



COALITION ON HUMAN NEEDS

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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 Secretary Carson:

On behalf of the Coalition on Human Needs, I am submitting comments strongly opposed to the changes regarding "verification of eligible status," published in the Federal Register on May 10, 2019 (RIN 2501-AD89; HUD Docket No. FR-6124-P-01). The Coalition on Human Needs (CHN) is an independent nonprofit alliance of 100 national-scope organizations, including human service providers, groups representing many faiths, policy experts, civil rights, labor, and other groups advocating to meet the needs of low-income and vulnerable people at the federal level. The members and affiliates of CHN's member groups are located in every state, and number in the millions. We urge the rule to be withdrawn in its entirety, and that HUD's long-standing regulations remain in effect.

The Coalition on Human Needs is particularly concerned about the very harmful impact if this proposed rule is adopted because we have for decades tracked the individual, family, and societal costs of poverty and homelessness or unstable housing. These costs affect health, child development and education, and economic success across generations. Our members understand that children are among the most vulnerable to poverty and housing instability, and also have seen the positive impact of stable, subsidized housing on the health and future success of children. Further, since our members' expertise encompasses health care, disabilities, housing, nutrition, and a host of services utilized by people of all ages, we have seen the harmful consequences of citizenship documentation requirements applied to Medicaid, which we have every reason to believe would cause similar harm if this ill-considered proposed rule were to take effect.

These comments emphasize the following points: (1) Current law supports the existing practice of allowing mixed-status families to reside in public/subsidized housing; (2) If the proposed change is made, it will deny housing assistance to very low-income households made up primarily of citizens or otherwise eligible people, more than half of whom are children; (3) There is abundant research to show that homelessness or unstable housing contributes to a host of ills experienced by children; (4) The documentation requirements in the proposed rule will deny housing assistance to large numbers of eligible citizens simply because they cannot produce the needed documents; (5) The impact of the proposed rule will overwhelmingly affect people of color, and therefore illegally discriminates.

(1) Current law supports the existing practice of allowing mixed-status families to reside in public/subsidized housing. The law is clear: 42 U.S.C. § 1436a(b)(2) states, “If 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 choose not to affirmatively establish ineligibility. Congress did not mince words. “Shall be prorated” does not mean “may be prorated for some period of time.” In mixed status families, HUD must provide prorated assistance. This is directly contrary to HUD’s insistence (unsupported by any citation of statutory language) that Section 214 prohibits the indefinite receipt of prorated assistance by mixed-status families. The plain language of Section 214 contradicts the purpose of this proposed rule, and is reason enough for HUD to withdraw it.

(2) If the proposed change is made, it will deny housing assistance to very low-income households made up primarily of citizens or otherwise eligible people, more than half of whom are children. It is estimated¹ that 109,500 individuals in 25,000 mixed-status households would have to choose either to split up or to leave their subsidized housing unit under the proposed rule. Of these, 73,000 are citizens and 4,000 are eligible non-citizens (that is, close to three out of four). Children represent 58,200 of the mixed-status household members, the vast majority of whom are citizens (56,000). Mixed-status families in subsidized housing typically earn about \$13,000 a year, not enough to afford unsubsidized housing in any state. Even a one-bedroom apartment at Fair Market Value would cost \$970 a month (the national average) in 2019²; that is nearly 90 percent of the mixed-status family’s typical income.

Because 70 percent of these households include citizen children and non-citizen parents, it is not realistic to think that families will split up, with citizens remaining in the units. Children cannot sign leases. In fact, HUD in its regulatory impact analysis says that “HUD expects that fear of the family being separated would lead to prompt evacuation by most mixed households, whether that fear is justified.”

Older people in mixed-status HUD households will also suffer. Seniors with fixed incomes are especially at risk of serious harm if they live in mixed status families and lose rental assistance due to the rule because they have such limited resources to spend on other basic needs, including food, medicine, transportation, and clothing. The proposed rule would also make it impossible for many intergenerational families to live together and share resources that enable them to succeed. It ignores the critical roles many grandparents play in caring for their grandchildren and other family members, as well as the role adult children play in caring for their aging parents and relatives.

People with disabilities are a relatively small share of the people in mixed-status HUD households (fewer than 5 percent), but over 92 percent of people with disabilities in mixed-status households are either citizens or eligible non-citizens. Their health and safety would be jeopardized if they lost the help of other household members because of the dislocations of the proposed rule. Keeping families together and enabling them to care for members with extra needs is a societal goal and should not be sabotaged by this proposed rule. HUD should undertake an evaluation of the consequences to people with disabilities residing in HUD housing before any steps are taken to finalize the propose rule.

It is also important to note that some of the people in mixed-status households are able to escape from domestic violence by being part of such a household. Forcing an immigrant woman to leave the household may create a threatening situation, leaving her vulnerable to more violence. Domestic violence, including sexual abuse, is reported as the acute cause of homelessness among 22% to 57% of all homeless women. According to the Centers for Disease Control and Prevention, over half of all female lifetime victims of intimate partner abuse—including rape, other physical violence, and

stalking—did not receive housing services after requesting them. It would be tragic to force women out of a safe environment into a dangerous one as a consequence of this proposed rule.

HUD's stated aim in forcing families out of subsidized housing is to increase units available to those on the waitlist. However, since mixed-status households pay more for their units than other families, because of prorated assistance, subsidies will have to be higher for similarly sized households, and the additional costs will force a reduction in the total number of units available. By HUD's own assessment, the proposed rule will likely lead to a *decrease* in the number of assisted families. According to HUD, if the agency were to replace the 25,000 mixed status families currently receiving HUD assistance with households comprising members who are all eligible, this transition would cost HUD from \$372 million to \$437 million annually. These funds are needed to maintain units, which now face an estimated \$50 billion backlog of desperately needed repairs. In the Regulatory Impact Analysis issued by HUD, the agency acknowledged that the proposed rule could create about \$200 million in new costs and hurt public housing by reducing the "maintenance of the units and possibly [leading to] deterioration of the units that could lead to vacancy." The Trump Administration has sought to eliminate other funds for such repairs, and although Congress has not agreed, funding is inadequate. The proposed rule would make things worse, with an inevitable loss of units that become uninhabitable.

The proposed rule's combined impacts of loss of total subsidized units, expulsion of low-income mixed-status families from HUD's housing assistance programs, and loss of assistance for inability to supply the newly required documentation, will inevitably cause a substantial increase in homelessness. Such an increase is antithetical to HUD's mission. Households that include workers with low wages and unstable hours, older members and/or people with disabilities with little or no work cannot easily transition to market housing after losing their rental assistance. If they do manage to find housing, the huge burden of rent will crowd out other necessary expenditures, including food, health care, and heat/cooling. Inadequate access to these necessities will increase ill health, with costs borne by individuals and families and by hospitals and all levels of government. HUD should conduct a rigorous analysis of the anticipated impacts of the proposed rule on increased homelessness and its attendant costs before going forward with a final rule.

(3) There is abundant research to show that homelessness or unstable housing contributes to a host of ills experienced by children. Children's HealthWatch, a research project by health professionals documenting the impact of the presence or absence of various benefits on low-income infants and toddlers, has published studies showing that homelessness substantially increases hospitalizations among young children as compared with similarly poor children in more stable housing. As reported by Children's HealthWatch, "children who experienced pre-natal homelessness (i.e., their mothers were homeless during pregnancy but were housed after their birth) were 20 percent more likely to have been hospitalized since birth. Children who experienced post-natal homelessness (i.e., their mothers were housed during pregnancy but were homeless when the children were infants and/or toddlers) were 22 percent more likely to have been hospitalized since birth. Children who experienced both pre- and post-natal homelessness were 41 percent more likely to have been hospitalized since birth."³

Further, Children's HealthWatch researchers found that "infants in food-insecure families with rental assistance during the pre-natal period were 43 percent less likely to have been hospitalized compared to infants in food-insecure families eligible for but not receiving rental assistance. The reduced rate of hospitalization among the infants whose family had rental assistance in the pre-natal period resulted from better overall health and fewer instances of serious illness." That is, even among vulnerable food-

insecure families, the help afforded by rental assistance had a large and positive impact on the health of infants.

Other studies confirm that unstable housing situations can cause individuals to experience increased hospital visits, loss of employment, and are associated with increased likelihood of mental health problems in children, and can dramatically increase the risk of an acute episode of a behavioral health condition, including relapse of addiction in adults. Having safe and stable housing is crucial to a person's good health, sustaining employment, and overall self-sufficiency. These effects will be particularly prominent in the children, nearly all of whom are U.S. citizens, in these mixed status families. Research has shown that economic and housing instability impedes children's cognitive development⁴, leading to poorer life outcomes as adults. Housing instability is directly correlated to decreases in student retention rates and contributes to homeless students' high suspension rates, school turnover, truancy, and expulsions, limiting students' opportunity to obtain the education they need to succeed later in life. 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—they spend \$200 less per month on food, nearly \$100 less on transportation, and about \$80 less on healthcare.

On the other hand, the presence of housing assistance 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. Further, when rental vouchers allowed families with children to move to higher opportunity neighborhoods, the good impacts lasted into the children's adulthoods. Adult earnings were more than \$3,000 higher than those who did not move into such neighborhoods; college attendance was higher, and single parenthood rates were lower. The proposed rule would result in the negative health and education outcomes the research clearly documents for children experiencing housing instability and would prevent the good outcomes possible from stable rental assistance.

Eviction and other forms of housing instability, such as 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 children are more likely to have behavioral problems and to struggle in school—and in classrooms where the student population changes quickly and frequently, all students can fall behind. Education itself is linked to positive health outcomes and longer lives; 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. Homelessness is also associated with an 87 percent greater likelihood of a child or youth dropping out of school.

There are decades of research evidence to document the damage housing instability wreaks on children's education. A 1991 study cited in the Children's Defense Fund's Report on the Costs of Child Poverty, entitled *Wasting America's Future*⁵, found that each time a family moves diminishes a child's chance of finishing high school by more than 2 percentage points, holding other factors equal.

First- (born outside the U.S.) and second- (born in the U.S.) generation immigrant children make up about one-quarter of all U.S. children. In 2017, there were 19.6 million first- and second-generation immigrant children (living with at least one parent born outside the U.S.). Most of these children are citizens (16.7 million, or more than 85 percent). They are more likely to be poor than U.S. children overall. In 2017, one-quarter (25 percent) of first-generation and 22 percent of second-generation immigrant children lived in poverty, compared with 17 percent of non-immigrant children.⁶ While only a

minority of immigrant children live in HUD housing, it should be HUD's mission to protect children and to provide as many as possible with housing stability. Turning tens of thousands of children and their families out of affordable housing is the opposite of what is needed. These children are an important part of America's future. With some initial help, they will follow the pattern of previous immigrant groups and make economic gains that will then be passed along to their children as well as to our economy as a whole. Some may wish to deny help to these children because of their parents' origins, but that is contrary to deeply held American values and contrary to law. It is also a reckless dislocation in people's lives that will play out in lost economic opportunities and the enduring costs of poverty. We will all pay these costs.

(4) The documentation requirements in the proposed rule will deny housing assistance to large numbers of eligible citizens simply because they cannot produce the needed documents. The more than 100,000 people in mixed-status households are not the only ones who will lose rental assistance under the proposed rule. The rule would impose new documentation requirements on U.S. citizens and eligible older immigrants who receive or apply for housing assistance under HUD's three largest programs: Housing Choice Vouchers, Public Housing, and Section 8 Project-Based Rental Assistance. More than 9 million citizens are beneficiaries of one of those forms of housing assistance. Some hundreds of thousands of them may lose assistance because they are unable to provide the required documents. Citizens with comparatively low incomes are less likely to possess documentation proving their citizenship. Citizens earning less than \$25,000 per year are more than twice as likely to lack ready documentation of their citizenship as those earning more than \$25,000, according to a report by the Brennan Center for Justice at the NYU School of Law based on a 2006 survey.⁷ The survey, conducted by the independent Opinion Research Corporation, found that 7 percent of the American citizens surveyed responded that they do not have ready access to U.S. passports, naturalization papers, or birth certificates (the equivalent of 13 million people at that time). But among voting-age American citizens earning less than \$25,000 per year, at least 12 percent do not have a readily available U.S. passport, naturalization document, or birth certificate. Those who have experienced homelessness, and therefore with the most acute need for rental assistance, will be disproportionately harmed by the documentation requirements, because many who become homeless lose most of their belongings, including important papers.

The Brennan Center also found that many women have problems with documenting citizenship because their names changed with marriage. Survey results showed that only 48% of voting-age women with access to their U.S. birth certificates have a birth certificate with their current legal name – and only 66% of voting-age women with easy access to any proof of citizenship have a document with their current legal name. Using 2000 census citizen voting-age population data, the Brennan Center concluded that as many as 32 million voting-age women may only have available proof of citizenship documents that do not show their current name.

Older individuals, especially in communities of color, are less likely to possess birth certificates, despite their clear citizenship. It is estimated that 18 percent of people 65 and over do not have a photo ID. The proposed rule would newly require documentation by people older than 62, many of whom will experience disproportionate hardships in complying. The proposed rule places additional documentation burdens on 120,000 noncitizen seniors as well, by requiring noncitizens 62 years old or older to provide documentation of their immigration status. Presently, these noncitizen seniors are

required to submit a signed declaration of their eligible immigration status and proof of age. Many immigrant seniors will struggle in the same way as citizen seniors to produce this documentation. The loss of rental assistance for eligible older citizens because of the documentation requirement is as harmful as it is foreseeable.

The harm is foreseeable, and therefore should be grounds for withdrawing the proposed rule, because prior experience with citizenship documentation has resulted in denials of assistance to eligible people. When the law was changed to require proof of citizenship to qualify for Medicaid in 2006, there was a large drop-off in the Medicaid rolls. This reduction came at the same time food stamp participation was increasing. Food stamps (now SNAP) did not require similar citizenship documentation.

In addition to the devastating loss of housing by people eligible but unable to provide proof, the documentation requirement will pose costs for housing authorities and state and local governments as they attempt to review and verify the documents. For example, in the last six months of 2006, Louisiana saw a net reduction of about 14,880 children from its Medicaid program. The state attributed at least some of the loss to inability of the families to supply the required documents. In addition, and troublingly, the staff engaged in documentation was not available to ensure that Medicaid beneficiaries up for renewal do what is needed to continue coverage uninterrupted. The drop-off in children happened despite the state's capacity to connect eligibility workers to the state's Vital Records agency for "real-time" on-line inquiries about birth records, for 60,000 inquiries each month. Without this capacity, Louisiana officials speculated that the caseload reduction would have been worse.⁸ In Kansas, between 18,000 and 20,000 applicants and previous beneficiaries, mostly children and parents, lost Medicaid coverage since the citizenship documentation requirement was implemented. About 16,000 of these individuals are "waiting to enroll" or "waiting to be re-enrolled;" the state's Health Policy Authority said these eligibility determinations are being delayed because of a large backlog of applications related to the difficulties confronting individuals and eligibility workers alike who are attempting to comply with the new rule.

As cited by the Center on Budget and Policy Priorities in 2007, Kevin Concannon, then Director of the Iowa Department of Human Services, reacted to the documentation requirements in *The New York Times*: "The largest adverse effect of this policy has been on people who are American citizens ... we have not turned up many undocumented immigrants receiving Medicaid in Waterloo, Dubuque or anywhere else in Iowa."

(5) The impact of the proposed rule will overwhelmingly affect people of color, and therefore illegally discriminates. According to an analysis prepared by the Center on Budget and Policy Priorities⁹, out of the 109,500 people in mixed-status households in HUD housing, 4,900 are white, or less than 5 percent. Out of the 95 percent who are in racial/ethnic categories, 85 percent are Latinx (of any race).

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. 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." The affirmatively furthering fair housing obligation also includes "fostering and maintaining compliance with civil rights and fair housing laws." Therefore, HUD's proposed rule directly violates the agency's statutory obligation to affirmatively further fair housing.

The documentation requirements will have a discriminatory adverse impact on citizens of color as well. As noted above, low-income people are less likely to have access to the needed documents, and communities of color are disproportionately low-income. In the survey cited above, 25 percent of African American citizens lacked a photo ID.

Conclusion. The proposed rule is contrary to the plain language of Section 214. It would result in an overall reduction of subsidized housing units, plunge many households into homelessness or housing instability, and cause even greater inability to pay for necessities such as food or health care for families losing rental assistance. Particularly vulnerable people, including children, older people, people with disabilities, and those escaping violence, would be harmed. Beyond the mixed-status families themselves, many others who are citizens but are unable to produce the required documentation will also suffer loss of their rental assistance. Loss of assistance will be almost exclusively borne by racial and ethnic minorities.

For all these reasons, HUD should withdraw this proposed rule. A thorough analysis of research and the experience of states with documentation requirements for Medicaid would provide ample evidence that this proposed rule will hurt many people, most of whom are citizens, and destabilize families.

Under current law, mixed-status households pay more for their housing, but there is a recognition of the social good that comes from stable families, with special attention to the 58,000 children who are an important part of our future.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact me at dweinstein@chn.org if you require additional information.

Sincerely,

Deborah Weinstein
Executive Director
Coalition on Human Needs

¹ Center on Budget and Policy Priorities, <https://www.cbpp.org/research/housing/demographic-data-highlight-potential-harm-of-new-trump-proposal-to-restrict-housing>, July 1, 2019.

² National Low Income Housing Coalition, Out of Reach, https://reports.nlihc.org/sites/default/files/oor/OOR_2019.pdf, 2019.

³ Children's HealthWatch, Housing as a Health Care Investment, <https://childrenshealthwatch.org/wp-content/uploads/Housing-as-a-Health-Care-Investment.pdf>, March, 2016.

⁴ Heather Sandstrom and Sandra Huerta, <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF> Urban Institute, September, 2013.

⁵ Children's Defense Fund, *Wasting America's Future*, Beacon Press, 1994.

⁶ Child Trends, *Immigrant children, 2018*. Available at: <https://www.childtrends.org/?indicators=immigrant-children>

⁷ CITIZENS WITHOUT PROOF: https://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf, Brennan Center for Justice at NYU School Of Law, November, 2006.

⁸ Center on Budget and Policy Priorities, <https://www.cbpp.org/research/new-medicaid-citizenship-documentation-requirement-is-taking-a-toll-states-report> March, 2007.

⁹ Center on Budget and Policy Priorities, <https://www.cbpp.org/research/housing/demographic-data-highlight-potential-harm-of-new-trump-proposal-to-restrict-housing>, July 1, 2019.