



July 9, 2019

Submitted via www.regulations.gov

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

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

Dear Sir/Madam:

On behalf of the Children's Defense Fund (CDF), we write to offer our strong opposition to the Department of Housing and Urban Development's (HUD) proposed rule regarding "verification of eligible status," published in the Federal Register on May 10, 2019 (RIN 2501-AD89; HUD Docket No. FR-6124-P-01). CDF appreciates the opportunity to submit comments on behalf of children in the United States, especially low-income children, young children, children of color, children with disabilities, immigrant children and children and youth involved in the child welfare or juvenile justice systems. CDF has been advocating for children for 45 years and seeking strong support for families through passage of laws and implementation of rules, programs and services in their best interest. CDF's Leave No Child Behind® mission is to ensure every child a Healthy Start, a Head Start, a Fair Start, a Safe Start and a Moral Start in life and successful passage to adulthood with the help of caring families and communities.

CDF strongly opposes the proposed rule because it threatens the health, development and well-being of children. The proposed rule would eliminate mixed-status families' eligibility for prorated assistance and result in the loss of vital housing assistance for eligible children who have parents who are ineligible to receive assistance. This forces mixed-status families to choose either to face eviction or separate their family in order to retain HUD-assisted housing. Further, the proposed rule places all families receiving HUD assistance—including more than 9 million citizens—at risk of losing their aid if they don't have the documents needed to verify their citizenship and can't get them in the required time. **We urge the rule to be withdrawn in its entirety, and that HUD's long-standing regulations remain in effect.**

Although HUD contends that the proposed rule is a means of addressing the waitlist crisis faced by a majority of Public Housing Authorities nationwide,¹ CDF recognizes that the proposed rule is a part of the current administration's coordinated attack on the safety net and immigrant families.² We all share the concern that millions of U.S. households struggle to find affordable

¹ Tracy Jan, *Trump Proposal Would Evict Undocumented Immigrants from Public Housing*, WASH. POST (Apr. 18, 2019), https://www.washingtonpost.com/business/2019/04/18/trump-proposal-would-evict-undocumented-immigrants-public-housing/?utm_term=.c6fd40565b83.

² See, e.g., NAT'L IMMIGRATION L. CTR., *Understanding Trump's Muslim Bans* (updated Mar. 8, 2019), <https://www.nilc.org/issues/immigration-enforcement/understanding-the-muslim-bans/>; Michael D. Shear & Emily Baumgaertner, *Trump Administration Aims to Sharply Restrict New Green Cards for Those on Public Aid*, N.Y. TIMES (Sept. 22, 2018), <https://www.nytimes.com/2018/09/22/us/politics/immigrants-green-card-public-aid.html>; Dan Lamothe, *Pentagon Will Shift an Additional \$1.5 Billion to Help Fund Trump's Border Wall*, WASH. POST (May 10, 2019),

housing. In fact, our recent report *Ending Child Poverty Now*,³ highlighted this nation's deepening affordable housing crisis and emphasized the power of federal assistance to help more than five million of our neediest households afford a place to live.⁴ To be sure, more poor families with children need help meeting their housing needs. But blaming struggling immigrant families will not fix this problem. Indeed, HUD's own analysis of the proposed rule concludes that fewer, not more, families are likely to receive assistance as a result of the rule.⁵ We must address the real issue: 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 Children.

The proposed rule threatens the well-being and health of children and families, and will effectively evict more than 55,000 children who are eligible for the covered housing programs.

The proposed rule threatens to undermine the well-being of low-income U.S. citizens, immigrants and their families. 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 the subsidies to avoid separation. In fact, HUD is banking on this, noting in their regulatory impact analysis that “HUD expects that fear of the family being separated would lead to prompt evacuation by most mixed households, whether that fear is justified.”⁶ Therefore, this rule would effectively evict as many as 108,000 individuals in mixed-status families (in which nearly 3 out of 4 are eligible for assistance) from public housing, Section 8, and other programs covered by the proposed rule.⁷ These mass evictions and departures from housing assistance will cause increased rates of homelessness and unstable housing among an already vulnerable population.⁸

The changes proposed are specifically designed to force families to make choices that will harm their child's health. Mixed-status families will have to make the excruciating decision to either face eviction or separate as a family in order to retain housing stability. Both options will have lasting impacts on child and family health. Research shows that families who are evicted are more likely to experience homelessness, move into substandard or overcrowded housing and have a sequence of adverse physical and mental health outcomes.⁹ The alternative, family

https://www.washingtonpost.com/national-security/2019/05/10/pentagon-will-shift-an-additional-billion-help-fund-trumps-border-wall/?utm_term=.37360e7cda10; REUTERS, *Exclusive: Trump Administration Proposal Would Make It Easier to Deport Immigrants Who Use Public Benefits*, N.Y. TIMES (May 3, 2019),

<https://www.nytimes.com/reuters/2019/05/03/us/politics/03reuters-usa-immigration-benefits-exclusive.html>.

³ CHILD. DEF. FUND, *ENDING CHILD POVERTY NOW* (2019), <https://www.childrensdefense.org/wp-content/uploads/2019/04/Ending-Child-Poverty-2019.pdf>.

⁴ *Id.* at 21–22.

⁵ HUD, Regulatory Impact Analysis, *Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980*, Docket No. FR-6124-P-01 (Apr. 15, 2019).

⁶ 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).

⁷ *Id.* at 8.

⁸ PRATT CTR. FOR CMTY. DEV., *CONFRONTING THE HOUSING SQUEEZE: CHALLENGES FACING IMMIGRANT TENANTS, AND WHAT NEW YORK CAN DO* (2008), <https://prattcenter.net/research/confronting-housing-squeeze-challenges-facing-immigrant-tenants-and-what-new-york-can-do>.

⁹ Boveell-Ammon A & Sandel M., *The Hidden Health Crisis of Eviction*, BOS. U. SCH. OF PUB. HEALTH (2018), <http://www.bu.edu/sph/2018/10/05/the-hidden-health-crisis-of-eviction/>; Desmond M. & Tolbert Kimbro R., *Evictions Fallout: Housing, Hardship, and Health*, 94 SOCIAL FORCES 295 (2015).

separation, is a stressful and traumatizing experience for children, which can alter the architecture of a child’s developing brain and have lifelong consequences.¹⁰

Approximately 18 million children in the U.S. live in a family with at least one immigrant parent,¹¹ and an estimated five million children (of whom more than 80 percent are U.S. citizens) live in homes with at least one undocumented parent.¹² While the majority of children in these households are citizens, the fact that they have at least one member of their household who has limited or no eligibility for public assistance based on their immigration status means that children in immigrant families have higher rates of poverty than children in U.S.-born families.¹³

Access to housing assistance already remains limited for families—only one in four families who are eligible for rental assistance in the U.S. receive it. Nearly 40% of the households currently receiving rental assistance include children.¹⁴ Housing is the single largest expense for most families and the affordable housing crisis is only deepening around the country.¹⁵ Full-time, year-round minimum wage workers can not afford the monthly Fair Market Rent for a two-bedroom rental unit in any state or the District of Columbia and have enough money for food, utilities and other basic necessities.¹⁶ Research shows that rental assistance for households with children results in significant positive effects for future child outcomes and family economic security. Housing assistance lifts about a million children out of poverty each year,¹⁷ and can improve a child’s chances for long-term economic mobility—one study found that children in households receiving Housing Choice Vouchers have higher adult earnings and a lower chance of incarceration.¹⁸

Housing assistance also improves child health—children of families receiving housing assistance had a 35 percent higher chance of being labeled a “well child,” a 28 percent lower risk of being seriously underweight and a 19 percent lower risk of food insecurity.¹⁹ Access to affordable housing provides stability for families and frees up income for other necessities. Low-income households with children that pay more than half of their monthly income on rent spend considerably less on other basic necessities—\$200 less per month on food, nearly \$100 less on transportation, and about \$80 less on healthcare.²⁰

¹⁰ Simha S., *The Impact of Family Separation on Immigrant and Refugee Families*, 80 N C MED J. 95, 96 (2019).

¹¹ *Databank Indicator: Immigrant Children*, CHILD TRENDS (Oct. 2014), www.childtrends.org/?indicators=immigrant-children.

¹² Randy Capps, Michael Fix, and Jie Zong, *A profile of U.S. Children with Unauthorized Immigrant Parents* (Washington, DC: Migration Policy Institute, 2016), www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents.

¹³ *Id.* at 140.

¹⁴ “National and State Housing Fact Sheets & Data.” Center on Budget and Policy Priorities, August 2017, <https://www.cbpp.org/research/housing/national-and-state-housing-fact-sheets-data>.

¹⁵ CHILD. DEF. FUND, *supra* note 3, at 21.

¹⁶ ANDREW AURAND, ABBY COOPER, DAN EMMANUEL, IKRA RAFI, & DIANE YENTEL, NATIONAL LOW INCOME HOUSING COALITION, *OUT OF REACH 2019* (2019), https://reports.nlihc.org/sites/default/files/oor/OOR_2019.pdf.

¹⁷ Liana Fox, “The Supplemental Poverty Measure: 2017,” September 2018, <https://www.census.gov/library/publications/2018/demo/p60-265.html>.

¹⁸ Andersson, Fredrik and Haltiwanger, John C, et. al. “Childhood Housing and Adult Earnings: A Between-Siblings Analysis of Housing Vouchers and Public Housing.” National Bureau of Economic Research, Working Paper No. 22721, September 2018, <http://www.nber.org/papers/w22721>.

¹⁹ Elizabeth March, “Rx for Hunger: Affordable Housing,” *Children’s Health-Watch; Medical-Legal Partnership*, December 2009, http://www.vtaffordablehousing.org/documents/resources/435_RxforhungerNEW12_09.pdf.

²⁰ “The State of the Nation’s Housing 2018”, Joint Center for Housing Studies of Harvard University, tabulations of US Bureau of Labor Statistics, 2016 Consumer Expenditure Survey, 2018, http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf

This rule would add insult to injury by further limiting access to housing assistance for families with children. HUD estimates that 55,000 children will be displaced and at-risk of homelessness as a result of implementation of this rule. Child and youth homelessness continues to skyrocket in the United States – on a single night in January 2017, about 115,000 children were homeless in America.²¹ Additionally, nearly 1.4 million homeless children were enrolled in public schools in 2016-2017.²² Children who experience homelessness are more likely to suffer chronic health problems, witness violence, get suspended or expelled or drop out of high school.²³

The proposed rule will only serve to further increase child homelessness, with detrimental effects to child well-being and our economy. Homelessness, even for a brief time, is extremely detrimental to a child's healthy development. The younger and longer a child experiences homelessness, the greater the cumulative toll of negative health outcomes.²⁴ Homelessness is also associated with an 87 percent greater likelihood of a child or youth dropping out of school.²⁵

Through our work, we hear the stories of young people from across the country. A baby sleeping in a car alongside his mom and 5-year-old brother after their landlord evicted them. A 6-year-old enrolling in her fourth school in a year because she's had to move from one relative's couch to another. An 11-year-old who loses her housing when her father is deported and her mom cannot keep up with the rent on one income. A high-schooler who rises at 4:35 a.m. to begin a four-train, two-hour commute that delivers her from the family shelter she calls home to her advanced chemistry class. These are the children facing the invisible, uphill battles of homelessness, instability and toxic stress. We need policies that expand, not reduce, access to stable homes for families with children in order to ensure all children have opportunities to be healthy and reach their highest potential.

The proposed rule will bar children who are U.S. citizens and lawful permanent residents from maintaining and seeking federally subsidized housing.

By eliminating the ability of mixed-status families to receive prorated assistance on a permanent basis, the proposed rule robs eligible children of housing subsidies because they have parents with ineligible noncitizen status. Section 214 of the Housing and Community Development Act of 1980 (Section 214) limits access to federally subsidized housing programs to U.S. citizens and a specific list of noncitizen categories.²⁶ Nearly all of the children in mixed-status families who are receiving HUD assistance covered by Section 214 are U.S. citizens and lawful permanent residents (LPR) who live with parents or other adults who do not have eligible immigration

²¹ CHILD. DEF. FUND, *supra* note 3, at 12.

²² *Id.*

²³ *Id.*

²⁴ Megan Sandel, Richard Sheward, and Lisa Sturtevant, Compounding Stress: The Timing and Duration Effects of Homelessness on Children's Health, Insights from Housing Policy Research (Washington, DC: Center for Housing Policy; Boston: Children's HealthWatch, 2015), <https://www.issuelab.org/resources/21731/21731.pdf>.

²⁵ Erin S. Ingram, John M. Bridgeland, Bruce Reed, and Matthew Atwell, Hidden in Plain Sight: Homeless Students in America's Public Schools (Washington, DC: Civic Enterprises and Hart Research Associates, 2016), <http://www.americaspromise.org/report/hidden-plainsight>.

²⁶ 42 U.S.C.A. § 1436a(a)(1)-(6) (West 2019) (Noncitizens eligible for Section 214 housing programs: Lawful Permanent Residents, VAWA Self-Petitioners, Asylees and Refugees, Parolees, Persons Granted Withholding of Removal/Deportation, Qualified Victims of Trafficking, Persons granted admission for emergent or public interest reasons, Persons granted lawful temporary residence amnesty under the Immigration Reform and Control Act of 1986, Immigrants eligible for registry who entered the U.S. before June 30, 1948, Lawful U.S. residents and individuals who entered the U.S. under the Compacts of Free Association with the Marshall Islands, Micronesia, Palau and Guam^[1]Immigrants admitted for lawful temporary residence prior to January 1, 1982).

status. HUD's statistics show that 70% of mixed-status families are composed of eligible children and ineligible parents. There are over 38,000 U.S. citizen and otherwise eligible children in these families, and over 55,000 eligible children in mixed-status families overall.²⁷ Since these children lack the legal capacity to sign leases themselves, the adult heads of household, including those who do not receive assistance, must sign these contracts on behalf of their family. However, by prohibiting the ineligible adults from living in subsidized units, the proposed rule forecloses the possibility of these U.S. citizen and LPR children from receiving any housing assistance under the covered housing programs.

II. The Rule Would Violate HUD's Obligation to Affirmatively Further Fair Housing.

Adoption of HUD's proposed rule directly violates the agency's statutory obligation to affirmatively further fair housing. The federal Fair Housing Act (FHA) mandates that the HUD Secretary shall "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of" the FHA.²⁸ In its 2015 regulation, HUD defined "Affirmatively further fair housing" to mean "taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics."²⁹ The affirmatively furthering fair housing obligation also includes "fostering and maintaining compliance with civil rights and fair housing laws."

The proposed rule does nothing to advance fair housing aims, or compliance with other civil rights laws. Instead, it seeks to do the exact opposite by denying housing opportunities to thousands of immigrant families, using eligible immigration status as a pretext for discriminating against individuals based on their race and national origin. Furthermore, according to HUD's own analysis, 70 percent of the households negatively impacted by this proposed rule *are families with eligible children*.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. This clearly discriminatory policy is wholly inconsistent with HUD's obligation to combat housing discrimination and segregation.

III. HUD Has Not Adequately Addressed the Administrative Burdens Created by the Proposed Rule.

The rule's impact will not be limited to immigrants and their families. Under the proposed new requirements for documentation, more than nine million HUD-assisted residents would need to provide documents "proving" their citizenship—despite having already attested, under the

²⁷ See 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 6-8 (Apr. 15, 2019) (73% of eligible family members are children and there are a total of 76,141 eligible individuals in the covered programs, for a total of 55,582 eligible children; 70% of households are composed of eligible children with ineligible parents, for a total of 38,907 eligible children in households with ineligible parents).

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

²⁹ 24 C.F.R. § 5.152 (definition of "Affirmatively furthering fair housing").

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).

penalty of perjury, their eligibility.³² This places *all families* at risk of losing their aid if they don't have the documents needed to verify their citizenship and can't get them in the required time.

Many tenants face tremendous obstacles in accessing this kind of documentation. Notably, documentation requirements disproportionately harm U.S. citizens who are low-income, women or people of color. A national survey found that 12 percent of citizens with incomes below \$25,000 lack proof of citizenship, and adults earning under \$35,000 are twice as likely as others to lack a government-issued photo ID.³³ Roughly one-quarter of Black citizens lack a government-issued photo ID and about half of women citizens lack a birth certificate with their current legal name.³⁴ When citizenship documentation requirements were introduced to Medicaid in 2006, the vital program saw enrollment declines among *eligible* people, prompting concern and attention from policymakers.³⁵

The documentation requirements are a weighty burden for both tenants and housing providers, who would need to collect status documents. Additionally, the proposed rule calls for public housing authorities to establish their own policies and criteria to determine whether a family should receive continued or temporary deferral of assistance. All of these requirements will place a significant cost burden on housing authorities and other subsidized housing providers that are completely unaccounted for in the rule. Housing authorities, charged with administering the public housing and Housing Choice Voucher programs, have spoken out against the proposed rule. For example, the president of the Public Housing Authorities Directors Association (PHADA)—John Clarke—noted that “[r]emoving a family is not free. It takes staff time. It takes legal resources. Staff will have to sit in court instead of screening families or going over eligibility applications. It doesn't seem like a quality way to maximize the slim resources we do have.”³⁶

Other anticipated costs for housing authorities and other subsidized housing providers include:

- Formal eviction and termination of assistance for thousands of mixed-status families that HUD estimates would cost \$4.4 million.³⁷
- Unit turnover because of the chilling effect of this rule on eligible immigrant families who will forgo housing assistance.
- Questions from tenants fearful about the implications of the proposed rule on their families. Housing providers will have to be prepared to answer consumer questions about the new rule. They will experience increased call volume and traffic from tenants and applicants about the new policies.

³² Douglas Rice, *Trump Proposal Would Jeopardize Rental Aid for Many U.S. Citizens*, CTR. ON BUDGET & POL'Y PRIORITIES: OFF THE CHARTS (June 18, 2019, 3:45 PM), <https://www.cbpp.org/blog/trump-proposal-would-jeopardize-rental-aid-for-more-than-9-million-us-citizens>.

³³ BRENNAN CTR. FOR JUSTICE, *CITIZENS WITHOUT PROOF* (2006), http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf.

³⁴ *Id.*

³⁵ Rice, *supra* note 32.

³⁶ Matt Quinn, *Public Housing Agencies Oppose HUD's Plan to Evict Immigrant Families*, GOVERNING (May 21, 2019), <https://www.governing.com/topics/health-human-services/gov-hud-public-housing-immigrants-rule-hearing-congress.html>.

³⁷ 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 15 (Apr. 15, 2019).

- Updating forms and notices to ensure that they are providing tenants and applicants with accurate information about the potential consequences of receiving certain housing assistance.

Again, many of these burdens on tenants and housing providers are not considered in the proposed rule. Moreover, these mounting costs for providers could deter them from participating or continuing to participate in these programs, which would decrease the affordable housing supply even more. The proposed rule will require already overburdened public housing authorities and housing providers to take on additional administrative costs, without providing the benefit of reducing waitlists or improving public housing. HUD has failed to account for these costs and should do its due diligence and perform a comprehensive study on the impact the proposed rule will have on housing providers and local housing markets more generally, before finalizing the proposed rule.

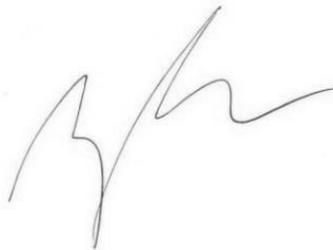
Given the harms children will suffer both in the short and long term, we urge HUD to immediately withdraw its current proposal, and dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to support themselves and their families in the future. If the government were truly interested in easing the pressure on the waiting list for housing assistance, there are productive options for doing so, such as increasing funding for new housing vouchers. Instead, this proposed rule is cruel, vindictive and undermines this nation’s values. 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 again for the opportunity to respond to the Request for Comment on consumer inflation measures. Please contact CDF’s Policy Team (202) 628-8787 if you have any questions or if we can be of further assistance.

Sincerely yours,



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A handwritten signature in black ink, appearing to read "Mina Dixon Davis". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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