produce documents such as birth certificates to access housing aid will lengthen the amount of time they spend on the street or in shelters, exacerbating the hardships they experience. It also runs counter to a fundamental goal of federal homelessness policy, which is to provide low barrier access to housing aid for people who are homeless and experiencing severe hardship.[12]

U.S. citizens that *currently* receive aid under a covered program are also likely to face challenges in meeting the proposed documentation requirements, although once again HUD provides no analysis of how many will be affected by the proposal, how many are likely to struggle to meet the requirements, or what the impact will be for those who fail to do so despite being citizens. Consistent with Section 214 and current regulations, many housing agencies and owners do not require U.S. citizens to submit documents as proof of citizenship beyond a signed declaration of their citizenship status. While many agencies and owners may collect birth certificates (or passports, though few low- income U.S. citizens are likely to have passports[13]) as one of several documents they accept for other purposes, such as to establish applicants' identity, age, or relationship to other family members,[14] HUD does not appear to have comprehensive data on the number or share of existing HUD-assisted tenants who have not submitted birth certificates or other documents that could be proof of citizenship. This too is a significant information gap in the regulatory impact analysis — HUD took no steps to provide even a rough estimate of how many participants and applicants will be affected by additional documentation requirements because they will need to submit information they have not

[12] A key component of the successful "housing first" strategy promoted by HUD is low-barrier admissions policies; see the HUD brief on housing first strategies, "Housing First in Permanent Supportive Housing," Department of Housing and Urban Development, July, 2014, https://www.hudexchange.info/resource/3892/housing-first-in-permanent-supportive-housing-brief/.

[13] Richard Florida, "America's Great Passport Divide," *The Atlantic,* March 15, 2011, https://www.theatlantic.com/national/archive/2011/03/americas-great-passport-divide/72399/.

[14] CBPP reviewed the Housing Choice Voucher administrative plans of 44 large housing agencies that currently lease roughly 750,000 housing vouchers in total, or nearly one-third of all housing vouchers. About one-third of the agencies require U.S. citizens to submit birth certificates or other documents verifying their status, and two-thirds did not. Of the housing agencies in the latter category, nearly all required applicants to submit additional documents for other purposes, such as to verify age; many prefer birth certificates for some other purposes, but other types of documents (such as photo identification) were also allowed.

already submitted or would not submit under existing rules to verify identity or other information.

In the absence of key information from HUD, we spoke to more than a dozen industry experts with extensive experience running, working for, or working with housing agencies and owners that administer the covered programs. These discussions suggests that while many assisted tenants who are citizens have likely already submitted a birth certificate, a significant number have not, and these experts expressed a good deal of uncertainty about the size of the share that has not, with some saying they could not hazard an estimate and others putting the likely figure at 10 to 25 percent.

Based on the available evidence and its uncertainty, it seems reasonable to expect that tens to hundreds of thousands of the more than 9 million U.S. citizens currently assisted under one of the covered programs have not submitted a birth certificate or passport. Moreover, many of those citizens who have not submitted citizenship documents likely have not done so because they do not have one. This does not mean they are not citizens, as the data from the Brennan Center cited above demonstrates. The share of assisted tenants who have not submitted citizenship documents likely varies considerably among locations — for instance, housing agencies that target more assistance to people who are homeless or seniors are likely to have larger shares of recipients that have not submitted birth certificates or passports.

There's even greater uncertainty about the share of the 120,000 eligible elderly noncitizens who currently receive assistance who will face significant difficulties submitting one of the documents that the proposed rule would require. However, the share may be significant. In the authorizing statute, Congress explicitly exempted noncitizens aged 62 years or older from the documentation and verification requirements that it applied to other noncitizens. Congress likely chose to do this out of recognition that elderly noncitizens are less likely than others to have such documents, through no fault of their own, as well as out of humanitarian concern for this particularly vulnerable group of people. In addition to threatening the housing security of eligible immigrants over the age of 62, the documentation requirements threaten the rental assistance of everyone in the household.

In conclusion, based on the available evidence, we believe it's reasonable to expect that hundreds of thousands of U.S. citizens and elderly noncitizens in families that currently receive assistance from a covered program have not submitted birth certificates or other documents that would meet the proposed requirements to their housing agency or owner, and many are likely not in possession of such documents. Moreover, several times this number of people would be placed at risk of losing their assistance because they share a home with a family member who does not have the required documents.

More fundamentally, HUD is proposing to move ahead with rulemaking that could result in needy households losing their housing without solid data on how many individuals this proposal will affect, without any discussion of the resources landlords and housing agencies should have to devote to assist individuals who do not have ready access to these documents attain them, how many households could lose their housing, and how many of these individuals are eligible but simply lack the documents that would now be required. Such information is necessary for this proposed regulatory change to have a sound justification.

ii. People who do not have the required documents could find it difficult to obtain them.

For applicants or assisted tenants who do not have one of the required documents, the time and cost of obtaining documents may be a barrier. The monetary cost of a state-issued birth certificate, for example, ranges from $7 to $34, and 22 states charge $20 or more.[15] This can be a considerable expense for low-income households, particularly if more than one family member must obtain a certificate. Obtaining documents also takes time: it can easily take more than a month to obtain a copy of a birth certificate by mail.

Moreover, the process will entail multiple steps for many individuals, raising cost and time burdens. States typically require applications for a copy of a birth certificate to be accompanied by identification documents such as a copy of person's driver's license. The NYU Brennan Center study mentioned above found that millions of U.S. citizens do not have government-issued photo identification such as driver's licenses. Certain groups are less likely to have photo IDs than others: 18 percent of seniors, 25 percent of adult African Americans, and 15 percent of people earning less than $35,000 per year do not have a government-issued photo ID, according to the survey.[16] In most states, a state-issued ID costs $30 or more, adding to the total cost to the tenant, as well as the total amount of time that will required to obtain a birth certificate.

Moreover, it is unclear how much notice households will receive regarding these documentation changes. The proposed rule requires that the documentation requirements be met at the assisted family's next annual reexamination (and households may request a 30-day extension to meet the requirement). Households' eligibility is reexamined every year on the anniversary of their admission to the program. However, housing agencies are not required to provide advance notice. If families aren't following these new rules or don't understand them — and most won't — they will be caught off-guard by the requirements and have limited time to acquire the documentation necessary to maintain their housing assistance. Some households could have many months before their next reexamination and in theory could be given significant advance notice of the change in documentation requirements by high functioning housing agencies, but, even with notice, roughly 1 in 4 assisted households will have less than 4 months total to obtain documents (counting the 30-day grace period), and roughly 1 in 12 will have 2 months or less, which will be insufficient time for many. Working households, seniors, and people with disabilities could find it particularly difficult to obtain the necessary documents within the required time for any number of reasons including (in addition to

[15] Ballotpedia, "Birth certificate costs by state, 2018", https://ballotpedia.org/Birth_certificate_costs_by_state,_2018; see also Centers for Disease Control, "Where to Write for Vital Records," January 25, 2019, https://www.cdc.gov/nchs/w2w/index.htm

[16] Several independent studies have confirmed the findings of the NYU Brennan Center survey. See Wendy R. Weiser et al., "'Citizens Without Proof' Stands Strong," Brennan Center for Justice, September 2011, https://www.brennancenter.org/analysis/citizens-without-proof-stands-strong; Robert Greenstein, Leighton Ku, and Stacy Dean, "Survey Indicates House Bill Could Deny Voting Rights to Millions of US Citizens," Center on Budget and Policy Priorities, 9/22/2006, 6/14/2019, https://www.cbpp.org/research/survey-indicates-house-bill-could-deny-voting-rights-to-millions-of-us-citizens#_ftn4.

the cost mentioned above) their work schedule leaves them too little time, they are unsure the process for acquiring needed documentation or uncertain of whom to contact due to absent parents or foster care status, or they have physical constraints, mental health concerns, or cognitive impairments.

iii. Households that are unable to produce a birth certificate or other document verifying family members' citizenship or immigration status within the required time would lose their rental assistance, or be denied assistance, causing substantial hardship for many.

Households that are unable to produce a birth certificate or other document verifying family members' citizenship or an elderly member's immigration status within the required time would likely lose their rental assistance or be denied the assistance for which they are applying. The experience of Medicaid, which began requiring citizenship documentation in 2006, suggests the impacts would be substantial. A GAO study completed less than one year after implementation of the new requirements found that most states reported declines in enrollment among people that appeared to be eligible, as well as increases in administrative costs.[17] Several separate studies had similar findings.[18] Indeed, the reported declines in enrollment and administrative burdens were so alarming that lawmakers responded by directing Medicaid (in statute, as was required) to implement an electronic data matching system to check citizenship. This directive greatly reduced the share of citizens who were required to submit documents to prove their citizenship to Medicaid agencies, mitigating the requirement's impact on enrollment. Nevertheless, those who are unable to have their status verified through data matching likely still face problems. For example, some people who have changed their names must still provide documents proving their citizenship — and, as the NYU Brennan survey indicates, this may include a large share of women.

The vast majority of households that apply for federal housing aid have extremely low incomes, and are either homeless, living doubled-up with other families, or paying private market housing costs that consume well over half of the family's monthly income. Such high housing costs deepen poverty, increase households' risk of housing instability and food insecurity, and undermine children's ability to succeed in school.[19] For households that are denied assistance because they are unable to produce the documents required by the proposed rule in a timely manner, the requirements would perpetuate their hardship.

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[17] GAO, "Medicaid: States Reported that Citizenship Documentation Requirements Result in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens," June 2007, https://www.gao.gov/products/GAO-07-889.

[18] 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, March 13, 2007, https://www.cbpp.org/research/new-medicaid-citizenship-documentation-requirement-is-taking-a-toll-states-report?fa=view&id=1090.

[19] Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing, 2019," 2019, p. 33, https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf; Sandra Newman and Scott Holupka, 2015, Sandra Newman and Scott Holupka, 2013; Elizabeth March *et al.,* 2011.

For assisted households that lose aid because they are unable to meet the documentation requirements, they will be thrown into immediate hardship. Rigorous research consistently finds that rental assistance significantly reduces poverty, homelessness, food insecurity, and other hardships among low-income households. Rental assistance also improves long-term outcomes for children, particularly when it enables their families to locate in low-poverty neighborhoods with quality schools and other opportunities.[20]

For instance, more than one-third of households who receive federal housing assistance are lifted out of poverty by that aid; this implies that a large share of households that lose assistance because of documentation rules will likely fall back into poverty.[21] Similarly, a small but significant share of cost-burdened low-income households experience at least one bout of homelessness, and a much larger share experience other types of housing instability, such as evictions or being forced by economic circumstances to double-up with other families.[22] It is important to recognize that households that lose their rental assistance are not likely to regain it, even if they later obtain the necessary documents. Because of funding limitations, only 3 out of 4 eligible households receives federal rental assistance.[23] Therefore, loss of assistance would likely mean homelessness and instability for similar shares of assisted tenants who fail to meet the proposed documentation requirements.

Among children, homelessness is associated with increased likelihood of cognitive and mental health problems, physical health problems such as asthma, physical assaults,

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[20] Will Fischer, "Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children," Center on Budget and Policy Priorities, October 2015, https://www.cbpp.org/research/housing/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-long-term; Liana Fox, "The Supplemental Poverty Measure: 2017, U.S. Census Bureau, September 2018, https://www.census.gov/content/dam/Census/library/publications/2018/demo/p60-265.pdf; Michelle Wood, Jennifer Turnham, and Gregory Mills, "Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation," *Housing Policy Debate,* Vol. 19, issue 2, pp. 367-412, 2008, http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.530.3116&rep=rep1&type=pdf; Gregory Mills *et al.,* "Effects of Housing Vouchers on Welfare Families," prepared for U.S. Department of Housing and Urban Development Office of Policy Development and Research, September 2006, https://www.huduser.gov/publications/pdf/hsgvouchers_1_2011.pdf; Gubits *et al.*, *Family Options Study: 3-Year Impacts of Housing and Services Interventions for Homeless Families,* prepared for Department of Housing and Urban Development, October 2016, https://www.huduser.gov/portal/sites/default/files/pdf/Family-Options-Study-Full-Report.pdf; Raj Chetty, Nathaniel Hendren, and Lawrence Katz, "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment," American Economic Review, April 2016, pp. 855-902, https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.20150572; Heather Schwartz, "Housing policy is school policy: Economically integrative housing promotes academic success in Montgomery County, Maryland," in R.D. Kahlenberg, ed., *The Future of School Integration*, Century Foundation, 2012, https://tcf.org/assets/downloads/tcf-Schwartz.pdf.

[21] Center on Budget and Policy Priorities, "Chart Book: Economic Security and Health Insurance Programs Reduce Poverty and Provide Access to Needed Care," May 6, 2015, https://www.cbpp.org/research/poverty-and-inequality/chart-book-economic-security-and-health-insurance-programs-reduce.

[22] One study of families with children who were eligible for TANF found that 12.5 percent had been homeless in the prior year, and an additional 31 percent had lived doubled-up with family or friends for part of the year; see Michelle Wood et al., 2008.

[23] Center on Budget and Policy Priorities, "Three Out of Four Low-Income At-Risk Renters Do Not Receive Federal Rental Assistance," https://www.cbpp.org/three-out-of-four-low-income-at-risk-renters-do-not-receive-federal-rental-assistance.

accidental injuries, and poor school performance. Housing instability is also linked to attention and behavioral problems among preschool children, and low-income children who switch schools frequently tend to perform less well academically, are less likely to complete high school, and as adults obtain jobs with lower earnings and skill requirements.[24]

More generally, people experiencing homelessness have high rates of chronic health conditions and substance use disorders, and have mortality rates that are several times higher than the general population.[25] Homelessness can both contribute to new health problems and worsen existing health conditions.[26] For example, if a family must live outdoors or in a homeless shelter after losing rental assistance, they might not have a secure place to store medication or prepare the foods needed to manage a family members' health conditions, such as diabetes. People who are evicted from their homes, or even threatened with eviction, are more likely to visit an emergency room or experience health problems like depression, anxiety, and high blood pressure than people with stable housing.[27]

To be sure, when a household has their assistance taken away another household will receive assistance with the freed up resources. However, this does not diminish the harm done to eligible individuals when their assistance is withdrawn due to an inability to provide newly required documentation. Not only will these families have more difficulty

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[24] Marybeth Shinn *et al.,* "Long-Term Associations of Homelessness with Children's Well-Being," *American Behavioral Scientist,* Vol. 51, No. 6, February 2008; Linda C. Berti *et al.,* "Comparison of Health Status of Children Using a School-Based Health Center for Comprehensive Care," *Journal of Pediatric Health Care,* Vol. 15, pp. 244-250, September/October 2001; Stanley K. Frencher *et al.,* "A Comparative Analysis of Serious Injury and Illness among Homeless and Housed Low Income Residents of New York City," *Trauma,* Vol. 69, No. 4, October 2010; Jelena Obradovic *et al.,* "Academic Achievement of Homeless and Highly Mobile Children in an Urban School District," *Development and Psychopathology,* 2009, https://www.researchgate.net/publication/24250390_Academic_achievement_of_homeless_and_highly_mobile_children_in_an_urban_school_district_Longitudinal_evidence_on_risk_growth_and_resilience; Kathleen M. Ziol-Guest and Claire C. McKenna, "Early Childhood Housing Instability and School Readiness," *Child Development,* 2013; David T. Burkam *et al.,* "School Mobility in the Early Elementary Grades: Frequency and Impact from Nationally Representative Data," prepared for workshop on Impact of Mobility and Change on the Lives of Young Children, Schools, and Neighborhoods, June 4, 2009, https://www.fcd-us.org/assets/2016/04/BurkamSchoolMobilityInThe-EarlyElementaryGrades.pdf; Arthur J. Reynolds, Chin-Chih Chen, and Janette Herbers, "School Mobility and Educational Success: A Research Synthesis and Evidence on Prevention," prepared for workshop on Impact of Mobility and Change on the Lives of Young Children, Schools, and Neighborhoods, June 22, 2009, http://www.nationalacademies.org/hmd/~/media/E82266FA9F9B4D6C87535F1E2FC1B1D9.ashx; Janette Herbers *et al.,* "School Mobility and Developmental Outcomes in Young Adulthood," *Development and Psychopathology,* Vol. 25, pp. 501-515, 2013.

[25] National Alliance to End Homelessness, "Health and Homelessness," https://endhomelessness.org/homelessness-in-america/what-causes-homelessness/health/; Centers for Disease Control, "National Homeless Persons' Memorial Day," December 14, 2017, https://www.cdc.gov/features/homelessness/index.html.

[26] National Health Care for the Homeless Council, "Homelessness and Health: What's the Connection?", 2011, 3/13/2019, https://www.nhchc.org/wp-content/uploads/2011/09/Hln_health_factsheet_Jan10.pdf.

[27] Alison Bovell & Megan Sandel, "The Hidden Health Crisis of Eviction," CHILDREN'S HEATH WATCH BLOG (Oct. 5, 2018), http://childrenshealthwatch.org/the-hidden-health-crisis-of-eviction/; 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.

affording a place to live, thus jeopardizing their housing, they may suffer poor outcomes related to the trauma and stress caused by overall financial strain now that more of their income, with likely little time to prepare, must go toward paying rent.

HUD's lack of any analysis in the RIA of the number of households that will be affected by the documentation requirements and the harm households losing assistance will face are serious deficiencies in the rationale for the proposed rule changes. HUD should carefully review all of this research (provided, in full, in the appendix to these comments) and its RIA should be re-done and available for public comment.

b. HUD's proposed new documentation requirements for eligible elderly noncitizens directly conflicts with the statute and ignores congressional enactments on this subject.

In a 1988 amendment to the authorizing statute, Congress explicitly exempted noncitizens aged 62 years or older from the documentation and verification requirements that it applied to other noncitizens.[28] Congress likely chose to do this out of recognition that elderly noncitizens are less likely than others to have such documents, through no fault of their own, as well as out of humanitarian concern for this particularly vulnerable group of people. While the proposed rule acknowledges this "exception" to the verification process when discussing other elements of the proposed rule, HUD fails to explain its authority and justification for requiring eligible immigrants ages 62 and older to submit documentation of their immigration status. In addition, HUD's RIA neglects to acknowledge the impact of this change and merely mentions this change in passing in a footnote.

Section 214(d)(1) makes clear that all eligible immigrants (as well as citizens and nationals) seeking assistance of a program covered by Section 214 must submit a signed declaration under penalty of perjury stating their status.[29] The statute then specifies additional authorities and requirements for several groups of people. For citizens and nationals, the statute delegates the decision of whether to require them to submit additional documentation to HUD and local agencies that administer assistance.[30] For all eligible immigrants "younger than 62 years of age," it requires that their status "be verified by the Immigration and Naturalization Service."[31] As part of the verification process, Section 214(d)(2) requires eligible immigrants who are "not 62 years of age or older" to present documentation as evidence of their immigration status.[32]

For eligible immigrants ages 62 and older, however, *no additional authorities or requirements are specified*; that is, they are explicitly exempted from these requirements — both the

[28] 42 U.S.C. § 1436a(d). The provision discussed were added by the Housing and Community Development Act of 1987 (Enacted February of 1988), https://www.govinfo.gov/content/pkg/STATUTE-101/pdf/STATUTE-101-Pg1815.pdf.

[29] 42 U.S.C. § 1436a(d)(1)(A).

[30] 42 U.S.C. § 1436a(d)(1)(A).

[31] 42 U.S.C. § 1436a(d)(1)(A).

[32] 42 U.S.C. § 1436a(d)(2).

requirement to have their status verified and to submit documentation as evidence of their status. Thus, neither HUD nor any other administering agency has the authority to impose such requirements. There is no other reasonable reading of the statute's plain language.

The history of Congress' legislative responses to HUD's regulatory actions regarding Section 214 actions over the years further supports this reading of the statute. Over a period of several years in the 1980's, HUD issued two final rules that would have required elder immigrants to submit documentation of their status along with all other immigrants. But those rules never took effect, in large part because Congress delayed their implementation. Congress amended the statute in 1988 to exclude eligible immigrants ages 62 and older from the documentation requirements. After the 1988 amendment, all subsequent proposed and final rules (including the first rule to take effect, in 1995) exempted eligible immigrants 62 and older from the documentation requirements and instead required them to submit proof of age along with their signed declaration of eligible status.

The first final rule (finalized but never implemented) — issued in 1982 — would have required *all* eligible immigrants ages 18 and older to submit documentation of their immigration status, including those 62 and older.[33] However, the rule did not include an effective date, stating it would be included in a future notice, and Congress later passed legislation that further delayed the rule's implementation date.[34]

HUD later issued a revised final rule in April of 1986 that also would have required all eligible immigrants who are the head of household, a spouse, age 18 and older to submit evidence of their status.[35] A lawsuit challenging the 1986 rule was filed in July of 1986, and shortly thereafter HUD postponed the rule's effective date twice — in July and September — after several members of Congress requested that HUD delay it.[36] In October, Congress included language in appropriations legislation further delaying the revised final rule's implementation for another year, which a committee report explained was to "prevent the

[33] 47 Fed. Reg. 43674 (October 4, 1982), https://www.govinfo.gov/content/pkg/FR-1982-10-04/pdf/FR-1982-10-04.pdf. The final rule stated that all applicants for assistance and tenants receiving assistance "shall furnish documentary evidence of citizenship or eligible alien status and accompanying signed verification consent forms for themselves regardless of their ages, and for all other persons 18 years of age or older who will or do occupy the housing unit." Note that HUD issued an Interim rule in November of 1981, but it only applied to the original prohibition of nonimmigrant alien students from receiving assistance, not the broader prohibition of noncitizens and non-nationals enacted in the Housing and Community Development Amendments of 1981 that is most relevant to HUD's current proposed rule.

[34] In the Housing and Urban-Rural Recovery Act of 1983, Congress barred HUD from implementing 1981 amendments to Section 214 (which extended the prohibition of assistance for certain noncitizens and non-nationals beyond non-immigrant alien students) until November 1984, preventing the 1982 final rule from taking effect during that period.

[35] 51 Fed. Reg. 11198 (April 1, 1986), https://s3.amazonaws.com/archives.federalregister.gov/issue_slice/1986/4/1/11139-11231.pdf#page=60. The revised final rule stated that evidence of eligible immigrations status is required for "the family head and spouse regardless of age, and for all other persons 18 years or older."

[36] HUD issued regulations in July and September of 1986 delaying the implementation of the revised final rule, explicitly in response to requests by members of Congress. See 51 Fed. Reg. 26876 (https://www.govinfo.gov/content/pkg/FR-1986-07-28/pdf/FR-1986-07-28.pdf) and 51 Fed. Reg. 34570 (https://www.govinfo.gov/content/pkg/FR-1986-09-29/pdf/FR-1986-09-29.pdf).

hardship that would needlessly result from imposing the regulations without giving the Congress sufficient time to assess the full implications of HUD's proposed actions."[37] The following month (November 1986), Congress passed the Immigration Reform and Control Act of 1986, which amended section 214 by adding the requirement that all eligible immigrants must submit signed declarations of eligible status must submit documentation or other proof of their status.[38] A little over one year later, the Housing and Community Development Act of 1987 (enacted in 1988) amended section 214, excluding people age 62 and older from the eligible immigrants' documentation and verification requirements.[39]

HUD revised its regulations in 1988 to conform to the Housing and Community Development Act of 1987 so that eligible immigrants age 62 and older were only required to submit a declaration of eligible status and proof of age, exempting older immigrants from the requirement to submit documentation and have their status verified.[40] While those regulations also did not go into effect, the exemption of eligible immigrants ages 62 and older were incorporated into HUD's 1995 final rule and have since remained HUD's policy. Congress has amended Section 214 multiple times since the 1995 rule took effect and did not use those opportunities to change HUD policy on the documentation and verification requirements for eligible immigrants age 62 and older, further demonstrating that that HUD's longstanding policy is consistent with congressional action.[41]

c. Many people in protected classes under the Fair Housing Act will be disproportionately harmed by the proposed rule's documentation requirements.

As explained in the overview section, federal laws prohibit federal housing assistance programs from discriminating on the basis of several protected classes, including but not limited to race, color, sex, and disability, and federal regulations that have a disparate impact on these classes of people may be illegal.[42] The evidence presented above indicates that the proposed rule's citizenship documentation requirements are likely to have a harmful and

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[37] See 51 Fed. Reg. 34570 (https://www.govinfo.gov/content/pkg/FR-1986-09-29/pdf/FR-1986-09-29.pdf), explaining that Congress included language in appropriations prohibiting HUD from using any funds to implement the revised final rule, and citing the House Appropriations Committee's Report, H. Rep. 99-731 (July 31, 1986).

[38] Immigration Reform and Control Act of 1986, 42 U.S.C. § 1436a(d) (1986); http://library.uwb.edu/Static/USimmigration/100%20stat%203359.pdf. Shortly after the enactment of the Immigration Reform and Control Act of 1986, a federal court issued a preliminary injunction that December after certifying a class action suit challenging the legality of HUD's revised final rule, further preventing the implementation of the 1986 revised final rule; Yolano-Donnelly Tenant Assoc. v. Pierce, Civ. No. S-86-846 (U.S. E.D. Cal. 1986), https://www.nhlp.org/wp-content/uploads/Yolano-Donnelly-Tenant-Assn-v.-Pierce-Dec.-18-1986.pdf.

[39] Housing and Community Development Act of 1987, 42 U.S.C. § 1436a(d) (1988).

[40] 53 Fed. Reg. 41038, October 19,1988, https://www.govinfo.gov/content/pkg/FR-1988-10-19/pdf/FR-1988-10-19.pdf.

[41] 60 Fed. Reg. 14816 March 20, 1995, https://www.govinfo.gov/content/pkg/FR-1995-03-20/pdf/95-6358.pdf.

[42] The Fair Housing Act, 42 U.S.C. § 3601 et seq.,; see, Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc. 576 U.S. (2015), (holding that "disparate-impact claims are cognizable under the Fair Housing Act"), https://www.supremecourt.gov/opinions/14pdf/13-1371_8m58.pdf

disparate impact on people who are women, African American, or who have a disability because these groups will likely face greater challenges than others in meeting the new documentation requirements. The rule's new documentation requirements for elderly noncitizens will likely overwhelmingly impact people of color, particularly people who are Hispanic/Latinx — by far the largest group among eligible non-citizens — and everyone subject to the new requirements for older noncitizens will have national origins other than the United States.[43] Despite HUD's statutory obligation to administer its programs in a manner that furthers fair housing and the disproportionate negative impact of this rule on protected groups, the proposed rule and the regulatory impact analysis provide RIA provide no evidence that HUD has considered the rule in light of its fair housing obligations or that the rule does not run afoul of HUD's fair housing obligations.

d. The proposed rule's documentation requirements will impose substantial burdens and costs on housing agencies and private owners who rent to assisted tenants.

The proposed rule will impose the most severe burdens and costs on housing agencies and private owners when households' housing assistance is terminated because one or more family members is unable to produce documents verifying their citizenship or eligible immigration status within the required amount of time. If the family is living in public housing and refuses to exit the unit, the housing agency will be forced to initiate eviction proceedings, a process that can be costly and time-consuming, particularly if the family itself initiates legal action challenging the termination of their assistance. Eviction and related costs are also an issue when households are living in private market units under the housing voucher or Section 8 project-based rental assistance programs. A family may not be forced to exit the unit immediately, but their rent would increase dramatically due to the loss of subsidy. All such households would find it difficult to keep up with rent payments at the higher market rate, and some could quickly fall behind on their monthly rent payments, reducing revenues to the landlord and putting them at risk of eviction. In addition, such households could also initiate litigation challenging the termination of their assistance, adding to the burdens and costs experienced by housing agencies and owners.

Once the family has vacated the unit (whether or not eviction proceedings were required), the housing agency or private owner must locate and verify the eligibility of a new tenant, assist the tenant in searching for a new unit (in the housing voucher program), and prepare the unit for occupancy (or, in the case of the voucher program, inspect the unit to ensure that it meets federal standards for safety and quality). This is a significant amount of work — in the housing voucher program, for example, certifying tenant income and eligibility and inspecting units for occupancy are a significant share of the overall administrative work that housing agencies are required to do and constitute a significant share of administrative costs as well.[44]

In addition, implementing the new documentation requirements will also be burdensome for housing agencies and private owners, particularly in the first year. The software that housing

[43] Alicia Mazzara, 2019.

[44] Department of Housing and Urban Development, "Housing Choice Voucher Administrative Fee Study: Final Report," 2015, https://www.huduser.gov/portal/hcvfeestudy.html.

agencies and private owners use to manage annual reexaminations may have to be updated to incorporate the new documentation requirements for U.S. citizens and elderly noncitizens. As explained above, many assisted tenants have probably not verified their citizenship beyond submitting a signed declaration but have submitted birth certificates for other purposes such as to establish their identity and birth date. In these cases — which will likely number in the millions — housing agency and owner staff must nevertheless review these tenants' files to verify that a birth certificate has been submitted. Moreover, as explained above, housing agencies and owners have likely not collected birth certificates from a significant share of assisted tenants. For these tenants, they must request that they submit a birth certificate or passport at the annual reexamination and follow up if they are unable to meet that deadline and request an extension. All of these steps will take time of agency and private owner staff, and thus will raise costs.

e. HUD's Regulatory Impact Analysis is seriously deficient because it provides no analysis of the likely substantial impact and burdens of the proposed new documentation requirements.

HUD's propose rule offers no justification, explanation, benefits, or costs of the purpose of its proposed new documentation requirements. Moreover, HUD's RIA (RIA) of the proposed rule does not even consider the impact of the rule's proposed new documentation requirements for U.S. citizens and elderly noncitizens. As we argue above, the impact of these proposed changes on low-income households who receive housing assistance, or who will apply for housing assistance in the future, as well as on housing agencies and private owners who administer these programs, is likely to be substantial, but these impacts are entirely ignored by the RIA. Similarly, the RIA does not document the costs that will be borne by housing agencies and private landlords to comply with these documentation requirements or the costs borne by households required to gather and submit documentation. Finally, the proposed rule overall fails to provide any analysis of the fair housing implications of these provisions, or even any evidence that the agency undertook any fair housing analysis whatsoever.

4. Proposed Bar on Mixed-Status Families Receiving Assistance

HUD proposes to prohibit "mixed-status" families — that is, families that include at least one eligible U.S. citizen or noncitizen but also at least one noncitizen who is ineligible because of their immigration status — from receiving assistance under programs covered by Section 214 of the Housing and Community Development Act of 1980, except:

- on a temporary basis in certain circumstances pending the verification of family members' status, but only if the head of household or their spouse has verified eligible status;
- in the form of "continued assistance" to prevent the separation of families that were already receiving assistance in June of 1995 when the restrictions on eligibility first took effect (a small group given that this only applies to individuals already receiving assistance some two decades ago); or
- during a temporary deferral of termination of assistance for families that received assistance before the restrictions took effect but who don't qualify for continued assistance (which can typically last for no more than 18 months total).

The proposed rule's prohibition on assistance to mixed-status families will cause severe hardship to the great majority of the more than 100,000 people in tens of thousands of mixed-status families, forcing them to choose between losing their homes and separating from loved ones. All of the people who will lose assistance under this provision are U.S. citizens and noncitizens who are *eligible* for assistance because current proration policy means that ineligible individuals do not receive assistance. Most of those losing benefits are children, and several thousand are elderly or people with disabilities. Moreover, most of the individuals who live in the households losing assistance — including the ineligible household members — are citizens or eligible noncitizens, only a modest fraction of the individuals in these households are ineligible.

The rule's prohibition would disproportionately harm families with children and Hispanic/Latinx people, which raises substantial concerns that the rule is inconsistent with the directives of the Fair Housing Act that prohibit discrimination as well as disproportionate harmful impacts on these protected classes.[45] These fair housing issues were entirely ignored in the discussion of the rule and in the RIA despite the Fair Housing Act's requirement that HUD affirmatively further fair housing.

The proposed rule reverses a sensible, balanced policy that has been in place for more than two decades. Contrary to assertions by Secretary Carson, the proposed rule is inconsistent with the authorizing statue. Moreover, the case presented by the Administration for the supposed benefits of the changes does not withstand scrutiny, as HUD's own RIA shows.

In light of the substantial harm that the proposed prohibition of assistance to mixed-status families would cause, as well as the complete absence of evidence that the requirements would provide any public benefits, we strongly urge the Administration to withdraw the proposed changes that effectively ban nearly all mixed-status families.

a. HUD's proposal to bar assistance to nearly all mixed-status families (except temporarily in certain circumstances) is inconsistent with the statute and ignores a series of specific congressional enactments on this subject.

The preamble to the proposed rule asserts that it will bring the regulations "into greater alignment with the wording and purpose of Section 214." This assertion, however, relies on a highly selective reading of the statute and of the history of Congress's legislative responses to HUD's regulatory actions over the years. When the full array of legislation is considered, it becomes obvious that the proposed rule is far *out* of alignment with Section 214's text and Congress's clearly articulated policies.

Over the years, HUD has issued multiple proposed and final rules to implement Section 214's limitations on assistance for many noncitizens. Congress found several of these unsatisfactory and acted accordingly. HUD finally issued regulations that Congress allowed to take effect in 1995.[46] Examining the two ill-fated final rules HUD issued before the 1995

[45] The Fair Housing Act, 42 U.S.C. § 3601 et seq., see, Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc. 576 U.S. (2015), (holding that "disparate-impact claims are cognizable under the Fair Housing Act"), https://www.supremecourt.gov/opinions/14pdf/13-1371_8m58.pdf.

[46] HUD did issue an interim rule that took effect in 1981 to implement Section 214's original prohibition against nonimmigrant alien students. That interim rule explained that HUD planned to implement the broader restrictions on noncitizens' eligibility for assistance enacted in the Omnibus Budget and Reconciliation Act of 1981 at a future date.

rule (in 1982 and in 1986) shows what policies Congress rejected. Like the new proposed rule, both of these earlier rules provided no mechanism for eligible individuals to receive assistance when living in a mixed-status family. As a result, like HUD's new proposed rule, they would have caused these families to lose assistance or split up.[47]

Congress acted to delay the implementation of both the 1982 and 1986 final rules, in large part due to concerns about the likely harm to mixed-status families. Congress only allowed HUD to implement Section 214 after HUD included a provision in the final 1995 rule that pro-rates assistance among eligible and ineligible members of mixed households. This shows that Congress insisted on a policy that both prevents federal financial assistance from going to ineligible non-citizens *and* prevents eligible family members from having to choose between losing housing assistance and splitting up their families. It is precisely this balance that the new proposed rule would destroy. Since the 1995 final rule, Congress has amended Section 214 in ways that *affirm* the use of proration for mixed-status families and continued to reject the whole-household termination of assistance for mixed-status families.

Congress Repeatedly Prevented HUD Regulations from Taking Effect in the 1980s Out of Concern that Eligible Citizens and Noncitizens Living in Mixed-Status Families Would be Forced to Lose Assistance or Split Up

The 1982 final rule would have made everyone in a household ineligible for assistance if just one household member was ineligible or unable to meet the documentation requirements.[48] HUD did not publish an effective date with the final rule but rather announced its intention to set an effective date in a future notice. Before HUD did so, Congress prohibited HUD from implementing Section 214 until November 1984, preventing the final rule from taking effect during that period.[49]

When HUD issued a revised final rule in 1986 that also would have terminated assistance for mixed-status families, Congress again effectively delayed the rule's effective date, first through requests to HUD and then through legislation:[50]

- HUD issued regulations in July 1986 postponing implementation "[i]n response to a request by Members of Congress" and because Congress was actively considering substantive amendments to Section 214.[51]

1981 Interim Rule, 46 Fed. Reg. 56421 (November 17, 1981), https://s3.amazonaws.com/archives.federalregister.gov/issue_slice/1981/11/17/56420-56423.pdf#page=2.

[47] 1982 Final Rule, 47 Fed. Reg. 43674 (October 4, 1982), https://www.govinfo.gov/content/pkg/FR-1982-10-04/pdf/FR-1982-10-04.pdf; 1986 Revised Final Rule, 51 Fed. Reg. 11198 (April 1, 1986), https://s3.amazonaws.com/archives.federalregister.gov/issue_slice/1986/4/1/11139-11231.pdf#page=60.

[48] 1982 Final Rule, 47 Fed. Reg. 43674 (October 4, 1982), https://www.govinfo.gov/content/pkg/FR-1982-10-04/pdf/FR-1982-10-04.pdf.

[49] Housing and Urban-Rural Recovery Act of 1983 barred HUD from implementing 1981 amendments to Section 214, which extended the prohibition of assistance for certain noncitizens and non-nationals beyond non-immigrant alien students.

[50] Revised Final Rule 51 Fed. Reg. 11198 (April 1, 1986), https://s3.amazonaws.com/archives.federalregister.gov/issue_slice/1986/4/1/11139-11231.pdf#page=60; House Appropriations Committee, H. Rept. No. 731, 99th Cong., 2d Sess. 1986, 20.

- HUD issued regulations in September 1986 further delaying implementation "[i]n response to a second Congressional request."[52]
- In October 1986, Congress passed legislation preventing HUD from implementing the rule until October of 1987. The House Appropriations Committee explained that "[m]any concerns have been raised as to the potential harsh impact of the regulations regarding alien eligibility for housing assistance on current residents of HUD-assisted housing, many of whom would be made subject to eviction". Blocking the regulations "would prevent the hardship that would needlessly result from imposing the regulations without giving the Congress sufficient time to assess the full implications of HUD's proposed actions."[53]
- Shortly thereafter, in December of 1986, a federal court issued a preliminary injunction preventing the implementation of the October 1986 rule that would have denied housing assistance to mixed status households.[54] The suit was brought by a class of citizens and eligible noncitizens challenging the 1986 revised final rule in part on the basis that it would deprive eligible people in mixed-status families of their right to live with their families. These concerns were similar to those Members of Congress raised when they delayed the implementation of the 1986 revised final rule.
- In January of 1988, HUD issued regulations clarifying that Section 214's restrictions on assistance for certain noncitizens were not in effect.[55]
- In March 1995, HUD issued a rewritten final rule. In addition to changes in the documentation requirements, the key difference between this final rule and its 1982 and 1986 predecessors was that it provided a way for eligible people living in mixed-status families to receive assistance using proration. With this change, Congress allowed the rule finally to go into effect, implementing Section 214 for the first time.[56] This is the rule that remains in effect today and that would be displaced by the new proposed rule.

HUD's Proposed Rule Ignores Clear Congressional Intent to Protect Mixed-Status Families Already Receiving Assistance from Eviction or Splitting Up

After repeatedly preventing HUD from implementing the 1982 and 1986 rules, Congress amended Section 214 through the Housing and Community Development Act of 1987 (enacted in 1988). Among other changes, the 1987 law created protections for mixed-status families already receiving assistance (as of February 5, 1988), allowing them to continue

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[51] 51 Fed. Reg. 26876 (July 28, 1986) https://www.govinfo.gov/content/pkg/FR-1986-07-28/pdf/FR-1986-07-28.pdf.

[52] 51 Fed. Reg. 34570 (September 29, 1986), https://www.govinfo.gov/content/pkg/FR-1986-09-29/pdf/FR-1986-09-29.pdf.

[53] House Appropriations Committee, H. Rept. No. 731, 99th Cong., 2d Sess. 1986, 20.

[54] Yolano-Donnelly Tenant Assoc. v. Pierce, Civ. No. S-86-846 (U.S. E.D. Cal. 1986), https://www.nhlp.org/wp-content/uploads/Yolano-Donnelly-Tenant-Assn-v.-Pierce-Dec.-18-1986.pdf.

[55] 53 Fed. Reg. 842, January 13, 1988, https://cdn.loc.gov/service/ll/fedreg/fr053/fr053008/fr053008.pdf.

[56] 60 Fed. Reg. 14816, March 20, 1995, https://www.govinfo.gov/content/pkg/FR-1995-03-20/pdf/95-6358.pdf.

receiving assistance if the head of household or spouse is an eligible citizen or noncitizen and delaying termination in other cases.[57] As HUD noted in a 1988 proposed rule, "the general Congressional intent of section 214(c)(1) was to protect 'the sanctity of the family'" (citing Senator William Armstrong's statements in 133 Cong. Rec. S18615 (December 21, 1987)).[58]

While the 1988 amendment created specific protections only for mixed-status families receiving assistance on February 5, 1988, HUD determined that it was more consistent with congressional intent to extend the protection to all families receiving assistance on the date the implementing regulations would actually take effect (which ended up being June 19, 1995).[59] HUD's conclusions about Congress's intent to prevent the termination or break-up of mixed-status households was the obvious and correct reading of its interactions over the section 214 regulations during the preceding thirteen years. Nothing Congress has done since has in any way reversed that policy. In keeping with this congressional intent, if HUD does end indefinite prorated assistance for all mixed-status families, HUD should extend the preservation provisions of Section 214(c) to all mixed-status families receiving assistance at the time HUD's new rule takes effect. To do otherwise would be to cause the very same harm to families that Congress repeatedly prevented by blocking the implementation of the 1982 and 1986 rules and by amending the statute in 1988.

Moreover, HUD's justification for ending proration for mixed-status families relies heavily on a dubious reading of this language added in the 1988 law. This reading largely ignores subsequent amendments to Section 214 that demonstrate Congress' endorsement of HUD's indefinite proration policy. But even if HUD was correct about the 1988 legislation, it is not free to pick and choose among Congress's policy determinations. Any new policy must honor Congress's commitments, which HUD recognized when it first implemented that legislation, to avoid putting current residents to the heart-rending choice of termination or separation.

Less than two years after the 1995 final rule took effect, implementing HUD's proration policy, Congress amended Section 214 again by adding the three provisions explicitly mentioning proration. Instead of dismantling HUD's indefinite proration policy for mixed-status families, Congress ratified it by affirmatively acknowledging for the first time that mixed-status families could receive prorated assistance under Section 214.[60] The three provisions:

1. Added to the definition of "financial assistance" under subsection (b) to require assistance to be "prorated" for families in which "at least one member of the family

[57] Housing and Community Development Act of 1987, 42 U.S.C. § 1436a(c) (1988).

[58] Proposed Rule, 52 Fed. Reg. 202, 41044, October 19, 1988, https://www.govinfo.gov/content/pkg/FR-1988-10-19/pdf/FR-1988-10-19.pdf.

[59] See Proposed Rule, 52 Fed. Reg. 202, 41044, October 19, 1988, https://www.govinfo.gov/content/pkg/FR-1988-10-19/pdf/FR-1988-10-19.pdf. See also, 60 Fed. Reg. 14816, March 20, 1995, https://www.govinfo.gov/content/pkg/FR-1995-03-20/pdf/95-6358.pdf.

[60] Omnibus Consolidated Appropriations Act of 1997, 42 U.S.C. § 1436a, subsections (b)(2), (c)(1)(A), and (d)(6), 1996. https://www.govinfo.gov/content/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf.

has been affirmatively established under the program and under this section, and the ineligibility of one or more family members has not been affirmatively established."[61]

2. Made clear that preservation assistance provided under subsection (c) is prorated.[62]
3. Added a requirement under subsection (d) that the household lose its assistance for at least 24 months *if* someone in the household "knowingly permitted another individual who is not eligible for such assistance to reside in the public or assisted housing unit" unless it is "the ineligible individual at issue was considered in calculating any proration of assistance."[63] This language clearly indicates that the single circumstance for whole-household termination is in the case when the family has misrepresented the eligibility of an individual and that if the individual was known, and therefore proration is in place, no household termination occurs.

When HUD updated its regulations to incorporate these changes, HUD recognized that these changes are consistent with allowing mixed-status families to receive indefinite assistance on a prorated basis.[64] Shortly after the proration references were added to the statute, HUD finalized a settlement agreement affirming that HUD's 1995 final rules "adequately protect the right of mixed families to live together in housing covered under Section 214" and that "HUD will continue to protect that right, as required by law, in its implementation of Section 214."[65]

Finally, if HUD's 1995 rule *was* such a perversion of the statute, as HUD's proposed rule now suggests, Congress had ample opportunity to correct it, most obviously in the 1996 legislation enacted just two years after that rule went into effect. Not only did Congress — after having actively intervened repeatedly in the implementation of section 214 — not override the 1995 rule, it affirmatively embraced it by building off of HUD's proration mechanism in these three respects.

Yet HUD's new proposed rule ignores the 1996 amendments to subsections (b) and (d)(6). HUD instead focuses exclusively on the preservation provision in Section 214(c), which provides for continued assistance or delay of termination for families that were receiving assistance on February 5, 1988. (Even here, the new proposed rule glosses over HUD's determination in the 1995 final rule that Congress was adamantly opposed to applying restrictions to current program recipients, causing it to extend protections to families receiving assistance at the time the rule took effect).[66]

HUD's Proposed Rule Disregards the Statute's Provisions Basing Eligibility on Individual Circumstances Not the Circumstances of Whole Families

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[61] Section 214(b)(2), 42 U.S.C. § 1436a(b)(2).

[62] Section 214(c)(A), 42 U.S.C. § 1436a(c)(A).

[63] Section 214(d)(6), 42 U.S.C. § 1436a(d)(6).

[64] 61 Fed. Reg. 60535, November 29, 1996, https://www.govinfo.gov/content/pkg/FR-1996-11-29/pdf/96-30498.pdf.

[65] Yolano-Donnelly Tenant Ass'n, et al. v. Cisneros, Civil No. CIV-S-86-0846 (E.D. Cal). Settlement agreement was reached September 12, 1996, and the court approved the settlement in February 1997. See https://www.clearinghouse.net/chDocs/public/IM-CA-0048-9000.pdf.

[66] 42 U.S.C. § 1436a(c).

HUD's proposed rule would effectively require all members of a household to be eligible for any family members to receive assistance. Thus, it would discard the concept of individual eligibility. This is flatly inconsistent with the statute. While eligibility for HUD's rental assistance programs is generally determined on a whole-household basis,[67] Section 214(d) clearly demonstrates that one individuals' ineligibility on the basis of immigration status does not render the whole household ineligible. This section, entitled "Conditions for Provision of Financial Assistance for Individuals," discusses the eligibility and documentation requirements for each "individual" in a household and discusses termination of assistance for an "individual" when the documentation and eligibility requirements are not met.

When Congress desired a whole household's eligibility to depend on the status of a single member of that household, it clearly showed that it was capable of doing so. It did so in only one place: subsection (d)(6) (added in 1996 after the 1995 final rule took effect). Subsection (d)(6) requires that assistance be terminated for "an individual **and the members of the household**" (emphasis added) if someone in the household "knowingly permitted another individual who is not eligible for such assistance to reside in the household" unless the ineligible person "was considered in calculating any proration" of the household's assistance.[68] Absent similar language creating whole-household ineligibility elsewhere in Section 214, HUD is without authority to extend individual ineligibility to entire households. Expressio unius est exclusion alterius.

Subsection (d)(6) would make no sense if a single member of a household's ineligibility rendered the entire household ineligible: there would be nothing to "consider in calculating" the household's eligibility because the household would be ineligible. Congress is presumed not to enact laws with no effect; HUD is certainly not authorized to render congressional enactments meaningless. Note that any currently participating mixed status household that receives pro-rated assistance under current rules such that only eligible individuals in the household are receiving assistance is covered by this provision and thus that **the statute specifically precludes terminating assistance for such households.**

Moreover, for new applications, the process laid out in Section 214(d) is clearly an individual-level process to determine which individuals in a household are eligible for assistance. The fact that the statute then makes plain that **individuals** who do not meet the eligibility and verification requirements are ineligible, does not speak to ineligibility for the household, and reserves whole-family ineligibility for the particular case of misrepresentation for current participants again indicates that Congress intended for the proration rules in place at the time would continue and ineligibility would apply to individuals, as clearly stated in the statute.

Finally, subsection (i)(3) specifically calls for making eligibility decisions with respect to immigration status on an individual rather than family basis. HUD's proposed rule would reverse that, which it lacks the power to do.

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[67] See example, 42 U.S.C. § 1437a(b)(3).

[68] 42 U.S.C. § 1436a(d)(6).

In addition to overlooking several of Section 214's key provisions on prorated assistance, the proposed rule makes the unsubstantiated claim that the leaseholder in a household must have their eligibility verified before a family can receive any assistance. As previously mentioned, the statute specifies that assistance can be provided as long as "eligibility for financial assistance of at least one member of the family has been affirmatively established."[69] Congress did *not* say "as long as eligibility for the *leaseholder* in the family has been established." While Congress did specify that families receiving continued assistance under the *preservation* provision (Section 214(c)) must include a head of household or spouse who is eligible for assistance, Congress chose *not* to include similar requirements for other kinds of families receiving prorated assistance, demonstrating that Congress did not intend that restriction to apply in other cases of prorated assistance.[70] Here again, HUD disregards the time-honored maxim of expressio unius est exclusion alterius.

Other Public Assistance Statutes' Treatment of Mixed-Status Households Show that Congress Opposed Denying Aid to Eligible Citizen and Non-Citizen Members of Households.

HUD's housing assistance programs do not exist in a vacuum. These programs are meant to interact to assist many of the same low-income families served by other programs that include many of the same eligibility restrictions as in housing programs. For example, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) changed aspects of the treatment of non-citizens in housing assistance programs, in Supplemental Security Income (SSI), and under the Temporary Assistance for Needy Families (TANF) block grant all within the same section of the Act.[71] Congress enacted comprehensive reforms of HUD housing assistance statutes in 1996, applying principles similar to those it had espoused a year earlier in TANF, SSI, and other programs.[72] As such, the laws governing these various assistance programs should be read together, or *in pare materia* with one another.[73]

Where congressional intent is unclear under one statute but clear under another that should be read *in pare materia* with the first, the policy under the second statute should be applied to the first unless compelling reasons exist for failing to do so. As explained above, Congress carefully and repeatedly considered the issue of mixed-status household eligibility in the context of housing assistance programs and firmly decided against the policy in the new proposed rule. Even if Congress's intent was far less clear, however, Congress's clear

[69] Section 214(b)(2), 42 U.S.C. § 1436a(b)(2). Note that Section 214(i)(2), 42 U.S.C. § 1436a(i)(2) includes an exception for public housing agencies, which may "elect not to affirmatively establish and verify eligibility before providing financial assistance."

[70] See the preservation provision found in Section 214(c), 42 U.S.C. § 1436a(c).

[71] Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193, § 404, 110 Stat. 2105, 2267 (1996)).

[72] Omnibus Consolidated Appropriations Act of 1997, 42 U.S.C. § 1436a, subsections (b)(2), (c)(1)(A), and (d)(6), 1996. https://www.govinfo.gov/content/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf (Pub. L. No. 104-208, Subtitle E (1996)).

[73] *See, e.g.*, Lorillard v. Pons, 434 U.S. 575 (1978).

resolution of this issue in other closely related programs demonstrates that the proposed rule exceeds HUD's statutory authority.

For example, the Supplemental Nutrition Assistance Program (SNAP) provides food assistance to many of the same households that receive housing assistance from HUD. As in the case of housing assistance programs, SNAP eligibility is generally determined on a household basis, rather than on an individual basis, but one individual's ineligibility due to their immigration status does not render the whole household ineligible.[74] Section 6(f) of the Food and Nutrition Act of 2008 (a continuation of the Food Stamp Act of 1977) prohibits providing benefits to certain non-citizens (a great many of whom are also ineligible for housing assistance under Section 214).[75] After listing five categories of eligible non-citizens, that Act states that "No aliens other than the ones specifically described in clauses (B) through (F) of this subsection shall be eligible to participate in the supplemental nutrition assistance program as a member of any household", closely paralleling section 214. Section 6(f) goes on to explicitly state that the rest of the household remains eligible for assistance and that a method of proration is to be used: "The income (less, at State option, a pro rata share) and financial resources of the individual rendered ineligible to participate in the supplemental nutrition assistance program under this subsection shall be considered in determining the eligibility and the value of the allotment of the household of which such individual is a member."

Similarly, neither SSI nor TANF contain any prohibitions on providing assistance to other family members of ineligible non-citizens.[76]

Nothing in the preamble to HUD's new proposed rule provides any reason to believe that Congress intended a different result in housing assistance programs than it had required in food or cash assistance programs. Indeed, as discussed above, one year after reinforcing the proration method for mixed-status households receiving food assistance, Congress in 1996 enacted amendments to Section 214 that endorsed and refined proration for housing assistance.

b. The proposed rule's prohibition will harm families, forcing them to choose between losing their homes and separating from loved ones, both of which can be devastating for families.

Barring mixed-status families from receiving housing assistance would force over 100,000 people living in 25,000 families to make the agonizing choice between splitting up their families and losing the assistance that helps them keep a roof over their heads. Whichever option these families choose, the consequences for them could be devastating. It would also

[74] United States Dept. of Agriculture v. Moreno, 413 U.S. 528, 529 (1973); 7 U.S.C. §§ 2012(m), 2014(a), 2017(a).

[75] 7 U.S.C. § 2015(f). However, as explained above, while housing assistance is generally determined on a household basis, Section 214 considers individual circumstances not the circumstances of whole families for the purposes of Section 214's restrictions on housing assistance eligibility for certain noncitizens. See Section 214 subsections (d) 214(i)(3), 42 U.S.C. § 1436a(d) and 42 U.S.C. § 1436a(i)(3).

[76] 8 U.S.C. § 1612(a) and (b).

deny housing aid to vulnerable U.S. citizens and eligible noncitizens in the future if they are living with family members who are ineligible noncitizens.

The typical mixed-status household is a working family of four with two school-aged children and two adults. Seventy percent of the people in mixed-status families — that is, roughly 3 out the 4 members of a typical family — are eligible for housing assistance, and 95 percent of these are U.S. citizens. About 58,000 of the more than 100,000 people in mixed-status families that would be harmed by the rule are children, nearly all of whom are U.S. citizens. These families also include some 4,000 seniors or adults with disabilities, most of whom are also U.S. citizens. The vast majority of those who would lose assistance — and the large majority of those living in households that would lose assistance — are thus highly vulnerable people who are eligible for assistance, nearly all of whom are U.S. citizens, a fact that HUD's own RIA makes clear.

Family separations are highly disruptive, and can contribute to toxic stress, trauma, and attachment issues in children. Even temporary separations can have an enormously harmful impact on child health and development, and children may struggle to restore healthy bonds with their parents as a result.[77]

Some mixed-status families may choose to split up, but most would likely choose to forgo housing assistance. These families' incomes are higher, on average, than assisted households' overall, but most earn $14,000 or less per year, which isn't nearly enough to afford a two-bedroom rental home in any community.[78] With the loss of assistance, families living in public housing will be forced to leave their homes; families receiving some form of Section 8 assistance will be forced either to leave their homes or pay much higher market rents. Among those in the last category, a significant share is likely to quickly fall behind on their rent, because rent payments will jump to well over half their income for most tenants, and they will soon be forced to move (or face eviction). A large share will be thrown into poverty, and a significant share are likely to become homeless. (See the discussion in the section on the new documentation requirements for information on the effects of rental assistance loss and the resulting poverty, instability, and homelessness on families and children. That same research on the harm that will be done applies to families losing assistance under the mixed status household provisions and should be considered by HUD in this context as well.)

c. The proposed rule will disproportionately harm families with children and Hispanic/Latinx people, raising fair housing concerns.

As noted in the overview section, the Administration's proposal to bar mixed-status families from receiving federal housing aid will disproportionately harm several classes of people protected by the Fair Housing Act, including families with children and people who are Hispanic/Latinx. Some 39 percent of people who receive assistance from the programs covered by the proposed rule are children, and about 20 percent are Hispanic. Yet, 53 percent of people affected by the proposal to bar mixed-status families are children and 85

[77] 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/.

[78] National Low Income Housing Coalition, "Out of Reach 2019," https://reports.nlihc.org/oor.

are Hispanic.[79] HUD's proposed rule RIA fails to consider the proposed rule's potential discriminatory effects and whether the rule would affirmatively promote fair housing.

d. Contrary to the Administration's argument, the rule will do nothing to address the need for affordable housing among U.S. citizens or anyone else.

Ben Carson, Secretary of the Department of Housing and Urban Development, has argued that the rule would enable America to "take care of its own first," and would help to address the long waiting lists for assistance populated by "legal citizens."[80] These statements run counter to the agency's obligation not to discriminate against individuals on the basis of national origin and the statute that makes many groups of noncitizens eligible for housing assistance on the same basis as citizens.

But setting aside these comments and focusing on whether the rule expands access to assistance for eligible individuals, these claims do not survive scrutiny: the proposed rule's provisions would not result in more eligible individuals receiving housing assistance. Indeed, HUD's own RIA concludes that, if anything, the rule would increase program costs and reduce the availability of housing assistance unless Congress appropriates more resources.

Under the existing regulation, housing assistance to mixed-status families is prorated in proportion to the share of family members who are eligible for assistance. For instance, if one person in a 4-person family is an ineligible noncitizen, then the subsidy the family receives will be 75 percent of the subsidy that the family would otherwise receive if all four members were eligible. Put another way, only the eligible citizens and noncitizens in mixed-status families receive assistance (and nearly all of these are citizens) — and only these *eligible* individuals will lose assistance as a result of the rule.

It follows that the proposed rule's prohibition against assistance for mixed-status families would, at best, simply transfer the assistance currently received by the eligible citizens and noncitizens in mixed-status families to other eligible citizens and noncitizens on current waiting lists. No additional eligible people would be served, and the proposal would thus do nothing to address the severe shortage of affordable housing among people who are eligible for assistance. But the transfer of assistance from one set of eligible citizens and non-citizens to another has an enormous downside — it would destabilize and traumatize the families of eligible people currently receiving assistance, cutting off assistance they have used to establish households in a community and organize their work, child care, and other arrangements around.

HUD's own RIA shows that, in addition to devastating the mixed-status families currently receiving assistance, housing assistance would likely become less available under the rule because it will increase program costs. The RIA concludes that program costs would increase by between $193 million and $227 million per year if the affected programs were to continue to assist the same number of households of the same size.

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[79] Alicia Mazzara, 2019.

[80] 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.'", *The Washington Post*, May 21, 2019, https://www.washingtonpost.com/business/2019/05/21/house-democrats-grill-hud-secretary-ben-carson-plan-evict-undocumented-immigrants/.

HUD concludes, that "it is unlikely that this transfer would occur in the form of increased subsidies from taxpayers to the replacement households. Housing assistance is not an entitlement and the federal budget for housing is not expected to increase because of this rule." Instead, "*[t]he number and quality of public housing units likely could decline as could any additional resident services provided by housing authorities*" (emphasis added).[81]

We estimate that, if cost increases totaling $210 million (i.e., the midpoint of HUD's estimate) were absorbed by reducing the number of households assisted, some 24,000 fewer households would receive assistance under the proposed rule.[82]

[81] Department of Housing and Urban Development, *Regulatory Impact Analysis: Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980, Proposed Rule, Docket No: FR-6124-P-01*, April 15, 2019.

[82] This is based on the average per-unit cost for Housing Choice Vouchers in 2019, according to HUD Voucher Management System data for 2018, adjusted for inflation. HUD's analysis depends on the assumption that assistance is transferred to households of the same size. But if instead we assume that assistance is simply transferred to the same number of people, costs would still go up and fewer people would likely receive assistance as a result.