



Fair Housing Advocates of Northern California

1314 Lincoln Ave., Ste. A, San Rafael, CA 94901 ▼ (415) 457-5025 ▼ TDD: (800) 735-2922

www.fairhousingnorcal.org ▼ fhanc@fairhousingnorcal.org

July 3, 2019

Submitted via www.regulations.gov

Office of General Counsel, Rules Docket Clerk
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Re: HUD Docket No. FR-6124-P-01, RIN 2501-AD89 Comments in Response to Proposed Rulemaking:
Housing and Community Development Act of 1980: Verification of Eligible Status

Dear Sir/Madam:

I am writing on behalf of Fair Housing Advocates of Northern California (FHANC) in response to the Department of Housing and Urban Development's (HUD) proposed rule to express our strong opposition to the changes regarding "verification of eligible status," published in the Federal Register on May 10, 2019 (RIN 2501-AD89; HUD Docket No. FR-6124-P-01). FHANC strongly opposes the verification of eligible status rule ("the proposed rule") due to the detrimental effect it would have on the communities we serve and their opportunity to access affordable housing. We urge the rule to be withdrawn entirely, and that HUD's long-standing regulations remain in effect.

FHANC is a private non-profit agency designed to maximize housing opportunities for all persons regardless of disability, race, color, religion, national origin, familial status, gender, marital status, sexual orientations, age, occupation, ancestry, or source of income. Our mission is to ensure equal housing opportunity and to educate our communities on the value of diversity in our neighborhoods in our service areas including Marin, Sonoma, and Solano counties. FHANC also actively engages in education and outreach to help fight housing discrimination, as well as advocacy with jurisdictions and other recipients of federal funds to affirmatively further fair housing under the federal Fair Housing Act.

The proposed rule is particularly troubling in that it specifically targets low-income immigrants, a population that already faces substantial barriers to housing.¹ In its own analysis of the proposed rule, HUD has attested to the fact that it will harm numerous immigrants and their families who would be applying for and receiving critical housing assistance.

We have seen firsthand how our clients – immigrants and non-immigrants alike – can swiftly become homeless following an eviction as a result of not having access to safe and affordable housing. They cannot get back on

¹ ROBERT WOOD JOHNSON FOUND., LIVING IN AMERICA (Katherine E. Garrett ed., 2006), <https://www.rwjf.org/en/library/research/2006/08/living-in-america.html>.

A local non-profit helping communities eliminate housing discrimination



TDD: CALIFORNIA RELAY SERVICE FOR THE HEARING OR SPEECH IMPAIRED: (800) 735-2922
SE HABLA ESPAÑOL - NẾU CẦN GIÚP ĐỠ BẰNG TIẾNG VIỆT NAM XIN LIÊN LẠC SỐ: (415) 847-2747

their feet as they face a myriad of problems because they lack stable housing, such as loss of jobs for parents or poor performance in school for children. FHANC is able to assist tenants with disability-related needs to request reasonable accommodations, such as extending their voucher term to find housing in this market. Yet our clients who are *citizens* are often unable to find housing due to their status as a Housing Choice Voucher participant. With the proposed rule, it will be exponentially more difficult for immigrants and their families who may not even seek housing subsidies at all – and subsequently much more difficult for them to secure housing and avoid homelessness.

The rule will disproportionately harm children, communities of color, people with disabilities, women, and senior citizens – the most vulnerable in our society, and those less likely to have proof of citizenship due to their gender or race.² Children of immigrant parents who are U.S. citizens would be unable to participate in housing programs designed to alleviate the pressures of the housing crisis, as they cannot live on their own. Furthermore, the wildfires in our service areas have decimated the housing stock and exacerbated the lack of affordable housing.

Although HUD contends that the proposed rule is a means of addressing the waitlist crisis faced by a majority of Public Housing Authorities nationwide, the proposed rule essentially undermines the stability of many immigrants and their families.³ The real issue is the lack of sufficient funding to ensure that every family, regardless of immigration status, has access to one of the most basic of human rights — a safe place to call home.

I. The Proposed Rule Will Hurt Tens of Thousands of Immigrant Families Including Many Children Who Are Citizens.

The proposed rule places tens of thousands of immigrant families at risk of homelessness, jeopardizing their family and housing stability, both of which are critical to getting families on the pathway to self-sufficiency and better life outcomes.

The proposed rule threatens to break up immigrant families. It would force mixed-status families to make an impossible choice — either separate to allow eligible family members to continue receiving assistance or forgo the subsidies so they can stay together. Yet either choice is untenable. Family separations undermine family stability, and lead to toxic stress, trauma, and attachment disorders in children. Even a temporary separation has an enormous negative impact on the health and educational attainment of these children later in life, and many parents struggle to restore the parent-child bond once it has been disrupted.

Since 70 percent of mixed status families currently receiving HUD assistance are composed of eligible children and at least one ineligible parent, it is likely that these families will forgo subsidies to avoid separation. In fact, HUD is apparently counting on this, noting in the Regulatory Impact Analysis ("RIA") that "HUD expects that fear of the family being separated would lead to prompt evacuation by most mixed households, whether that fear is justified."⁴ Therefore, this rule would effectively evict as many as 108,000 individuals in mixed status families (in which nearly 3 out of 4 are eligible for assistance) from public housing, Section 8, and other

² Brennan Center for Justice; Greenstein, Ku, and Dean.

³ Department of Housing and Urban Development, "Regulatory Impact Analysis: Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980," April 15, 2019, <https://nlihc.org/sites/default/files/2019-05/Noncitizen-RIA-Final-April-15-2019.pdf>.

⁴ HUD, Regulatory Impact Analysis, *Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980*, Docket No. FR-6124-P-01, at 7 (Apr. 15, 2019).

covered programs.⁵ These mass evictions will cause increased rates of homelessness and unstable housing among an already disadvantaged population.⁶

The proposed regulations are in direct conflict with their underlying statute and ignore Congress' amendments to Section 214.

In the proposed rule, HUD claims to be revising its regulations “into greater alignment with the wording and purpose of Section 214,” namely by barring mixed-status families from receiving assistance. To support its claim, HUD posits that Section 214 prohibits the indefinite receipt of prorated assistance by mixed-status families, without pointing to any statutory language containing such an edict. In fact, the plain language of Section 214 clearly conveys that Congress intended to ensure that individuals with eligible immigration status would receive assistance while keeping mixed status families together in the same home.

42 U.S.C. § 1436a(b)(2) states that,

“[i]f the eligibility for financial assistance of *at least one member* of a family has been affirmatively established under this section, and *the ineligibility of one or more family members has not been affirmatively* established under this section, any financial assistance made available to that family by the applicable Secretary *shall be prorated...*” (emphasis added).

The law explicitly permits housing authorities to affirmatively choose not to establish ineligibility in the interest of keeping families together.⁷ In other words, HUD *must* provide prorated assistance for mixed status families.

Our own state of California, which holds the largest immigrant population in the country,⁸ has eight of the ten highest rental cost metropolitan counties in the country, including Marin County.⁹ Beyond financial burdens, the proposed rule will create additional burdens on immigrant families that already face significant hurdles in securing affordable housing, placing thousands of families at risk of homelessness.

While FHANC does not request the immigration status of people who request our services, the number of national origin complaints we receive is not insignificant. Marin County's segregated housing patterns are apparent in San Rafael's Canal district, where Latinx represent 80% of the population (when they comprise only 16% of the County's population).¹⁰ Allegations of national origin discrimination comprise 10-15% of the complaints received over the last two years. In addition, FHANC's systemic investigations have historically revealed discriminatory practices of housing providers when Latinx are searching for rental housing, such as offering fewer units, quoting higher rents, more burdensome qualification requirements, and less encouragement and follow-up compared to their white, non-Latinx counterparts.¹¹ In Solano County, in 2017-2018, 11% of client cases alleged national origin discrimination and in Sonoma County, FHANC's 2017-2018 race/national origin audit using criminal records showed significant differential treatment, with 33% of tests showing unfavorable treatment toward African-Americans and/or Latinx. In addition, FHANC's

⁵ *Id.* at 8.

⁶ PRATT CTR. FOR CMTY. DEV., *CONFRONTING THE HOUSING SQUEEZE: CHALLENGES FACING IMMIGRANT TENANTS, AND WHAT NEW YORK CAN DO* (2018), <https://prattcenter.net/research/confronting-housing-squeeze-challenges-facing-immigrant-tenants-and-what-new-york-can-do>.

⁷ 42 U.S.C. § 1436a(i)(2)(A).

⁸ Jens Manuel Krogstad & Michael Keegan, *15 States with the Highest Share of Immigrants in Their Population*, PEW RESEARCH CTR.: FACTTANK (May 14, 2014), <http://www.pewresearch.org/fact-tank/2014/05/14/15-states-with-the-highest-share-of-immigrants-in-their-population/>.

⁹ ANDREW AURAND ET AL., NAT'L LOW INCOME HOUSING COALITION, *OUT OF REACH: THE HIGH COST OF HOUSING 14* (2018), https://nlihc.org/sites/default/files/oor/OOR_2018.pdf.

¹⁰ <http://www.marinij.com/article/NO/20150826/NEWS/150829859>; <https://www.census.gov/quickfacts/fact/table/marincountycalifornia/PST045216>.

¹¹ In 2016-2017, under a MY-PEI FHIP grant, FHANC conducted an audit to investigate the prevalence of race discrimination in Marin and Solano Counties. The results of the investigation showed African-Americans faced unfavorable treatment in 59% of paired tests in Marin.

2015-16 familial status/national origin audit showed even stronger differential treatment of Latinx testers with children as compared to Non-Latinx testers with children.¹²

In short, the proposed rule does not take into account these unique hardships and costs faced by immigrants in today's housing market, and the rule should be withdrawn until HUD completes an in-depth study of these issues.

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

The proposed rule will reduce the number of the 25,000 families that currently receive federally subsidized assistance.

By HUD's own assessment, the proposed rule will most likely lead to a *decrease* in the number of families helped. According to HUD, if the agency were to replace these mixed status families with households comprising of members who are all eligible, this transition would actually *increase* costs for HUD from \$372 million to \$437 million annually.¹³

To pay for these new costs of the proposed rule,¹⁴ HUD has surmised that it would be likely that it "would have to reduce the quantity and quality of assisted housing in response to higher costs."¹⁵ Too many times, our clients come to us not only with fair housing issues, but also habitability issues, especially those living in federally subsidized housing. With the already scarce resources HUD has to administer these housing programs, conditions are likely to be far worse for the families who can continue to receive assistance.

Further, the RIA released by HUD makes it clear that the proposed rule will not further HUD's mission to "create strong, sustainable, inclusive communities and quality affordable homes for all."¹⁶ In fact, the proposed rule will do the exact opposite, reducing the quantity of affordable homes on the market.

III. The Proposed Rule is in Conflict with U.S. Policy Priorities on Preventing and Responding to Homelessness.

Access to stable and affordable housing is a basic platform for family and community health, well-being, and individual dignity. Immigrants and their families are vital our country's social and economic fabric, and we should be building a housing system that creates the conditions for all of us to flourish. Instead, this proposed rule change would harm the health of immigrant families and of our communities as a whole, threatening people with evictions and homelessness and breaking families apart.

Under the proposed rule, thousands of immigrant families will be evicted from federally subsidized housing that will have severe consequences for their health. People who are evicted from their homes, or even threatened with eviction, are more likely to experience health problems like depression, anxiety, and high blood pressure than people with stable housing.¹⁷ They are also more likely to become homeless, contend with long-term housing instability, and visit an emergency room.¹⁸ Eviction and other forms of housing instability, such as

¹² Of the 23 tests conducted in Sonoma County, 57% indicated at least some discrepancies or disadvantages for the Latinx tester and/or the tester with a child, meriting further testing.

¹³ HUD, Regulatory Impact Analysis, *Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980*, Docket No. FR-6124-P-01, at 11 (Apr. 15, 2019).

¹⁴ Braktkton Booker, *White House Budget Calls for Deep Cuts to HUD*, NPR (Feb. 13, 2018), <https://www.npr.org/2018/02/13/585255697/white-house-budget-calls-for-deep-cuts-to-hud>.

¹⁵ HUD, Regulatory Impact Analysis, *Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980*, Docket No. FR-6124-P-01, at 3 (Apr. 15, 2019) (emphasis added).

¹⁶ HUD, ABOUT HUD, MISSION (last visited May 20, 2019), <https://www.hud.gov/about/mission>.

¹⁷ Alison Bovell & Megan Sandel, *The Hidden Health Crisis of Eviction*, CHILDREN'S HEALTH WATCH BLOG (Oct. 5, 2018), <http://childrenshealthwatch.org/the-hidden-health-crisis-of-eviction/>.

¹⁸ 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.

having to move frequently, are particularly harmful for children, which means that these rule changes would harm the health of many children living in mixed status families. Unstable housing means that kids are more likely to have behavioral problems and struggle in school¹⁹—and in classrooms where the student population changes quickly and frequently, all students can fall behind.²⁰ Education itself is linked to positive health outcomes and longer lives;²¹ thus, creating housing instability in children’s lives can have immediate and negative health impacts, but can also lead to poorer health across the life course by disrupting their education. This rule change would leave families with the terrible choice of either losing their housing or splitting up their family members. Rather than continuing to target and scapegoat immigrant families, we should support public health and strengthen our communities by working to expand housing subsidies and support for all low-income families.

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

Adoption of HUD’s proposed rule directly violates HUD’s statutory obligation to affirmatively further fair housing. The federal Fair Housing Act (FHA) mandates that the HUD Secretary shall “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the [FHA’s] policies[.]”²² In its 2015 regulation, HUD defined “[a]ffirmatively further fair housing” to mean “taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.”²³ This also includes “fostering and maintaining compliance with civil rights and fair housing laws.”

Yet the proposed rule does nothing to advance fair housing rights or enforce compliance with other civil rights laws. Instead, it seeks to do the exact opposite by denying housing opportunities to thousands of immigrant families, using immigration status as a pretext for discriminating against individuals based on their race and national origin – a clear violation of federal and state fair housing law. This clearly discriminatory policy is wholly inconsistent with HUD’s obligation to combat housing discrimination and segregation.

V. The Proposed Rule Will Disproportionately Hurt Already Vulnerable and Disadvantaged Populations.

Individuals with Disabilities

The lack of affordable housing, especially in California, makes it particularly difficult for people with disabilities to move from segregated facilities into housing suitable for their disability-related needs, and puts many of these people at risk of unnecessary institutionalization or homelessness. As an example, one of FHANC’s clients, a U.S. citizen, whom we assisted with obtaining a reasonable accommodation for an extension of tenancy due to her disability-related needs, ended up in a hospital shortly after the extension expired. A senior citizen living in Fairfield, California using her Section 8 Housing Choice Voucher, she was under extreme pressure and stress caused by her housing provider and suffered a stroke days after moving out, and is currently facing homelessness. This is the reality recipients of federal assistance face. Functioning in such

¹⁹ *Housing Instability is Linked to Adverse Childhood Behavior*, HOW HOUSING MATTERS (May 9, 2019), <https://howhousingmatters.org/articles/housing-instability-linked-adverse-childhood-behavior/>.

²⁰ Mary Cunningham & Graham MacDonald, *Housing as a Platform for Improving Education Outcomes among Low-Income Children*, URBAN INSTITUTE (May 2012), https://www.researchgate.net/profile/Heather_Schwartz/publication/267687704_Housing_as_a_Platform_for_Improving_Education_Outcomes_among_Low-Income_Children/links/54662110cf25b85d17f58d7/Housing-as-a-Platform-for-Improving-Education-Outcomes-among-Low-Income-Children.pdf.

²¹ S. Egerter, P. Braveman, T. Sadegh-Nobari, R. Grossman-Kahn, and M. Dekker, *An Examination of the Many Ways in Which Education can Influence Health, Including How Educational Attainment Affects Health Across Generations and the Social and Economic Advantages it Represents*, ROBERT WOOD JOHNSON FOUNDATION (Apr. 1, 2011), <https://www.rwjf.org/en/library/research/2011/05/education-matters-for-health.html>.

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

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

circumstances is made exponentially worse when most members of a household speak English as a second language.

People with disabilities comprise of 73 percent of the fair housing complaints FHANC received from 2017-18, similar to other parts of the country²⁴ and likewise make up a large percentage of the individuals served by programs covered under the proposed rule. All too often, as we have seen, they face discrimination when seeking housing and are turned away or steered towards other housing where safety is used as a pretext.²⁵ Termination of assistance under the proposed rule would cause significant harm, with tremendous cost to their health, earning potential, and general well-being.

Several years ago, FHANC successfully intervened on behalf of a disabled client whose housing subsidy had been terminated, leaving him homeless. We negotiated the reinstatement of his Shelter Plus Care assistance as an accommodation based upon the connection between his disabilities and alleged lease violations, allowing the client to search for stable, affordable housing.

However, not every case results in such a positive outcome. The lack of accessible, affordable housing is a continuing and significant barrier to integrated communities, making it particularly difficult for people with disabilities, communities of color (particularly those whose cultures value and rely upon intergenerational living), survivors of gender-based violence, and others to move to and continue living in neighborhoods of opportunity.

Communities of color

Of the families living in subsidizing housing that FHANC has assisted over the last year, 33 percent are Latinx and 53 percent are African-Americans, despite the fact that African-Americans comprise less than two percent²⁶ and three percent²⁷ of the population, respectively, in Sonoma and Marin counties. The proposed rule would disproportionately impact our clients and specifically people of color. Access to federal housing assistance has allowed hundreds of thousands of Latinx like our clients to lift themselves out of poverty. While research suggests that Latinx remain underrepresented in these programs,²⁸ the proposed rule would deter many eligible Latinx from participating in public or subsidized housing programs and increase housing insecurity for Latinx families. As HUD acknowledges, families that lose housing assistance are at serious risk of homelessness, with resulting consequences for family well-being and child development, feeding into the cycle of poverty. On the other hand, when families have access to housing assistance, they have more resources to cover the cost of nutritious foods, health care, and other necessities.²⁹ It is the unfortunate truth that a family's zipcode determines their life outcomes.

This year, FHANC assisted a Latinx mixed-status family with a disability-related need. They were living in project-based housing receiving prorated assistance, as only one member of the household was eligible for the subsidy. Even the lower, pro-rated subsidy has allowed the family to live together and afford their housing for almost a decade. Under the proposed rule, housing for the entire family would be destabilized.

²⁴ Fair Housing Advocates of Northern California, Annual Report Fiscal Year 2017-18, <http://www.fairhousingnorcal.org/who-we-serve.html>.

²⁵ [2] See, e.g., National Fair Housing Alliance, "Making Every Neighborhood A Place of Opportunity: 2018 Fair Housing Trends Report," 52 (2018) at <https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report-4-30-18.pdf> ("As has been the case in past years, the majority of complaints from 2017 involved housing discrimination against people with disabilities.")

²⁶ US Census Bureau for Sonoma County, California (July 1, 2018), <https://www.census.gov/quickfacts/sonomacountycalifornia>.

²⁷ US Census Bureau for Marin County, California (July 1, 2018), <https://www.census.gov/quickfacts/marincountycalifornia>.

²⁸ UnidosUS "Latinxs and the Great Recession: 10 Years of Economic Loss and Recovery" (Washington, DC: UnidosUS, March 2019) <http://publications.unidosus.org/handle/123456789/1932>.

²⁹ Nabihah Maqbool, Janet Viveiros, and Mindy Ault, *The Impacts of Affordable Housing on Health: A Research Summary*, Center for Housing Policy, 2015, http://www.housingpartners.com/assets/creating_change/http_app.brnto.pdf.

FHANC sees many such cases of families who currently have sustainable living situations under the existing rule, but who would lose their housing if the proposed rule were to go into effect.

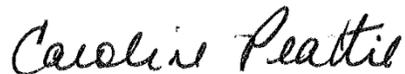
Furthermore, according to HUD's own analysis, 70 percent of the households negatively impacted by this proposed rule are *families with eligible children*.³⁰ Since minor children comprise the vast majority of eligible occupants of mixed status households,³¹ the proposed rule would also have a disproportionate and devastating impact on families with children.

In sum, our communities will be greatly impacted by the proposed rule with those of color disproportionately and will drive away increasing number of families and exacerbate the housing crisis. These housing programs serve as a lifeline for many families who are just one step away from homelessness. Providing and supporting housing stability ensures that families can maintain jobs, access better educational opportunities, and have better health outcomes. Housing is a human right, not a privilege. It is an investment that provides people with opportunities to contribute to our society.

We urge HUD to immediately withdraw its current proposal and dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to support themselves and their families in the future. If we want our communities to thrive, everyone in those communities must be able to stay together and get the care, services and support they need to remain healthy and productive.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact me for further information.

Sincerely,



Caroline Peattie
Executive Director
Fair Housing Advocates of Northern California
peattie@fairhousingnorcal.org

³⁰ RIA at 8.

³¹ *Id.* At 6 (noting that in mixed status households, 73 percent of eligible occupants are children between 0 and 17 years old).