



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 Madam/Sir:

The Asian Outreach Unit of Greater Boston Legal Services writes in strong opposition to the Department of Housing and Urban Development's (HUD) proposed rule published in the Federal Register on May 10, 2019 (RIN 2501-AD89; HUD Docket No. FR-6124-P-01). Although HUD claims the proposed rule will address the problem of long waitlists for public housing programs, HUD's own analysis shows that the rule would mean fewer families receiving assistance and would displace or separate more than 25,000 immigrant families currently living in federally-assisted housing.¹ The proposed rule is plainly another attack by this current administration on immigrant families. As a program dedicated to uplifting and serving the legal needs of the Asian American community in Massachusetts, we know firsthand how devastating the proposed rule will be on the Asian American community, which represents the fastest growing immigrant population in the United States. We urge HUD to withdraw the rule in its entirety and allow the current long-standing regulations to remain in effect.

Founded in 1972, the Asian Outreach Unit (AOU) at Greater Boston Legal Services (GBLS) has significantly advanced equality and justice for the Asian American community by directly responding to its legal needs and supporting community organizing. No other program in Massachusetts serves the legal needs of the Asian American population with the same breadth and depth. AOU provides bilingual and bicultural legal services to Asian immigrant clients seeking access to justice. We use litigation, legislation, and legal services—in collaboration with

¹ 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) (hereinafter "Regulatory Impact Analysis").

organizing—to fight against systemic forces disrupting low-income Asian immigrant communities. Each year, we provide legal representation and assistance to over 1,000 low-income Asian immigrant clients. We directly hear from the most vulnerable voices of Asian immigrants in Greater Boston through weekly legal clinics in the heart of Chinatown and Dorchester, two of the most populated Asian immigrant neighborhoods. We represent and advise individuals and community groups in cases involving immigration, housing and displacement, employment, family violence, voting rights, and public benefits. Populations that AOU serve include low-income Chinese, Vietnamese, and Cambodians. The impact of our work has state-wide and national implications.

The proposed rule cuts at the intersection of the most pressing issues right now in the Asian American community—the immigration and housing affordability crises. The majority of our legal docket involves representation of, and advice to, immigrants and community groups fighting deportation and housing instability. The proposed rule will exacerbate the displacement that our community currently faces and increase the fear already present due to these crises.

The history of the Asian American community is rooted in forced displacement. Large portions of the Asian American population migrated to the United States due to war, genocide, and economic survival. Once within the United States, Asian immigrant populations have continued to experience forced displacement in the housing context as discrimination, urban renewal, and gentrification have disrupted their livelihoods, neighborhoods, and families. Similarly, through the lens of citizenship and immigration, internment and deportations have torn apart the Asian American community. The proposed rule perpetuates the history of discriminatory and systematic upheaval and displacement in communities of color.

I. The proposed rule will create housing instability, mental health issues, and other negative long-term effects for U.S. citizen family members.

The proposed rule will force U.S. citizens in mixed-status families to make a cruel choice between homelessness and family separation, a choice that other citizens do not need to face. The proposed rule would be purely punitive in nature. By punishing U.S. citizen spouses for marrying undocumented people and by punishing U.S. citizen children for having undocumented parents, the proposed rule would, as scholars put it, create a “second-class citizenry” for U.S. citizens with undocumented family members.²

Even at this moment, we are working with a client, a mother of three children, in a mixed-status multi-generational family in Boston’s Chinatown receiving prorated housing subsidy. The prorated rates for the family’s housing subsidy have recently changed and have become unaffordable for the family. Our client and her family are now contemplating an impossible choice—the mother moving out of the unit and separating from her family or the entire family giving up the home they have been living in for more than a decade with the mother’s three children, husband, and father-in-law. The family cannot afford a non-subsidized rent, which would be more than three times their household income. The mother, who is the primary caregiver for the children and works a full-time job, also could not afford housing on her

² April M. Schueths, “Where Are My Rights?” Compromised Citizenship in Mixed-Status Marriages: A Research Note.” *J. Soc & Soc Welfare* 39 (2012): 97.

own close enough to Chinatown to provide the necessary support for the family. The proposed rule would introduce a similar—and unnecessary—impossible choice for tens of thousands of families across the United States.

Research has shown that housing instability can have negative long-term effects on children. Displacement impedes children’s cognitive development, leading to poorer life outcomes as adults.³ 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.⁴ The proposed rule would increase barriers and challenges for mixed-status families and would force many U.S. citizen children, who are not only eligible but also in most desperate need for housing subsidies, into homelessness, creating an even more egregious and intergenerational form of “second-class citizenry.”

Family separation can also lead to various mental health issues and lifelong consequences, especially for children in mixed-status families, most of whom are U.S. citizens.⁵ The experience of family separation imposes constant stress on children, and persistent stress can damage parts of the brain in charge of executive function, short-term memory, and regulation of thoughts, emotions, and actions.⁶ Even temporary separation between a young child and her parent will cause catastrophic and long-lasting harm, as well documented in recent articles about family separations at the border.⁷ Currently about 5 million children in the United States have undocumented parents and around 4 million of these children are U.S. citizens.⁸ The mental health repercussions of the proposed rule are unfathomable.

Our client’s story is an unfortunate, current example of the impact the proposed rule would have in forcing families to make the nearly impossible choice of separating from loved ones or risking homelessness. That displacement—whether of the ineligible individual or the entire family—will have long-lasting ripple effects.

³ HEATHER SANDSTROM & SANDRA HUERTA, THE NEGATIVE EFFECTS OF INSTABILITY ON CHILD DEVELOPMENT: A RESEARCH SYNTHESIS (2013), <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF>.

⁴ See Mai Abdul Rahman, *The Demographic Profile of Black Homeless High School Students Residing in the District of Columbia Shelters and the Factors that Influence their Education* 55 (Mar. 2014) (Ph.D. dissertation, Howard University), available at <http://gradworks.umi.com/3639463.pdf> (citations omitted).

⁵ Simha S., *The Impact of Family Separation on Immigrant and Refugee Families*, 80 N C MED J. 95, 96 (2019).

⁶ Harvard University Center on the Developing Child, *InBrief: The Science of Early Childhood Development*. Center on the Developing Child website, <https://developingchild.harvard.edu/resources/inbrief-science-of-eecd/>.

Caballero TM, Johnson SB, Buchanan CRM, and DeCamp LR, *Adverse childhood experiences among hispanic children in immigrant families versus US-native families*. *Pediatrics*. doi: 10.1542/peds.2017-0297.

⁷ See Jamie Ducharme, *'What This Amounts to Is Child Abuse.'* *Psychologists Warn Against Separating Kids From Their Parents*, TIME, Jun. 19, 2018, <http://time.com/5316030/kids-separation-parents-psychological-harm/>; Allison Eck, *Psychological Damage Inflicted By Parent-Child Separation Is Deep, Long-Lasting*, NOVA Lens, Jun. 20, 2018, <http://www.pbs.org/wgbh/nova/next/body/psychological-damage-inflicted-by-parent-child-separation-is-deep-long-lasting/>; William Wan, *What separation from parents does to children: 'The effect is catastrophic.'* The Washington Post, Jun. 18, 2018, <http://time.com/5316030/kids-separation-parents-psychological-harm/>.

⁸ 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.

II. The proposed rule harms Asian and other immigrant communities, particularly in neighborhoods that are rapidly gentrifying and unaffordable.

The Asian American population, the fastest growing immigrant population in the United States, is diverse and includes undocumented people, U-visa holders, and Temporary Protected Status (TPS) holders—among the people with ineligible status that the proposed rule would severely harm. Of the undocumented population in Massachusetts, 28.5% is Asian American. The clients we represent and advise through our legal clinics and collaborations with community groups reflect the diversity of the Asian American community.

Last year, the Massachusetts governor declared a housing crisis in Massachusetts. Despite—or rather because of—rising home prices, homelessness is on the rise in the Commonwealth.⁹ A recent report from the Federal Reserve Bank of Boston has found that for every 100 extremely low-income households, the number of affordable and available units has decreased from 50.2 units in 2011 to 48.6 units in 2016.¹⁰

Asian Americans are especially burdened by high housing prices. More than half of all poor Asian Americans live in only 10 Metropolitan Statistical Areas,¹¹ most of which are located in the most expensive housing markets. Most low-income Asian Americans live in areas with housing prices, including renting and homeownership prices, higher than the national median.¹² The financial burden renders Asian Americans especially vulnerable to displacement, turning the population into one of the fastest growing poverty populations in the United States. Additionally, 26 percent of Asian Americans, more than any other Americans, tend to live in multigenerational households¹³ and the average household size of Asian Americans is larger than that of all Americans.¹⁴ Multigenerational households, which include a mix of citizens and non-citizens, allow for sharing daily and childcare expenses and responsibilities that may otherwise be prohibitive for low-income families.

Roughly 12.3% of Asian Americans live below the federal poverty line.¹⁵ This figure is even higher for certain Asian ethnicities: as of 2015, 19.1% of Cambodian Americans, 14.4% of Chinese Americans, and 14.3% of Vietnamese Americans live in poverty, compared to a national

⁹ Eli Sherman, Housing Crisis Fuels Homelessness in Massachusetts, *The Worcester Telegram*, Feb. 6, 2019, <https://www.telegram.com/news/20190206/housing-crisis-fuels-homelessness-in-massachusetts>.

¹⁰ Nicholas Chiumenti, The Growing Shortage of Affordable Housing for the Extremely Low Income in Massachusetts (2019), available at <https://www.bostonfed.org/publications/new-england-public-policy-center-policy-report/2019/growing-shortage-affordable-housing-extremely-low-income-massachusetts.aspx>.

¹¹ US Census, 1-Year American Community Survey, 2011-2017.

¹² US Census, 5-Year American Community Survey, 2016.

¹³ Vanessa Hua. "Asian Americans More Likely to Have Multigenerational Households." *NBC News* 25 (2014).

¹⁴ Cheryl Russell, *Household Size by Race and Hispanic Origin, 2017*, Demo Memo (Feb. 12, 2018), <https://demomemo.blogspot.com/2018/02/household-size-by-race-and-hispanic.html>.

¹⁵ Victoria Tran, *Urban Wire: Poverty, Vulnerability, and the Safety Net*, URBAN INST. (June 19, 2018), <https://www.urban.org/urban-wire/asian-americans-are-falling-through-cracks-data-representation-and-social-services>; Rakesh Kochhar & Anthony Cilluffo, *Income Inequality in the U.S. is Rising Most Rapidly Among Asians*, PEW RESEARCH CTR., APPENDIX B (July 12, 2018), <http://www.pewsocialtrends.org/2018/07/12/income-inequality-in-the-u-s-is-rising-most-rapidly-among-asians/>.

average of 15.1%.¹⁶ Over half of the recently arrived, lawfully present Asian immigrant community fall below the 250% mark of the Federal Poverty Line, which the proposed public charge rule sets as the threshold for being either a negative or positive factor.¹⁷ In numerical terms, this means over 1,041,000 Asian immigrants would be in jeopardy of being deemed a “public charge” under the new rule.¹⁸ The “model minority” stereotype has masked the reality that many in the Asian American community suffer from extreme levels of poverty.

The national poverty rates among the Asian population are consistent with the Asian American community in Massachusetts, where 32% of Asian American residents are non-citizen immigrants.¹⁹ Specifically, nearly 30% of Asian Americans in Boston are living in poverty, compared to a city-wide average of 21%.²⁰ In Malden, Massachusetts, a rapidly-developing neighborhood north of Boston proper, Asian Americans are the second largest ethnic group living below the poverty line, as an estimated 30% of Malden residents living in poverty are Asian American.²¹ In addition, compared to the overall poverty rate of 10.4% in Massachusetts, 17.5% and 18.1% of the Cambodian and Vietnamese families, respectively, fall below the poverty line, while 27.4% of Hmong population experience poverty.

In Massachusetts, one of the newest—and therefore most vulnerable—immigrant communities is the Nepalese population. The U.S. Census shows that Massachusetts had a nearly nonexistent Nepalese population in 2000 to one that has grown to more than 2,500 people by 2010.²² Currently around 9,000 Nepalese immigrants in the United States receive Temporary Protected Status.²³ The administration’s recent attempt to end Temporary Protected Status for Nepalese has already generated grave fear among Nepalese communities.²⁴ Family separation and homelessness would further terrorize this group.

U-visa holders, who had been victims of crimes and had assisted law enforcement in investigations and prosecutions, are also a more vulnerable group that would be prevented from receiving housing subsidies. Having worked with many U-visa holders and applicants, we know that undocumented immigrants need to overcome huge pressure, both from their immigration status and from the perpetrators, to come to law enforcement and help investigate crimes. To

¹⁶ Ibid.

¹⁷ See Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114, 51,204 (Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248).

¹⁸ *Through the Back Door*, supra note **Error! Bookmark not defined.**

¹⁹ SHAUNA LO, U. OF MASS. BOS. INST. FOR ASIAN AM. STUDIES, ASIAN AMERICANS IN MASSACHUSETTS, INCLUDING BOSTON AND OTHER SELECTED CITIES 7 (2017), https://www.umb.edu/editor_uploads/images/centers_institutes/institute_asian_american_studies/publications/AAs_in_MA_2017.pdf.

²⁰ ASIAN AMERICANS ADVANCING JUSTICE, A COMMUNITY OF CONTRASTS 18 (2013), https://www.advancingjustice-aaajc.org/sites/default/files/2016-09/A%20Community%20of%20Contrasts_Northeast.pdf.

²¹ Malden, MA, DATA USA (last visited Nov. 13, 2018), <https://datausa.io/profile/geo/malden-ma/>.

²² Institute for Asian American Studies, Populations of Asian American Subgroups in Massachusetts (last visited July 9, 2019), https://www.umb.edu/iaas/census/2010/population_of_asian_american_subgroups_in_ma.

²³ Anh Do, A “Hidden” Community of Nepalese Migrants Fights to Remain in U.S., Los Angeles Times (Apr. 17, 2019), <https://www.latimes.com/local/lanow/la-me-ln-nepal-migrants-tps-trump-immigration-20190417-story.html>.

²⁴ *Id.*

exclude them from housing subsidies and thus potentially forcing them into homelessness would frustrate their legitimate reliance interests in the government providing them basic protection.

In 2018, over a quarter of a million Asian Americans and Pacific Islanders received HUD subsidized housing assistance. The impact of HUD's proposed rule would mean that the presence of a single ineligible member of a household could lead to disqualification of the entire household, including citizens, children, and the elderly who are eligible for public housing and Section 8 programs.

III. The proposed rule would violate civil rights and HUD's obligations under the Fair Housing Act by disproportionately harming communities of color.

HUD has an affirmative duty to protect, rather than harm, minority groups. Under the Fair Housing Act (FHA), the HUD Secretary has an obligation to "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,²⁵ HUD itself defined "[a]ffirmatively further fair housing" as "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."²⁶ Thus, one of HUD's duties should be to include, rather than exclude, more people of minority groups into housing subsidies. The proposed rule, however, would contradict HUD's obligation and violate the FHA. It would disproportionately harm communities of color, including Asian communities, by imposing financial burdens, forcing family separations, and rendering U.S. citizen children homeless.

Furthermore, the documentation requirement imposed by the proposed rule would disproportionately burden elderly citizens, citizens of color, citizens with disabilities, and low-income citizens, who would experience more difficulties in obtaining such documentation. 11% of U.S. citizens do not have government-issued photo identification.²⁷ The number becomes 18% when it comes to citizens over 65 years old, 25% for African American citizens, 16% for Hispanic citizens and 15% for citizens earning less than \$35,000 per year.²⁸ The documentation requirement would impose a significant burden on all eligible applicants, but especially on elderly people, low-income groups, and racial minorities.

IV. The proposed rule fails to achieve its stated goal and will waste resources.

HUD has provided thinly veiled justifications for the proposed rule. While the proposed rule claims to address the current waitlist crisis by allowing only eligible applicants to receive subsidies, it would fail to do so. Moreover, it would waste resources and thus make subsidies even less available to eligible applicants.

²⁵ 42 U.S.C.A. § 3608(e)(5).

²⁶ 24 C.F.R. § 5.152.

²⁷ Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification, Brennan Center for Justice (Nov. 2006), http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf

²⁸ *Id.*

HUD claims that the proposed rule would “bring its regulations into greater alignment with the wording and purpose of Section 214,” which “prohibits the Secretary of HUD from making financial assistance available to persons other than” eligible citizens and residents. The proposed rule, however, would not further that goal, since the current rule, which grant prorated subsidies to mixed-status families, has already excluded ineligible aliens from receiving their share of subsidies. Thus, the proposed rule would not free up additional resources for “legal residents who have been waiting . . . for access to affordable housing.”²⁹

As the story of our client whose rent is pro-rated illustrates, the proposed rule may not incentivize many mixed-status families to give up their subsidies because housing prices are prohibitively high, particularly in cities like Boston that are facing significant shortages in affordable housing units. Families could not afford unsubsidized rents and the ineligible members would be forced to move out. Thus, the proposed rule may not significantly ameliorate the waitlist crisis. If the entire family did move out, the proposed rule would cause an even greater problem because the entire family would lose subsidies and potentially become homeless.

Homelessness and housing instability created by the proposed rule can result in a public health crisis. Research has found a connection between increased housing costs and food insecurity.³⁰ When a family cannot afford safe food due to high housing costs, the family is more likely to experience health issues. Families may also delay medical care due to high housing costs, which will ultimately increase medical costs.³¹ Moreover, the deprivation of subsidies itself can have significant and easily underestimated impact on family members’ mental and physical health. Having worked with many clients on social benefits and housing cases, we know that the fear of being deprived of social benefits or being evicted can quickly and directly lead to anxiety, depression, high blood pressure, and other severe health problems, incurring medical costs.³² Finally, increased rents lead to increased homelessness,³³ which would be detrimental to public health.

We have worked with an elderly Chinese client who had no access to federal housing subsidies because of his immigration status. He was approximately 80 years old and had developed a serious physical disability leg. Due to his disability and age, his ability to work had decreased. Therefore, his housing situation had become increasingly precarious and his health was deteriorating. When we met this man at our legal clinic, his formerly homeless friends accompanying him emphasized how they had seen too many people in his situation die. The proposed rule would not only cause more unnecessary human misery by forcing more immigrant populations into this man’s situation, but also increase healthcare costs and waste public resources.

²⁹ *Id.*

³⁰ Jason M. Fletcher, Tatiana Andreyeva, & Susan H. Busch, *Assessing the Effect of Increasing Housing Costs on Food Insecurity* (Nov. 12, 2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1503043.

³¹ ENTERPRISE, *Renters Report Housing Costs Significantly Impact Their Health Care* (Apr. 3, 2019), https://www.enterprisecommunity.org/news-and-events/news-releases/2019-04_renters-report-housing-costs-significantly-impact-their-health-care.

³² See also CENTER ON BUDGET & POLICY PRIORITIES, *Policy Basics: Public Housing* (Nov. 15, 2017), <https://www.cbpp.org/research/policy-basics-public-housing>.

³³ Chris Glynn and Alexander Casey, *Homelessness Rises Faster Where Rent Exceeds a Third of Income* (Dec. 11, 2018), Zillow, <https://www.zillow.com/research/homelessness-rent-affordability-22247/>.

The proposed rule, unjustified by any legitimate policy concerns, not only fails to benefit, but also harms and wastes resources for eligible applicants.

* * *

In conclusion, the proposed rule would impose grave and unnecessary sufferings on low-income populations of color, including Asian American communities, and little benefit for eligible applicants. In light of the proposed rule's detrimental effects on Asian Americans and other communities of color and the lack of legitimate policy justifications, we strongly urge HUD to withdraw the rule.

Sincerely,

Bethany Li, Director, Asian Outreach Unit
Ruo Fei Qu, Legal Intern, Asian Outreach Unit
Irene Zhang, Legal Intern, Asian Outreach Unit